

Opinion of the European Economic and Social Committee on the Proposal for a Regulation of the European Parliament and of the Council on interchange fees for card-based payment transactions

COM(2013) 550 final — 2013/0265 (COD)

Proposal for a Directive of the European Parliament and of the Council on payment services in the internal market and amending Directives 2002/65/EC, 2013/36/EU and 2009/110/EC and repealing Directive 2007/64/EC

COM(2013) 547 final — 2013/0264 (COD)

(2014/C 170/13)

Rapporteur: **Mr FARRUGIA**

On 8 October 2013 and on 31 October 2013 respectively, the European Parliament and the Council decided to consult the European Economic and Social Committee, under Article 114 of the Treaty on the Functioning of the European Union, on the

Proposal for a Regulation of the European Parliament and of the Council on interchange fees for card-based payment transactions

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and the

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COM(2013) 547 final — 2013/0264 (COD).

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 13 November 2013.

At its 494th plenary session, held on 10 and 11 December 2013 (meeting of 11 December), the European Economic and Social Committee adopted the following opinion by 176 votes to 22 with 12 abstentions.

1. Conclusions and recommendations

1.1 The European Economic and Social Committee (EESC) welcomes the two legislative initiatives, in the Commission's payments package published on 24 July 2013: the proposed revised Directive on payment services (PSD II) and the proposal for a Regulation on interchange fees (IF Regulation).

1.2 The EESC stresses the need to see these proposals through their regulatory process as a matter of urgency to combat the lack of transparency on the real costs of card payments and the barriers to entry in the payments market — including the multilateral interchange fee. The EESC notes that the payments market still lacks a regulatory framework based on empirical evidence which would lead to full SEPA harmonisation. In addition, the legal framework must allow free and open competition to promote consumer welfare and the smooth functioning of the free market. The European payments market must evolve to cater for new payment models and developments in technology.

1.3 The EESC generally supports the caps proposed by the Commission in the IF Regulation, but recommends that caps for both credit and debit electronic payments should be lower than those currently proposed. A debit system which does not operate using an interchange system would give Europe a truly low-cost, easy and efficient electronic alternative to cash and would open up greater opportunities for the e-commerce market both nationally and cross-border. In tandem, a lower cost system for credit card transactions would bring greater benefits to consumers and the economy.

1.4 The EESC also believes that these measures are of such importance that there should be as little delay as possible in their implementation. Caps should be introduced at national level if possible within six months from the adoption of the Regulation, but by one year at the latest.

1.5 The EESC recommends that an option be found to limit the fees imposed under the 3-party business model also. In the impact assessment published with the proposals, the Commission states that the 3-party model, as is has limited market share and is generally confined to business use, can be exempted from the proposed caps. Given the rapid development of new business models and cloud-based systems, the EESC does not entirely share the Commission's confidence that this will remain the case.

1.6 The EESC considers that commercial cards should be included within the caps at the same level as those proposed for consumer cards. There must be provision to prevent any push by card schemes towards more commercial card usage.

1.7 The EESC recommends more clarity in the PSD II on possible charges from banks to third party providers (TPPs) for accessing consumer account information. The EESC understands that the Commission does not consider banks should charge such fees and recommends this should be made clear in the text of the Directive.

1.8 In addition to these proposals, the EESC stresses the need for fully interoperable standards for payments across all markets in Europe. More work is needed to encompass new technologies and provide certainty. Also it is essential that all relevant players are consulted and adhere to the same standards. This will need centralised European leadership and a robust governance structure.

2. Comments and observations

2.1 In 2011, the European Commission issued a green paper 'Towards an integrated European market for card, internet and mobile payments' ⁽¹⁾ and the payments package is the outcome of the consultation which arose. The EESC refers to its opinion ⁽²⁾ in which it noted the need for clarity and certainty on the rules concerning multilateral interchange fees (MIFs) and the business rules associated with card payments. This need was echoed by many in response to the consultation. The EESC welcomes the proposed IF regulation, which will address these very issues. The Regulation, as well as applying to transactions made using current plastic cards, would also apply to any e- or m-payments made with applications which use the same business model.

2.2 The EESC notes that according to ECB figures, the total societal cost of retail payments is EUR 130 billion or 1% of GDP and that the cost of interchange fees represent 10 billion ⁽³⁾. The retail banking market, the extent of its development and the maturity of electronic and card payments varies significantly from member state to member state. In much of Europe and in certain member states in particular, it is characterised by too little competition, thus keeping prices high and innovation low.

2.3 The EESC notes that cash withdrawals at ATMs are not included in the proposed legislation. A lower use of cash may create an increase in electronic payments, creating benefits for all merchants and consumers. The ECB and the Commission recognise that cash has a high private cost and may encourage the shadow economy and tax evasion, given that cash payments have poor traceability and transparency.

2.4 E-payment usage, both over the internet and mobile phone, is increasing rapidly. It is essential that Europe's regulatory landscape is fit to encompass these changes. The EESC notes the danger, also noted by the Commission, that the draw-backs of the interchange system and other types of cost should not be allowed to 'spill-over' into these new mobile technologies.

⁽¹⁾ COM(2011) 941 final.

⁽²⁾ OJ C 351, 15.11.2012, p. 52.

⁽³⁾ ECB Report, 'The Social and Private Costs of Retail Payments Instruments', Occasional Paper 137, September 2012.

2.5 The EESC supports the Commission's proposed Directive on access to payment accounts⁽⁴⁾, which should go some way to stimulate competition in this area. It is also desirable that this Directive provides the necessary transparency and information on all other costs paid by consumers, information which is not currently known and makes provision to enable consumers to switch banks more easily to find the most cost-effective solution. It intends to give every citizen in Europe the right to open a bank account with certain minimum features free of charge or at 'reasonable' cost. The payments package, in combination with this proposal should have as overall aim that all EU citizens should be able to make basic electronic payments over the internet both nationally and cross-border cheaply and easily.

2.6 The EESC further notes the lack of available data on the true costs of electronic payment methods and the lack of transparency around this issue. Further data is required to permit a full analysis of these problems to establish who amongst the parties involved is paying what. Care must also be taken to avoid any unintended consequences i.e. that lowering fees on one side of the market may result in increased costs in another area of the system.

2.7 The EESC notes that the Commission has commissioned a study to ascertain the impact on merchants of the MIFs vis-à-vis cash using the merchant indifference test⁽⁵⁾. The EESC considers there is a need for similar studies on the perceptions and the attitudes of consumers to the cost of different payment instruments since there is currently little empirical data. The study on the impact of the PSD I and the cross-border payments Regulation, prepared by London Economics gives some information⁽⁶⁾. Also, a recent study⁽⁷⁾ showed that surcharging had the greatest impact on consumer behaviour when choosing methods of payment. However, the EESC notes that further studies are required to ascertain the effects on consumer behaviour when the true costs of different payment models are made transparent.

2.8 The multilateral interchange fee (MIF) based card-scheme model was first designed to stimulate card usage and it operated well for many years. However, in today's saturated market, it has become outdated. It is standing in the way of innovation and competition to the detriment of Europe's economy as a whole.

2.9 The MIF is charged by a cardholder's bank (issuing bank) to a merchant's bank (acquiring bank) on each sales transaction made with a payment card. The fee is passed on by the acquiring bank to the retailer by way of a reduction from the payment of the transaction price. Interchange fees are a major source of revenue for issuing banks from cards (others include annual fees, interests for the use of a credit facility, late payment fees, currency exchange fees, etc.).

2.10 The current electronic payment market in Europe is dominated by cards, owned by just two major schemes and run under the MIF model. This business model distorts competition in a number of ways. Competition between the card schemes for issuing bank custom forces fees even higher, while competition for card-holder custom produces new products with greater 'free benefits' attached. It is therefore necessary to increase competition amongst payment service providers.

2.11 In 2007, the Commission reached a decision finding that MasterCard's MIF model was an anticompetitive agreement, contrary to section 101 of the EU Treaty. MasterCard appealed the decision but, in May 2012, the EU General Court fully upheld the Commission decision and affirmed that the MIF applied by MasterCard was anti-competitive and not necessary for the proper functioning of the card system. MasterCard has appealed the judgment.

2.12 The IF Regulation proposes to address these issues by setting caps on interchange fees at certain levels on certain types of card, the caps to be imposed after specific time periods. It also seeks to address and to remove some of the contractual rules which have bound the users of card systems and which, it has been argued, are anti-competitive in their impact.

⁽⁴⁾ COM(2013) 266 final, EESC opinion OJ C 341, 21.11.2013, p. 40.

⁽⁵⁾ The Commission has appointed Deloitte to carry out a study on the costs of acceptance of payment means.

⁽⁶⁾ See Study on the Impact of Directive 2007/64/EC and on the application of Regulation 924/2009 at http://ec.europa.eu/internal_market/payments/docs/framework/130724_study-impact-psd_en.pdf.

⁽⁷⁾ Elke Himmelsbach and Nico Siegel, of TNS in Germany, 'Hidden fees for card payments: Will transparency change consumer behaviour?'

2.13 The Regulation only proposes to set caps on card transactions within the four-party payment schemes which are widely used by consumers; caps would not apply to commercial cards, or to three-party card schemes (e.g. Amex, Diners). However, where three party schemes issue or acquire card transactions through a licensee bank — as is done by AMEX in some Member States — they are considered four-party schemes.

2.14 The proposed caps would only apply to consumer card transactions and would be set at a maximum level of 0,2% for debit cards and 0,3% for credit cards. The EESC has no knowledge of any definitive data on which these cap levels are based. They are the same as those adopted by commitments offered by MasterCard in 2009, following the competition action. Also in 2010, Visa Europe undertook commitments for 0,2% on debit cards. Visa Europe has also subsequently offered to commit to a level of 0,3% for credit cards.

2.15 The cap levels therefore reflect the competition commitments accepted by the Commission on the basis of the merchant indifference test. However, the EESC notes that the Commission is yet to complete the study mentioned at 2.7 above. The figures originally were suggested by the card schemes themselves, using data provided by a number of central banks ⁽⁸⁾. The EESC emphasises that all necessary safeguards should be introduced in the proposed legislation to ensure that direct costs to consumers which may be imposed by banks (such as commissions, card and account fees) will not be increased to circumvent the lowering of the MIF.

2.16 However, the explanatory memo to the Regulation itself notes that currently in eight Member States, no or very low interchange fees apply to debt card transactions with no appreciable negative effects on card issuing and card usage. Also, the Commission impact assessment gives substantial backing for the view that consumer debit cards should carry no interchange fee ⁽⁹⁾. The EESC contends that a more detailed analysis should be carried out to ascertain the real costs of the MIF to consumers whether in surcharging or in direct increases in pricing.

2.17 The EESC is of the view that the levels of caps proposed in the IF Regulation should be more deeply considered. The debit card market in almost all Member States in Europe is highly developed and there is no need to incentivise the use of these cards through marketing funded by the interchange fees. In addition, lower MIFs would bring increased card-acceptance, therefore increased card usage and so banks would overall suffer little or no revenue loss.

2.18 The EESC would propose that the current proposal should be amended to set a no-MIF system for debit cards, taking the most efficient current national schemes as a basis. In conjunction, the cap for credit, set at 0,3%, should be reviewed with a view to setting it at a lower level proportionate to the lower debit level. The measures should be reviewed and their impact on businesses and consumers should be assessed.

2.19 The IF Regulation would bring the caps into force in two stages: cross-border transactions, to be subject to the cap two months after entry into force and domestic transactions two years after entry into force. The EESC questions the need for such a long transition period for domestic MIFs. Most payments are made locally and the cross-border payments market is very small in comparison. It is on the domestic market that IF levels are the greatest burden for merchants and consequently for consumers. Such a long transition period for the domestic market could severely delay the real benefits of the Regulation.

2.20 The EESC also welcomes changes in rules on cross-border acquiring but insists that this should not result in the creation of new barriers between big and small merchants. The proposal would allow cross-border acquiring on consumer cards at the capped rate from its entry into force. If national implementation is not brought in as soon as possible (as advised under 1.4 above), this might mean that only large retailers could benefit from the caps immediately by shifting their acquiring operations to cross-border, while SMEs operations, which do not have this possibility, would be left paying high domestic rates. It cannot be assumed that domestic banks would voluntarily lower rates in order to counteract the shift of business to cross-border acquirers. We also consider that commercial cards should be included in the rules on cross-border acquiring by stating that the interchange fee to be applied should be that of the country where the acquirer operates.

⁽⁸⁾ See European Commission MEMO 13/719, 24 July 2013.

⁽⁹⁾ On page 193 it states: 'The option of banning interchange fees for debit cards which would generate potentially higher benefits to merchants and consumers deserves further examination. This is to ensure that the maturity of markets in the EEA, in particular as regards debit cards issuance and usage, is such that there is no need for charging interchange fees to incentivise debit card payments. A review to this effect could therefore be conducted shortly after a legislative action on interchange fees has been taken.'

2.21 The EESC supports the removal of the rules relating to honour all cards. If commercial cards are not included in the caps, retailers could refuse them. They would also, under the PSD II proposal, be able to surcharge commercial cards. This will allow merchants to steer consumers away from higher-fee cards.

2.22 However the EESC is not at all clear that the exclusion of three-party schemes from the Regulation is a good option and is not convinced by the Commission's reasoning that such cards will continue to focus on wealthy consumers⁽¹⁰⁾. There may be a danger that banks might seek to shift their clients to the three party systems, or indeed towards using commercial cards which are not covered by the regulation.

2.23 The EESC also notes that the rules as to when commercial cards should or must be issued are not clear. In many Member States all one-man businesses are automatically issued with a commercial card if they open a business account. We are not clear how such rules are set and whether it is open to a small business to request a non-commercial card. In addition, many companies issue their employees with 'business' cards which may also be used for non-business purposes.

2.24 The EESC welcomes the rules on choice of payment application at the terminal. The regulation specifies that, where two or more payment brands are contained in one device or card, the bank cannot build in a default choice when the card is issued: the choice must be made at the point of sale by the consumer. This gives the consumer additional freedom to choose the best payment method for his economic profile. The regulation also removes the non-discrimination rule and so relaxes the information merchants can and cannot give concerning the MIFs they pay.

2.25 The Regulation seeks to prevent the raising of scheme fees to compensate for the lowering of MIFs through its Article 5 which would treat as an interchange fee any net compensation received by an issuing bank from a payment card scheme in relation to payment transactions or related activities. However, it is not clear that the Regulation pays enough attention to the level of fees imposed on merchants by their own acquiring banks which may be very high, particularly for small businesses which have little negotiating power.

2.26 The EESC welcomes the provision which will separate the payment cards scheme from any processing entity. This will prevent the 'bundling' of cards scheme and processing services into one contractual offer and merchants will therefore be able to freely choose their processing option. This will increase competition and allow new entrants into the market, bringing down prices in its turn.

2.27 In relation to the PSD II, the EESC welcomes the opening of the market this will allow. It will align legal rules and remove national divergences which resulted from the optional nature of some current PSD provisions. It will create legal clarity as to the status of new payment models by bringing them all under the same regulatory regime. It will thus create more competition among providers, allow new entrants into the market and help improve efficiency and decrease costs. By doing this, it will promote the development of new payment models for e-commerce. It also will provide security, transparency, and adequate information for payment users.

2.28 PSD II will also include third party payment providers within its scope of regulation and alter the definition of payment services to make it technologically neutral, thus promoting the development of new technologies. In addition it will open the way for new payment models by allowing third party payment providers (TPPs) access to consumer account information. Such TPPs will therefore be able to check whether a consumer seeking to make an online payment has sufficient funds in his account and transfer an authorisation from that consumer to make a payment to the consumers own bank. Safeguards are provided for consumers to ensure that they have given informed consent to the TPP to do this.

2.29 One element, however, on which the PSD II is silent is whether a bank will be able to charge a fee to the TPP (and therefore to the consumer) for carrying out this service. If such fees were to be widespread and high, this would be likely to destroy any benefit to the TPP business model. We therefore urge the regulators to stipulate that this service should be provided free, i.e. as part of the normal service provided under the account holder's contract.

⁽¹⁰⁾ See European Commission MEMO 13/719, 24 July 2013.

2.30 In relation to clearing and settlement, the PSD II would make some changes. Under the Settlement Finality Directive, payment institutions may not participate directly in clearing and settlement mechanisms (CSM). They must access CSMs indirectly through the large banks. PSD II would not change this situation radically: there is no across the board direct access to clearing and settlement systems for PIs. Under PSD II, rules for indirect access must be the same for all types of payment institution (within the need to safeguard from settlement risk).

2.31 A further point for consideration is the need for real-time or close to real-time clearing and settlement in Europe. Some jurisdictions already have such a system and others are looking at it. The US Federal Reserve Bank issued a consultation paper on this in September this year. Regulators should consider whether to enforce a shift to clearing and settlement processes operating in real time through a future regulatory initiative.

2.32 The EESC hopes that the PSD II will result in new entrants to the payments market which will offer payment solutions using the SEPA credit transfer and SEPA direct debit systems. Such innovative payment products would greatly reduce the costs of e-commerce payments and open them up to a wider market. It could also arguably be more secure since far less sensitive information will be passed. Online payments made with cards require the entry of much sensitive data and are therefore highly susceptible to fraud. Current security methods (3-D secure etc.) try to overcome this, but they are cumbersome and inadequate.

Brussels, 11 December 2013.

The President
of the European Economic and Social Committee
Henri MALOSSE

APPENDIX

to the opinion of the European Economic and Social Committee

The following amendments, which received at least a quarter of the votes cast, were rejected during the debate (Rule 54 (3) of the Rules of Procedure):

Point 2.18

Amend as follows:

The EESC would propose that the current proposal should be amended to set a ~~no-MIF~~ system for debit cards, taking the most efficient current national schemes as a basis. In conjunction, the cap for credit, set at 0,3%, should be reviewed with a view to setting it at ~~a lower~~ an appropriate level ~~proportionate to the lower debit level~~. The measures should be reviewed and their impact on businesses and consumers should be assessed.

Outcome of the vote

For	49
Against	108
Abstentions	20

Point 2.19

Amend as follows:

The IF Regulation would bring the caps into force in two stages: cross-border transactions, to be subject to the cap two months after entry into force and domestic transactions two years after entry into force. The EESC calls on the Commission to analyse rigorously the impact of this first measure on the interested parties (consumers, merchants, employers and employees of this payment system, etc.) before applying the second phase ~~questions the need for such a long transition period for domestic MIFs. Most payments are made locally and the cross border payments market is very small in comparison. It is on the domestic market that IF levels are the greatest burden for merchants and consequently for consumers. Such a long transition period for the domestic market could severely delay the real benefits of the Regulation.~~

Outcome of the vote

For	48
Against	121
Abstentions	22
