Launched in 1960, the European Banking Federation (EBF) is the voice of the European banking sector from the European Union and European Free Trade Association countries. The EBF represents the interests of some 4,500 banks, large and small, wholesale and retail, local and cross-border financial institutions. Together, these banks account for over 80% of the total assets and deposits and some 80% of all bank loans in the EU alone.

Key Points

The EBF supports the objectives of the proposal of the European Commission for a Regulation on Interchange Fees for Card-based Transactions: reinforcing the European Internal Market by promoting more secure, innovative, efficient and competitive card payments. This is fully in line with the long standing call of the European banking industry to be able to set up modern and innovative e-payment systems allowing a quicker and more secure payment processing as an alternative to cash payments.

However, we seriously wonder whether the means proposed by the EC—namely capping interchange fees and imposing some structural changes to the cards business—will really help achieving those objectives.

The proposal would interfere unnecessarily in the market which has ensured huge benefits for both consumers and retailers in the shift to electronic payments.

The experience shows that in countries where interchange fees have been reduced or capped by legislative or other intervention (Spain, Australia) the intended benefits were finally not brought to the consumers\(^1\). More importantly, in some countries such initiatives may even discourage the use of electronic payments in favor of cash, which is by far the most expensive means of payment, as demonstrated recently also by the ECB\(^2\).

The current caps imposed on MIFs in four party schemes are based on the so called “merchant indifference test” (MIT, see Impact Assessment), which does neither consider the relevant investment costs borne by issuers, especially in terms of security (migration to EMV, contactless technologies, etc.) for both proximity and remote payments (e.g. in the context of e-commerce), nor the benefits for consumers and merchants of card usage (substitution of cash and credit extension for the former and payment guarantee for the latter).

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\(^1\) Spain is one of the few countries where strict curbs on IFS have been introduced. ADICAE, the Spanish consumer group claims that Interchange Fees reductions have caused ‘serious damage to consumers’ and showed no benefits in terms of prices paid by them.

More importantly, the MIT does not consider the actual cost of cash for society as a whole\(^3\) and for merchants specifically: the “hidden” cost of cash is not factored in by most retailers, especially small ones, and therefore the “indifference level” is very frequently biased towards cash.

The Regulation also imposes a number of other rules (the so called “flanking measures” such as mandatory co-badging, separation of scheme and processing, unblending, Honour All Cards Rule, choice of application) which would totally change the operating model of current schemes. While the stated goal of such measures is to enhance competition, the investment that some of the proposed rules will require from all stakeholders in the cards market seem huge and would greatly outweigh the intended benefits. Furthermore, some of the proposed measures are not accompanied by an appropriate impact assessment which identifies particular problems and assess the implications in the market of the proposed measures.

Of course, such an overhaul cannot be achieved in the 20 days the Regulation provides for between publication and entry into force.

Finally, some of the identified “market failures” are already addressed by innovation in the market (e.g. prepaid cards which can be used of online payments both domestically and cross-border) and by activity put in place by the PSPs (e.g. the EPC SEPA Cards Framework already stipulates an obligation of separating scheme and processing.): those aspects are not duly taken into consideration by the Regulation proposal.

**Specific Remarks**

**Article 1 – Scope**

The limitation to four party card schemes (and only some aspects of three party schemes) is very difficult to justify, and therefore it will be consistently difficult to be applied, in so far as in some cases also typical three party schemes do not acquire merchants directly but through other parties (such activity would be covered by the proposal as per the definition of three party systems). In these circumstances also the transparency rules vis-à-vis the merchants are particularly complex. The scope should aim to achieve a level playing field amongst four party systems, between three and four party systems and other non-bank market players.

In terms of transactions, we understand that all card transactions are in the scope of the Regulation, but some of them are out of the scope of Chapter II (negative scope of paragraph 3 (a),(b),(c)). However, it remains clear that, for instance, cash advances at ATMs are not included in the scope of Chapter II.

**Article 2 - Definitions**

**Definitions** (4) and (5) (debit and credit card transaction) make reference to “48 hours” as the dividing line between a debit and a credit card transaction. This is not appropriate as it carries the unintended consequence of “transforming” automatically a transaction effected by a debit card before a weekend or a holiday in a credit card transaction, regardless of the features of the relevant scheme. The “48 hours limit” should only be applicable from the moment the

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\(^3\) “Due to the relatively high usage of cash, the social costs of cash are nearly half of the total social costs” from ECB, op. cit.
issuer has received the clearing file, as the timing of presenting the transaction entirely depends on the merchant and the acquirer.

**Definition (10)** (merchant service charge) is not correct in so far as:

a) the list of charges is not comprehensive, as the “merchant service charge” may cover expenses borne by the acquirer (e.g. security-related expenses) other than those listed, and

b) not necessarily such charge is paid “for each transaction” as the economic model of each acquirer may differ.

**Articles 3 and 4 - Interchange fees**

The EBF fears that the reduction of MIFs and the cap on them will alter the equilibrium between issuers and acquirers, discourage further investment in security and new technology, ultimately they are detrimental to the cards market as a whole and consumers in particular and thus they backfire in terms of use of cash, against the policies that many Member States are implementing.

Indeed, there are serious doubts that the potential benefits that merchants would get from the Regulation would be passed on to consumers.

Moreover imposing *the same cap* in different countries would constitute yet another case of price regulation at European level with the objective to homogenize conditions irrespective of the very different level of development in the cards and overall payments market in different countries⁴, which is both unfounded from and economic and competition viewpoints.

The cap is intended to apply to transactions with cards issued by four party payment card schemes, but only to some of those issued by three party card schemes, and not to virtual wallets offered by PSPs or even non-regulated entities (i.e. PayPal, iTunes, Google Play). We consider that these exclusions generate regulatory unbalances and a shift from regulated to unregulated payments with higher costs which will affect the level playing field between different economic agents operating in the same market and ultimately distort competition and stifle innovation by regulated PSPs.

**Article 5 - Prohibition of circumvention**

This provision seems also to ban the current practice of offering rebates and/or incentives for issuers, which are actually quite common for example when new products are launched and when new alliances are struck.

Unintended consequences of such prohibition can be the following:

- new global schemes would refrain from entering in competition with those already active in SEPA (because to convince issuers to move from the old schemes to a new one the issuers need to make investments in infrastructures and/or in communication about the launching and issuance of new products)

- the raise of a new pan European scheme and the launch of new products (e.g. low value payments) could be hindered.

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⁴ “Each of the [13] countries participating in the cost study, like every EU27 Member State, has a unique retail payment market with its own market characteristics”. From ECB, op. cit.
Article 7 – Separation of scheme and processing

The EPC Cards Framework already provides for “Separation of card scheme governance, processing and other functions” (see par. 3.2.3). We consider that the issue of separation of scheme and processing is dealt with appropriately by the market through the Cards Framework. We therefore regard this article as imposing an additional and very profound separation, whose benefits in terms of actual opening up of the market should be gauged against the cost to be borne by all stakeholders.

Article 8 – Co-badging

Conceptually, co-badging is only having two or more payment applications on a payment card. Having several payment applications in a wallet or on a mobile phone can’t be characterized as co-badging and the proposal should be amended to reflect this.

The change of model imposed by this provision will impact almost all the domestic schemes and require to update the functional specifications of the schemes and their certification against the products, as well as to update the entire infrastructure of terminals and cards and to inform the customers.

This will entail huge – and possibly unintended – investment which appears to be disproportionate to the intended goal of enhancing competition that, by the way, is already a reality thanks to co-badging. Moreover, the repartition of such costs on the different stakeholders would have to be considered.

In addition, the Interchange Fees Regulation proposes that, if there are several payment applications on the same card (co-badging), it should be the customer who decides on a case-by-case basis at the point of sale which application will be used (choice of application).

In Europe, a lot of the debit cards in circulation are currently co-badged cards and would satisfy the principle that payers should have a free choice of which application is used. In the interests of practicality and fostering the acceptance of electronic payment media, we suggest that card issuers include a transparent prioritisation of payment applications on the card in consultation with the cardholder. This would avoid unnecessary delays in the processing of a card payment at the point of sale compared to making cash payments or card payments today.

Article 9 - Unblending

The EBF supports the principle of unblending.

Article 10 – Honour All Cards Rule

The so-called Honour All Cards (HAC) rules provide certainty for cardholders that all cards showing a particular brand are accepted at all merchants showing this brand no matter where the card is issued. Abolishing the HAC would mean that cardholders would not have this certainty anymore which could result in cardholders using less their cards and switching to cash to ensure that they have a payment means which is accepted everywhere.

The first and third paragraphs seem to be in contradiction with Article 8, because in practice the choice rests on the merchant and not on the payer.

The third paragraph also appears to be extremely burdensome in terms of effective and transparent information to payers. The effectiveness of such provision is highly dependent on
actual control and dissuasive sanctions to be introduced by this Regulation. We suggest therefore to clarify this aspect under Article 13 (see below).

The last paragraph imposing that cards are electronically identifiable is not in line with the existing global standards. There is also a privacy issue, because the merchants are entering into the contractual relation in place between the cardholder and the issuer.

**Article 11 – Steering rules**

This article contradicts article 8, because it provides for the payee to “steer” the payer towards a given instrument.

In the interests of practicality and fostering the acceptance of electronic payment media, it would therefore be better if card issuers included a transparent prioritisation of payment applications on the card in consultation with the cardholder. This would allow to preserve the overarching principle—also embodied in the proposal— that the choice of the instrument should always reside with the payer.

**Articles 13 and 14 - Competent authorities and sanctions**

As this Regulation imposes obligations on different categories of stakeholders, it seems appropriate to ensure a level playing field in terms of compliance.

The PSPs are already regulated by competent authorities according to PSD rules, while other stakeholders may (e.g. processing entities) or may not be supervised in all Member States, and other categories are not supervised at all. We suggest that this article specifies that Member States competent authorities shall monitor the compliance of entities currently non-regulated under the PSD and set at the same time dissuasive sanctions against breaches (e.g. Article 10, third paragraph).

**Article 16- Review Clause**

The review of the Regulation after 4 years is contradictory with the stated objective of the Regulation to bring clarity and certainty to the market, all the more so since it is also stated in the “Explanatory Memorandum” to the Regulation that the latter “does not prevent Member States from maintaining or introducing lower caps or measures of equivalent object or effect through national legislation”. The latter national flexibility is also in direct contradiction with the rationale explicitly provided by the EC for issuing a Regulation (i.e. market integration, level playing field and no disruption to the EC-wide payment market).

**Article 17 - Entry into force**

As indicated above, the timing of entering into force of this Regulation is too tight (only 20 days) to allow PSPs to properly adapt their operating procedures and give information tools to merchants as required by this Regulation.

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