AMCHAM EU
AMERICAN CHAMBER OF COMMERCE TO THE EUROPEAN UNION
SPEAKING FOR AMERICAN BUSINESS IN EUROPE

CONSULTATION RESPONSE

AmCham EU's response to the European Commission Green Paper "Towards an integrated European market for card, internet and mobile payments"

American Chamber of Commerce to the European Union
Avenue des Arts/Kunstlaan 53, 1000 Brussels, Belgium
Telephone 32-2-513 68 92 Fax 32-2-513 79 28
Register ID: 5265780509-97
Email:info@amchameu.eu

Secretariat Point of Contact: Aylin Lusi aylin.lusi@amchameu.eu +32(0)2 289 1033

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Background and Analysis

AmCham EU supports the objectives stated in the European Commission's Green Paper, i.e. (1) more competition, (2) more choice and transparency for consumers, (3) more innovation, and (4) more payment security and customer trust. However, we believe that some of the measures proposed in the Green Paper will not help in the achievement of these objectives. To the contrary, some of these measures will counter these objectives.

Question 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 market fragmentation both with regard to the geographic scope of certain payment products and interchange fees exists for historical reasons, for which industry players have little if any responsibility. These historical factors include the role that the EC and national regulators may have played by accepting, encouraging, and in some cases possibly even requiring some of the practices addressed in the Green Paper.

For example, the differences in the level of interchange fees applicable to domestic transactions in the European Economic Area are justified by objective differences between these various countries. The Commission itself recognised in its MasterCard decision of 19 December 2007 that "[…] *while the SEPA project may increase cross-border competition and may allow consumers to use payment cards in the entire Eurozone, at the current moment market conditions and in particular prices are still too heterogeneous to adopt a market definition going beyond the national scope*" (recital 328).

Differences reflected in interchange fees include factors such as: card penetration; number of transactions; volumes; fraud levels; and the nature of the card market (ATM/POS, credit/debit, face-to-face/card not present, etc). For instance, market conditions in the UK (large volumes, high number of transactions, and the importance of credit) are radically different from the market conditions in Bulgaria or Romania (debit markets, with high ATM usage, lower volumes and number of transactions) for instance.

> AmCham EU supports a higher degree of harmonisation of interchange fee rates within the EU as a result of market forces as a long term objective. However, a short-term, mandated harmonisation of interchange fee rates for domestic transactions in various Member

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States (and harmonisation of domestic interchange fee rates with Intra-EEA rates) is not the best path towards an integrated market. It will put the further development of electronic payments at risk, especially in the newer Member States. Such longer term harmonisation should not be the result of legislation or regulation, but the result of a market development and improvement over time.

Question 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?

It is inappropriate for the Commission to claim to provide "legal clarity" on issues that are currently pending before the European Courts.

The regulation of interchange fees would amount to price regulation. Though there are some precedents such as in the telecoms sector – the payment cards market is a very different case. The price regulation in the telecoms sector was imposed as part of the deregulation of entrenched monopolists. Even so it is still subject to numerous checks and balances, including a finding that an individual company subject to price regulation has market power.

Question 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?

As indicated above, AmCham EU believes that no legislative intervention is necessary.

Commercial cards are a very different product from consumer cards, and offer different benefits to merchants and cardholders. Therefore they must be treated differently.

This is already the case for interchange fee transparency. Visa and MasterCard as well as several domestic schemes publish their interchange fee rates that they adopt on their respective websites.

Regarding market access, the rules of the game have to be construed to help create a competitive and vibrant market, which AmCham EU largely feels is the case today. An appropriate regulatory framework, a level playing-field and a healthy business case are the best guarantees for a competitive market. Market engineering aimed at giving preferential treatment to new market entrants (e.g. a new pan-European payment scheme) is not only unfair, but potentially counterproductive.

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4.1.2. Cross-border acquiring

Question 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 number of central acquirers has been growing for several years. This is a sign that there is no obstacle to central acquiring. However, it is up to banks to decide if they would like to engage in such activity.

There is therefore no need for any intervention with a view to "facilitating" central acquiring.

Question 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?

As indicated above, no action is necessary for central acquiring. It is naturally expanding and will continue to expand with increased demand from retailers requesting the provision of these services by acquirers.

Mandatory prior authorisation of a central acquirer by the payment card scheme is fully justified, like any other authorisation to issue cards or acquire transactions. In any event, the conditions required to obtain authorisation as a central acquirer are minimal and all acquirers are in a position to meet these conditions.

The interchange fee is a balancing mechanism that addresses *inter alia* the imbalance in costs as between issuers and acquirers. Whether the domestic transaction is locally acquired or centrally acquired, the nature of the transaction remains the same, the costs incurred by the issuer remain the same, and the relevant market conditions are broadly the same. In the case of central acquiring, there is no justification for an interchange fee to be applied in addition to the interchange fee of the country of the issuer / merchant. This allows for a level playing field between central acquirers and domestic acquirers.

Having the interchange fee applicable to centrally-acquired transactions being the domestic interchange fees of the country where the central acquirer is located would mean that acquirers would establish themselves in the countries with the lowest cost structure (including lower interchange fees).These central acquirers would then have a competitive advantage over domestic acquirers located in the same country as the merchant / issuer. Eventually, this could result in domestic acquirers being squeezed out of business due to the competitive disadvantage.

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4.1.3. Co-badging

Question 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?

Co-badging (or "co-residency" of different payment brands on the same card) already exists in a number of markets across the Union where there are commercial and/or other reasons justifying it, and can have benefits for cardholders. For example in the EU, a number of purely domestic scheme cards are co-badged with an international badge to allow the same plastic cards to be used outside the home country (e.g. Pago Bancomat cards co-branded with V Pay and Bancontact/Mr Cash cards co-branded with Maestro: the Pago Bancomat and BC/MC function of the card was traditionally used for domestic transactions – and the V Pay and Maestro function of the same card was traditionally used for cross-border transactions).

AmCham EU supports the principle of co-branding though we believe it should be done on a voluntary basis. . AmCham EU opposes mandatory co-badging as it risks unnecessary complications in the management of numerous card services and features, such as security standards. Additionally, it would cause confusion among cardholders, which would slow down check-out times at the cash register for merchants at the POS. Co-badging should be assessed on a case-by-case basis and always be decided on a voluntary basis.

Question 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 latest version of the SCF (version 2.1), published by the European Payments Council (EPC) on 18 December 2009, already provides an answer to this question:

> *"3.6.1. Cardholder experience*
>
> *Card scheme rules must enable and facilitate for cardholders a consistent payment and cash withdrawal service experience throughout SEPA. In accordance with Directive 2007/64EC, where several payment applications are made available by the issuer in the same card, supported by the same terminal, and are accepted by the merchant, cardholders will have through their cardholder agreement with their card issuer the choice of which payment application they will use provided the merchant accepts it and its POS equipment supports it. The agreement between the cardholder and the issuer will define the choices available to the cardholder. Prevalence at POS or ATM for a particular*

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payment application may not be mandated by a card scheme or ATM operator or merchant"

Therefore, in principle, a bank that issues, for example, a Pago Bancomat-V Pay or Bancontact/MisterCash-Maestro co-badged card could agree on the priority of the applications on the Europay, MasterCard VISA (EMV) chip of one brand / scheme over another, by assigning distinct application priority values to each application on the card. Therefore, if choice is not supported at the terminal, and the terminal accepts both the Pago Bancomat-V Pay, or Bancontact/MisterCash-Maestro brands, the terminal must respect the prioritisation of the applications as provided by the card in the Application Priority Indicator. The terminal must default to this as the top priority application.

In most cases, however, the cardholder choice is supported at the terminal. The terminal must show all relevant, accepted applications on the card in the priority order as indicated by the card in the Application Priority Indicator.

4.1.4. Separating card schemes and card payment processing

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

AmCham EU believes that customers of the schemes should be free to issue/acquire a Visa, Amex, MasterCard or a domestic brand without purchasing the processing services of that same scheme and vice versa. Market operators should be free to purchase the processing services of a scheme without issuing/acquiring the brands of that scheme. This is very much the case today. In many instances international card schemes do not process transactions done with one of their brands.

Question 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'?

Legally forcing the separation of scheme and processing (operational unbundling) would damage current customer-led strategies: it will be more difficult for payment scheme operators to offer tailor-made products and support to their customers, and would jeopardise many current and future benefits to merchants and cardholders.

A legal separation (operational separation), and a fortiori full ownership unbundling, are structural measures that the EC / EU is only empowered to impose in exceptional circumstances. AmCham EU believes that the EC / EU is not empowered to impose these measures in particular for the following reasons:

- The conditions of Article 7 of Regulation 1/2003 are not met. Article 7 provides that "Where the Commission, acting on a complaint or on its own initiative, finds that there is an infringement of Article [101] or of Article [102] of the Treaty, it may by decision require the undertakings and associations of undertakings concerned to bring such infringement to an end. For this purpose, it may impose on them any behavioural or structural remedies which are proportionate to the infringement committed and

necessary to bring the infringement effectively to an end. Structural remedies can only be imposed either where there is no equally effective behavioural remedy or where any equally effective behavioural remedy would be more burdensome for the undertaking concerned than the structural remedy. If the Commission has a legitimate interest in doing so, it may also find that an infringement has been committed in the past".

- As a legislative measure, the EU would only be able to impose such a measure under Article 114 TFEU in case of discrepancy between the national laws of the Member States, or a risk of such discrepancy, or a distortion of competition. That is not the case. In addition to the lack of legal basis, the principles of subsidiarity and proportionality would argue against the adoption of such measures.

4.1.5. Access to settlement systems

Question 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?

Licensees of international brands, including banks, payment institutions or electronic money institutions have access to the processing services including settlement.

Question 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?

Card payments are not restricted within the borders of the EU but take place at a global level. The services behind the scenes that are required to make this happen are therefore also global in nature. There are already common card processing rules in place at a worldwide level and those rules apply in particular to Single Euro Payments Area (SEPA) transactions. It is essential to ensure that card processing rules within the EU/SEPA are not divergent or conflicting with global ones and consequently threaten international interoperability.

4.1.6. Compliance with the SEPA Cards Framework (SCF)

Question 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?

As for compliance with the SEPA Cards Framework (SCF), all schemes including domestic ones should be obliged to compete on a level playing field. Additionally, all relevant players should be equally allowed to contribute to the drafting of the SCF.

4.1.7. Information on the availability of funds

4.1.8. Dependence on payment card transactions

Question 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?

There isn't a merchant in the world that is required to accept payment cards in general or a specific type or brand of cards in particular. Likewise, there isn't a consumer in the world that is required to have a payment card in his or her wallet (and a fortiori to use it). Whether it is face-to-face or a card-not-present (e.g. internet) transaction, there are always a wide variety of card products available. Thus, there is no such thing as a dependent use of any particular type or brand of cards. Additionally, there are alternative means for merchants to accept and for cardholder to make, a payment. These include cash, cheques, direct debit, transfers, etc.

If a merchant decides to accept cards, because they value the advantages that payment cards offer, the merchant has a choice, to accept only credit products, and/or only debit products. Once a merchant has voluntarily accepted a product (e.g. only a MasterCard debit product), they remain free under MasterCard rules to steer in favour of particular methods of payment. For example, a merchant is free to impose a surcharge for a card payment. The merchant may even impose different surcharges for consumer cards and commercial cards and/or give its customers a discount for the use of another means of payment (e.g. for a cash payment). This is provided, of course, that national laws do not prevent this. In addition, merchants have the possibility of favouring local/domestic payment schemes (e.g. CB, Servired, Dankort) as opposed to international schemes.

There is therefore no such thing as "dependent users".

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

4.2.1. Consumer — merchant relationship: transparency

Question 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?

There is no reason why merchants should inform consumers about the fees that they pay for the use of various payment instruments; for instance the very important costs that they bear in relation to cash payments, the costs that they bear in relation to cheques, the Merchant Service Charge (MSC) that they pay to their acquirer for payment card transactions, etc. These costs are only a tiny fraction of a merchant's costs, along with their supply costs, personnel-related

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costs, electricity bills, telephone bills, transportation costs, taxes, etc. Why should the costs related to the acceptance of payment instruments be singled out?

For the same reason, why should an acquirer be required to disclose to consumers (who are not its customers) the level of MSCs that it charges to its customers (the merchants)? Why should the costs related to payment cards be singled out from (1) other forms of payment and in particular the important cost of cash for merchant, and from (2) other merchant costs (e.g. electricity bill, telephone bill, etc)?

Why should issuers be required to disclose to cardholders the amount of interchange fees that they collect? Why should these revenues be singled out from other sources of revenues for banks, such as the fees that they collect for holding current accounts, or even the amount of interests that they earn on mortgages? In addition, what would justify such a transparency requirement on banks/issuers only, as opposed to any other service provider or undertaking?

Even assuming that such information would be disclosed to consumers, it would not influence their payment choices. As an analogy, should a merchant disclose the entirety of its costs (or even one input cost only) for two competing products, A and B: would the consumer choose the product that he is going to buy on the basis of the input costs borne by the merchant? No. The consumer will buy the product that he prefers, taking into account various factors such as his personal tastes, the user-friendliness of the product, etc.

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

Question 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?

The issue of merchant surcharging / discounting is dealt with by the EU Payment Services Directive (PSD) and the Consumer Rights Directive. There is no need for further harmonisation of rebates / surcharges / other steering practices.

The PSD requires that merchants be allowed to grant discounts for certain means of payments. Regarding surcharging, the PSD essentially leaves it up to the Member States to decide whether merchants should be allowed to surcharge or not. Surcharging consumers for the use of a payment card which is convenient, rapid, safe and efficient, is not an obvious or logical choice for

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Member States. Therefore AmCham EU fully understands why certain Member States sensibly decided not to allow merchants to surcharge card payments.

As the Commission is aware, under the rules of certain schemes merchants have been allowed to steer consumers for a very long time by the following means:

- discounting certain types of payment (e.g. cash or a proprietary card);
- adding surcharges for payments with one of the scheme's products, provided that the amount of the surcharge is (1) indicated to the cardholder at the POI location and (2) bears a reasonable relationship to the merchant's cost of accepting cards; and,
- suggesting to the cardholder that they use another means of payment (e.g. cash, or local debit scheme, etc). This can be done by posting a sign at the point of sale informing consumers of the discount, e.g. "help us keep our costs down, please use XYZ".

Given the cost of cash, not only for merchants, but for society as a whole (i.e. grey economy, avoidance of taxes, etc) it is arguably cash payments that should be surcharged.

4.2.3. Merchant — payment service provider relationship

Question 17) Could changes in the card scheme and acquirer rules improve the transparency and facilitate cost-effective pricing of payment services? Would such measures be effective on their own or would they require additional flanking measures? Would such changes require additional checks and balances or new measures in the merchant-consumer relations, so that consumer rights are not affected? Should three-party schemes be covered? Should a distinction be drawn between consumer and commercial cards? Are there specific requirements and implications for micropayments?

There is no need for changes in the card scheme rules and/or acquirer practices to improve the transparency and facilitate cost-effective pricing of payment services

The two scheme rules that are referred to in the Green paper are (1) the Honour All Cards Rule (HACR) and (2) the No Discrimination Rule (NDR). However, these two scheme rules are not the source of any lack of transparency or cost-inefficient pricing of payment services. The Green Paper also refers to the acquirer practice of "blending" as an issue, although this issue has already been solved in the EU.

HACR

The HACR is a requirement in any payment scheme – in particular for international payment schemes involving thousands of banks. The consumer is attracted to the products of international schemes in the first place because of the promise of a universally accepted, hassle-free payment method. If the cardholder has no guarantee that his card will be accepted internationally, wherever he travels, the card is worthless to the cardholder.

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The Green Paper states that the HACR would mean that "*merchants are obliged to accept all cards within the same brand, even if the fees related to them are not the same*". This is incorrect. For example, MasterCard has three separate HACRs in place: one for its Credit products; one for its Debit products; and one for its Debit MasterCard product (where launched). The merchant can therefore decide to accept none, one, two or the three categories of products. These HACRs are crucial to any payment scheme: if they were suppressed, it would become increasingly difficult for schemes to develop new products and innovate.

NDR

Contrary to what is stated in the Green Paper, the NDR that exists in MasterCard's rules does not prohibit merchants from "directing their customers towards the use of the payment instrument they prefer through surcharging, offering rebates or other forms of steering". As indicated above, under MasterCard's rules merchants are allowed to steer customers towards the use of the payment instrument they prefer in various manners (e.g. surcharging of payment cards, discounts for other means of payments such as cash, etc.).

The NDR merely prohibits merchant practices that make it effectively impossible for the products of international brands to be used, and thus undermine the universal acceptance / the HACR. If a merchant who chooses to accept branded payment cards could disparage or discriminate against a particular brand, then the integrity and universality of that brand would be undermined. The consumer may be attracted to a brand in the first place because of the promise of a universally accepted, hassle-free payment method. Over time, if a brand is not protected and merchants are permitted to disparage the brand, consumer demand for it will decline, which in turn will decrease the value and the benefits of acceptance of the brand to merchants. Any international branded cards must therefore be accepted on the same terms as other brands (without discrimination).

In practice, a merchant would have to do something as egregious as disparaging the brand or making it difficult or impractical to use the card before the international scheme would consider a practice discriminatory / contrary to the NDR e.g. requiring the cardholder to fill out a form before he can use his card, or get the store manager's permission to use the card.

Blending

The Green Paper states that "As a result of blending only an average fee for card payments is charged to merchants by their acquirers and the merchant is not informed about the MSCs applied for the various individual categories of cards".

However both Visa and MasterCard have in place a so called "unblending" rule that prohibits acquirers from mandating bundling of the processing of transactions. Merchants are therefore free to require unbundled MSCs from their acquirer.

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Blending is therefore no longer an issue as far as EU-based merchants are concerned.

4.3. Standardisation

Question 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?

Generally speaking, the use of common standards in the field of payment cards is beneficial. However, these standards should be voluntary and adopted by the industry, not imposed by a regulator or a standard-setting body, particularly one without expertise in the payment industry. Strict and uniform standards risk killing innovation and reduce competition.

Additionally, AmCham EU believes that standards need to be of global nature to ensure global interoperability.

Question 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?

As indicated above, it is important that the standardisation process, for all types of payments, is led by industry – not a regulator or a standard-setting body; particularly one without expertise in the payment industry.

As far the industry-led standardisation process is concerned, it is also important to ensure that all relevant market players are involved in the standardisation process.

Question 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?

As indicated above, it is important that the standardisation process, for all types of payments, be led by the industry – not a regulator or a standard-setting body; particularly one without expertise in the payment industry).

CEN or ETSI are not specialised in the payment industry. They should therefore not be involved in the standardisation of card payments. Standardisation should be left with the existing, specialised bodies.

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

As indicated above, it is important that the standardisation process, for all types of payments, be led by the industry – not a regulator or a standard-setting body; particularly one without expertise in the payment industry). As a consequence there is no need for any standardising work lead by the Commission, a standard setting body or any other regulator.

As regards mobile-commerce, this functionality is still at its very early stages. It is therefore too early to "*see specific areas in which more standardisation would be crucial*". The industry needs to get m-payments to become a reality. Once m-payments will be in operation, naturally, a standard will emerge, which will ensure that the objectives which are set out in the Green Paper will be achieved (i.e. more competition as the standards will be publically available, which will result in more choice for merchants and consumers, more innovation and more security). This is what happened for face-to-face payment cards (e.g. EMV, etc). This is also what is happening with e-commerce (e.g. 3d Secure, etc). This is what will happen with m-payment. Any regulatory interference with the industry-led standard process would "cripple" the more efficient industry-led standardisation process.

Question 22) Should European standardisation bodies, such as CEN or ETSI, play a more active role in standardising e- or m-payments? In which area do you see the greatest potential for their involvement and what are the potential deliverables?

Please see our response to question 20.

4.4. Interoperability between service providers

Question 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?

Like standardisation, interoperability should be led by the industry. As a consequence, there is no need for any interoperability work lead by the Commission, bodies or any other regulator.

As regards m-commerce, this functionality is still at its very early stages. It is therefore premature to think about "interoperability". The industry first needs to make m-payments a reality. Once m-payments are operational, interoperability will emerge. This will ensure that the objectives which are set out in the Green Paper will be achieved (i.e. more competition as the standards will be publically available, which will result in more choice for merchants and consumers, more innovation and more security). This is what happened for face-to-face payment cards and what is happening with e-commerce. Any regulatory interference with

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the industry-led interoperability process would "cripple" the more efficient industry-led interoperability process.

4.5. Payments security

Question 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?

Card present/e-commerce and m-commerce transactions are sufficiently secure. Various innovative security features have been implemented over the years for card-present transactions (e.g. EMV), e-commerce (e.g. 3D Secure) and m-commerce transactions to increase security.

The current migration of cards to EMV is a step in the right direction, but the complete removal of the magstripe from European cards would be a disproportionate measure, jeopardising global interoperability.

However, continued investment in R&D and innovation is required to keep them that way.

Should fraud happen despite the significant security measures which have been put in place, it is generally the issuer which is liable for the fraud – not the merchant, nor the cardholder.

Question 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?

The industry has already adopted the necessary security standards for face-to-face card transactions, as well as e-payments, to ensure that merchants and consumers can rely on the security offered by payment cards. The industry is following the same approach for m-payments.

Continued investment in R&D and innovation is required to keep them that way.

Should fraud happen despite the significant security measures which have been put in place, it is generally the issuer which is liable for the fraud – not the merchant, nor the consumer.

Question 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?

Until now all security developments were made by the industry, e.g. EMV was developed by EMVCo and then adopted by the industry as the standard and endorsed in the SCF. Security developments should continue to be made freely by the industry – not be subject to a regulatory framework.

American Chamber of Commerce to the European Union – Avenue des Arts/Kunstlaan 53, B-1000 Brussels, Belgium
Telephone 32-2-513 68 92 – Fax 32-2-513 79 28 – info@amchameu.eu – www.amchameu.eu

Question 28) What are the most appropriate mechanisms to ensure the protection of personal data and compliance with the legal and technical requirements laid down by EU law??

A consistent data protection law across the EU would help ensure the protection of personal data, as well as compliance with legal requirements. AmCham EU therefore welcomes recent proposals to update EU data protection law through a Regulation, rather than a Directive, as this should grant consumers with the same rights in each Member State, and could help businesses with compliance, by giving them certainty and consistency across the EU.

In addition, the Commission's proposal for a lead regulator (based in a Company's home market) to be responsible for supervision activities could lead to a simpler and more effective compliance regime.

[We should focus on PCI/DSS as ensuring sufficient protection of the data in the context of payment processing. PCI/DSS should be championed as such to avoid legislative initiative in this area]

AmCham EU believes that an appropriate sanctions and enforcement regime can also play a role in protecting personal data and ensuring legal compliance. However, such a regime must be proportionate and importantly should distinguish between negligence and when all reasonable steps have been taken to comply with EU law. Importantly, any proposed fines must be proportionate to the violation.

5. STRATEGY IMPLEMENTATION/GOVERNANCE

5.1. Governance of SEPA

Question 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?

One of the main challenges for improving SEPA governance is to ensure the fair representation of all affected stakeholders. We strongly believe that payment institutions should be directly represented in the EPC to guarantee the fair representation of relevant market participants. In addition, where payment institutions have formed groups, seats should be made available in the EPC for their representation as well. Many bank associations are represented in the EPC at present.

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5.2. Governance in the field of cards, m-payments and e-payments

Question 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?

As indicated above, standardisation and interoperability should continue to be industry-driven (although some governance aspects need improvement).

Question 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?

Given the importance of SEPA to payments, it is essential that all relevant players have access to the different fora.

Given the fact that it is the industry which is investing very significant amounts of money in the improvement of existing products (e.g. more security, more innovation, etc) and the development of new products, it is only logical that the industry would also generally decide how the product should operate, with what features, etc.

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AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate U.S. investment in Europe totalled €1.4 trillion in 2009 and currently supports more than 4.5 million jobs in Europe.

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