



Financial Services User Group's (FSUG)

response

**to the Green Paper –
Towards an integrated
European market
for card, internet and
mobile payments**



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FSUG c/o European Commission
Internal Market and Services DG
SPA2 4/69, 1049 Brussels, BELGIUM
markt-fsug@ec.europa.eu

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Payment services constitute one of the most basic financial service which is used by all virtually all consumers. Access to cheap, efficient, accessible and user-friendly, reliable, easy-to-use and secure payment methods is an absolute necessity for consumers. While payment options vary from country to country and from sector to sector, there is a need to provide inclusive solutions and ensure that the single market works for all citizens no matter their personal situation and country of residence.

Otherwise there is a risk that some consumers will be excluded from the benefits of these payment methods as a result of their lack of accessibility or irrelevance to these consumers' needs.

Payment services are more than ordinarily essential and for this reason need to be accessible to everyone at affordable costs and with general acceptance to enable everyone to participate in the market for goods and services and to create a level playing field in the internal market. We would also like to take this opportunity to point to further Commission initiatives as for basic bank accounts as we do not see that the necessary equal opportunity for market access is granted. We need to ensure, that basic bank accounts include all the options to use modern forms of payments at no additional costs compared to ordinary accounts.

The advent of the internet has necessitated the development of new e-payment methods as alternatives to cash payments. Up to now cash has served as a general, neutral and equal means of payment in most daily life applications. However, the emergence of the internet as the main supplier of some commodities like flight tickets cash is no longer in a position to fulfil this role. New payments currently under developed can therefore not be treated as niche products for technologically savvy consumers but need to be treated as payment options that can be accessible for all consumers.

These new payment methods can offer advantages to both consumers and businesses but they also pose significant potential risks which need to be identified to ensure that adequate protections are put in place.

As consumers are most heterogenic in their interest, fears and capabilities to adapt to new technologies we like to state in advance that we are not opposing new developments, yet we see the following comments necessary to provide relevant food for thought on how to avoid certain foreseeable issues and malpractice to develop or even establish in a currently developing market in order to allow for a successful and widely accepted development of payment options.

The FSA, the UK financial services regulator in its recently published risk outlook set out the following potential concerns linked to the introduction and growth in new payment technologies:

- the risk of inadequate controls within firms, on the development of new payment products aimed at consumers
- the risk of inadequate security controls within firms, on payments made via new technologies and
- the risk that consumers may be inadequately informed about how to use new payment technologies or about their rights and responsibilities in relation to new payment technologies.

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It concluded that “if these risks were to crystallise they could lead to consumers suffering detriment in the form of unauthorised transactions, delays in making and receiving payments or not being able to access their funds. Due to the potential concerns highlighted, we will continue to actively monitor developments in this area.”¹

Further, research into the main risks associated with payment services identify that the major types of risk associated with payment facilities are: fraud, unauthorised payments, and error or mistake mis-purchasing (or mis-selling), inequality of bargaining power and product failure².

The Commission cites four benefits of market integration, more competition, more choice and transparency for consumers, more innovation and more payment security and consumer trust cannot be taken for granted given the current partly already known developments and consequences but will need careful tackling:

- **More competition:** Usually competition in itself provides for cost related fair pricing, however we can see two counter-active ‘cycles of competition’ which apply to the market in new payment methods.

A first cycle provides cards, e- and mobile payment services to consumers. The more cards and options exist, the more competitively priced options should be available to the end-user.

Yet there is a second cycle at the point of acceptance and currently the more payment options are available to the consumers the more costs develop to the paid providers to prepare for acceptance and to manage a huge amount of different options. These costs will together with the mostly static costs of cash affect consumer pricing.

The competition in new payment services therefore can deliver benefits and costs to consumers and we urge the Commission to keep this in mind when assessing this market.

- **More choice and transparency for consumers:** the Commission seems very keen to drive consumers to use the most cost-effective form of payment and is suggesting surcharging as potential tool to achieve this aim. However, we need to bear in mind that the most cost-effective is not always the best method for consumers, especially with regard to the pre-payment of goods and services where the most cost-effective payment method may not offer any protection when a retailer or service provider does not comply with the conditions of the contract or fails to deliver at all.

The application of surcharging in the airline industry is an example of how firms are exploiting a tool that was intended to make payments more cost-

¹ FSA Retail Conduct Risk Outlook 2012

² For an extensive overview, see R Bollen: *A review of European regulation of the payment system*; R Bollen: *Recent developments in mobile banking and payments*; G Hillebrand: *Before the grand rethinking: five things to do today With payments law and ten principles to guide new payments products and new payments law*; M Budnitz: *Stored value cards and the consumer: the need for regulation*; SJ Hughes: *Regulation Of Electronic Commerce: A Case For Regulating Cyberpayments*; J Winn: *Symposium: Clash Of The Titans: Regulating The Competition Between Established And Emerging Electronic Payment Systems*; and E Wentworth: *Direct Debits, Consumer Protection and Payment System Regulation – Issues of Policy and Reform*, 2002, 13 JBFLP 77.

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effective for their own benefit and instead use it to distort the overall price of their service offering. The supercomplaint brought by the UK consumer association, Which? and the recent court case brought by the German consumer association vzbv³ highlighted this issue.

- More innovation: However, it is important to challenge whether innovation is always good or whether it can also lead to exclusion e.g. in France and the UK cheques are still widely used as a payment method by more vulnerable consumer groups like the house-bound and elderly. The development of new payment methods has been seen as a justification to get rid of cheques.
- More payment security and customer trust: We are supportive of stringent security measures but it needs to be ensured that they are not used to create unnecessary barriers to entry for new market participants.

Answers to the questions

Multilateral Inter-change Fees (MIFs)

Q1) *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?*

Q2) *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?*

Q3) *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?*

The fees charged to consumers for card usage can vary widely between Member States. However, an overarching theme in all Member States is the lack of transparency. It is unclear to consumers what they are paying for and whether the amount they are being charged is justified and proportionate.

Fees and charges range from annual card fees which are standard for most cards in some Member States but in other Member States are only applied to exclusive reward card schemes to surcharges levied by a variety of retailers especially in the transport industry for payment by card.

It is also questionable whether merchants should be allowed to charge consumers for making a payment, as accepting payment for goods and services is clearly

³ vzbv brought a case against Ryanair based on European law i.e. Article 23 of Regulation 1008/2008. According to this the final price of the flight has always to be presented and possible additional costs are to be shown right at the beginning of the booking proceedings. The Berlin Court of Appeal (Kammergericht Berlin) ruled on 9.12.2011 – 5 U 147/10 – that the fee of EUR 5 (pay fee) levied by Ryanair qualifies as unavoidable cost in reference to Article 23 paragraph 1 sentence 2 of Regulation 1008/2008 and thus has always to be included in the end-price to be shown. The fee is, despite the option of a non-mainstream card to pay free of charge, an unavoidable fee in reference to Article 23 paragraph 1 sentence 2 of the Regulation, since it does not apply to a well-established payment option.

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an integral part of their business like rent for their premises and not something that should be charged to the consumer as an add-on service.

The fairness of multilateral interchanges fees (MIFs) raises justified objections. MIFs systematically went up for the last 10 years despite obvious cost reductions for card issuers linked to growing volumes.⁴ Hundreds of different MIFs have been created by international card schemes over the past decades.⁵

Under the same card scheme, MIFs can differ very much from one country to another, and for cross-border payments. Despite the fact that it is very difficult to find the local MIFs on international card schemes websites, it is also very difficult to compare them, because it is not a table which includes all of them, but a drop-down list of countries with a pdf-file for each country. These files are sometimes very different structured and data are not comparable – e.g. MasterCard file for Czech Republic has just 8 pages, the one for Greece has 12 pages and the one for Romania has 18.⁶

International card schemes argue that interchange fees are set by taking into account local market conditions, including competitive pressures from other payment methods, long-term trends in costs, regulatory context, the need for investment in new technology and the need to provide incentives to increase the efficiency of the system, the type of card and its associated risk, etc.

But a calculation model of these MIFs is not available, and it is very difficult to understand, even taking into account all mentioned arguments, how MIFs can vary so much between countries – see Annex 2 of the present consultation and other files of interchange fees by country⁷

According to research carried out by Which?, the UK consumer association the MIF constitutes 60-90 % of the Merchant service charge transmitted through the relevant schemes (VISA, MasterCard, Amex or Diners Club). This view has been set out to Which? in its meetings with retailers and the card industry, and is supported by the EC sector study into retail banking. Which? therefore expects that the MIF should form a significant proportion of any costs recovered from customers⁸.

Restricting MIFs therefore seems to be a key component in reducing the cost of card processing for merchants and ultimately consumers.

Various regulators have been/are looking into the mechanisms of price setting of MIFs showing that the EU can no longer be out of the loop:

- Cost based: Australia (2003 credit), Chile (2005), Columbia (2005)
- Interchange fees set (mostly reduced): Argentina (1999), Australia (2006 debit), Austria (2006 via self-regulation), Denmark (1990), EU (2002 - 2010), Israel (2006), Mexico (2006), Panama (2004), Portugal (2006), South Korea, Spain (2005), Switzerland (2005)
- Set at zero: Canada (1995), Norway (1974)

⁴ http://c0462491.cdn.cloudfiles.rackspacecloud.com/Facts_about_Hidden_Fees.pdf

⁵ See, for example, MasterCard intra-EEA Fallback POS Interchange Fees:
<http://www.mastercard.com/us/company/en/whatwedo/interchange/Intra-EEA.html>.

⁶ <http://www.mastercard.com/us/company/en/whatwedo/interchange/Country.html>

⁷ http://www.visaeurope.com/en/about_us/our_business/fees_and_interchange.aspx

⁸ Which? super complaint: credit and debit surcharges.

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- Interchange fees regulated: France (1990), Poland (2007), Turkey (2005)
- Merchant-acquirer negotiated : Columbia (2004), Denmark (1990)
- Under investigation: Brazil, Hungary, New Zealand, Norway, South Africa, United Kingdom, and EU.⁹

There is a clear case for EU action, since there is no other way of tackling the above-mentioned barriers across EU. Thus, EU legislation would be the most appropriate way of achieving legal clarity on interchange fees. The scope should cover both four-party and three-party schemes in order not to distort competition and create a level playing field. That being said, the impact of any policy option on consumers must be thoroughly assessed beforehand. For example, the impact on the cardholder fee and other fees directly paid by the consumer to his payment service provider should be anticipated.

Q4) *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?*

Q5) *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?*

We have consulted and searched for robust evidence to support our responses to Question 4 and 5 but unfortunately it seems such evidence does not exist. The responses therefore represent anecdotal 'evidence'. However, it is important prior to the adoption of policy that the EC should carry out appropriate research to establish the evidence.

The following summarises the obstacles to cross border acquiring and reasons for the presence of these problems:

- Security is an issue that many owners, from micro and small entities, perceive as a problem. Many see it as a risk that they are unwilling to take in relation to the benefits. We should emphasise this is a perceived problem which the Commission and the industry should address. The risks include non-payment or delays in paying suppliers, effective communication with PSP and the lack of data protection.
- Lack of transparency with fees and charges.
- Language – where the PSP resides (EC Member State) that differs from that of the micro- and small-business owner. Thus creating a problem of communication.
- Differing rules and standards in different Member States.

The benefits of facilitating cross border acquiring:

- Greater competition and it should follow a more efficient services and lower fees and charges.

⁹ Dhaene Leon: *Living in a world without interchange, 2010-2015*, Berlin, European Card Acquiring Forum, 24.2.2010, p. 11.

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- The opportunity of paying and receiving payments in the same currency. Foreign exchange issues are a recognised problem with micro- and small-businesses who export and import. The use of a PSP in a country where most of the businesses activity arises would reduce costs. Followed by the only the occasional movement of cash between the entities two accounts.
- Having an account with a PSP in another country signals to customers and others that they have a global or at least a presence across Europe.
- It is important for purposes facilitating cross border acquiring that there is transparency in the context of PSPs offering its services and a basis for comparison with other providers. There is a need for standardised format. Standardisation should not be administered by the industry (PSPs).
- If there is effective transparency the owner-manager should be able to make informed decisions.

Co-badging

***Q6)** 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?*

***Q7)** 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?*

FSUG is of the view that co-badging allows new entrants to access the market while giving a real possibility to keep cheap and efficient national debit cards. As such we are not opposed to the practice.

In order to make co-badging suitable for consumers, the following requests should be met:

- Consumers have the right to choose the payment brands to be used on a co-badged card when they take out a contract with a payment service provider. There are still many European consumers who never travel abroad and buy on the internet. These consumers should not have to bear the cost for different brands on their card when all they require is a basic debit card that works at national level.
- Consumers get to choose the payment brand – among the pre-selected ones – they wish to use for a concrete payment transaction both at point-of-sale and online.
- Co-badging does not create unnecessary confusion for consumers. The combination of several card brands on the same card may make it more difficult for consumer to best brand at the point-of-sale.
- An impact assessment is carried out to evaluate various application cases, e.g. remote and point-of-sale payments, motorways, parking, etc.
- There is no major impact on prices of cards for consumers who choose/accept to have several brands on their card to ensure that consumers genuinely benefit from co-badging. It would be reasonable to expect cheaper prices for consumers due to EU-wide competition in this area.
- Security is not compromised.

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- Consumers still have the option to have instruments on separate cards, e.g. to protect an alternative in case of loss, theft or malfunctioning of that payment instrument to have a back-up.

Separating card schemes and card payment processing

Q8) *Do you think that bundling scheme and processing entities is problematic, and if so why? What is the magnitude of the problem?*

Q9) *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'?*

FSUG believes that the subject of access restrictions for new entrants into the card market (and the market for other payment methods) is an issue that should be considered by the Commission in more detail. The current payment markets for bank transfers also relies on monopolies in many countries and as a result important changes and improvement are only made following legislative or regulatory pressure. The UK, banks for many years stalled or resisted the full implementation of a faster payments system despite the fact that a Government review¹⁰ had highlighted this as an area of great concern and the industry had persuaded the Government to take a self-regulatory approach to the problem.

We therefore believe that the Commission should investigate the possibility of separation of card schemes and card payment processing to evaluate the effects the current practice has on the end-user of the service.

It is also important to assess the separation of the card scheme and payment process considering the particular market condition. This assessment should take into account the risks of consolidating big monopolies in order to guarantee fair access under competitive prices under principles of transparency.

Access to settlement systems

Q10) *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?*

Q11) *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?*

From a consumer perspective, issues that could arise from non-direct access to clearing and settlement systems are the following:

- A potential impact on competition and restricted consumer choice as new entrants are discouraged by the cost/restrictions.

¹⁰ The Cruickshank report: Competition in UK Banking,
<http://archive.treasury.gov.uk/pdf/2000/cruickshank0408.pdf>.

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- A risk that the service offered by providers without direct access to the payment system is slower and/or more expensive than the service provided by payments institutions with direct access. The PSD allows firms to execute payments on the day of the receipt of the instruction or on a date specified in the future; provided that the time it takes to actually execute the payment is within the maximum timescale set out in the PSRs, which is D+1. The day when the payment starts to be executed (or the day the payment order is deemed to have been received) can therefore be different to the day when the PSU physically initiates a payment order, as long as this delay is agreed with the customer. This legal construct which allows a delay in the execution of the payment order is most likely to be used by firms without direct access to the payment system.
- With SEPA currently only technical standards are set, not contractual basics that allow competition by allowing consumers to find acceptance with their cards. That is while SEPA-compliant payment cards may technically be used in another MS it is not guaranteed, that they will be accepted everywhere. Several options to resolve this are feasible, starting with a basic set of requirements with all contracts accepting SEPA payment cards, to setting up an own SEPA-branded scheme to co-brand all SEPA payment cards, including the setup of authorisation, clearings and settlement procedures on their own or standards to allow national payment schemes beyond the oligopolists to interact cross-border with their schemes.

Compliance with the SEPA Cards Framework (SCF)

Q12) *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?*

According to the European Payments Council's (EPC) SEPA Cards Framework, a SEPA-compliant payment card should technically allow cardholders to make payments and withdrawals throughout SEPA.¹¹ Further, the document states that "An SCF-compliant scheme must operate in such a way that there are no barriers to effective competition between issuers, acquirers, and providers." It also provides that consumer choice of card products would increase.

Even if we fully support some cards' technical requirements as set in the SCF – like the EMV obligation (Chip & PIN) for all cards as they improve security (see Q25) – we also notice that the implementation of the SEPA Cards Framework is leading to reduced competition in the payment card market.

Indeed, national debit card schemes have potentially four options:

- (1) expand by investing in their own payment network and become SEPA-compliant
- (2) jointly develop a European card scheme
- (3) co-brand with one or several international card schemes and become SEPA-compliant
- (4) cease to exist.

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<http://www.europeanpaymentscouncil.eu/documents/Cards%20SCF%20006%2009%20v%202%201.pdf>

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For the time being, the latter two tendencies are being observed on the market. Thus, several efficient, secure and cheap national debit card schemes already phased out or are in the process to do so. For example, in Luxembourg, Bancomat debit cards were phased out at the end of 2011 and replaced by Visa V PAY to be in compliance with SEPA.¹² The same occurred in Finland, Ireland and in the Netherlands. In the UK, the Switch debit card was replaced by Maestro.¹³

The current situation is not satisfactory from the consumer point of view, since the benefits of SEPA Cards Framework for consumers are unclear. Indeed, around 95 % of all card transactions occur at national level and there is no sufficient demand for SEPA cards migration. Furthermore, the expected dominance of Visa and MasterCard both at national and cross-border level raises substantiated concerns about prospective price increases and reduced security. On the other hand, despite repeated calls from EU policymakers, we have not yet seen any noteworthy developments regarding the emergence of a new European card scheme.¹⁴ An alternative option could be the expansion of existing national card schemes, which is deemed feasible by some researchers.¹⁵

Information on the availability of funds

Q12) *Is there a need to give non-banks access to information on the availability of funds in bank accounts, with the agreement of the customer, and if so what limits would need to be placed on such information? Should action by public authorities be considered, and if so, what aspects should it cover and what form should it take?*

The bank accounts and, more specifically, the funds that have been deposited in these accounts belong to the consumer, not to the bank.

The role of the bank is to provide different services facilitating the use of these funds and accounts. Those services include the authorisation of a transaction (i.e. providing a guarantee to the payee), clearing of transaction data, financial settlement of transactions, information about a transaction, fraud management of transactions, etc.

New payment methods are creating the opportunity for non-banks to provide payment services and to compete with traditional providers. It is therefore necessary that consumers have the right to request their bank to accept transactions made by a payment system, which is not necessarily offered by the bank. It should therefore be possible, as long as the standard operating procedures, format, infrastructure, security, and message flows are used, for the consumer to request their bank to authorise and guarantee transactions made on retailers' cards, mobile payments processed by mobile operators, or any new payment service offered by a licensed payment institution. For this reason, it is necessary that the bank shares this information.

As it is the consumer who owns the funds in the account, the banking should only be able to refuse to make a payment if:¹⁶

¹² <http://www.abbl.lu/news-publications/news-archive/partner-news/new-debit-cards-2012>

¹³ <http://www.solocard.co.uk/about.html>

¹⁴ Three pending projects are PayFair, EAPS and Monnet.

¹⁵ *SEPA Cards: success factors for sustainable card schemes in Europe*, Research Center for Financial Services, Steinbeis-University Berlin, May 2011, http://www.steinbeis-research.de/pdf/2011_SEPA_Cards_RFS_Steinbeis.pdf.

¹⁶ See footnote 15, p. 19.

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- there are no sufficient funds available in the account
- the consumer has broken the agreed terms and conditions, such as needing to provide two signatures for a joint-account payment
- making the payment would be unlawful.

In those cases, consumers should be informed about the reasons for the refusal to make the payment.

Q14) *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.*

According to a FSUG member representing small and medium-sized businesses, there is much evidence that a significant number of micro and small businesses may not be entirely dependent upon payment card transaction although it is not to say that they did not have to make investments to facilitate this kind of payment method. This includes security issues with regard to internal controls and accounting for such transactions. Card payments in these circumstances may become a preferred method of paying for transactions.

However, we think that the market should always offer the option to the consumer to pay by a range of payment alternatives. We also consider that the regulation should not disincentive or incentive the use of a particular payment alternative.

In services tied to smart phones, we see that providers of the operating systems already enact monopolies concerning the application markets and restrict consumers to their payment schemes with both general functions of their phones tied to the operating system as well as third party applications.

Q15) *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?*

Consumers should be provided with the full cost of their purchase at the earliest opportunity. There should be no hidden charges: consumers should always know what they pay for and how much they pay. FSUG considers that the price you see should be the price you pay.

Yet, transparency alone would not be sufficient to change consumers' payment habits to the benefit of cheaper payment options. This measure should be combined with direct regulation of fee levels (see our answer to questions 1-3).

Q16) *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?*

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- *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?*

At EU level, surcharge and rebates were introduced by the Payment Services Directive to allow merchants to steer consumers towards using more efficient and cheap means of payments, allow them to renegotiate lower fees and thus put downward pressure on MIF.¹⁷ Nevertheless, the tool was inadequately designed, failed to achieve its objectives and has been to the detriment of consumers without any benefits for them. First, excessive surcharge has become an important revenue source for some businesses, e.g. the UK Office of Fair Trading estimates UK consumers spent £300 million on payment surcharges during 2009 in airline sector only.¹⁸ As a result, actions against excessive surcharges have been taken in several Member States.¹⁹ The issue of excessive surcharges will be addressed by implementing the Consumer Rights Directive²⁰, while the cross-border dimension still remains unresolved.²¹ Second, there is no proof indicating that prices of goods and services have dropped as a result of implementation of the surcharge.²²

FSUG considers that the following features of surcharges individually, or in combination, significantly harms the interests of consumers:

- The practice of advertising incomplete or partial prices, by, at least, omitting surcharges for payment method from advertised prices, which, due to behavioural biases, means consumers are unable to effectively and efficiently shop around and make like-for-like comparisons.
- The lack of reasonably or practicably available alternatives to avoid or mitigate surcharges for payment method.
- The conduct or practice of retailers that impose a surcharge for payment method, hidden or not, that exceeds a reasonable estimate of the costs for processing consumers' payments.

These features lead to widespread detriment including:

- Price comparisons being much harder so weaken the competitive process between retailers.
- Consumers making poor choices between competing alternative goods and services from which they may choose.

¹⁷ The Payment Services Directive Article 52(3) provided an option to Member States to allow, forbid or limit surcharging.

¹⁸ <http://www.offt.gov.uk/news-and-updates/press/2011/76-11>

¹⁹ Which? super-complaint and the UK government decision to regulate excessive card surcharges, December 2011, http://www.hm-treasury.gov.uk/press_148_11.htm

A Paris Tribunal condemned 23 clauses in Easyjet's terms and conditions, February 2012, <http://www.quechoisir.org/transport/transport-aerien/editorial-compagnies-aeriennes-trop-d-abus-dans-l-air>

VZBV vs. Ryanair in Germany: <http://www.upgradetravelbetter.com/2010/05/20/german-courts-take-a-stand-against-airline-credit-card-fees/>

²⁰ Directive 2011/83/EU on consumer rights, Article 19: "Member States shall prohibit traders from charging consumers, in respect of the use of a given means of payment, fees that exceed the cost borne by the trader for the use of such means."

²¹ Consumers in Member States where surcharge is prohibited are paying a surcharge to companies established in Member States where surcharge is authorised.

²² That would mean consumers are being charged thrice.

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- Consumers spending more time and money searching the market than should be the case.
- Consumers often being misled over actual prices and being frustrated at being asked to 'pay for paying'.

In our view, paying for goods or services is not an additional or optional feature of a product but a necessary pre-requisite intrinsic to the conclusion of a contract. Even when the retailer offers a number of alternative payment methods, that retailer retains a monopoly on the setting of the prices²³ that the customer will pay for different payment methods. Where these additional surcharges applied to customers exceed the differences in cost, retailers are using their monopoly to actually recover the costs of the primary goods or services. As a result, the advertised price excluding these additional fees does not actually reflect the price at which the retailer is willing to sell; and is therefore misleading.

The UK consumer association Which? set out the impact of surcharges on consumer behaviour and competition in its supercomplaint to the UK Office of Fair Trading:

"It has been established that 'price framing', the way in which prices are presented or revealed to consumers, has a material impact on consumers' ability to judge value and make like-for-like comparisons. This is because consumers are subject to behavioural biases – the fact that we rely upon rules of thumb and 'mental short-cuts' to make judgements that can lead to, from an economic perspective, irrational behaviour. These behavioural biases can result in consumers being misled over the relative or absolute value of goods or services. It can lead to a competitive outcome in which retailers do not compete on the basis of the clearest or most complete price offered to consumers, but actively obfuscate and misrepresent their prices.

For customers to 'punish' retailers with excessive additional (but in practice unavoidable for the consumer) surcharges they must individually incur significant additional search and transaction costs (which may be higher than their individual savings for as long as the overall market remains in this dynamic state). In the absence of requirements on retailers to behave differently, consumers will continue to struggle to make meaningful and informed comparisons of prices and pay inflated surcharges related to payment method."²⁴

Consumer research carried out by Which? showed that nearly two-thirds of consumers when asked whether surcharges made a difference to advertised prices and to the difficulty of comparing the price of goods and services agreed that surcharges made a significant difference to the advertised price. Just under half (49 %) agreed that surcharges made comparing prices more difficult, with only 17 % explicitly disagreeing.²⁵

Consequently, we don't consider surcharge as an optimal policy tool to improve competition in the payments services sector. Instead, regulation should tackle the level of interchange fees. In addition, this legislation should also address the issues of rebates, and price transparency. Furthermore, the implementation of SEPA must lead to more efficient and cheap payment services, not the contrary. The dominant position of international card schemes and banks, their excessive profit margin on

²³ In addition, payment providers will continue to look for ways to increase the value of payment products to customers, thereby enhancing potential revenue streams.

²⁴ Which? supercomplaint on surcharges.

²⁵ Which? commissioned a general public omnibus specifically to gather evidence on consumers' experience of payment method surcharging. 1 305 members of the UK general public participated in an online omnibus survey in January 2011. Most of the questions were answered by the 484 respondents who had encountered a fee for paying either by credit or debit card in the past 12 months. All responses were re-weighted to ensure the survey was representative of the UK adult population.

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card payments (completely disconnected from costs) must be broken in view of fostering effective competition.

Rebates are currently widely used by utility suppliers to encourage consumers to pay by direct debit. However, many consumers see them as the equivalent of surcharges and in the UK, consumer groups regularly receive complaints about them. There is a danger that rebates can lead to financial exclusion and drive up the cost of services and especially utilities for the un-banked.

In the UK, there have previously been significant issues with energy suppliers using direct debits to collect payments that were larger than the actual usage of the consumer based on predicted future energy usage. When, the actual usage by the consumer was lower than predicted energy companies took a long time to reimburse consumers. The UK regulator Ofgem, has now published guidance to address this issue however refunds still don't happen automatically. The onus is still on the consumer to challenge the usage estimates and demand an immediate refund. The guidance also does not define what a fair and reasonable direct debit is. This is also a reason often cited by consumers who opt not to pay for utilities by direct debit.

Therefore it is more convenient to encourage the merchant to offer reasonable and competitive real end prices. And merchants should be asked to accept one, widely used, cost-effective electronic payment instrument without surcharge.

Merchant – payment service provider relationship

Q17) 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 micro-payments?

In our view, users of payment services should have a choice over the means of payment they choose. Different payment methods offer different benefits to consumers which will be of a varying degree of importance to them. Although we are supportive of trying to make payment systems more efficient and cost-effective we are also aware that some consumers will not or cannot make use of certain payment methods.

In the UK, the Payments Council tried to abolish the cheque as a form of payment and announced that it would be phased out by 2018. This led to a huge backlash by consumer groups, individual consumer as well as organisations representing people with disabilities and older consumers. Despite cost and efficiency shortcomings, cheques were still perceived as a more convenient and safe form of payment by many consumers. As result the Payments Council had to revise its position and there is no longer a set date at which the cheque will be phased out.

We would also like to point out that the approach taken in this green paper seems to fail to take account that provision of a facility to pay for goods and services is an inherent part of the cost of doing business as are rent for the premises, cost of energy and heating, staff cost etc. A consumer who buys one high-cost item which has taken up little floor space and where staff has had little involvement in the sales

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process will have made a much larger contribution to covering the cost of running the business than someone who purchases a physically large but cheap item and who required a lot of advice from sales staff. The cost of processing the payment method is in comparison secondary.

We therefore have the following views on the rules applied by card schemes:

- **No-Discrimination Rule (NDR):** We are not in favour of enabling merchants to use surcharges to steer consumers towards the use of more efficient payment instruments. Merchants are already using surcharges without even having to justify whether they are really directing consumers to the most efficient payment instrument. Some service providers like Ryan Air levy surcharges on debit cards which are currently one of the most efficient and in many cases the most efficient payment instrument²⁶.
- **Honour All Cards Rule (HACR):** We are concerned that the abolition of this rule could lead to reduced consumer choice rather than a more efficient payment market. Theoretically the freedom for the merchant to accept only the cheapest cards of a specific brand contributes to competition and efficiency. But in reality it may not work well for consumers. For example, if HACR is abolished, consumer payment options may be further reduced, as merchants would refuse to accept certain cards. One could consider partial abolition of HACR rule, e.g. freedom for the merchant to refuse excessively costly cards, like gold and black cards. However, it is also necessary to keep in mind that it is difficult to objectively divide the fairness of the pricing of payment methods from the fairness of the pricing of the overall service offered. Any policy options need to be properly designed and a thorough impact assessment must be conducted to evaluate possible adverse effects on consumers.
- **Blending practices, applied by card acquirers:** We favour abolishing blended fees, i.e. differences in the fees of brands should be reflected in the rates offered by the acquirer to the merchant. It goes without saying that any cost reductions on payment transactions should be passed on to consumers via reduced prices of goods and services.

Standardisation

Q18) *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?*

Q19) *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?*

Q20) *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*

²⁶ This is at least the case in countries where it is currently not possible to pay for internet purchases with a direct bank transfer.

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their involvement and what are the potential deliverables? Are there other new or existing bodies that could facilitate standardisation for card payments?

Q21) *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?*

Q22) *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?*

The establishment of standards in emerging and innovative markets has been criticised, since it is argued that it may stop its development and innovation by obligating the market providers to adapt to static rules, which will deter a continuing developing. Accordingly it is proposed to leave the providers to develop their products in a competitive market. However, it is important to point out that, in order to avoid infringements of important consumer principles like right to information, fair access and prices; some rules should be established in a standard as a guideline of general principles that the providers need to follow, leaving at the same time sufficient scope for the developing of the market to adapt to the changing conditions.

Adopting common standards would help mainstream electronic payments, encourage online and cross-border purchases and would enhance consumers' confidence. Vulnerable consumers should be addressed in standardisation procedures, taking into account both aspects of financial inclusion and accessibility.

European standardisation bodies, the European Banking Authority, the ICT industry as well as consumers' organisations and civil society should be included in the discussions around standardisation. The aim of these initiatives should be to create Europe-wide standardised payment methods and debit cards. Interoperability of applications and methods should be explored as well.

Please also refer to our answers to Q29-31.

Interoperability between service providers

Q23) *Is there currently any segment in the payment chain (payer, payee, payee's PSP, processor, scheme, payer's PSP) where interoperability gaps are particularly prominent? How should they be addressed? What level of interoperability would be needed to avoid fragmentation of the market? Can minimum requirements for interoperability, in particular of e-payments, be identified?*

Q24) *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?*

In the area of mobile payment, the lack of common technology standards is characterised by many different protocols being used and a large number of different mobile phone devices. Thus, the need for greater interoperability is largely dependent on the financial intermediaries themselves, where minimum requirements

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such as installed applications that provide better security, are easier to use and allow development of more complex services, similar to those of internet banking.

Consequently, a degree of internationally accepted standards should be developed to allow interoperability. In addition to regulatory standard compliance, trust marks, limitations of liability for unauthorised or fraudulent use of payment systems and charge-back mechanisms has been pointed as potential drivers of consumer confidence²⁷.

From an end-user point of view, portability of applications and interoperability are areas where standardisation is crucial to ensure that traditional payment services providers who have a clear incentive to link usage of new payment methods to existing methods like bank accounts are not in a position to develop monopolies.

In the UK, the Payments Council, the body responsible for ensuring that payment services work, has started work on a central database that links mobile phone numbers to account details. However, this service will only be accessible by banks and building societies and not by other service providers.

Mobile and electronic payment services should be available to un-banked consumers and therefore the development of such services should not be driven and monopolised by traditional providers of banking services. We see a role for standard setting bodies, regulators and legislators to ensure as much interoperability between service providers so that consumers without a bank account can make e- and m-payments to all other consumers and vice-versa.

Access to affordable financial services for unbanked should include access to savings, money transfer, payments and micro-credit. One large potential growth area is international remittances, which will necessarily require services able to transfer funds between mobile phone devices in different countries. Some trials have begun of international mobile remittances. For example, both Deutsche Bank and Belgacom launched some pilot projects²⁸.

Payments security

Q25) *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?*

Q26) *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?*

Q27) *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?*

²⁷ OECD Workshop on consumer protection in online and mobile payments, France, 15.4.2011.
²⁸ See: <http://www.finextra.com/news/fullstory.aspx?newsitemid=19826>. For details on the emerging landscape for international remittance deployments through mobile money, see: <http://technology.cgap.org/2012/03/21/what-do-international-remittances-mean-for-mobile-money-cgap-releases-study-on-remittances/>. For an extensive overview, see: Jaimie Feltault: *M-payments: the next payment frontier – current developments and challenges in international implementation of m-payments*, 2007, 22 JIBLR 575; R Bollen: *A review of the regulation of payment facilities*, 2005, 16 JBFLP 325.

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Q28) *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?*

Key security issues in relation to cards, m- and e-payments include:

- Ensuring data protection and security are designed into an application at the system level by the organisation issuing the payment method.
- Making sure that certain key security principles are covered by any system. These should include strong user authentication, mutual authentication, strong cryptography, trusted devices and user interfaces and improved usability.
- The amount of information stored on any payment card or for the use of m- and e-payment services is minimal. This would help protect the security of the user. Too much information stored in one place opens up the owner of that data to greater danger.

Consumers and other end-users of payment services need to have clearly defined protections that will give them the confidence to use such services and therefore enable to drive greater competition in this market. Such protections cannot vary between different payment services providers. Payment security therefore should be harmonised across the EU at a minimum harmonisation level through a regulatory framework which should regulate all the actors involved in the provision of payment services.

Recent consumer research carried out by Which?, the UK consumer association with regard to contactless cards found that concerns about security was the most important reason why consumers did not want to use contactless cards.²⁹

It is therefore vital that systems are made very difficult to hack and personal data tough to access e.g. if they were lost or stolen. Channel4 news in the UK recently exposed potentially significant weaknesses in the security arrangements used for contactless cards.³⁰

In The Netherlands iDEAL is one of the most used online means of payment. It seems to be an efficient payment mechanism due to the user-friendliness and the safety of this means of payment, which apparently has given many consumers confidence in online shopping and safe payment. Consumers are redirected from the merchant's webstore to the online banking window of their bank, right after selecting it. After successfully logging on to their respective account using account number and PIN, all relevant purchase data is uploaded from the shopping cart to the electronic payment system. To complete the transaction, all the consumer needs to do is authorise the transaction using a TAN. Consumentenbond, a Netherlands-based consumer organisation described as safe payment method³¹. Moreover, the name and account number are not provided after approved the payment. Unlike credit card payments, consumers keep full control over the release of their personal data.

²⁹ 1 335 GB adults (aged 16+) were surveyed online in August 2011, actual dates: 25-30 August 2011.

³⁰ <http://www.channel4.com/news/fraud-fears-grow-over-contactless-bank-card-technology>

³¹ See: http://www.consumentenbond.nl/service/faq/betalen_met_iDEAL/

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Whilst we welcome new authentication methods provided by international card schemes and individual card providers we would also like to highlight potential access issues for some users of such services. Such authentication methods can cause a barrier to use for some consumers. Which? has received consumer feedback stating that card readers can make it difficult for some consumers to use cards to pay online. In this regard, a phenomenon that is a relatively new threat to consumers in the Netherlands is the so-called 'phishing'³² for personal data such as pin codes, bank account numbers, credit card numbers, passwords, etc. by illegal organisations.

It is important to consider how security arrangements can end up being used to the disadvantage of the consumer/user. In the age of phishing, pharming and further criminal attacks of that kind we may say that simple passwords are no longer secure; yet while some banks in Germany use 2-way authentication for 3DS Payments some use simple passwords. The latter are too easy to be keylogged and compromised turning a security idea into a liability deadlock.

Security has to be designed in a way that it is accessible and understandable to consumers so they know how it will make them secure and are less likely to be tricked when using it.

Furthermore, many sellers store consumer personal data for their business purposes. The Payment Card Industry's Data Security Standard (PCI DSS) set security requirements for merchants who store consumer data. The PCI Security Standards Council established by the major card brands recommends merchants e.g. not store any payment card data in payment card terminals or other unprotected endpoint devices, such as PCs, laptops or smart phones; not to permit any unauthorised people to access stored cardholder data.³³ However, several cases where data of millions of consumers were compromised show that data servers are not secure enough.³⁴ Furthermore, according to some witnesses, companies may have card storage occurring without their knowledge, e.g. on employee desktops or in mailboxes.³⁵

More effective protective tools (mainly technological) should be obligatory in the market in order to guarantee an effective protection of personal data. Particularly financial information and personal data need to be kept safe. The payment methods of the m- and e- payments should comply with the most cautious security requirements in order to protect this sensitive information.

According to research published by Innopay, NFC security "has been repeatedly proven to be vulnerable to a variety of possible attack scenarios, and security remains one of the most serious threats to a large-scale contactless mobile payments adoption. Securing NFC data demands that a number of parties cooperate. They include device manufacturers (who must deploy strong cryptography and authentication protocols into contactless phones), consumers (who would protect

³² See Netherlands Authority for the Financial Markets (Autoriteit Financiële Markten – AFM) at <http://www.afm.nl/en/consumer/risico/phishing.aspx>.

³³ https://www.pcisecuritystandards.org/pdfs/pci_fs_data_storage.pdf

³⁴ <http://www.securityfocus.com/news/11493>

³⁵ http://www.theregister.co.uk/2009/08/17/heartland_payment_suspect/

³⁵ <http://www.itworld.com/storage/69677/pci-dss-and-storage-credit-card-data>

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their devices with passwords, PINs, etc.), application providers and transaction parties (who must protect their systems against infection with malware).³⁶

Governance of SEPA

Q29) *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?*

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

Q30) *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?*

Q31) *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?*

SEPA has been promoted as an extension of the Euro: after replacing national currencies by Euro coins and notes in several EU countries, the next step was supposed to be the creation of a Single Euro Payments Area (SEPA) in which all electronic payments are considered domestic, and where a difference between national and intra-European cross-border payments does not exist anymore.

This project of general public interest has been run as a self-regulatory project, set up and managed by the European banking industry through the European Payments Council. As consumer representatives have pointed out over many years now, this governance of SEPA has only favoured banks' priorities and interests. The Customer Stakeholder Forum (CSF) for credit transfer and direct debit set up by the EPC is a consultative body only and the EPC Plenary holds the final decision-making power. Consumers and other end-users have spent time explaining their needs and requests, but could do nothing when the answer was 'no'. There is no arbitration, no independent decision-maker, as the EU SEPA Council declined to take this role. Consumers groups involved in the work with the EPC have expressed their frustrations and commented that they felt that working with the EPC was a waste of time.

Finally, the consumer specific requests for improving security of SEPA Direct Debit were included in the proposal of Regulation adopted by the Commission and voted by the European Parliament and the Council at the beginning of 2012. Consumer organisations were always of the view that this important project should have been mainly driven by the European Commission and the European Central Bank, and

³⁶ Innopay – Mobile payments 2012.

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questioned whether an excessive belief in the merits of self-regulation was the reason that this did not happen.

Based on this experience, the following should be considered:

- SEPA governance should be fully revised to ensure that the expectations and requests of all stakeholders are taken into account. Given the general public interest of the SEPA project, only the European authorities should be its driver.
- The European legislator has a crucial role to play insofar as the rules that apply to SEPA products are not all purely technical; some of them have a direct impact, for example, on consumer rights and some issues can only be solved by legally binding provisions.

We would also like to increase awareness that consumer organisations and other users representatives in non-SEPA Member States have so far had little opportunity to engage with the process and that any measures going forward especially in the area of m- and e-payments should be consulted with relevant bodies on non-SEPA countries. In the area of e- and m-payments there is little justification for distinguishing between euro countries and other Member States.

***Q32)** This paper addresses specific aspects related to the functioning of the payments market for card, e- and m-payments. Do you think any important issues have been omitted or under-represented?*

FSUG feels that the paper fails to take adequate account of the wider issue of consumer protection related to the pre-payment for goods and services. We acknowledge that other Commission instruments touch on these issues. However, from a consumer perspective there is a close relationship between such consumer protections and the choice of payment method.

In the UK, users of credit cards are afforded significant and valuable protection under Section 75 of the Consumer Credit Act 1974 by making credit card companies 'jointly and severally liable' for any breach of contract or misrepresentation by the company if the good or service purchased were more expensive than £100. Similar albeit not legally-binding protection is afforded to consumers through the VISA and MasterCard chargeback arrangements.

These protections have proven to be invaluable during the financial crisis when a significant number of retailers and businesses went into administration leaving consumers at risk of financial loss. Section 75 protection is also a valuable protection for internet purchases and is likely to make consumers more confident in purchasing cross-border as it also applies to such purchases.

Another issue that is not mentioned in the green paper is the protection of funds held via new payment methods. E-payment systems like Paypal are e-money and not protected deposits to store and use money. The funds held on pre-paid cards are not protected against fraud by the payment service provider e.g. the provider fails to hold the money in a segregated account. Such funds therefore do not enjoy the same level of protection as funds held in bank accounts.

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The Green Paper addresses specific aspects related to the functioning of the payments market for card, e- and m-payments, however, issues of financial and digital inclusion, were under-presented in the green paper. There is a need to recognise the problems which the rapid moves towards electronic methods of payment are creating for some consumers. Customers are being increasingly pressurised to pay by electronic means and often financially penalised if they are unable, or unwilling to do so. Indeed in some instances only electronic methods of payment are accepted.

Additionally, the market of payment should be transparent and allow for informed consumer choices.