European Payment Institutions Federation aisbl

THE EUROPEAN PAYMENT INSTITUTIONS FEDERATION'S RESPONSE TO THE EUROPEAN COMMISSION'S CONSULTATION ON THE GREEN PAPER – TOWARDS AN INTEGRATED EUROPEAN MARKET FOR CARD, INTERNET AND MOBILE PAYMENTS

APRIL 2012

About EPIF

EPIF represents the interests of the payment institutions sector at European level. Its members represent the broad range of business models covered by the Payment Services Directive (PSD) and include companies and national associations from every part of Europe. The different business models represented within EPIF include:

- 3-party Card Network Schemes
- Acquirers
- Money Transfer Operators
- M-payments
- Payment Processing Service Providers
- Card Issuers

EPIF seeks to represent the voice of this industry with EU institutions, policymakers and stakeholders. It aims to play a constructive role in shaping and developing market conditions for payments in a modern and constantly evolving environment.

Executive Summary

- EPIF supports the aims of the European Commission set out in the Green Paper of increasing competition and consumer choice and fostering innovation to support emerging payment technologies.

- Competition and consumer choice and demand should be the key drivers of innovation in the payments sector, whereas regulatory intervention risks hampering the industry.

- In principle, EPIF supports any sensible AML legislation. The current AML/CFT regime in Europe should be reviewed with a view to eliminating existing obstacles to growth and innovation in the electronic and mobile retail payments markets provided by Payment Institutions offering remittance services.

- EPIF has already set out high-level principles which should apply to SEPA governance, in order to ensure the fair representation of all affected stakeholders, of which the payment institutions sector is one constituency.

- EPIF's response to the questions below is representative of all payment institutions included within EPIF membership and their different business models as described above. Nonetheless, some questions raised in the Paper concern issues which impact certain business models more than others, and therefore the EPIF response is appropriately and similarly guided by such business models as suggested by the question.

Questions

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?**

Multilateral Interchange Fees are only a feature in the four-party payment scheme model, which is the predominant business model in the payments sector. EPIF members that operate as three-party payment schemes, such as American Express and Diners, operate a very different business model, and even where such payment institutions grant licenses to partners, this does not result in any MIFs being agreed between partners. Moreover, there is no concept of "membership" in the three party scheme structure, and the decision whether and to whom to license the network's assets is taken solely by the three-party network in its complete discretion, without any direct or indirect involvement by other licensees. Furthermore, licensees play no role in the management of the network and are not represented, directly or indirectly, in any governance bodies of the network.

For other members within EPIF whose business models are affected by MIFs, they are seen as a competitive instrument for differentiation between products and services. In addition, MIFs should not hinder the development of SEPA as a domestic market, and as such should be left to the market to avoid over regulation.

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?**

The assessment of the legality of MIFs under EU and national competition rules is a highly complex issue, as evidenced by (i) the length of the EU and national investigations and (ii) the fact that the European appeal courts have yet to rule definitively on this issue. EPIF would urge that no further action is taken in this sphere until legal clarity emerges from the General Court ruling in the MasterCard case and the appeal process is fully exhausted.

In the Green Paper the Commission observes that in Australia and the U.S., regulatory measures have been introduced to cap MIF levels. It is important that the EU benefits from any relevant and comparable experiences in these countries. In these jurisdictions, evidence suggests consumers have ultimately been harmed as there is no evidence to suggest consumer prices have fallen as a result of the regulatory interventions. For example[1], in Australia, interchange reforms have ultimately led to consumers paying more for credit (through higher card fees and reduced reward programmes) and, most significantly, they have not shared the savings that have been passed on to merchants and indeed have been subject to additional costs in the form of surcharges. While merchants' costs have

[1] http://www.rba.gov.au/publications/bulletin/2012/mar/pdf/bu-0312-7.pdf p.55

fallen as a result of regulation, there has been no demonstrable corresponding decrease in retail prices.

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 considered? Should a distinction be drawn between consumer and commercial cards?**

No action should be taken with respect to MIF levels pending the General Court ruling and the exhaustion of the appeal process.

Furthermore, those three-party networks which are represented by payment institutions that participate in EPIF do not have MIFs, either explicitly or implicitly, and therefore should not be included in the scope of any proposals which may emerge from the Green Paper on MIFs.

Commercial cards have traditionally been out of scope of the MIF-related competition law investigations, presumably as the Commission's investigations have to date focused on cases where there may be the potential for consumer detriment. There is no reason why this should change.

From a broader perspective and for those business models within EPIF who are affected by MIFs, regulation should be left to the market as pointed out above, so as to focus on MIFs as a legal competitive instrument and avoid limiting access to certain markets and card schemes.

As an alternative to price controls, regulators should focus on initiatives to increase competition and transparency so that merchants are well informed about the terms and conditions of card acceptance before entering into relationships with merchant acquirers or payment networks.

4. **Are there currently any obstacles to cross-border acquiring? If so, what are the reasons? Would substantial benefits arise from facilitating cross-border or central acquiring?**

From a three-party card perspective, the ability to enter into exclusive, market-specific licensing agreements is essential to enable those with small market shares to extend the reach and coverage of their brand, thus enabling them to compete more effectively on a pan-European basis with the dominant market players. Without this licensing structure, three-party networks would not be able to compete across Europe, thus undermining one of SEPA's central objectives, namely increasing the number of market participants in the payments sector.

In accordance with European competition law, it is critical that smaller competitors such as the three-party schemes represented by the payment institutions that sit in EPIF retain their discretion over who to partner with and how to develop their licensing strategy, including geographic scope.

Expecting the smaller card networks to get ahead of the SEPA curve and adopt SEPA-wide licensing practices would, ultimately, undermine the success of those networks as counterweights to the dominant networks.

From the broader perspective of other business models within EPIF, standards could assist cross-border and/or central acquiring if they are based on best practice and not driven by political interests from single market participants (e.g. the current EPC standards are driven by banks).

However attention should be paid that innovation is not restricted and costs do not outweigh the benefits.

From the point of view of SEPA as a single market, looking at cross-border or central acquiring is not as relevant, and as such, passporting as described in the PSD should focus on being fully adapted to card payments.

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?**

There are critical distinctions between the licensing rationale and structure of three-party and four-party networks that are highly relevant in this context. These have been explicitly recognised as a basis for distinction in the PSD, the ECB's 6th SEPA Progress Report and the current version of the SEPA Cards Framework. For this reason, three-party networks such as American Express and Diners Club International, have not been required to issue active cross-border issuing or acquiring licences. Any proposals on cross-border acquiring should not therefore include three party networks in their scope.

Where MIFs do affect members of EPIF, considering SEPA as a single market as mentioned above is a priority.

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?**

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 existing SCF regulation which allows issuers to pre-select the brand takes away the ability to choose for the consumer, merchants and providers. In principle, the priority to make the decision should be given to the person paying the bill.

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

From a general perspective, bundling scheme and processing entities risks harming competition between schemes, and places acquirers and third party processors in a weaker position. Theoretically, competition should be open to all parts of the payment chain, and the use of 'bundled only' solutions in Europe should not be allowed in cases where they are used to cross-subsidise.

Specifically for those EPIF members who operate three-party networks, they should not be subject to these, as unbundling requirements are only appropriate for dominant firms. Furthermore, in its sixth SEPA Progress Report published in November 2008, the European Central Bank (ECB) specifically exempts three-party networks, including those with licensees, from the unbundling

requirements set out in prior versions of the SEPA Cards Framework in relation to the interbank processing space. The ECB report states that the unbundling requirements are "less appropriate for three-party card schemes with licensees, provided that all licensee contractual relations are indeed strictly with the card scheme[2]. Nevertheless, a licensee should be allowed to work with the issuing or acquiring processor of his choice, as this promotes the development of an efficient and competitive market for card processing. The scheme should only be able to restrict authorisation, clearing and settlement to the scheme itself (page 24 of ECB sixth SEPA Progress Report). In particular, the ECB's guidance recognises that three-party schemes do not operate on the basis of interbank relationships.

From a broader perspective, it is important to also take into consideration the creation of an open market environment which does not limit competition.

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'?**

Please see response to Question 8.

"Unbundling" provisions make sense only for four-party networks where the tying of brand governance and management with processing in the interbank space could potentially create barriers to market entry in relation to processing activities, hinder the development of new, competing, multilateral networks and contribute, through control of certain bottleneck or gateway activities, to higher prices. It is inappropriate for three-party networks.

10. **Is non-direct access to clearing and settlement systems problematic for PIs and ELMIs and if so, what is the magnitude of the problem?**

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 PSD be amended accordingly?**

Questions 10 and 11 are addressed together.

Non-direct access to clearing and settlement systems is problematic for some payment institutions and E-money institutions as this hinders the rapid movement of funds. More importantly, clearing and settlement for many payment institutions is dependent on working through their banking partner. In the current environment it is extremely difficult for some payment institutions to obtain banking services and where they can the costs are extremely high. This results in more costs being passed on to the consumer or absorbed by the payment institution. A clear rule on access would be

[2] "All the licensee contractual relationships should be strictly with the card scheme, i.e. the agreements are on a bilateral basis, there are no links or undertakings between licensees, licensees are not allowed to agree fees or membership rules with each other or on a collective basis, and licensees are not allowed to participate in the management and/or governance of the scheme."

beneficial, as on a general level, approved payment institutions and/or e-money licensed companies already fulfill the necessary requirements for access.

Existing restrictions limit the creation of alternative payment schemes and focus in this area should not limit access for payment institutions.

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?**

It is critical that payment institutions have equal prominence in the process of agreeing any revisions to the SCF.

The standards in the SCF have been established and agreed without any input from three-party schemes, such as those represented in EPIF, and support bank-driven card systems only. Until the European Central Bank provided guidance on the relevance of the SCF for three-party schemes, it was difficult for these payment institutions to declare their SCF compliance.

Current definitions exclude alternative card payment schemes, and based on those rules non-bank driven card systems would not be compliant even if they are proven, cost-efficient, secure and accepted by the consumer (e. g. the German card based ELV). It is absolutely essential that any review of the SCF should involve payment institutions and should expressly recognise the specific and distinct business models of three-party and four-party payment schemes, so as to avoid re-introducing ambiguity or competitive disadvantage.

13. **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?**

In certain cases access to available funds is a pre-requisite for secured payments and therefore it may well be needed to provide the information on the availability of funds. Especially when the end-user agrees, we think current and especially new payment options could benefit from access to this information. Due to the regulated status of payment institutions, privacy when the end-user agrees is not an issue and such information creates an opportunity to form payment ways without any declines based on available funds. In card-not-present situations, in order to ensure that the customer requesting the payment is the real holder of the account it should be enough for the non-bank payment processor to provide the customers' name and his/her date-of-birth and the card issuing bank verifies this information.

Furthermore, there should be no distinction between banks and regulated and approved payment institutions, to focus on opening the current restrictive and bank-only driven infrastructure. This would have the added benefit of creating new and innovative payment methods in Europe, and reduce the banking monopoly on payments.

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-a vis dependent users?

EPIF is not aware of any companies whose activities depend on their ability to accept payments by card. All retailers have other options available to them, such as cash, cheque, ACH, e-wallets and other electronic transfer mechanisms.

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?**

EPIF sees no benefit or logic to merchants informing consumers about the fees they pay for the various payment instruments they choose to accept. EPIF does not believe this will influence customer choice, which is driven primarily by other factors such as the product features, credit line, ease-of-use, security measures or pricing offered to the customer in conjunction with each payment method accepted by the merchant.

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?

EPIF believes surcharging is detrimental to consumer choice and protection and to the efficient functioning of the payments sector.

In particular, merchants with market power are often able to exercise unrestrained surcharging at the expense of consumers, whether that be a store in a remote location or a nationally dominate retail enterprise. This experience has been borne out in Australia where surcharges by merchants often exceed the fee they pay to card schemes, indicating this could be an attempt to profiteer, rather than a practice to genuinely recover costs. Indeed, there is no evidence that merchants' income from surcharging has been offset or balanced by reductions in retail prices.

Surcharging unfairly discriminates against card payments, especially when compared to other less efficient forms of payment, such as cash and cheques. These payment methods are less practicable for merchants to handle and are often more costly, especially when the risks of counterfeit notes, theft, dishonored cheques, write-offs and collection agency commissions are taken into account.

As such, EPIF urges that harmonisation measures are introduced to prohibit surcharging. This is the best protection that regulators can provide as there is no reliable or pro-competitive basis for establishing a surcharge cap, which will be the fall back position in the absence of harmonisation upon implementation of the Consumer Rights Directive in 2013.

Indeed, assessing the value of card acceptance is complex, and merchants cannot accurately calculate a 'cost' against which to surcharge, since there are many different business models and pricing structures that support payment products and services. It is therefore impossible in practice to reflect the cost of each individual product at the point of sale.

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?**

The scheme rules referred to by the Commission in Q17 are rules that have come under scrutiny in the context of the Visa and MasterCard cross-border MIF investigations. Three-party schemes represented by the payment institutions that sit in EPIF have not been in the scope of these investigations. For these reasons EPIF urges that three-party networks are not included within the scope of any proposals intended to address questions raised in the context of the investigations into the four-party networks.

On a general level, it is important that competition remains open for all parts of the payment chain.

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?**

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?**

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?**

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?**

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?**

23. **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?**

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?**

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?**

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?**

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?**

Questions 18-27 are addressed together in a single response:

Card standards: EPIF considers that the use of common technical standards for card payments would be beneficial in order to promote interoperability for all stakeholders within the A2I and T2A interaction. However, these should also be sufficiently flexible to allow for the introduction of new and innovative products/services and should not serve to stifle competition. Such technical standards are currently being developed by standard bodies/associations such as the EPC and EPIF has contributed to this process. The current governance arrangements in this specific area are sufficient and include representation across all sectors, however direct EPIF representation in the relevant decision-making bodies as explained later in this Response is necessary to fully ensure equal representation. With respect to timeframes, moves to new standards will often lead to additional cost so the migration to new standards should be carefully considered to minimise these costs, particularly for smaller payment participants.

e-payments and m-payments: With respect to e-payments and m-payments, industry led standardisation should focus on supporting data security and consumer choice, striking the right balance between the two so as to enable mobile consumers to have the freedom to choose mobile payment products/services from multiple providers through ensuring technical interoperability. Direct regulation should be avoided as it is not appropriate for legislation to regulate the competitive space and risk stifling innovation. Ultimately it is consumers who should drive the best outcome, determining the right combination of both security and usability. Technical standards for

mobile payments providers should include a review of whether access to international and EU-wide telecommunications carrier service affects mobile payment functionality and should ensure that smaller participants and new entrants in payments are not technologically "locked out" from competing by larger players. In addition, any advocacy or oversight role adopted by interested regulators should not favour one industry over another.
In order to ensure secure payments, e-payments like overlay payments or internet bank payments (OBeps) should bring standardisation like matching the merchant's customer details with account holder details before accepting their payments. Regarding payment security, a regulatory framework should be focused on principles and would be advisable covering all market actors: banks, merchants and digital authentication schemes. Specifically related to question 26: the AVS (Address verification system) used in the UK and the U.S. would be a good technology protocol to roll out throughout Europe, however other systems should not be excluded.

Technical standard setting arrangements: The current arrangements for setting technical standards for m-payments now includes several industries. There are a significant number of bodies involved in both the formation of standards (e.g. Global Platform, EMVco, EPC, ISO, NFC forum, ETSI, PCI, Common Criteria) as well as industry groups (GMSA, Mobey Forum) commenting on the implementation/requirements for standards. EPIF believes there are sufficient standard setting bodies that operate to develop interoperability between different industries/technologies and these should be used to drive clarity where required. The complexity of bringing together multiple different industries and establishing a working business model is a reflection of the fact that the mobile payments sector is still in the early stages of its growth.

European standards: The development of European standards bodies should be in conjunction with global standards (e.g. ISO, PCI, EMVCo etc) in order to ensure interoperability for payment technologies on a global basis. For European businesses and consumers to achieve the full benefits of standardisation, card payments must be built on international standards.

Fraud standards: With respect to fraud standards, it is notable that when the US recently considered proposals to regulate this space, the Federal Reserve Board rejected a prescriptive approach that would require banks to adopt particular technologies, in favour of more general standards. The Board stated in its discussion explaining why it rejected a prescriptive approach as follows: "*The dynamic nature of the debit card fraud environment requires standards that permit issuers to determine themselves the best methods to detect, prevent and mitigate fraud losses for the size and scope of their debit card program and in response to frequent changes in fraud patterns. Standards that incorporate a technology-specific approach do not provide sufficient flexibility to issuers to design and adapt policies and procedures that best meet a particular issuer's needs and that would most effectively reduce fraud losses for all parties to a transaction… Another factor affecting fraud trends is the nature of the fraud environment as a 'cat and mouse' game. For example, as new and more effective fraud-prevention practices are employed by issuers, these practices will become targets for fraudsters wanting to compromise card and cardholder data. As technologies become less effective because of these efforts by fraudsters, issuers will be expected to find new ways to strengthen their fraud prevention measures*".[3] It should be noted that in the cards business, three-party networks - having direct access to both cardholder and merchant data - are particularly well situated to manage fraud. Meanwhile, customers remain protected from bearing liability for fraud due to the harmonised rules introduced under the PSD.

[3] https://www.federalregister.gov/articles/2011/07/20/2011-16860/debit-card-interchange-fees-and-routing#h-4

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?**

In the interests of competition and innovation, any further developments in this area should be market led.

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, so that payment institutions are involved in both the working groups and the decision making bodies.

EPIF understands that SEPA governance is currently being reviewed by the European institutions, in close cooperation with the EPC. Payment institutions support the equal representation of EPIF in all bodies emerging from the EPC governance reform (SEPA Council, Stakeholder Group and its Working Groups). This equal representation needs to reflect the evolution of the payment institutions industry, the evolution of its market share, its geographical breadth and the different business models of the industry. As a result, equal representation should mean an equal share of the seats for each of the constituencies involved in the SEPA process, of which the payment institutions sector is one constituency. As regards technical input, the governance reform needs to reflect the specialised expertise and competences of the payment institutions industry. EPIF believes the standards setting process should be chaired and overseen by public bodies and that the SEPA standard setting process and governance reform should ideally be publicly funded to reflect the public policy interest in the standard setting process.

During the transition to the new SEPA governance structure EPIF needs to be represented directly or through its members in the EPC plenary and the EPC Working Groups. EPIF should also be directly privy to any discussions on SEPA governance reform. As part of this, already during the transition EPIF should be a member of the existing SEPA Council.

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?**

Please see response to questions 18-27.

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?**

32. **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?**

One issue where further innovation has been potentially identified is currency cards, where a client can upload his card with a particular currency in the EEA and send the card to a recipient elsewhere, who is then able to download the funds via an ATM. EPIF members who operate transmittance models, such as the UKMTA, have observed the potential for growth of this niche product.

In addition, EPIF has in the recent past submitted to the European Commission services its position paper regarding the review of the 3rd AML Directive. Payment institutions' compliance with anti-money laundering (AML) and counter terrorist financing (CFT) obligations is a prerequisite for their authorisation under the Payment Services Directive (PSD).

The current EU AML/CFT framework was, however, established prior to the opening of the payment institution market and is arguably not catered to the needs of the various payment institution business models. This also has implications regarding the ability of payment institutions to innovate and grow their electronic or mobile payment services offering. Arguably, several aspects of the current AML/CFT regime serve as an obstacle to growth and innovation in the electronic and mobile payments market:

The existing regime set forth by the 3rd AML Directive (AMLD) is unfortunately not based on the *maximum harmonisation* principle. This results in the different implementation and application of AML/CFT rules in the 27 EU Member States. As a result, payment institutions operating on a pan-European basis have to comply with widely different AML regimes, requiring considerable compliance resources to be deployed which also has a direct impact on the cost of the services provided.

For instance, most competent supervisory authorities in Europe apply a 'zero threshold' customer due diligence (CDD) policy vis-à-vis payment institutions operating in the money remittance industry. Importantly, remittance services are usually being conducted without an account relationship between the payment institutions and the customer (see Art. 4 (13) PSD). Typically, remittance customers transact on an occasional basis with the payment institution. Thus the above mentioned supervisory practice means that for every occasional money transfers, even for a small remittance payment of only EUR 20, the full set of CDD measures has to be followed under the current AMLD regime.

In an online or mobile remittance context even stricter requirements apply: **enhanced customer due diligence** (EDD) requirements need to be followed under the current AMLD regime due to the non-face to face context. Such EDD requirements are very costly, impracticable, and arguably not necessary and not proportionate for electronic or mobile remittances up to a certain threshold. Such requirements serve as a clear obstacle to develop, innovate and provide online and/or mobile remittances payment products as they jeopardise the business case behind many of these low-

margin retail payment services. As a result, payment innovation in this segment does not take place within Europe but elsewhere (see for instance the vivid mobile payments and remittance markets in several African (e.g. Kenya) or Asian countries (e.g. Philippines).

For electronic money products, the 3rd AML Directive already provides for optional exemptions from CDD requirements if certain monetary and aggregate thresholds are observed (Art. 11 (5) AMLD). **EPIF proposes to apply the same exemptions to non-electronic money products (incl. remittances) for low-value retail payment products** which do not involve e-money if the maximum amount transferred is no more than EUR 250 supplemented by an aggregate limit, and a "low-risk scenario" is maintained (e.g. via CDD checks at the back-end of the transaction).

For transactions over EUR 250, EPIF supports the introduction of a 'tiered' / 'progressive' approach for CDD, as advocated for wire transfers in the FATF Guidelines on Financial Inclusion (June 2011). This approach could be supplemented by a requirement to intensify transaction monitoring. Overall, and in light of the continuously sizeable informal remittance sector in Europe, this will foster a higher efficacy of the overall AML/CFT framework in Europe.

As a principle, EPIF believes CDD requirements should increase in line with the risk profile of the activity, without hampering innovative low-value payment products from being developed and offered. More generally, EPIF would welcome further consistency and more guidance on the practical use of a risk-based approach with respect to new payment methods (incl. electronic and mobile payments), in particular with respect to non-face-to-face situations. We would also welcome a consistent approach regarding the application of the CDD rules on occasional transactions (Art. 7 (b) of the 3rd AML Directive).

Lastly, EPIF advocates for impact assessments to be carried out, and published, to support the rationale and effectiveness of any new proposed rules. It is worth mentioning that the global AML/CFT regulatory framework has been tightened during the last decade, thereby "raising the regulatory bar" but also the cost of compliance for the financial industry. No impact assessments have been made or published by the FATF or other bodies to support the introduction of new rules and EPIF would welcome this taking place at least on the European level.

The EPIF Position Paper regarding the review of the 3rd AML Directive is provided as an Annex for information.