

**European Commission – Green Paper****Towards an integrated European market for cards, internet and  
mobile payments****Response from BNP Paribas**

- *Letter from Jean Laurent Bonnafé, CEO of BNP Paribas, to the European Commissioners Joaquin Almunia and Michel Barnier*
- *Answers to the questions of the Green Paper*

Paris, 11th April 2012

Dear Mr. Almunia,  
Dear Mr. Barnier,

*The green paper entitled "Towards an integrated European markets for cards, internet and mobile payments" published on 11 January 2012 has given rise to a very important public debate, since the major challenge set forth in this paper concerns European integration of payment systems within the SEPA framework.*

*BNP Paribas has a significant presence all over Europe and wishes to help this initiative fully achieve the goals of developing a competitive and innovative single European means of payment market that would benefit the economy as a whole.*

*BNP Paribas is already contributing to this goal day in and day out by supporting its customers on all their markets and is positioning itself as the leading bank for businesses in Europe. In the same vein, BNP Paribas supports the European Commission's initiatives to encourage information for consumers. Being at the core of the relationship of trust with our customers, this information must first and foremost be relevant to them.*

*In the light of everything said above, it is essential that this public consultation and the associated work set up a clear and legible European regulatory framework for cards, internet and mobile payments that does not unnecessarily expose customers to security flaws, that offers competitors a level playing field and that enables innovative solutions to be developed for the benefit of consumers.*

*In view of this, BNP Paribas would like to draw the attention of the Commission to two issues concerning the sustainability of banks in Europe.*

1) *The greatest concern relates to access to bank accounts by third party institutions.*

*Recently a number of operators, both payment institutions and others, have been asking bank customers to provide them with their on-line banking credentials, in order to retrieve their bank data and /or make payments.*

*These practices are dangerous. They constitute a major systemic risk for customers and banks as a whole.*

*The prime role of a bank consists in guaranteeing the security of customer deposits and ensuring its customers' data remain confidential. This is the foundation on which the relationship of trust is built and without which banking would be impossible. In concrete terms, banks provide their customers*

*with personal banking credentials, enabling them to access their data and perform transactions remotely.*

*It is unacceptable that customers hand this information over to any third party whatsoever. An identifier thus distributed no longer provides any protection to the holder of it.*

*Furthermore, each year the banks invest large sums of money to protect their information systems from attempted intrusion, such attempts are on the increase in recent years. A multiplication of accesses by third parties to customer data jeopardises all these anti-intrusion protection systems. This exposes customer data to a new type of fraud with the potential for massive manipulations thus creating a de facto systemic risk.*

*These accesses put customers at financial risk and incur substantial image and reputation risk for European banks. Nothing can justify taking such a risk especially in the current context.*

*As for other banking areas (trading dark pools, hedge funds), access by third party operators to customer accounts would encourage the development of "Shadow Banking", an opaque "second system" that is very difficult to control and that generates systemic risks that are as yet new and unknown.*

*European citizens, after having to cope with the recent financial and economic crises, must be protected from these risks.*

2) *The second concern relates to interchange fees for payment card transactions.*

*It is a fact that on the whole card payment systems offer a very high level of service to consumers and retailers in most European countries. Card payment volumes continue to grow and provide society with a substantial gain in business efficiency compared to the use of cash that is undeniable, not to mention the positive effect in terms of the fight against tax fraud and money laundering.*

*Today, the foundations of these systems are threatened by major legal insecurity, due to the competition cases on interchange fees before the European Commission and the Court of Justice. The approach adopted at present by the European Commission ("tourist test" and comparison with the cost of cash) and the various cases put to the European and national authorities and courts do not provide any visibility as to the legal framework.*

*Furthermore, none of the studies performed by the European Commission on the cost of cash, that the Commission itself had decided to use as the reference level, have been communicated.*

*This situation of non-communication is abnormal.*

*It is contrary to the very principle of transparency that should apply to all work carried out in this field. This situation is also a major stumbling block to initiatives from economic actors such as the launch of a new European payment card network.*



*Finally, a regulation on interchange fees that sets a single ceiling unrelated to costs would be counter-productive since it would not take account of the different national situations and types of card. It risks jeopardising a tried and tested service model and would lead to the emergence of other types of billing to cover costs.*

*Any initiative taken by the European Commission should therefore adopt a clear and transparent approach based on objective elements in order to offer the visibility required for economic actors. The recent example of the United States with their pragmatic approach based on the costs of card systems, proves that an agreement on interchange fees that is stable and accepted by all actors is possible.*

*To conclude, whereas BNP Paribas fully supports the goals in principle set by the European Commission to move forward with integration of the European market for cards, internet and mobile payments, for two major issues - access to bank accounts by third parties and the setting of payment card interchange fees – the approach initiated at present does not serve these very goals.*

*In the current economic climate, it is necessary to at once protect customers from new systemic risks while continuing to innovate. It is BNP Paribas' desire to move in this direction.*

*We look forward to a forthcoming meeting with you and until then remain yours sincerely,*

Jean-Laurent Bonnafé

**Part 1: Market fragmentation, market access and market entry  
across borders**

**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?**

Interchanges are part of the economic basis of the 4-corner model that enabled strong development of card issuance and acceptance.

At present, these interchange levels are different on European markets. They reflect economic card payment realities that differ from one country to another:

- (i) the average amount of transactions varies significantly from one country to another;
- (ii) the services rendered to customers and retailers are different and imply very different costs;
- (iii) the settlement dates and guarantee mechanisms are different from one scheme and one country to another;
- (iv) insurance and other advantages attached to cards differ;
- (v) the cost of financing and the availability of funds vary from one country to another;
- (vi) national regulations differ and sometimes create distortions in the way payment systems operate;
- (vii) levels of fraud and its type vary, in particular as regards issuing banks;
- (viii) the volumes of transactions performed by users of a common infrastructure differ.

From our point of view, only a harmonisation of the operating rules on a European level with the creation of a single cards scheme would enable an end to be put to these objective reasons that justify different interchange levels in Europe. This approach was adopted by the Monnet initiative and presented significant economic advantages for all stakeholders.

**2/ Is there a need to increase legal clarity on interchange fees? If so, how and through which instrument do you think this could be achieved?**

It is essential to clarify the legal situation of interchange fees.

At present, several proceedings are in progress before competition authorities and National and European courts. The approaches adopted by the various national authorities are not identical and several temporary agreements have been drawn up based on card system undertakings. The lack of visibility regarding the procedures in progress is very prejudicial to all stakeholders.

BNP Paribas wishes to highlight in particular that the “tourist test” and cash cost based approach adopted by the European Commission is not transparent. Studies on the cost of cash that were intended to be used to set a reference level for the cost of cash and interchanges were not published. The various economic studies and the conference on interchanges have shown that to date there is no consensus as to the methodology to be adopted to set an optimal interchange level from an economic point of view. However, several temporary agreements have been drawn up based on card system undertakings.

Therefore, achieving a stable regulatory framework on interchanges is essential for BNP Paribas in order to enable it to continue investing and developing new services for its customers.

This legal instability on interchanges is one of the main reasons why the Monnet European card scheme project was not capable of establishing a balanced business model and could not therefore be launched.

The recent example of the United States however shows that it is possible to define a pragmatic methodological approach (based on the costs of card systems) and come to a clear and stable agreement shared by all actors.<sup>1</sup>

Similarly, it is necessary to define a clear methodology in Europe built on a balanced economic approach and objective elements (costs). Such an approach must be in a position to take account of diverse payment situations (remote payment, proximity payment, recurring payment, pre-authorisation) and envisage an interchange level for each of them depending on the risk, infrastructure and substitutability with other means of payment (cash for example). It must also be possible to vary this interchange level depending on the different types of cards and account must be taken of competition from 3-corner schemes, in particular for top of the range cards which feature a range of services.

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<sup>1</sup> "Given the re-evaluation of permissible fees, the board established an interchange fee cap composed of the following:

- A base fee of 21 cents per transaction for transactional type costs/expenditures
- A five basis point adjustment to cover potential losses from fraudulent activity
- An additional 1 cent per transaction to cover fraud prevention costs (except for monitoring, which is included in the base transaction costs/expenditures noted above) if the issuer is eligible

According to a Fed study of transactions initiated and processed during 2009, the average debit card transaction was approximately \$40. Based on the final permissible fee structure, the interchange fee applicable to this transaction would be capped at 24 cents (21 cents + (\$40 X .05) + 1 cent)."

**3) If you think that action on interchange fees is necessary, which issues should be covered and in which form? For example, lowering MIF levels, providing fee transparency and facilitating market access? Should three-party schemes be covered? Should a distinction be drawn between consumer and commercial cards?**

For BNP Paribas, in principle there is no justification for regulating interchange levels. These are price levels established by the card schemes in a competitive business. The interchange level enables the business model of card issuance and cross-border acquiring activities to be balanced in order to foster transaction development. An interchange level that is too low does not enable card issuers to cover their costs and does not therefore encourage card issue development. An interchange level that is too high has an impact on the cost of transactions and penalises card acceptance by merchants in relation to other means of payment. Furthermore, many banks act both as issuers and acquirers to differing degrees which creates different incentives given the interchange levels.

Hence, a set of factors limit the interchange levels that may be practiced, such as acceptance by merchants, the cost relative to other means of payment, the various incentives from issuers and acquirers and of course the competition between international or domestic schemes. Therefore in principle it is preferable to leave market forces determine interchanges.

However this approach does not seem to be shared by European authorities and several proceedings are underway before competition authorities or national or European courts. As set out in the previous reply, BNP Paribas feels that the ensuing legal insecurity penalises investment and innovation by economic actors.

Even if BNP Paribas considers that a public intervention is not justified, an initiative by the European Commission on interchanges could make sense in order to break the stalemate that is in no way satisfactory.

Any initiative must adopt a clear and transparent approach, based on objective elements in order to offer the visibility required for economic actors. In particular one could mention as reference elements the costs of other means of payment, in particular the cost of cash, as envisaged by the European Commission (see the answer to question 2). These costs must however be based on detailed statistical studies shared with all stakeholders and this has not been the case up to now. Another approach is based on the costs borne by card issuers.

Its impacts on all stakeholders in the card schemes should be assessed in detail so as not to jeopardise a tried and tested business model that has successfully contributed to the universality of payment cards. In a complex environment, not yet fully analysed by economic theory, any regulatory intervention is furthermore likely to have unforeseen consequences as economic actors adapt.

As regards information on prices and transparency, BNP Paribas considers this as a positive principle: all bank charges must be clear to the merchants and private individuals to whom they apply. This principle however must not lead to excessive levels of detail on prices which, in this case, has the opposite effect on customers.





If an intervention by the European authorities must take place it should in particular ensure that 3-corner schemes be subject to the same regulatory requirements as four-corner systems to avoid any distortion in competition. This point is fundamental, even if formally it is sometimes considered that 3-corner schemes do not have interchange. Any initiative by the European Commission must absolutely avoid favouring one actor over another.

The BNP Paribas group is in favour of making a distinction between personal payment cards and corporate cards. We believe they do not belong to the same market for there is no substitutability at the supply or demand levels. The provision of corporate cards and the choice of card issuer are not decided by each cardholder but rather by the company that wishes to provide cards to its staff. For the cardholder, this card is for a different usage, for payment of business expenses. Corporate cards offer businesses who sign a contract with the card issuer a set of expense management and tracking features, such as more efficient accounting management, optimised cash management and centralisation of expenses.

Corporate cards must therefore be clearly set apart and not included in a common approach given that they do not address the same needs and are not built on the same business model.



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

The diversity of national card payment markets mentioned in response to question 1 makes centralised or cross-border acquiring complex. In general, there are a number of obstacles to the deployment of European card acquiring solutions such as:

- 1/ The existence of national means of payment and card schemes that need to be specifically taken into account in order to offer a full acquiring solution to retailers;
- 2/ The different operating rules for each means of payment and that must be complied with by acquirers;
- 3/ The licenses required by national and international schemes to be able to operate an acquiring activity;
- 4/ The technical protocols between the payment terminals and acquiring platforms that vary from one country to another;
- 5/ The different standard services on the markets that need to be developed in order to be competitive in a given country;
- 6/ The existence of bilateral interchange agreements in certain countries.

BNP Paribas wishes to support its major customers in all European countries through a cash management offer adapted to the local means of payment. For customers present in several European countries, the factors mentioned above are sources of complexity in implementing homogeneous Europe-wide cross-border acquiring solutions.

**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?**

All approaches towards standardisation on a European scale mentioned in the following questions and answers could remedy this situation and facilitate development of European acquiring activities. However given the systems already installed and the investments required, these harmonisation processes are slow to implement and take several years to produce their effects. BNP Paribas supports this convergence of technical standards in the acceptance area which it feels will facilitate competition and be beneficial therefore to merchants and customers.

Furthermore, cross-border acquiring in the form of a centralised technical platform is not the only technical solution possible to address the needs of customers present in several countries. It is also possible to develop acquiring offers in several countries with partially centralised platforms and consolidation of transactions for accounting and activity tracking purposes for merchants.

This approach enables at once economies of scale in terms of processing costs but also takes account of customers' habits and demands which vary from one country to another. It helps avoid the complexity inherent to a fully centralised system while at the same time addressing customers' needs in terms of costs and services.

**6) What are the potential benefits and/or drawbacks of co-badging? Are there any potential restrictions to co-badging that are particularly problematic? If you can, please quantify the magnitude of the problem. Should restrictions on co-badging by schemes be addressed and, if so, in which form?**

Co-badging consists in having two or more schemes on the same payment card.

This co-badging between a domestic scheme and an international scheme for example is beneficial in that it increases the possibilities of card acceptance when the customer is abroad for example. So it offers a genuine service to the customer.

BNP Paribas considers therefore that it is useful to allow this practice, without however making it compulsory since it is a commercial approach by card issuers. Co-badging must be performed in conditions that ensure a high level of service and security.

BNP Paribas has never encountered any particular difficulties or restrictions as regards co-badging.

**7) When a co-badged payment instrument is used, who should take the decision on prioritization of the instrument to be used first? How could this be implemented in practice?**

We support the position taken in the EPC Volume when it states that the choice must be made in the mutual interest of the different stakeholders with the consumer having the final say.

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

Not concerned since we are not a scheme.

**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'?**

Not concerned since we are not a scheme.

**10) Is non-direct access to clearing and settlement systems problematic for payment institutions and e-money institutions and if so what is the magnitude of the problem?**

This non-direct access does not pose a problem since payment institutions and e-money institutions have in any case non-direct access to the clearing system. This organisation is justified by the fact that payment institutions and e-money institutions are not subject to the same solvency and capital contingency requirements as credit institutions. These requirements are essential in ensuring the stability of clearing and settlement systems.

The quality of the signature of the direct participant and the size of the deposited collateral provide a high level of protection for the system against the risk of default by one of the indirect participants with regard to all the other direct and indirect participants in the system. Providing direct access to the system to all indirect participants would result in an overall weakening of the system and would increase the systemic risk.

Furthermore, indirect participants do not usually have sufficient transaction volumes to cover the costs incurred in direct participation in a system. The system of direct and indirect participants enables indirect participants to benefit from the economies of scale generated by the substantial transaction volumes of their direct participants.

In this context defined by European Directives, in which flow exchanges are based on trust, it is clear that going through a small number of main members who are subject to more stringent requirements is a decisive factor in ensuring the stability and security of clearing systems. Therefore increasing access rights would be prejudicial to the security of the systems in place.

**11) Should a common cards-processing framework laying down the rules for SEPA card processing (i.e. authorisation, clearing and settlement) be set up? Should it lay out terms and fees for access to card processing infrastructures under transparent and non-discriminatory criteria? Should it tackle the participation of Payment Institutions and E-money Institutions in designated settlement systems? Should the SFD and/or the PSD be amended accordingly?**

In our view it is not necessary to define a new Cards Framework but rather continue standardisation work in progress.

The questions raised do not appear to us as requiring new regulatory adaptations. To complement the previous answer, it can be said that payment institutions already have the possibility of joining card schemes in the same conditions as credit institutions. However, given their small size and financial standing or their status as a subsidiary of a financial group, they are however often represented on schemes at their request by a Main Member, a direct participant.

However, we believe it is essential that national and European authorities ensure that all actors, in particular those who have recently started a payment or electronic money institution business, comply with all the rules that apply to these actors in particular all rules on data security and protection.

**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?**

We support the standardisation work performed in the framework of the SEPA Cards Frameworks.

The SCF now constitutes a solid base and is complemented by the Volume to define general specifications on what a SEPA card payment system should be like, whether it be a new system or an upgrade to an existing system.

Rather than continuing to change this specifications level and then seeking to regulate them, we believe it is more important to facilitate implementation of these specifications in all systems that wish to do so by putting in place the work structures that enable this implementation (bringing together the different stakeholders).

It is essential to focus work on technical standardisation, interoperability and security, in particular in new fields such as Mobile payments or Wallet type emerging solutions in which standards have yet to be defined.

The question as to whether a card scheme that does not comply with the SCF should disappear or not is not relevant at this stage. A diversity of card schemes, hence card offerings, encourages healthy competition that can only be beneficial to consumers and professionals, retailers and businesses. It is the market that will decide on the sustainability or the disappearance of a non-compliant system.

**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?**

There is no need today to give a non-bank actor, or any other third party, access to information on the availability of funds in any bank account. Alternative means of payment like PayPal have experienced strong growth without access to customer banking data and our customers are not asking us to allow third parties to access their personal data.

Third party access to personal data would be contrary to current European Directives (PSD, privacy data protection directive, etc.) and national laws that do not allow banks and payment service providers to carry out this practice. It is also contrary to the key mission of the bank that is to protect its customers' funds and personal data.

BNP Paribas does not support such a proposal and does not agree to provide access to its customers accounts to any third party, whether a bank or not, or to any other type of PSP. Providing third parties with access to bank Information systems would incur unacceptable risks for the bank and its customers:

1 - Risk of responsibility: Sharing on-line banking credentials weakens the trust-based relationship between account holders and their bank. This information is secret and must not be divulged outside the boundaries of this relationship. Once shared with other parties, this information would no longer be secret and it would not be possible to determine whether it was actually the customer who accessed the account or made a request to the bank.

2 - Risk of massive fraud: Banks have made huge investments over the years to protect access to their Information systems and this is an on-going process. Multiplying the number of third parties allowed to access these information systems would seriously jeopardise the protection against hackers and fraudsters and would facilitate database hacking. In such an event, customers concerned could suffer from fraudulent transactions and / or fraudulent usage of their personal banking data. This might lead to a loss of trust in the banking system as a whole and would seriously damage the reputation of retail banks. We believe nobody is prepared to accept these consequences.

3 - Risk resulting from inappropriate usage made of this data by third parties: Allowing third parties access to personal data would increase the risks of misuse of this data such as sharing sensitive information with other third parties, compiling and exploiting illegal databases, uncontrolled commercial and marketing use, use of information concerning VIPs in the press, etc. In addition, such data would be vulnerable in third parties' information systems if they do not enforce the same level of security as bank systems.

4 – Risk of denial of service for the bank's customers when multiple requests from third parties are performed at the same time on home banking services. Providing third party access would





greatly increase the number of requests sent to the bank's information system thus jeopardising its performance and reliability.

BNP Paribas, to preserve its security, image and reputation and the security of its customers wishes to make it clear that it totally disagrees with the proposal to give any third party access to its customer accounts. This position is the same even if the customer agrees to a third party accessing their banking data. We believe that this is the only sensible and responsible way to protect our customers and to comply with the duty we have to advise and inform them.

**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 behavior of payment service providers and payment card schemes vis-à-vis dependent users?**

All merchants are free to choose the means of payment they accept and can propose a card payment service to their customers if they believe that this service provides value either for the merchants themselves (faster move through checkouts, payment guarantees, simplified accounting, less cash processing...) or for their customers (universal acceptance, remote payment, credit, security...).

With the possible exception of e-commerce, there is no economic sector in which card payment is the only form of payment accepted. In the field of e-commerce, rapid growth in the number of transactions and especially in the means of payment accepted must be noted (PayPal, Ideal, Giropay, etc.) the result being that it is quite often possible to not pay by card. E-commerce is to the fore when it comes to the rapid growth in new payment solutions and this has created genuine alternatives for customers and merchants.

However, given the practical and universal aspects of card payments for private individuals, it is possible that for a group of business sectors, a merchant who does not accept cards would be penalised compared to another who does accept cards. The supermarket and hypermarket retail sector is a case in point. It would seem difficult for them to refuse card payments given the advantages mentioned above.

Given the competition on the card acquiring market, even in this situation, it does not seem necessary to define specific rules. Indeed the forces of competition enable retailers to select the provider whose offer best meets their needs.

Nonetheless, if some rules are to be put in place, it is essential, as stressed in several other answers, that all the impacts be clearly established, that a level playing field be maintained for all competitors (and that these rules apply therefore to all competing actors) and that they preserve customer data protection and transaction security.

**Part 2: Transparent and cost-effective pricing of payment services  
for consumers, retailers and other businesses**

**15) Should merchants inform consumers about the fees they pay for the use of various payment instruments? Should payment service providers be obliged to inform consumers of the Merchant Service Charge (MSC) charged / the MIF income received from customer transactions? Is this information relevant for consumers and does it influence their payment choices?**

There is no reason why the cost of the means of payment borne by retailers should be shown to consumers. This is counter to the principle of transparency in that it provides information to consumers that is not relevant to them.

Firstly, it would be surprising that in the overall cost structure of a product only the cost of the payment would be shown to the end customer. Why shouldn't the merchant be obliged to display the purchase price of the raw materials, the cost of transport or quite simply the cost price of the goods or services thus sold? It must be reminded that the cost of card acceptance for a merchant is usually well under 1% of the total price and is therefore in no way significant for end customers. In principle only the final price of the product is relevant to the customer and not such and such a component making up the cost, all the more since it is such a small element in this end price.

Furthermore, even if the cost of the payment were to be displayed, the merchant would also have to display the cost of all means of payment, in particular the cost of cheque and cash payments. Indeed, numerous studies have shown that the cost of processing cash for merchants is much higher than the cost of processing cards<sup>2</sup>.

	Belgian study	US study	Swedish study	Dutch study	Canadian study
<b>Type of costs included in the analysis</b>					
Cardholder costs (direct or indirect)		✓	✓		
Financial institution costs (banks + central banks)	✓	✓	✓	✓	
Merchant costs	✓	✓	✓	✓	✓
<b>Main results of the studies' analysis</b>					
Average cost of a payment by cash (% of the average amount of a cash payment)	Financial inst. = 26c per trx Merchants: = 11c + 0.90%	Merchants: = 2.6%	Overall: = 2.85%	Overall: = 1.72%	Merchants: = 0.68%

Displaying only the cost of card payments would have a perverse effect since it would lead to a belief that other means of payment are free of charge for merchants whereas this is not the case.

BNP Paribas is fully behind the Commission's goal of providing clear and transparent pricing information to customers. We believe however that whereas transparency is required between the two parties to a contract, i.e. between the bank and the merchant or the bank and the cardholder, there is no reason why this transparency should be displayed to third parties.

<sup>2</sup> Cash Substitution methodology: The Monnet initiative, 2010

Displaying a cost that does not apply to customers would be counter-productive for several reasons because it would not only be information that is not relevant but it would come on top of other information making this other information less legible. Furthermore, it is clear that the customer would tend to believe that this cost is added to the cost of the product which is not the case.

BNP Paribas does not understand the logic behind such a proposal which would have the effect of penalising card payment at retailers whereas electronic payment instruments, cards being the leading instrument among these, are the most cost-effective means of payment for all actors concerned.

**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?**

We are not in favour of rebates or surcharges for card payments.

As stated in the previous answer an essential principle in customer information transparency is simplicity. Creating specific prices for certain types of means of payment is not desirable from this point of view. These rebates or surcharges would have the effect of varying the price depending on the means of payment used and would introduce complexity that would be prejudicial to customers. These variations would have the effect in particular of making product price comparisons more complicated and would therefore have a negative effect on competition.

Experiments in card surcharges in certain countries show that consumers may be penalised by the action of those applying these surcharges (airlines, taxi companies etc.). These surcharges often reach levels that bear no relation to the real cost of the transactions and are therefore totally unjustified.

Therefore BNP Paribas supports a harmonisation of these practices with a ban on them on a European scale. These practices damage universality and legibility for the customer making a payment by card and run counter to the goal of transparency being sought. They have already given rise to numerous abusive practices that are prejudicial to consumers when implemented.

To follow on from the previous replies, it is preferable that the choice of subscribing to and accepting means of payment by consumers and merchants respectively be made freely by these economic actors depending on the value provided by these means of payment in a competitive environment.



At the time of purchase, it is the consumer who chooses the means of payment from among those accepted by the retailer. This choice is not based on the displayed cost for the merchant or a complicated rebate or surcharge mechanism, but simply on the customer's interest and convenience at the time.

The consequence of surcharging would be to favour the use of cash to the detriment of card payments, which is desirable neither for the economic actors in terms of efficiency or for the public authorities in their fight against tax fraud and money laundering.

**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?**

See the answer to the previous question.

**Part 3 : Normalisation**

**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?**

The development of common standards is in principle beneficial for all actors. For example, standardised interfaces at certain points in the processing chain reduce costs by avoiding multiple developments (protocol conversions, etc.). This principle must be seen in the light of the answer to question 4 on cross-border acquiring.

It is important that reflections on standardisation be not limited to a European framework and that they take account of the global context. Questions can be asked about the all-powerful American influence over the drafting of standards for the cards industry. Implementation of these standards is clearly not satisfactory, with in particular EMV standards of American origin but which have still not been deployed in the United States. It must be mentioned that several countries, in particular China and India, have decided to develop their own card network in order to have more independence in this area.

In Europe, we can mention the various projects carried out over the last ten years by the various EPC groups concerning the SEPA card standards (EPAS, SEPA Fast, etc.). These standards have yet to be implemented, in particular in the “Acquirer/Acceptor” area (OSCAR pilot project) and other standardisation work has to be pursued (ISO20022 “acquirer to issuer”, ATICA-ISO20022 communication protocols...).

It must be remembered that these large-scale projects, given the numerous stakeholders, can only be rolled out over long time scales (e.g. EMV chip deployment: specifications in 1998, Europe-wide deployment completed in 2012).

**19) Are the current governance arrangements sufficient to coordinate, drive and ensure the adoption and implementation of common standards for card payments within a reasonable timeframe? Are all stakeholder groups properly represented? Are there specific ways by which conflict resolution could be improved and consensus finding accelerated?**

As regards governance, priority must go to ensuring that the standards drawn up by all stakeholders are adopted and then implemented. Given the time scale, a transition period must be provided during which existing systems and protocols exist side by side with new standards.



**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?**

There must be coordination between EPC WGs and other existing standardisation bodies (ISO, PC)

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

E-payments and m-payments are payments through different channels/devices, supported by standard payments such as SCT, SDD or a SEPA Card payment. Each of these payment systems is already standardised (e.g. ISO 20022 for SDD and SCT, ISO 8385 for Cards).

Standardisation activities for e- and m-payments may be of interest in two areas:

- Channel management, particularly for Secure Element management (when used) : it must complement other existing standardisation initiatives such as GlobalPlatform, GSMA, EMVCo, ISO ...and,
- Payment workflow: It could be interesting to think about standard or similar payment workflows for connected devices such as computers, smartphones and tablets. Such standardisation exists today in POS (Point of Sale) and ATM environments.

Another area where harmonisation could be beneficial is in portability of applications. To facilitate interoperability, common application programming interfaces (API) between devices and payment applications could be envisaged. Such APIs should be multi-Operating System, and address a variety of consumer devices (mobile phone, computer, tablet computer, etc.).

In Europe, e- and m-payment solutions have been designed and launched on a national scale and national payment markets have different characteristics (see answer to question 1), in particular when it comes to e- and m-payments. In this context, the EPC initiative to create a Card framework at the European level, the Card volume (work in progress) and the e-payment (SCT) framework initiative will encourage open innovation, portability of applications and interoperability between schemes.

Standardisation initiatives should apply to technical fields and not address the marketing and commercial areas which should remain open to competition.



**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?**

The relevant geographical scale for standardisation in the area of payments is not national or European but global. A number of stakeholders, in particular international card schemes, are global, and devices and components, such as Secure Element, are manufactured at a global level and need global standards. ISO and ETSI standards are already used for payments.

At the European level, the CEN and ETSI will play an active role in standardising e- and m-payments in 2012, following on the initiative from the European Commission in the review of the e-signature Directive. E-authentication of the payer in a payment transaction is one of the critical questions that will have to be addressed in the standardisation of e- and m-payments on a European level. In the review of the e-signature directive, the CEN and ETSI will address the question of “restrictive interpretations” authorised in the current version of the Directive, which restricts interoperability of both e-signatures and e-authentication certificates. This review will also have an impact on EPC standards in this area.

BNPP would like e-payments by card or SCT (and by SDD in the future on a European level requiring the use of e-mandates) to benefit from the review of this regulatory framework.

**Part 4 : Interoperability between service providers**

**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?**

For BNP Paribas, this is not an issue in the payment value chain for card payments either at the national or global level since card schemes guarantee this interoperability.

Concerning new payment schemes, in particular for e- and m-payments:

- There is no problem for those based on card payments which ensure this interoperability;
- Concerning those who use various other means of payment (SCT, SDD, local credit and debit transfers), these have to develop standard exchange interfaces to achieve interoperability. This raises the questions of the use of shared technical standards (ISO 2002) and harmonised scheme rules as regards claims management, security and data protection, etc...

In this respect, a fair business model approach should be promoted between these new payment schemes and the underlying payment solutions and infrastructures.

BNP Paribas considers that the e- and m-payment markets are very dynamic with a number of new market players and alternative payment solutions. While this may imply a certain level of fragmentation on the market at this stage, it also ensures that a large and varied range of means and methods of payment is on offer to consumers and merchants. Competition between these payment solutions will show which ones are the most relevant and best address the needs of stakeholders. BNP Paribas would like to stress that this is a classical innovation process on an emerging market and there is no need to have a highly intricate standardisation approach apart from those areas mentioned in the answer to question 21. Similarly, interoperability between these solutions can be achieved at a future stage as the market develops.

**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?**

First, we would like to stress that e-commerce purchases enjoy a rapid growth, estimated at around 20% per year<sup>3</sup>. As regards m-payments, we do not consider interoperability as currently being in a stalemate. This is a recent market that has only come about in the last few years with the coming of smartphones.

The widespread adoption of proximity payments by mobile phone requires that a certain number of obstacles be removed which depend on a group of actors in a complex ecosystem:

- Telephone vendors: First and foremost it is necessary to have a device capable of performing m-payments. At the time of writing, there are very few smartphones fitted out with NFC capabilities even though several vendors plan to integrate this feature into the next generation of their mobile phones;
- Telco operators who provide the phone to private individuals;
- The acceptance network: not all merchants are currently prepared to make the investments necessary to accept m-payments (NFC terminals for example);
- The banks must develop mobile phone payment applications and deploy them among their customers.

For its part, BNP Paribas has developed a full mobile payment offer in France that enables any customer having an NFC smartphone to make proximity payments if this type of payment is accepted by the merchant. The market migration is underway and the consumer can avail of a mobile payment offer.

As regards interoperability on e-commerce, it must be specified here that card scheme interoperability operates perfectly and fully addresses the needs of customers. Double authentication procedures have in fact turned out to be very efficient in guaranteeing the security of this means of payment. These procedures have been distributed via the main banks and most e-commerce sites. The dynamic growth of the e-commerce market in most European countries, around 20% per year, is proof that there are no significant obstacles blocking the growth of e-payments. Moreover, alternative non-banking e-payment solutions are coming to the fore (PayPal or Apple) and are based on payment cards.

If the attempts to develop an e-payment SEPA framework based on the SCT have not yet had the success hoped for this is certainly due to:

- the absence of a balanced business model between all the actors in the field given that the finalisation of an SCT transaction is likely to involve two different schemes and is also likely to

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<sup>3</sup> Source: Press release of the Fédération E-Commerce et Vente à Distance (FEVAD) of January 30<sup>th</sup>, 2012



operate in two different countries, one for the merchant and his bank, one for the customer and his bank;

- the inappropriate move to bring the processing of service offers that are in the commercial domain, a domain that is by its very nature competitive, within the scope of this standardisation. For example, we could mention the provision of a payment guarantee to an e-merchant issued by the bank of the customer. It was initially planned to provide this service for all transactions but after numerous and long investigations this service offer was brought into question not just due to the problem of the business model but mainly because it was impossible to find solutions to the large number of legal issues arising out of its implementation (contractual relations, responsibility of parties, divergences between national legal systems...).

**Part 5 : Payments security**

**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?**

With the deployment of EMV cards and terminals (still on-going in some countries), the European Union is one of the most secure areas for card payments. Based on the application of existing industry standards and investments by card issuers and acquirers, BNP Paribas considers that card payments are very safe for cardholders.

The largest share of fraud now comes from non-EMV countries, such as the United States. The adoption of EMV liability shift by all stakeholders globally would be a major step to decrease significantly fraud.

Nevertheless, the execution of payment transactions is constantly faced with new malware or fraud technology such as the Cambridge Chip and PIN fraud. It is essential to anticipate such new attacks and be prepared to react swiftly. BNP Paribas has set up an internal cyber financial crime monitoring unit to rapidly detect potential frauds and be prepared to manage such frauds when they occur. More generally, Computer Emergency Response Teams (CERT) could be an efficient response to EMV or malware fraud attacks. CERT is internationally renowned for developing protection and detection practices and technologies to respond to attacks, accidents, and failures within network or payment systems.

In BNP Paribas' view, the main security gaps to be addressed in the light of the high financial risks are:

- Validity period of cards: this should be adapted to the risk of new security attacks;
- Brute force attacks on Crypto keys: Computer power is increasing and mathematical algorithms are also improving so the key needs to be long enough to rebuff such attacks.

Finally, BNP Paribas considers that cooperation between stakeholders is currently insufficient. Greater collaboration between private and public sectors, including the Eurosystem, would improve fraud detection and help prevent financial cybercrime.



**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?**

Security recommendations have been made by the EPC with regard to the “payee bank/scheme” / “scheme/payer bank” relationship and BNP Paribas supports these recommendations.

As regards the “merchant/bank” and “payer/bank” relationship, security requirements are derived from the European and regulatory framework, recommendations from public authorities and industry rules. In addition, each bank has to define its own security policy based on its own assessment of the risks and available solutions.

The BNP Paribas group is strongly committed to ensuring the security of e- and m-payments and has defined a group security policy for this purpose. In France, Luxembourg, Belgium and Italy, access to the home banking payment environment and execution of e-payments is subject to dual authentication regardless of the means of payment and channel used.

Our view is that authentication means have to be continually improved given the sensitive services they grant access to and changing technology and devices. A number of questions have to be constantly addressed to maintain secure authentication solutions, such as how to deal with payments mandated via a mobile channel with the One-Time-Password received by the mobile device itself or when to waive the Pin requirement for low value proximity payments by contactless card or mobile.

We also consider that a variety of authentication methods and means is a protection against the risk if one of them were to be breached. In general, large-scale information platforms (such as Microsoft operating systems) are faced with a large number of attacks on a daily basis since they could give access to a large number of users. Authentication methods should not be fully standardised for this reason.

Finally, another type of risk is the operational risk, which implies not only technical issues but also organisational and functional practices with an end-to-end approach. BNP Paribas considers that this category of risk is important and should be taken into account accordingly. The Basel Committee requires that the operational risk be assessed. In this respect, we would like to stress that non-regulated actors do not need to comply with the Basel committee’s approach and do not have to apply its requirements.

This difference with regulated actors makes our answers to question 13 on account access and question 28 on personal data protection all the more relevant.

**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?**

In our view, there is no need for a further regulatory framework for payment security since the industry has itself developed a satisfactory framework to protect payment transactions and customers. All payment industry actors share the view that very strict industry and schemes rules have to be set up and implemented in this matter since the industry could suffer serious damage otherwise. A comprehensive set of rules has been adopted by the industry (PCI, etc.) in order to protect sensitive data at every stage in the card payment process.

At the European level and in order to ensure the highest level of security and trust in payment systems, BNP Paribas insists that it is key that the same rules and the same level of security be complied with by all parties in the payment value chain: PSPs, banks, electronic money issuers, schemes as well as non-regulated actors (non-banks, non-PSPs, non-electronic money issuers) involved such as processors or technical service providers. Any actor involved in the payment value chain mentioned above who does not comply with the same rules creates a weakness in the overall payment system jeopardising its overall security level and the trust by its users.

Everyday, banks' information systems come under attack from hackers obliging each bank to implement very stringent security measures and solutions to protect data. Other actors who do not implement the same firewalls and protections on their information systems could be the weak link in the payment system.

BNP Paribas considers that its core responsibility is to protect access to its payment operations and customer data. BNP Paribas' answer to question 13 of this public consultation explains the risks for banks and their customers in case of a breach of the bank's information system, as in the case of a breach of a third party information system if this third party records the bank customers' private and sensitive data.

In this context, BNP Paribas supports the current review of the e-signature Directive in that it will address a number of security-related issues (e.g. signature certificates to be used in the e-authentication process, record management, etc.) providing an updated regulatory framework for the e-authentication process.

**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??**

All stakeholders, schemes, banks, other PSPs or non-banks, have to comply with current EU regulations<sup>4</sup> as well as their national laws and payment industry rules on personal data protection.

According to the European regulatory framework on personal data protection, all data processed by a company has to be submitted to risk analysis that assesses the potential of this risk occurring and an ensuing risk policy has to be defined. Companies must have a security policy that is appropriate to the nature of the information in question and the harm that might result from its improper use or from its accidental loss or destruction.

Nevertheless, it appears that some differences in the implementation of the directive make the application and interpretation of personal data regulations different from one country to another. The European Commission should seek to avoid these types of differences which may create distortions between competitors.

On top of this, banks are bound by banking secrecy rules which are at the heart of their activity and organisation. This is a key difference with non-banks. BNP Paribas is strongly committed to protect its customers' personal data and considers this as a core responsibility of its banking activity.

In our view, to guarantee the same level of privacy, security and confidentiality for their customers' data all market players (banks, PSPs and non-banks) that collect private banking and transaction data, must comply with the same regulatory framework and this is not the case at present. These market players should implement a strict risk management framework (e.g. ISO 27005) and appropriate technical and organisational measures to protect this personal data, in particular against unauthorised disclosure or access.

These remarks also apply to merchants who store transaction and payment data on a large scale in particular for e payments. The example of Sony with 70 million customer accounts being breached in April 2011 demonstrates the risks associated to this type of database.

As set out in the answer to question 13, BNP Paribas does not want to allow third parties access to any of this information, since it could decrease the level of security and have far-reaching consequences firstly for consumers but also for the bank.

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<sup>4</sup> European Directive of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data)

**Part 6 : Strategy Implementation / Governance**

**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?**

**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?**

**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?**

BNP Paribas supports the proposal by the EPC to create a "New EPC" bringing together all stakeholders with common milestones agreed between Citizens, Regulators and Industries. There is a clear need to establish a common baseline and to work together to achieve the goals of the SEPA project.

The EPC and the European authorities must work together if they wish for the ambitious SEPA Project to succeed. This will only be possible if appropriate governance is put in place between stakeholders and public authorities.

**Part 7 : General Remarks**

**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?**

No