



EUROPEAN COMMISSION

Directorate General for Competition

Directorate-General for Financial Stability, Financial Services and Capital Markets Union

Director General

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Mr. Andrea Enria
Chairperson
European Banking Authority
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Canary Wharf
London E14 5AA
United Kingdom

Subject: Commission intention to partially endorse and amend the draft Regulatory Technical Standards submitted by EBA with regard to establishing the requirements to be complied with by payment card schemes and processing entities to ensure the application of independence requirements in terms of accounting, organisation and decision-making process in accordance with article 7 of Regulation (EU) No 2015/751.

Dear Mr. Enria,

Thank you for submitting the draft Regulatory Technical Standards with the requirements to be complied with by payment card schemes and processing entities to ensure the application of independence requirements in terms of accounting, organisation and decision-making process in accordance with Article 7 of Regulation (EU) No 2015/751 on 26 July 2016 ('the draft RTS').

We would like to inform you of the European Commission's intention to endorse Section 2 of the draft RTS related to 'Accounting', but amend Sections 3 and 4 of the draft RTS related to 'Organisation' and 'Decision-making process'.

Regarding these two remaining chapters the European Commission has the following concerns:

- a) The proposed derogation for the independence of staff in Section 3 related to the development of innovations (RTS Art 10.3) is not supported by article 7 and Recital 33 of Reg. 751/2015. The reference to innovation purposes could give a competitive advantage to the processor who has participated to the innovative process. In addition, it would allow schemes to maintain or create privileged information flows with the processor belonging to the same entity which would be contrary to the Interchange Fee Regulation's objective in relation to the separation of scheme and processing. Finally, there is no proper justification in the recitals for this exemption to the obligation to separate staff;

- b) In Art 9 of the draft RTS no provisions ensuring the independence of senior managers by controlling their mobility between payment card schemes and processing entities when part of the same group ('revolving doors') are foreseen. However, having instant mobility of senior managers between the two areas of activity would be a way to considerably weaken the effect of the rules;
- c) Art 11.3 draft RTS, allowing for all employees to participate in general benefits arrangements 'provided that compliance with paragraphs 11.1 and 11.2 is ensured' appears incompatible with the objective of applying neutral remuneration frameworks. This provision leaves it entirely to the schemes themselves to ensure compliance regarding such general arrangements. However, it is difficult to see how the schemes themselves can do so through an "*appropriate weighted basket*", or "*other appropriate weighted index*". For instance, in the case of an all employees' share plans, any weighted basket of shares will result in a degree of benefit to the employee related to the performance of the entity he/she is not working with unless the basket of shares contains no share of this entity, which is what is envisaged by Art 11.1 or 11.2 draft RTS.
- d) In addition, in order to have effective standards under Arts. 11.1 and 11.2 draft RTS it is necessary to add the words 'or indirectly' ([...] Remuneration of their staff shall therefore reflect the performance of the processing entity/ payment card schemes and shall not be directly *or indirectly* linked to [...]).
- e) As regards Article 15 draft RTS there is no guidance as to the content of the code of conduct to be drafted by payment card schemes and processing entities belonging to the same groups. For this reason, and in order to provide the flexibility to adjust the code of conduct to individual situations, it is necessary, at least that the code of conduct is subject to the authorities review. Finally, it would be necessary that enforcement mechanisms are foreseen to ensure compliance of staff with the code of conduct.
- f) As regards Article 16 (Management Bodies' Independence) there is a lack of criteria specifying under which conditions directorships may be held by the same person at the same time in the management body of the payment card scheme and of the participating processing entity. The schemes should set clear and objective criteria which should be subject to review by competent authorities.

The above comments were made earlier by the Commission's Legal Service under its early legal review of the draft Regulatory Technical Standards in June 2016 (see the comments under a), c) and f) respectively) and the Commission's services during the preparatory process of the Consultation Paper and the draft RTS (b), d) and e) respectively), but were not taken into account. As said, the Commission, acting in accordance with the procedure set out in the fifth and sixth subparagraphs of Article 10(1) of Regulation (EU) No 1093/2010, now intends to partially endorse and amend the draft RTS as described above and as indicated in the attached amended draft.

We would also like to draw your attention to the sixth subparagraph of Article 10(1) of the above Regulation. According to this article, after the Commission has informed EBA that it intends to endorse the draft RTS with amendments, EBA may amend the draft RTS within 6 weeks on the basis of the Commission's proposed amendments and resubmit it in the form of a formal opinion to the Commission.

Yours sincerely,



Olivier GUERSENT



Johannes LAITENBERGER