



SEPARATION OF PAYMENT CARD SCHEMES AND PROCESSING ENTITIES

The European Banking Authority published a Consultation Paper (EBA-CP-2015-24) ¹ on 8th December 2015 inviting comments on the Draft Regulatory Technical Standards on separation of payment card schemes and processing entities under the Interchange Fee Regulation ².

CB welcomes and supports this open consultation process initiated by the EBA, and the present document presents the views of Cartes Bancaires CB in response to the overall issues raised in the EBA Consultation Paper, and where appropriate, suggests areas of improvement, in addition to answering the specific questions posed therein.

The structure of the response is built around replies to the list of questions to found in the Consultation Paper itself, and we would welcome the opportunity to discuss the content of this document and provide further explanation should the EBA so wish.

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¹ <http://www.eba.europa.eu/documents/10180/1303831/EBA-CP-2015-24+%28CP+on+RTS+on+separation+under+IFR+%29.pdf>

² <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52013PC0550&from=EN>



Response to the EBA Consultation
on separation of payment card schemes and processing entities.

General Remarks

(a) The Regulatory Technical Standards must take into account the fact that some payment card schemes have already taken measures to separate the payment card scheme activities from those of processing. This is necessary so as to ensure that schemes which are already “unbundled” are not placed in an unfavourable position with respect to competitive payment card schemes which may still be “bundled”.

- For example, it should be noted that as early as 2009, the Groupement des Cartes Bancaires (CB) as a payment card scheme created a subsidiary, SER2S, for the management of the switching & authorisation network for card transactions. Furthermore, in 2015, SER2S was merged into an independent company, STET, with the result that all the processing activities are now legally separated from CB as a payment card scheme.
Such anticipation in the compliance process by CB must not place it in an unfavourable position with respect to competitive payment card schemes which have not at this stage taken measures to separate payment card scheme activities from those of processing.

(b) Another key subject which is not addressed in the draft Regulatory Technical Standards is the issue of Industrial and Intellectual Property Rights.

As is the case with many payment card schemes, CB has always been very focused on innovation and supportive of legislation which favours innovation. Unfortunately some of the provisions in the draft RTS begs the question of the likely impact that some of the requirements would have on innovation.

For example, since article 10.3 requires that *“the payment card scheme shall inform all processing entities participating in the payment card scheme at the same time and under the same conditions about the development of a new solution ...”*, the diffusion of such information to *“all processing entities participating in the payment card scheme”* could indeed pose problems in terms of Industrial Property Rights, since :

- even if it is possible to communicate such information via a Non Disclosure Agreement, such communication could be assimilated to the publication of the innovation and hence call into question criteria used in establishing Industrial Property Rights viz. anteriority and novelty
- furthermore, would it be considered “normal” for a given payment card scheme to provide information on innovative solutions, which represent a competitive advantage, to its competitors (for example, to payment card schemes which are not separated from their processing entity) ?



With regard to the options considered by the EBA and outlined on page 24 of the Consultation Paper, CB has indicated in this section those which it considers to be the most appropriate and answered the questions for consultation listed in section 5.2 of the Consultation Paper.

Recommended Options (page 24)

1. General : RECOMMENDED OPTION 1.1

It is essential to establish a list of activities which are considered to be “processing” and those which belong to a payment card scheme.

Even if such a list was provisional, at least for the first four years after the establishment of the Regulatory Technical Standards covered by the Consultation Paper, this would to some extent waylay the legal uncertainty and doubts as to how to define processing.

Since it is clear that the management and switching of transaction authorisation requests as well as clearing and settlement of transactions are “processing” activities, then it should be clearly stated that these are the three “processing” activities which are covered by the Regulatory Technical Standards.

This list must be published and circulated to all interested parties in the European Union, as proposed by the EBA in option 1.1

2. Accounting : RECOMMENDED OPTION 2.2

Separate financial statements must be made public.

If this is not the case, card schemes such as CB (or the Spanish schemes ServiRed and 4B) who have either created separate legal entities or sold their processing activities and who already produce separate financial accounts for the card scheme activity and the processing activity will be at a disadvantage.

So as not to distort competition all payment card schemes and all processing entities must make their financial statements public, in addition to disclosing them to the competent authorities, as proposed by the EBA in option 2.2

3. Organisation and decision-making

Separation : RECOMMENDED OPTION 3.1

As already stated, some payment card schemes, such as CB have already created a subsidiary for the processing activity (or ceded the activity to a third party). Based on this fact option 2.2 whereby the EBA suggests that it would abstain from requiring a separate business unit for processing would immediately cause Cartes Bancaires to be a victim of possible distorted competition.

CB considers that the EBA should not go further than option 3.1 currently proposed and that card payment scheme and processing activities must be carried out in separate business units. This would then result in effective separation between card payment schemes and processing activities.



Shared Services : RECOMMENDED OPTION 4.1

It is clear that activities such as “reporting”, “transaction monitoring” and “scoring” constitute shared services and must be able to be shared between the processing entity and the payment card scheme. The EBA must allow for this possibility in the Regulatory Technical Standards as proposed in option 4.1

Facilitate / Encourage Innovation : RECOMMENDED OPTION 5.1

In general, one can observe that it is the payment card schemes which are more inclined to decide to invest in innovation at an earlier stage than processing entities, whose main purpose is to provide a paid service and win clients.

New card payment services should be encouraged by the EBA by including derogations in the Regulatory Technical Standards for Innovation, as proposed in option 5.1

This will facilitate investment in innovation, which although it is often prone to risk, is a factor in stimulating competition between payment card schemes.

Sharing of Information : RECOMMENDED OPTION 6.2

CB would like to express a genuine reservation regarding the notion of “sensitive information” before being able to answer the question posed by the EBA.

“Sensitive information” needs to be clearly, or at least better, defined in the Regulatory Technical Standards, since the recommendation which CB would make may change depending on how the term is defined or interpreted.

Based on our current understanding of “Sensitive Information” we would recommend option 6.2 proposed by the EBA since there is a legal obligation for a payment card scheme to report and control the reliability of such information. The payment card scheme must also monitor, through exchange of information, technical incidents which could be the cause of vulnerabilities.

It is the responsibility of the payment card scheme to report to the competent authorities any incidents or vulnerabilities observed by the card scheme through its processing activities. To be able to do this the payment card scheme must receive the necessary information on technical incidents in a timely fashion so as to be able to judge the level of vulnerability of the payment card scheme due to possible / observed technical deficiencies in the processing entity.

Questions for consultation (page 27)

Answers to the specific questions posed in section 5.2 of the Consultation Paper are given below.

1. Do you agree with the proposals outlined in Section 1 of the draft RTS regarding general provisions ?

CB firmly believes that all payment card schemes must separate into distinct business units.

There is a need for clarification by defining exactly what is meant by :

- “financial information” in Recital (5)
- “business unit” in Recital (7). The term “separate entities” should be used throughout the Regulatory Technical Standards and avoid mentioning “business units” which implies that situations where the activities are carried out within the same legal entity could exist.
- is “senior management” in Recital (8) a concept which applies to internal employees (for example a management committee of a company) or is it a constituency which represents shareholders or company officers such as CEOs and /or Directors ?
- in Recital (10) mention is made of “when a payment card scheme and the processing entity are part of the same legal entity or group ...”. These two notions are very different, since one is based on legal criteria and the other on economic realities. Which criteria would apply ... or is it either / or ?
- what is meant by “management body” in recital (13) ? Is it the Board of Directors or a Management Committee which is internal to the company ?
- what is the definition of “sensitive information” ?
- article 2 covers the requirement for independence, but doesn’t define “independence”. Does it mean that a processing entity must be neutral and accept any and all clients no matter which payment card scheme they use ? Or does it mean internal independence which would be established by the fact that strategic information would not be shared between the processing entities and the payment card schemes ?
- ...

The above examples illustrate the need for the list of definitions to be extended and for terms and definitions to be clearly stated.

2. Do you agree with the proposals outlined in Section 2 of the draft RTS regarding accounting?

CB would like to point out that since the processing activities which it uses today are already situated in separate legal entities, CB already applies the rules and principles described in this section.

Thus in conformance with Article 5 the requirements described correspond to those which are usually applied by the statutory auditors used by Cartes Bancaires.

As far as Article 6 is concerned, it is important to point out that the competent authority does not have the right to publish or communicate to third parties any information which it receives with respect to this Article. In other words, the employees of the competent authority must be



subject to professional secrecy or sign confidentiality agreements with the payment card schemes and / or the processing entities which provide such information.

3. Do you agree with the proposals outlined in Section 3 of the draft RTS regarding organisation ?

As explained above, there is a real need to clearly define what is meant by “processing entities participating in the payment card scheme”. The notion of “participating” is very vague. Is it envisaged that this could include “processing entities” that are “business units” of a competitor of the payment card scheme ?

A separation in terms of physical location as described in Article 8 seems to be somewhat outdated in an era where telecommunications would allow physically separated locations to use the same IT facilities and servers.

In Article 10 .4 b) it is unclear as to the role which a processor could play in practice to design the rules of a payment card scheme. The notion of “processing entities participating in” also needs to be clarified ... what exactly does it mean ?

Article 11 should be clarified since the distinction between the performance of the processing entity and that of the payment card scheme can only exist in cases where the processing entity has activities which are other than those resulting from a single and unique payment card scheme.

Article 13 may be redundant compared with the requirements of Competition Law. The EBA should ensure that it doesn't create a double control of the same actions and preoccupations.

In Article 14 the notion of “sensitive information” is inadequately defined and remains very vague, thus making the reading and interpretation of Articles 13 and 15 very difficult.

4. Do you agree with the proposals outlined in Section 4 of the draft RTS regarding independence of decision making process ?

The management of conflicts of interest is often difficult to organise within different corporate or company bodies. Conformance programs and Charters can be developed but their control and application is generally complex.

In Article 16 the notion of “management bodies” has to be clarified, as does the notion of “conflict of interest”, based, for example through sworn statements from the managers or company officials regarding their independence with respect to processing entities and/or payment card schemes.

5. Do you have any other comments ?

Improvements in the drafting and definitions would greatly help in the interpretation and implementation of the final RTS.





About Groupement des Cartes Bancaires CB

Established in 1984 to provide a universal and interoperable card payment and ATM cash withdrawal scheme in France, Groupement des Cartes Bancaires CB is a non-profit organization acting as the governing body of the CB payment scheme.

As of January 2016, CB has 121 members, comprising both banks and payment institutions worldwide.

CB is responsible for the system's overall architecture, inter-member rules & procedures and risk management. CB also defines technical and security standards, and ensures that manufacturers and vendors whose products and services are used in the CB system comply with these standards.

Furthermore, CB operates an information system, providing its members with high performance tools and countermeasures in the fight against fraud.

CB is one of the largest card payment schemes in the European Union (2015 figures) :

- 64.5 million cards,
- 1.5 million merchant acceptance points and 58,263ATMs
- a very significant activity, both in terms of transaction volumes and value
- 9.78 billion CB payment transactions + 1.5 billion CB ATM operations for a total value of 565.4billion €uros

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