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SUMMARY OF THE IMPACT ASSESSMENT

Accompanying the document

Proposal for a directive of the European parliament and of the Council on payment services in the internal market and amending Directives 2002/65/EC, 2013/36/UE and 2009/110/EC and repealing Directive 2007/64/EC
and
Proposal for a Regulation of the European Parliament and of the Council on interchange fees for card-based payment transactions

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1. INTRODUCTION

Secure, efficient, competitive and innovative electronic payments are crucial if consumers, merchants and companies are to enjoy the full benefits of the Single Market and as the world moves beyond bricks-and-mortar trade towards e-commerce. Significant progress and integration of retail payments in the EU has been achieved with the current legislative acquis on payments. However, important areas of the payments market – card, internet and mobile payments - are still fragmented along national borders. The latest developments in these markets have also revealed certain regulatory gaps and inconsistencies in the current legal framework for payments.

2. PROBLEM DEFINITION

2.1. Problems

The legal framework established by the Payment Services Directive 2007/64/EC (PSD)[1] has already resulted in significant progress regarding the overall integration of the European retail payments market. However, there remain a number of specific and well-defined problems in the field of card, internet and mobile payments. The drivers behind these problems fall into two categories. First, in a number of areas, the market is not functioning optimally. Second, there are a number of gaps and shortcomings relating to the existing legal provisions.

2.1.1. Market fragmentation

Technical standardisation and interoperability are crucial in the payments network-based environment. In order to maximise the reach between payers, payees and their payment service providers (PSPs) inter-operability between different schemes on the basis of common standards is required. However, card, internet and mobile payments all suffer, in varying aspects and to different degrees, from a lack of standardisation and inter-operability between different solutions, especially at cross-border level. These problems, which also limit competition, are exacerbated by weak governance arrangements for the European retail payments market.

2.1.2. Ineffective competition

In the area of payment cards there are several restrictive business rules and practices that lead to distorted competition.

First, collective agreements between card issuing and acquiring banks in payment cards systems on inter-bank fees, so called Interchange Fees (IFs), cause several problems in relation to competition and market integration. IFs lead to reverse competition, resulting in upward rather than downward pressure for prices charged to merchants and consumers. Furthermore, the widely diverging levels of IFs between Member States and the way how IFs are applied across countries constitute an obstacle for market integration by disincentivising merchants from using the services of providers abroad.

In addition, certain card scheme rules limit the choice and ability of merchants to refuse expensive payment instruments or steer consumers to cheaper payment methods.

[1] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:319:0001:0036:EN:PDF

2.1.3. Diverse charging practices between Member States

Surcharges (charges for the use of a specific payment instrument) were originally devised as a steering mechanism for merchants to direct consumers to cheaper or more efficient payment instruments. However, it has not led to intended results. Currently, half of the EU Member States allow surcharging while it is forbidden by the remaining Member States. This leads to considerable confusion and consumer detriment in the e-commerce context.

2.1.4. Legal vacuum for certain internet payment service providers

Since the adoption of the PSD in 2007, new services have emerged in the area of internet payments, such as third party providers (TPPs) offering online-banking based payment initiation. These services represent a viable alternative to cards for payments on the internet as they are usually cheaper for merchants and accessible for the many consumers who do not own credit cards. However, access to consumer online banking credentials by third parties and the fact, that these new services are not covered by the existing legal framework, has raised a wide range of concerns.

2.1.5. Scope gaps and inconsistent application of the PSD

Certain exemptions in the PSD lead to very divergent interpretation and application of this law across Member States. The PSD exemption criteria appear too general or outdated in respect to market developments and are being interpreted by Member States in different ways. This applies especially to the PSD exemptions for commercial agents, limited networks, payment transactions initiated by a telecom device and independent ATM providers. Gaps in the scope of the PSD also arise for payments with one leg of the payment transaction located outside the EEA and payments in non-EU currencies.

2.2. Consequences

The identified problems result in consequences for consumers, merchants, new payment providers and the market as a whole.

2.2.1. Un-level playing field between service providers / payment institutions

Market incumbents – in particular banks and card schemes – have a vested interest to increase, or at least protect, the revenues from card payments, above all from IFs. Consequently, service providers offering payment solutions with a lower or no IF encounter serious difficulties in entering the market.

Furthermore, standardisation and interoperability gaps prevent competition among incumbents and create another barrier to the market entry for new and innovative PSPs.

2.2.2. Negative impacts on Payment Service Users (consumers, merchants)

Consumers are driven by banks towards using expensive cards, such as premium cards. When unable to refuse such cards or to charge consumers directly for their use, merchants pass these costs on to all consumers through higher prices for the goods and services offered. This is detrimental to society. On the other side, many smaller merchants may have to refuse card payements because of the high fees they are charged by card acquirers (and of which a principal component is IF).

2.2.3. Low cross-border activity

Due to a lack of inter-operability, in particular for debit cards or online-banking based payments, consumers are mostly restricted to expensive credit cards when buying online in a different country. This probably contributes to the fact that, in 2011, 34% of consumers in the

EU ordered goods or services over the internet domestically, but only 10% of them ordered products on a cross-border basis.[2]

For merchants, the choice of an acquiring service provider is often limited to the domestic incumbents. Even large European retail companies find it difficult to benefit from the services of acquirers located in another Member State. This leads to missed opportunities for economies of scale and the streamlining of operations for merchants.

2.2.4. Dispersed and hampered innovation

Due to technical differences between national payment formats and infrastructures, new market entrants or existing payment providers who would like to start offering innovative services see their business case restricted to the national market. This limits the potential for scale economies, both in terms of cost reductions and potential revenues and therefore discourages start-up investments. Ultimately, a fragmented environment along national borders might lead to lagging innovation in Europe in comparison to other regions, such as the US or Asia Pacific.

3. THE CASE FOR EU ACTION

An integrated EU market for electronic retail payments market contributes to the aim of Article 3 of the Treaty on the European Union stipulating an internal market. The benefits of market integration include more competition between PSPs and more choice, innovation and security for payment service users, especially consumers.

By its nature, an integrated payments market, based on networks that reach beyond national borders, requires a Community-wide approach as the applicable principles, rules, processes and standards have to be consistent across all Member States in order to achieve legal certainty and a level playing field for all market participants. A possible intervention at EU level therefore complies with the subsidiarity principle.

4. POLICY OBJECTIVES

Two general objectives overarch the identified problem areas. The first is to create a level playing field between all categories of payment providers which in turn increases the choice, efficiency, transparency and security of retail payments. The second objective is to facilitate the provision of innovative card, internet and mobile payment services across borders by ensuring a Single Market for all retail payments. This leads to six specific objectives:

- address standardisation and interoperability gaps for card, internet and mobile payments;
- eliminate hurdles for competition, in particular for card and internet payments;
- align charging and steering practices for payment services across the EU;
- ensure that emerging types of payment services are covered by the regulatory framework;
- ensure a consistent application of the legislative framework (PSD) across Member States;
- protect consumer interest by extending the regulatory protection to new payment channels and innovative payment services.

[2] http://epp.eurostat.ec.europa.eu/portal/page/portal/information_society/data/main_tables

5. POLICY OPTIONS

A number of policy options have been identified. The table below summarises these options (retained options are highlighted). Other possible measures which either address problems of a lower priority or ensure that the main policy options are fully effective without having a significant impact per se (ancillary and fine-tuning measures) are described in more detail in the Impact Assessment itself.

Market fragmentation
Weak governance arrangements
1: No policy change
2: A self-regulatory body set-up by market participants
3: ***Formal body based on legal act of the co-legislators***
Standardisation and interoperability gaps
1: No policy change
2: Drive standardisation through payments governance framework (card payments)
3: Mandate to European Standardisation Organisation (mobile payments)
4: Establish mandatory technical requirements through legislation
Ineffective competition in certain areas of card and internet payments
Interchange fees (IFs)
1: No policy change
2: Allow cross-border acquiring and regulate the level of cross-border interchange fees
3: Mandate Member States to set domestic IFs on the basis of a common methodology
4: Set a common, EU-wide IF level, based on a maximum cap
5: Exemption of commercial cards and cards issued by three party schemes
6: Regulation of Merchant Service Charges
Restrictive business rules
1: No policy change
2: Voluntary removal of Honour All Cards Rule by card schemes
3: Prohibit (part) of the Honour All Cards Rule
Diverse charging practices between Member States
1: No policy change
2: Prohibit surcharging in all Member States
3: Allow surcharging in all Member States
4: Oblige merchants to always offer at least one widely used payment means without any surcharge
5: Ban surcharging for IF-regulated payment instruments
Legal vacuum for certain payment service providers
Access to information on the availability of funds for new card schemes and other third party providers (TPPs)
1: No policy change
2: Define the conditions of access, define rights and obligations of the TPPs, clarify the liability repartition
3: Allow TPPs access to the information under a contractual agreement with the account servicing bank
Scope gaps and inconsistent application of the PSD
Negative Scope of the PSD
1: No policy change
2: Update and clarify the scope of PSD exclusions (commercial agents and limited networks)
3: Deletion of exclusions (Telecom initiated payments and independent ATMs)
4: Require payment service providers that make use of the exclusions to request clearance by competent authorities
Transactions with one leg outside EEA and payments in non-EU currencies
1: No policy change
2: Full extension to all one-leg transactions and all currencies
3: Selective extension of certain PSD rules to one-leg transactions and to all currencies

There is a consensus among stakeholders about (1) the benefits that could stem from reaching an appropriate level of technical standardisation, and hence inter-operability in the area of card, internet and mobile payments; (2) the need to have clear rules on MIFs and other business rules with a view to provide legal clarity and ensure a level playing field the cards market[3]; (3) the importance of covering payment initiation services offered by TPPs in the regulatory framework; (4) the need for harmonising steering practices, in particular surcharging; (5) broadening and clarifying the scope of the PSD.

6. IMPACTS

The recommended policy options aim to:

- decrease market fragmentation through standardisation efforts and new governance arrangements,
- address obstacles to competition in the area of card payments in particular by regulating IFs, eliminating restrictive business rules and improving market access,
- limit the possibilities for surcharging by merchants to the instruments left outside the scope of IF regulation,
- provide a legal framework regarding access to information on funds by TPPs,
- significantly reduce regulatory gaps and inconsistencies in the PSD.

Identified issue	Recommended Option	Economic Impact at EU level
Governance and standardisation		
Governance arrangements	Through formal body (European Retail Payments Council)	Better involvement of stakeholders. Costs marginal.
Standardisation card payments	Through payments governance framework (under European Retail Payments Framework)	Contributes to fully integrated card market. Benefits estimated at 4 billion per annum mainly for businesses and consumers
Standardisation mobile payments	Through European Standardisation Organisation	Drives volume of m-payment transactions. Estimate: 68% more transactions if standardised
Interchange fees (for card-based payments)		
IFs regulation (Phase 1)	Cap cross-border IFs (debit and credit) and allow choice of IF for cross-border transactions (through cross-border acquiring, see below)	Operational savings for large merchants. Estimated at EUR 3 billion annually.
IFs regulation (Phase 2)	Cap IFs for debit and credit cards at maximum 0.2% and 0.3% of the transaction value respectively	Operational savings for all card accepting merchants. Estimated at EUR 6 billion annually. Part of these could be passed through to consumers.
Interchange fees – main flanking measures		

[3] In particular in view of numerous competition proceedings.

Cross-border acquiring	Remove obstacles imposed by card schemes and laws to cross-border acquiring	Operational savings for large merchants estimated as a part of EUR 3 billion annually (if supported by cross-border IF regulation)
Restrictive business rules	Prohibit (part of) Honour All Cards and Non-Discrimination Rules	Operational savings for all card accepting merchants. Estimated at EUR 0.6 – 1.7 billion annually maximum, up to 0.5 billion EUR under the proposed caps. Part of these could be passed through to consumers.
Diverging charging practices between MS	Ban surcharging for payment instruments with regulated IF	Savings for consumers: up to EUR 731 million annually
Scope gap and inconsistent application of the PSD		
Access to the information on the availability of funds by TPPs	Define the conditions of access to the information on the availability of funds, define rights and obligations of the TPPs, clarify the liability repartition	Savings for merchants if TPP services substitute credit cards in online transactions estimated at EUR 0.9 – 3.5 billion annually. Much lower fees for any new card schemes (15-75%). New online payment solution for consumers, including those not possessing credit cards.
Negative scope (exemptions)	Re-definition of scope for commercial agents and limited networks; Include IT / mobile initiated transactions and independent ATMs in scope; Require clearance for exempted services by competent authorities	Cost for relevant PSPs estimated at EUR 128 – 193 million (one-off). Benefits not quantifiable but include improved consumer protection, increased payments security and a level playing field for competition.
Positive scope (one-leg and non-EU currency transactions)	Selective extension (Title III and IV) of PSD scope to one-leg and non-EU currency	Costs marginal. PSD benefits extended to payment transactions with an estimated total value of EUR 60 billion annually for some 32 million PSUs.

Impacts on stakeholders

Beyond the direct economic benefits discussed above:

Consumers mostly benefit through an increased choice of payment means, in particular through TPPs services and mobile payments; strengthened consumer protection rules and a stronger involvement in retail payments governance.

Merchants gain freedom regarding acceptance of payment means (having gained the capacity to refuse expensive cards); benefit from more standardisation (e.g. through a rationalisation of card-reading terminals) and the possibility for cross-border / central acquiring.

New entrants on the supply side: Gain level playing field and market access (e.g. TPPs and new card schemes); benefit from the IF regulation.

Existing PSPs and card schemes: banks and card schemes affected by a possible revenue reduction through the IF regulation; face stronger competition from new entrants. However likely to benefit in the medium and long run through more standardisation and much higher volume of card payments than presently (as many more merchants, especially smaller ones would start accepting cards).

7. PROPOSED REGULATORY INSTRUMENTS

Many of the proposed policy measures can be adressed through a revision of the PSD. This applies especially to the areas which are already covered by the PSD today, e.g. market access for TPPs, surcharging and rules for payment institutions. Other measures, in particular the regulation of IFs and ancillary measures, would be addressed by a dedicated Regulation.

Some measures described above could be approached through non-legislative means, for example the involvement of European Standardisation Organisations.