POSITION PAPER

ESBG response to the Eurosystem's Consultation on the draft "Oversight Framework for Card Payment Schemes – Requirements"

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EUROPEAN SAVINGS BANKS GROUP

WSBI – ESBG – The Global Voice of Savings and Retail Banking

WSBI (World Savings Banks Institute) is one of the largest international banking associations and the only global representative of savings and retail banking. Founded in 1924, it represents savings and retail banks and associations thereof in 89 countries of the world (Asia-Pacific, the Americas, Africa and Europe – via ESBG, the European Savings Banks Group). It works closely with international financial institutions and donor agencies and facilitates the provision of access to financial sectors worldwide – be it in developing or developed regions. At the start of 2006, assets of member banks amounted to more than €8,081 billion, with operations through more than 185,000 branches and outlets.

ESBG is an international banking association that represents one of the largest European retail banking networks, comprising about one third of the retail banking market in Europe, with total assets of € 5,215 billion (1 January 2006). It represents the interests of its members vis-à-vis the EU Institutions and generates, facilitates and manages high quality cross-border banking projects.

WSBI and ESBG members are typically savings and *retail* banks or associations thereof. They are often organised in decentralised networks and offer their services throughout their *region*. WSBI and ESBG member banks have reinvested *responsibly* in their region for many decades and are one distinct benchmark for corporate social responsibility activities throughout Europe and the world.

1. Introduction:

ESBG welcomes the opportunity to submit comments to the Eurosystem's draft "Oversight Framework for Card Payment Schemes – Requirements". It is ESBG's understanding that subsequently to the present Consultation a final Oversight Framework could be published by the Eurosystem as early as January 2008. ESBG would welcome further dialogue between the Eurosystem and the banking industry prior to the Framework becoming final, also as regards its implementation timeline.

The present ESBG position paper has been structured as follows:

- First comments are provided regarding the definition of card schemes, and the scope of the proposed Framework;
- Second views on key policy questions are expressed;
- And third a few remarks on the proposed Requirements are made.

2. Card Payment Schemes: definitions

2.1- The draft Framework proposes a definition of Card Payment Schemes (page 4) which is further detailed in Annex 1. The definition covers all functions related to enabling payments with cards, and is supported. However the name "Card Payment Schemes" may not immediately carry the message that these functions can be delivered by several entities – although that point is well made in Annex 1. As unbundling of traditional card schemes is due to become the rule rather than remaining the exception, it is suggested to refer to "Card Payment Systems" when the whole value chain is meant.

As a consequence, it should always be clarified throughout the Framework whether a policy or requirement is to apply to a "Card Payment Scheme" as such (i.e. the governance, brand and product management, rules, interchange and risk management functions), or to other functions, notably clearing and settlement, certification and type approval.

2.2- It would be an advantage if the 1. paragraph of Section 3 (Scope of the framework) made it immediately clear that the draft Framework covers cash withdrawals with cards – in addition to payments with cards.

3. Key policy questions

<u>3.1- Waiver policy:</u>

ESBG will assume that the proposed Waiver Policy (Section 4 of the draft Framework) is meant to apply to Card Schemes as defined under 2.1 above, i.e. to the governance, brand and product management, rules, interchange and risk management functions. It is assumed that notably the clearing and settlement functions will already be subject to other standards issued by the Eurosystem, notably the "Oversight Standards for Euro Retail Payment Systems" (and the Terms of Reference for the Oversight Assessment of Euro systematically and prominently Important Payment Systems).

This being said, whilst it is understood that National Central Banks "may decide to apply stricter rules on those CPSs under there jurisdiction entitled to a waiver on the basis of risk considerations", it is more difficult to understand the reference to a "national context" on the eve of the launch of the Single Euro Payments Area, where strictly card schemes and systems are encouraged to become "country independent" (see in particular the SEPA Cards Framework Art. 3.2.2 a), b) and d).

The criteria for waiver for a Card Scheme as defined under 2.1 above:

a. “over the past three years, the sum of cards in issue is on average less than 1.000.000 per year; or
b. over the past three years, the CPS has an annual average value of transactions of less than 1 billion Euro.”
is supported.

3.2- Risk profiles:

As a consequence of the remark made earlier in this Response, the definitions of respectively card systems and card schemes, and the requirement to unbundle, have implications for the risk profiles Section as well. Again ESBG will assume that the risks generated by the clearing and settlement functions are already addressed by other standards such as the “Oversight Standards for Euro Retail Payment Systems”.

3.3- Legal risk:

It should be acknowledged that specific, potential legal risks are generated for card systems by the migration to SEPA. Uncertainty stems from policy makers’ and regulators’ statements regarding the desired speed and outcome of the migration, and the acceptable business model, and from a yet to be transposed Payment Services Directive. It is recommended that policy makers and regulators do the utmost to provide for certainty in these fields, in order to minimize legal risks.

3.4- Financial risk:

The unbundling of functions, the emergence of larger, and/ or new processors, the possible emergence of new service providers (payment institutions), greater competition between likely consolidated acquirers, all of which within SEPA as a “domestic” market, will generate new risks over a short timeframe. It is essential for customer confidence that in the very near future tools are in place to monitor and pre-empt such risks. Given the greater number of actors (across the SEPA space) in this field in the future it also is of importance for the playing field that all actors have a similar understanding of their obligations regarding risk mitigation.

3.5- Operational risk:

Fighting fraud is an essential dimension of customer confidence in cards. On one side the respective effectiveness of fighting fraud is an element of the competition between issuers, and between schemes, on the other some information on fraud needs to be shared between selective parts of the cards value chain. As already suggested through banking industry work, it is recommended that overseers signal their willingness to act as trusted third parties for holding and managing, within a clear set of rules including data protection obligations, the exchange of competitive information.

4. Specific remarks on the five Requirements

The requirements are broadly supported, with the following remarks:

4.1- Sound legal basis under all jurisdictions

Regarding key issue 1 it should be acknowledged that there are and will be schemes that are unbundled, so that the requirement for a sound legal basis should cover providers of processing and clearing and services, and their relations with notably issuers and acquirers.

It should furthermore be clarified that for the purpose of these Requirements “international” means “out of SEPA” – SEPA being defined as the EU Member States, EEA Members, and Switzerland.

4.2- Ensuring an adequate degree of security, operational reliability and business continuity

All parties to the card value chain should, either individually, and/ or when exchanging transactions, ensure that they comply with data protection obligations, both within the framework of their ongoing operations, and in the context of their business continuity arrangements.

4.3- Ensuring effective, accountable and transparent governance arrangements

Some 3-party schemes could argue of the wording of Art. 23 2 c of the Payment Services Directive to exclude themselves from the proposed obligation to provide transparency as regards their governance arrangements. In particular where such schemes establish relationships with acquirers and issuers that deliver all the effects of a 4-party scheme they should be subject to all obligations under Requirement 4.