AmCham EU's position on the MIF Regulation and PSD II

Fostering electronic payments will deliver benefits for consumers, retailers and the broader economy

POSITION PAPER

Executive summary

The growing use of electronic payments delivers substantial benefits for consumers, retailers, society and the broader economy. Regulation of payments must therefore carefully balance the interests of all parties, while allowing for continued innovation and new technologies. AmCham EU believes that, given the vastly different levels of penetration of electronic payments across the EU, the cards industry should be allowed to determine the appropriate rate of interchange fees based on negotiations with retailers and costs, among other factors. In addition, implementing the Honour-All-Cards Rule will provide certainty for consumers, ease transactions for tourists and reduce the need for retailers to train staff to examine each type of card. Finally, it is to be welcomed that the review of the Payment Services Directive addresses recent technological developments and inconsistent implementation in Member States, thereby fostering greater harmonisation and innovation in the European payments market.

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AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled €1.9 trillion in 2012 and directly supports more than 4.2 million jobs in Europe.

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Introduction

Electronic payments make transactions quick, safe and convenient for consumers and large and small retailers. They are also at the heart of the emerging digital economy enabling small retailers to enter the digital marketplace by ensuring reliable payments. Most importantly, the traceable and transparent nature of electronic payments plays a pivotal role in the fight against tax evasion and the shadow economy. One recent study[1] presented to the Commission and national regulators showed that the shadow economy was worth €2.1 trillion per annum, or almost 18.5% of economic activity within the EU.

Continuing to harmonise payments regulation in a way that carefully balances the requirements of consumers, retailers and payment service providers will help nurture a payments market that delivers for society and the economy.

Multilateral Interchange Fees Regulation

The payments market is an innovative and rapidly changing space; therefore regulation should be sustainable, forward-looking, flexible, technology neutral and proportionate. It should allow new players to enter the market and existing players to take advantage of new technology to develop new solutions.

In Europe, card payments still represent a large portion of the electronic payment market. At present, there are significant variations across Member States and markets in terms of card usage and the acceptance level of cards in retailers. In some Member States, usage remains extremely low, particularly outside of capitals and urban centres. As a result, huge investments are still required in many markets to improve card networks and the Multilateral Interchange Fees (MIFs) regulation will play an important role in ensuring that all engaged parties can establish a valid business case for this investment. The Commission's draft proposal aims to establish more harmonised rules for card transactions and the rules governing relationships between players. More specifically, relating to interchange fees, the Commission proposes the introduction of two absolute caps applicable across Europe. AmCham EU believe that the long-term objective of a harmonised cap will be brought into place by market forces once the underlying applicable rules are harmonised and markets across Europe reach the same level of maturity. In the short-term, we question the ability of a harmonised absolute cap to reflect the vastly different levels of penetration of card payments among Member states. We continue to believe that the cards industry should be allowed to determine the appropriate rate of interchange fees based on several factors such as negotiations with retailers, cost recovery, investment requirements and fair attribution of revenues to encourage ongoing and future development of the European card market.

Capping interchange fees will not eliminate the substantial costs of operating card systems. Arbitrarily capping these fees may reallocate the current burden sharing. In countries where price controls have been imposed on cards, the evidence suggests that consumers have not benefited from any price reductions and in fact have been adversely affected. In Australia, a change in interchange regulation in 2002 ultimately led to consumers paying considerably more for credit (through higher card fees and reduced reward programmes) as well as being subject to additional costs in the form of surcharges. Likewise in Spain, mandated reductions in MIFs in Spain 2005-2010 had similar results without achieving the stated aims of increasing card usage and acceptance.

Furthermore, imposing a cap on MIFs would suggest that card services are mere commodities. In fact, cards deliver value to merchants beyond the mere provision of payment funds including better record keeping, faster check out procedures, lower fraud risk, cash management and security.. The proposed regulation takes some positive steps towards increasing merchants awareness of the terms and conditions of card acceptance. This will

[1] The Shadow Economy in Europe, 2013: http://www.atkearney.com/documents/10192/1743816/The+Shadow+Economy+in+Europe+2013.pdf/42062924-fac2-4c2c-ad8b-0c02e117e428

ultimately result in increase in competition and transparency. When looking at the level of fees, there are very considerable costs to merchants for handling cash which are currently not being considered.

In relation to the scope, we strongly agree with the exemption for commercial cards granted in the regulation. In contrast to consumer cards, the vast majority of commercial card spending is not in 'classic' retail scenarios. Much of this spending takes place with preferred vendors where there is an established buyer / supplier relationship in place between the paying organisation and the vendor (e.g. preferred airlines or hotel chains). Generally in such circumstances, an agreed preferred price is in place that will take into account all transactional costs caused by the payment method, such as the card payment cost. Furthermore, commercial cards fulfill a very specific function by giving customers more reliable audit trails on expenses, among many other benefits. We agree with the Commission that the materiality threshold for price regulation is not met.

Honour-All-Cards Rule (HACR)

The "Honour-All-Cards" requirement is premised on the principle that a card network must be able to give cardholders certainty about where their network-branded products will be accepted. In practice, when merchants display a card network logo they are conveying to consumers that the cards of the brands displayed will be acceptable forms of payment without being inconvenienced by a merchant's selective rejection of those cards. In short, the Honour-All-Cards Rule gives consumers certainty.

In addition, overseas travellers to Europe routinely benefit from the reassurance of knowing that their cards will be accepted without questions from merchants. It is essential that Europe continues to offer this basic assurance and certainty to visitors who travel and spend in the region.

The Honour-All-Cards Rule would also offer advantages to merchants, who would avoid the need to train staff to examine each specific type of card.

Payment Services Directive

AmCham EU welcomes the European Commission review of the Payment Service Directive (PSD and PSD II). The PSD has played a crucial role setting a framework for EU payments. New issues have emerged since the implementation of the first PSD, due to technological developments and discrepancies in the implementation in Member States. We therefore welcome the new proposal presented by the European Commission as a way to foster greater harmonization and innovation in the European payment market.

AmCham EU particularly welcomes the inclusion of Third Party Providers (TPPs) within the scope of the PSD II, by setting an obligation for these operators to obtain a license as payment service providers (PSPs). The market for innovative payments is growing and it is good to encourage innovation by opening the space for new entrants. But for this market to flourish, we need to ensure a high level of consumer trust in the payment solution and infrastructure. To achieve this, the interplay between the actors taking part in the payment transaction needs to be further clarified. This would for example result in a stronger liability regime in the event of non-execution or defective execution of a payment. Also, access to information relating to availability of funds should be carefully constructed so as not to jeopardise the security of the banking infrastructure.

To ensure that citizens trust the system, any legislation that the EU ultimately adopts must avoid overburdening regulators with unnecessary tasks while putting in place a system that facilitates a smooth and reliable consumer experience.