



EUROPEAN COMMISSION  
Impact Assessment Board

Brussels,  
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**Opinion**

**Title**                    **DG MARKT - Impact Assessment on the proposal for a revised Directive of the European Parliament and of the Council on payment services in the internal market and a Regulation/Directive on interchange fees for card-based payment systems**  
**(draft version of 20 February 2013)\***

**(A) Context**

The Payment Services Directive (PSD), adopted in 2007, aimed at establishing the harmonised legal framework necessary to remove the legal and technical obstacles blocking the creation of a single payments market and to promote market entry by a new class of financial institutions - payment institutions. The objective was to ensure faster, easier and cheaper payments throughout the EU thanks to increased competition and economies of scale. However, implementation and recent developments in the retail payments market (notably the rise of internet and mobile payment services) have revealed a number of specific problems. In addition, the issue of multi-lateral interchange fees (MIFs) between banks has come to the fore as a number of competition cases have been launched at European and national level and as stakeholders call for greater legal clarity. The integration of the European market for electronic retail payments is one of the priorities defined in the Digital Agenda. This impact assessment assesses how to further enhance the provision of card, internet and mobile payment services in the single market.

**(B) Overall opinion: POSITIVE**

**The report provides a significant amount of information on a large number of issues but this should be presented in a more concise and accessible way. In so doing, the report should better justify the need for revising the PSD only three years after it entered into force. The analysis of MIFs should be deepened in light of on-going competition cases. In particular, the report should clarify the main barriers for access to the card payment market and why there would be a need to ban/cap MIFs when other restrictive business practices (such as the fee blending, automatic selection in co-branding or limiting access to fund information) are eliminated and transparency for more informed consumer choice increased. The presentation and analysis of other options should also be improved, better taking into account on-going and planned policy initiatives, better explaining issues surrounding governance and deepening the analysis of security and consumer impacts. The report should compare alternative packages of options to clarify the synergies/trade-offs between the MIFs and PSD measures and the need for all the proposed measures. Finally, stakeholder views should be integrated throughout the text, particularly when they diverge from the Commission's position.**

\* Note that this opinion concerns a draft impact assessment report which may differ from the one adopted

## **(C) Main recommendations for improvements**

**(1) Better present and substantiate the problems.** The report should provide a more concise, accessible and evidence based analysis of the problems, more clearly differentiating between the two main issues at stake. In the case of PSD, the report should draw upon existing transposition and evaluation reports to substantiate the urgency of a revision after only three years of implementation and to clarify the significance of the identified shortcomings (such as the regulatory arbitrage, abusive use of the legislation or competitive distortion caused by the flexibility and exemptions granted by PSD). The case for regulating MIFs for the first time at EU level should build upon a short presentation of the case law at EU and national level and be more transparent on the existing divergence of views on MIFs' role and their impact in an EU context characterised by the different maturity of card and payment markets across Member States. In so doing, the report should clarify the relative importance of, and possible linkages between, MIFs and other restrictive business practices (such as the fee blending, automatic selection in co-branding or the non-discrimination rule) as barriers to market access. In addition, the report should clarify how exactly governance issues contribute to market fragmentation and provide more background on the status and role of the Single European Payment Area (SEPA) Council and of the European Payments Council (EPC). The legal challenges on competition grounds faced by the latter in its standardisation work should be better explained. Finally, the report should provide a more forward-looking analysis of how identified problems may be affected by on-going initiatives (such as the entry into force of the Consumer Protection and the Anti-money Laundering Directives, on-going competition cases, Member States' actions on MIFs etc.).

**(2) Better present policy options and demonstrate their proportionality.** The report should deepen the analysis of the options addressing key aspects (such as restrictive business practices, surcharging and MIFs) in the main text and moving to the annexes the detailed presentation and analysis of the remaining sets of options. Concerning the analysis of specific sub-sets of options, the report should clarify why the standardisation of card payments should be pursued through the revised SEPA Council rather than European Standardisation Organisations and how exactly the "additional implementation layer" would work. The report should better substantiate the reasons for regulating MIFs directly rather than using the instruments provided by competition policy and other measures to foster competition (like greater transparency for consumers or greater possibilities of choice/steering for retailers). It should also better explain why MIFs would need to be regulated at the domestic level as well as in a cross-border context and better justify the proposed level of capping and its appropriateness across different Member States. Finally, the report should explain why there is a need for a transitory solution in regulating the level of MIFs (starting with the cross-border fees only) and why the Merchant Service Charges should be addressed at all.

**(3) Strengthen the analysis of impacts.** The report should strengthen the analysis of some of the impacts of the MIFs regulation, including the impact of a common EU-wide MIFs level on the use of card-based payments across the national markets of different maturity and the risk that banks may attempt to recoup lost revenue by increasing fees on other banking services. It should explain if this may not outweigh the benefits of (lower) retail prices. The report should also more systematically assess impacts in term of security, consumer trust and social inclusion of particular groups. Finally, it should assess in greater detail the impact on individual Member States and identify those that will face significantly higher (or lower) supervisory costs.

**(4) Strengthen the selection and comparison of policy packages.** The report should provide more information on the added value of banning/capping MIFs on top of revising the PSD and eliminating other restrictive business practices. In doing so, it should for example assess the risk that MIFs may settle at, or near, the level of the proposed cap and explain how this would affect the estimated benefits arising from the elimination of the restrictive business practices. More generally, interdependencies between options should be better presented and alternative policy packages considered.

**(5) Better present stakeholder views.** The report should transparently indicate views that are conflicting or diverging from the Commission's position. The annex should provide a summary of stakeholder views according to their category on all key aspects of the impact assessment (i.e. including policy options and estimated impacts).

*Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report*

#### **(D) Procedure and presentation**

The report is exceedingly long and technical despite the fact that much of the analysis is in the annexes. To allow for the improvements suggested above while making the report more accessible to the decision makers, the main text should be further streamlined, particularly with respect to the large number of individual policy measures.

#### **(E) IAB scrutiny process**

Reference number	2013/MARKT/005
External expertise used	No
Date of IAB meeting	20 March 2013