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Subject: Reaction on the (draft) oversight framework for card
payment schemes – requirements

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In May this year, the ESCB published the (draft) oversight framework for card payment schemes (requirements) for consultation. The Netherlands Bankers' Association welcomes this initiative as it allows for a broad discussion of the needs, benefits and desirability of such a framework. In reply to the invitation to provide comments, please find below the considerations that we would like to submit on behalf of the Dutch banks.

Our reaction focuses on three subjects: timelines of publication, content and legal basis for this framework.

Timelines

The Dutch banking community does not fully comprehend why this draft oversight framework was published at the end of April 2007. The "final draft" of the Payment Services Directive (PSD) was published only a few days before. Is our understanding correct that the ESCB considers additional regulation necessary, on top of the PSD-requirements?

We note that while the PSD seeks maximum harmonisation in the area of retail payments it does not contain a role for the ECB nor does it specify requirements as outlined in the draft oversight framework. Therefore, the Dutch banking community doesn't quite understand why any additional regulation in this area is proposed. In our view the framework itself is an extra regulation which might be in violation of the maximum harmonisation principle of the Payment Services Directive.

Content

The CPS framework has been developed on the basis of identified risk profiles. On basis of the risk profiles and the further approach, the framework focuses on five requirements:

- The CPS should have a sound legal basis under all relevant jurisdictions;
- The CPS should ensure that comprehensive information, including appropriate information on financial risk, is available to the actors;
- The CPS should ensure an adequate degree of security, operational reliability and business continuity;

- The CPS should have effective, accountable and transparent governance arrangements;
- The CPS should manage and contain financial risks in relation to the clearing and settlement process.

The Dutch banking community agrees that these requirements are relevant requirements. But we hold the opinion that at present these requirements are sufficiently embedded in other legislative rules such as the applicable local (prudential) supervision laws as well as the binding private-sector rules, which are applicable in the form of payment scheme rules and regulations. The requirements on security and operational reliability and business continuity are sufficiently described in Basel II regulation or in the high level principles of the BIS.

The Dutch banking community fears that any additional regulation in the cards industry would have two major risks. On the one hand it could lead to obscurity, as the exact wording is different. Also, it might lead to a considerable additional administrative burden for both industry and regulators, as we expect that the framework will also require considerable additional efforts and resources to monitor and prove compliance.

In short: the Dutch banking community does not see any valid arguments to enact and publish this oversight framework, to start monitoring or supervising its compliance and thus to increase the cost of payment systems in general. We find it hard to reconcile this cost-increasing proposal with the general desire, voiced in the 5th progress report, for low card fees and prices.

Legal basis for this framework

The Dutch banking community fundamentally questions the described legal basis for the ECB to introduce an oversight framework on Card Payment Schemes (CPS's). The ECB and the ESCB are primarily responsible for the price-stability of the Euro as a currency and thus the interest rate and the money market. And the articles 105(2) of the Treaty and Articles 3 and 22 of the Statute of the European System of Central Banks and of the European Central Bank (ECB) outline a competence with respect to the smooth functioning of payment systems. However, in our view these competences do not apply to retail payments, but are restricted to the high-value gross settlement system (Target) required to ensure a proper functioning money market.

As we recall the discussions on those specific articles during the establishment of the EMI/ECB, it was Mr Duisenberg himself who, at a late stage of discussions, explained and motivated that an extra indent / article was necessary in order to be able to prescribe rules for the gross-settlement system and the participants to that gross-settlement system (thus effectively ensuring a full grip on the main vehicle in the money market). We find it incorrect to broaden this specific and limited mandate to imply that there is a formal role for the ECB/ESCB in the area of retail systems as well.

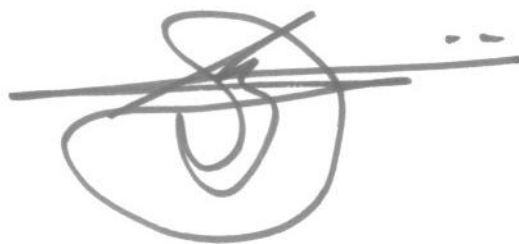
Furthermore, given the fact that the content of the proposed framework is well covered through existing laws and private sector arrangements, we find it hard to reconcile the proposal with the duty of the ESCB as defined in article 2 of the Statute of the European System of Central Banks and of the European Central Bank, which outlines that the ESCB shall act in accordance with the principle of an open market economy with free competition, favouring an efficient allocation of resources.

Given the above considerations the Dutch banking community is of the opinion that:

- 1 The Articles 105(2) of the Treaty and Articles 3 and 22 of the Statute of the European System of Central Banks and of the European Central Bank (ECB) at best provide a legal basis to publish or enact regulations with respect to gross-settlement systems that are directly relevant for the functioning of the money market. We note that the scope of the proposed oversight framework for CPS extends beyond this domain. While we recognize that analytically the proposed framework (or any other payments oversight regulation and measures of the ESCB) may perhaps be considered 'in line' with the statutory tasks of the ESCB, we are of the opinion that such an extension lacks the required legal basis. Additionally we note that it is only remotely related to the primary tasks of maintaining price stability.
- 2 The proposed regulation is unnecessary given that the combination of existing prudential laws / regulatory frameworks and the private sector scheme rules and regulations sufficiently, adequately and efficiently address the relevant issues. Enacting the proposed framework would raise the question how it can be reconciled with the duty of the ESCB in article 2 of its statute to act in accordance with the principles of an open market economy with free competition, favouring an efficient allocation of resources.
- 3 The introduction of this framework might constitute additional regulation, while the Payment Services Directive seeks to define all relevant maximum harmonisation requirements in the payments market and forbids any further regulation. The framework may also lead to an increase of the administrative burden, which is not what citizens, organisations and companies, in our view, expect and desire as an impact of new European legislation or oversight. It could well lead to higher costs (and thus fees) for cardholders and merchants. We find it hard to align these cost-increasing proposals with the general desire of the ESCB, voiced in the 5th progress report, for low card fees and prices in Europe.
- 4 The introduction of this framework can only lead to more confusion in the market and it will not lead to an increase of the security of card payment schemes.

With this reaction we hope to give you a clear view of the opinion of the NVB and its members on the oversight framework for CPS's. We are of course available, should you wish to receive further information or clarification.

Kind regards,

A handwritten signature in dark ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Mr Gijs Boudewijn
Head of Payment Systems and Security