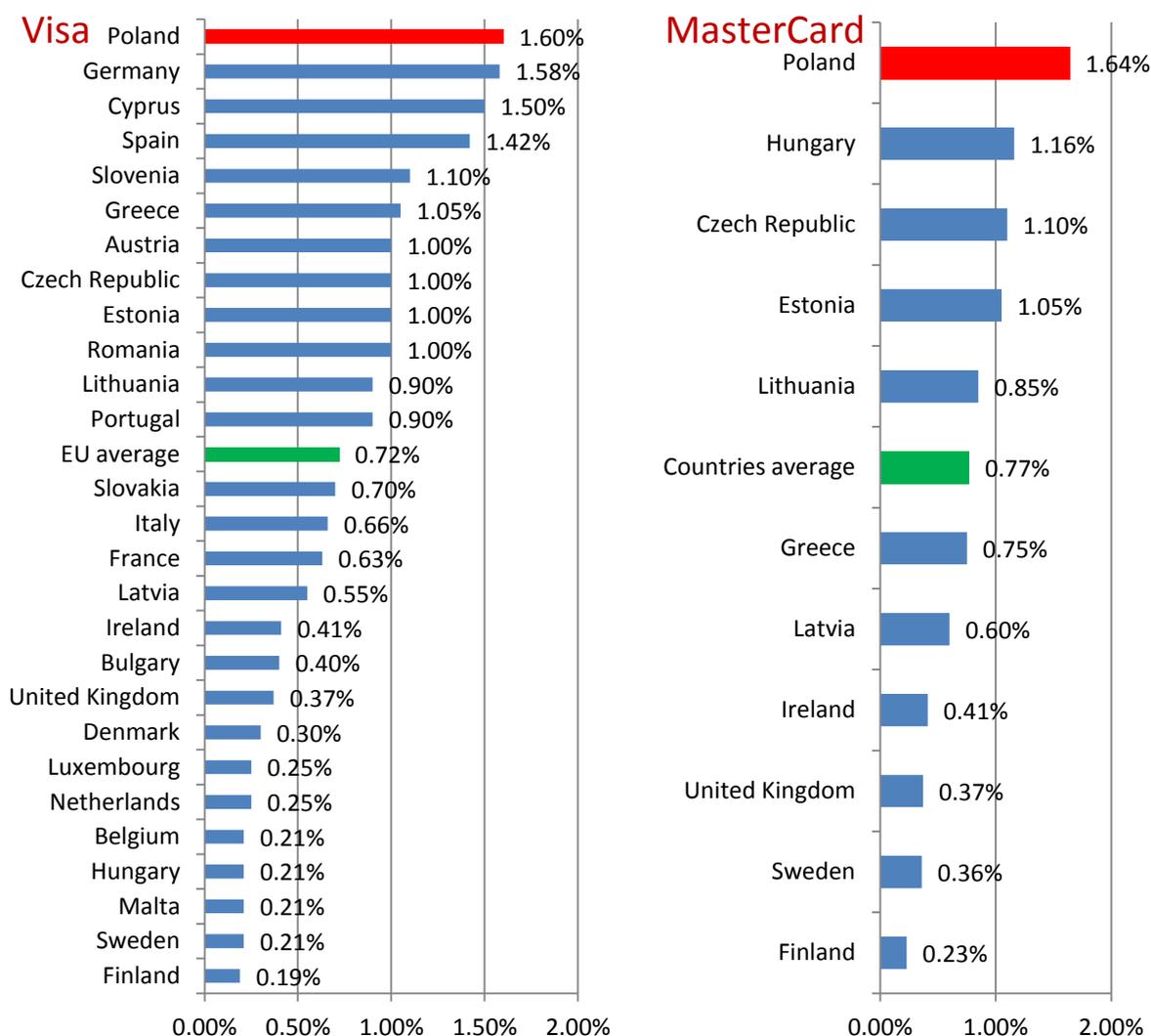


**Answers to the Green Paper**  
***Towards an integrated European market for card, internet and mobile payments***

*Ad 4.1.1. (MIFs)*

Figure 1. Interchange fees in card payments in Europe (2011).



Note: Fee tiers as of September 2011, *Visa debit, full EMV, consumer* percentage fees; the percentage fee after the inclusion of a flat fee element *Debit MasterCard, full EMV, consumer, general*. The Debit MasterCard is not issued in all countries. In some countries MasterCard fee tiers are set by local banks. In some countries the information on MasterCard fee tiers is not disclosed.

Source: Visa and MasterCard websites and the NBP data.

**1.** Interchange fees on card non-cash transactions in Poland are generally the highest in the European Union (compare figure 1), with the exceptions of some types of cards. Comparing levels of interchange fees in Europe one can state that such great differences in interchange fee tiers among countries are not justified by real resource costs underlying card payments.

Therefore in my opinion, application of different fees for domestic and cross-border payments is rather not based on objective reasons and if so, then only to a very limited extent. In fact interchange fees are set excessive in some countries. This is also the case in Poland.

High merchant service charges discourage merchants from accepting card payments. In effect, the expansion of the POS terminal network in Poland is hindered. According to the NBP and ECB data, in December 2010 Poland had 6 595 POS terminals per one million inhabitants, and only Romania had less (4 995). In the EU there were 17 561 POS terminals per one million inhabitants and in the euro area 19 873.

The problem was noticed by the National Bank of Poland and the Polish Ministry of Finance. The Polish central bank set up a task force consisting of all major payment stakeholders in Poland (merchants, banks, acquirers, payment organisations, the Office of Competition and Consumer Protection, the Ministry of Finance, the Ministry of Economy, the Financial Supervision Authority, the National Bank of Poland, etc.) in order to reach an agreement on lowering domestic interchange fees on card payments. Although the group members expressed will to agree on the programme of interchange fees reductions in Poland it is not certain whether all obstacles will be overtaken and the agreement's document signed.

**2.** Clearly there is a need to increase legal clarity on interchange fees. The best method would be by regulation (possibly through the amendment of the PSD) which would: firstly increase transparency of merchant service charges (showing the method based on objective criteria of setting the interchange fees, the payment organisation fees and the merchant service charge), secondly give merchants right to disclose to consumers components of the MSC and other cards fees and to impose a surcharge or offer a discount for the usage of a particular payment instrument. The last item would be hard to implement since not all EU countries transposed the art. 52(3) of the PSD, about half of all countries used the national option.

**3.** Lowering interchange fees should be preceded by the paneuropean study aimed at defining what the optimum interchange fee level in different countries is. The preferable method of calculating the optimum IF level is a merchant indifference test. Lowering MIF levels, providing fee transparency and facilitating market access to new entrants is very desirable. In what form? Through regulation (compare the point 2) and through supporting new projects that may lead to an introduction of cost-efficient and innovative payment methods on the market. The three-party schemes should be covered by payment cost studies and the regulation. They do not operate on the business model with a typical IF, but they impose an MSC on merchants.

#### *Ad 4.1.2. Cross-border acquiring*

**4. and 5.** Cross-border acquiring could cause lowering MIF in Visa and MasterCard systems to intra EU countries levels, that is to 0,2% per debit card transaction and 0,3% per credit card transactions (or in the case of credit cards higher, depending on the international card scheme). This would be beneficial for the European market. However according to payment organisation rules, if an issuer of a card, a card user and a merchant come from one country, the domestic MIF should be applicable. Any other contract provisions (between an acquirer and a merchant) cannot take place. Probably only a regulation or the consent of the payment organisations might change the situation (the latter not probable).

Cross-border acquiring could hardly help local debit card schemes (such as BankAxept in Norway, Dankort in Denmark, PIN in Netherlands, SIBS Multibanco in Portugal, LINK in Great Britain, girocard in Germany, etc.), because they do not operate on a paneuropean level. An integration of merchants' terminals to those systems in other countries than the country of origin is difficult, if not impossible for the time being. Hence, the cross-border acquiring can work well for local debit card schemes on the paneuropean level only when it would be supported by some degree of technical standardisation (compare the point 4.3. and the question 18).

#### *Ad 4.1.3. Co-badging*

**6. and 7.** Co-badging is a useful tool which could raise competition. Therefore any obstacles for co-badging implementation should be addressed and eliminated. However it would be quite hard without any kind of regulation to force international card schemes not to impose reporting requirements or charges on issuers and acquirers for transactions carried out with cards carrying their brand. International payment organisations are able to set rules for co-badged payment instruments, which could be advantageous for their own brands.

The consumer should take decision on prioritisation of the instrument to be used first at a point of sale. The merchant accepting a co-badged card ought to ask a payment card user what payment instrument to authorise and accept. Merchants should however have the possibility to steer consumers to low-cost payment instruments (with rebates and other incentives). In many countries (like France or Netherlands), merchants do not ask card users what brand from a co-badged card to accept but they choose themselves. This could also be an option. It is a simpler method but not fully in line with transparent cost-based pricing. Consumers should be aware of costs associated with payments and they should consciously make decisions on the choice of payment instruments. They can be incentivised and steered to particular payment instruments but it is good when they know costs underlying payments and decide on their own.

#### *Ad 4.1.4. Separating card schemes and card payment processing*

**8. and 9.** Visa and MasterCard have their own processing centres with huge capacities. However if a scheme management were by law separated from card payments processing it would affect not only Visa and MasterCard schemes but also other schemes, which hopefully emerge in Europe. New schemes should have the possibility to offer processing functions. Otherwise their functionality would be limited (compare final remarks).

#### *Ad 4.1.5. Access to settlement systems*

**10 and 11.** A non-direct access to clearing and settlement systems always raises risk to payment institutions and e-money institutions which have to rely on banks. Opportunistic behaviour of banks can pose a threat. Therefore, even without estimating the magnitude of the problem currently, a direct access for all payment service providers should be warranted after meeting reasonable and non-discriminatory requirements. Also the SEPA common cards processing framework should lay out terms and fees for access to card processing infrastructures under transparent, non-discriminatory criteria and tackle the participation of payment institutions and e-money institutions in designated settlement systems. The PSD should be amended accordingly.

#### *4.1.6. Compliance with the SEPA Cards Framework (SCF)*

**12.** There is risk that the SCF will enhance the market power of existing card schemes and non-compliant schemes will disappear. The requirement to become compliant hinders competition. Even the vision of the SEPA should not justify compliance in every case. It should be considered what the sufficient reasons to benefit from a non-compliance waiver are. Perhaps, up to a certain point of development (measured by the scope of a scheme) the lack of the full implementation of the EMV standard is not a problem. There are some incumbent payment solutions in European countries that have been successful but encounter problems with becoming SCF compliant. It is not a good idea to phase them out.

#### *4.1.7. Information on the availability of funds*

**13.** If a consumer gives a consent for the non-bank payment service provider to check his/her bank account balance, then a bank should not deny the access, especially when all prudential requirements by the PSP are met (compare the PayFair case). An adequate legal provision is needed. In Visa and MasterCard systems an authorisation which allows for verifying the availability of funds on a bank account of a client or his/her credit limit is a standard procedure. PSPs of other payment systems should have the same right.

The other issue are overlay services which today do not fall under the PSD. The question is whether to regulate them.

#### *4.1.8. Dependence on payment card transactions*

**14.** Perhaps there are some businesses (e.g. gambling or porn) which are refused to be served by payment service providers because of fraud risk or for moral reasons. However if PSPs are ready not to serve some businesses depriving themselves of potential revenues, there is no need to intervene. However, the problem may arise when ordinary businesses (e.g. airlines) which today use surcharging (or perhaps do something else what is not accepted by the payment service provider) will be refused to offer payments by cards. Potentially the possibility not to serve some businesses or particular companies may be used as an instrument of exerting power.

#### *4.2.1. Consumer — merchant relationship: transparency*

**15.** Merchants should have the possibility to inform payment users about fees they are charged for the use of various payment instruments. This information would be of greater importance for consumers if merchants used incentives to steer consumers to low-cost instruments with rebates, loyalty points, etc. Together incentives and transparent information about costs borne by merchants could function well. It must be however underlined that obligatory information to consumers about the MSC or better – all merchant costs attributed to a given payment instrument – makes sense only in such a case when merchants can quite easily distinguish between cost items. Today – when interchange fee tables of Visa and especially MasterCard consist of dozens of categories, acquirers pay additional assessment fees to payments organisations and impose their own margins on merchants – it is very difficult to identify properly fees/costs to given cards and then to disclose this information in a simple format to consumers.

#### *4.2.2. Consumer — merchant relationship: rebates, surcharging and other steering practices*

**16.** Stimulating the use of efficient payment instruments should be strongly supported. Rebates are already allowed in all member states in contrast to surcharging. It seems that there is also need to harmonise the latter. In practice, surcharging is rarely used in face to face transactions, even in countries where it is allowed. Its function would be more to balance the market position of merchants which is to date far more weaker against the position of payment organisations, banks and acquirers. Moreover, it is rather not probable that surcharging became popular except for particular e-commerce sectors, such as airlines industry. As established in Article 19 of the Consumer Rights Directive surcharging should not be used as an additional revenue source by merchants but should be limited to the real cost of using a payment instrument. This provision warrants that the surcharging option would not be overused by merchants.

Certainly specific rules should apply to micro-payments. The question is however how to make micro-payments profitable. Demanding preferential rates on micro-payments in debit and credit card transactions from existing international card schemes seems not entirely fair,

since perhaps such transactions stop being economically viable then. A good solution is to support alternative payment methods, including those based on e-money.

The issue of alternative digital currencies is complex. In fact such currencies are outside of national currencies regime and outside the scope of monetary policies of central banks. It should be well thought over whether at all and if so, how to regulate them.

#### *4.2.3. Merchant — payment service provider relationship*

**17.** The No Discrimination Rule and the Honour All Cards Rule should be prohibited by law. Concerning blending, it should be permissible only on request of a merchant. Three-party schemes should be covered respectively in line with four-party schemes.

#### *4.3. Standardisation*

**18.** Use of common standards for card payments would be beneficial. Common standards in the T2A domain would facilitate debit cards being accepted abroad. However it is a good question whether also other payment methods should be harmonised and to what extent, e.g. mobile payments. Many mobile payment solutions are on the initial phase of development and they use different technologies (e.g. USSD, NFC, etc.). Is it possible to standardise and at the same time not to hamper innovation?

#### *5.1. Governance of SEPA*

**29.** The SEPA project faces significant delays. If the European regulators and supervisors played a more active role in driving the SEPA project forward, the SEPA milestones would be reached sooner. However a new governance could provoke some resistance of banks. It seems, however, that at least to a certain extent more involvement of regulators is needed.

It is understandable that not only banks should shape the SEPA project. Therefore it would be reasonable to give more power to the SEPA Council which consists of more payment stakeholders representatives from the demand and supply sides of the payment market.

#### *5.2. Governance in the field of cards, m-payments and e-payments*

**30.** It seems that the SEPA Council may play a more significant role, also in issuing guidance on certain technical standards.

### *Final remarks*

**The major problem, especially concerning payments at physical points of sale, is the position of Visa and MasterCard schemes and the lack of competition on the payments market in Europe. By all means the European Commission, the European Parliament, the European Central Bank and other influential bodies should support new competitive and innovative payment solutions and help them overcome significant problems (such as a chicken-and-egg deadlock).**

**It is a good idea to thoroughly analyse, why EAPS, PayFair, Monnet and other initiatives cannot develop and what should be done to facilitate the successful rollout of new payment methods and their expansion in Europe.**