

EUROPEAN COMMISSION
LEGISLATIVE PACKAGE ON ELECTRONIC
TRANSACTIONS

DECEMBER 2013



Secrétariat de l'ASECAP • Rue Guimard, 15 • B-1040 Bruxelles

Tél. 00 32 2 289 26 20 • Fax 00 32 2 514 66 28
Email asecap@skynet.be • Site www.asecap.com

TVA FR 61 398 164 129

EUROPEAN COMMISSION LEGISLATIVE PACKAGE ON ELECTRONIC TRANSACTIONS

The electronic transactions Package

THE PACKAGE AND ITS IMPACT ON ASECAP's MEMBERS

On 24 July 2013, the European Commission adopted a legislative package on electronic transactions, composed of a proposal for a [Regulation](#) on interchanges fees for card-based payment transactions (MIF Regulation) and a proposal for a review of the [Directive](#) on payment services in the internal market (PSD2 Directive).

These proposals pursue three objectives:

- Update the existing legislation to **take into account the latest developments on the European retail payments market** since the adoption of the first Directive on payment services (PSD1) in 2007, particularly electronic and mobile payments, the appearance of new market players, new payment instruments and technological developments;
- **Promote the Single Euro Payment Area (SEPA) project**, the project to create a single unified payment market in Europe, with standardized payment instruments and without any national restriction to cross-border transactions;
- **Settle several competition issues**, which have opposed card schemes to competition authorities for a number of years (interchange fees, co-branding, cross-border acquiring).

Following these objectives, the European Commission proposed to set rules on, *inter alia*:

- **Co-branded cards** (cards emitted with two different brands of payment instruments);



- **The possibility for a merchant to refuse certain cards and the information requirements linked to it;**
- **The level of authentication to be required to authorize a payment transaction.**

This “electronic transactions package” is considered by the European Commission as an important milestone for the further development of an EU-wide market for electronic payments which will benefit consumer, retailers and other market players. **The two proposals of the package raise however some concerns for motorway companies. The specificities of the sector and the particular circumstances in which payments are realized on motorways are indeed not taken into account. In their current wording, some of the provisions of the two texts cannot be applied to the motorway sector; they can even be detrimental to EU citizens and to the actors of the sector.**

1. Co-badging and selection of application

The MIF Regulation introduces the principle **according to which the brand applied to the payment transaction shall be determined by the payer, when a payment device offers the choice between different brands of payment instruments (article 8.5).**

→ Possible impact on ASECAP members

The MIF regulation proposes that the payer has the possibility to choose the brand applied to the payment transaction at the point of sale when a payment device offers the choice between different brands of payment instruments:

- This can lead to a deterioration of the service provided to the user on motorways** which accept credit or debit cards as a payment means: giving the possibility of choosing the brand applied to the payment transaction to the payer will require an additional operation from the motorways user at the time of paying, leading to lengthened transaction times at toll booths and to queuing;
- The ergonomics of the toll booths** which are today deployed **does not fit with this requirement** and would imply a complete re-configuration of the point of payment.

→ ASECAP proposal

ASECAP proposes that the brand applied to the payment transaction shall be determined by the payee where a payment device offers the choice between different brands of payment instruments. An alternative would be that the choice be done by the payer, except in the case where, by default, the payee chooses the brand which has the lower impact on the payer, in order to guaranty that the choice is not done at the detriment of the payer.



2. Honor All Card Rules

The MIF Regulation introduces **new information requirements on merchants deciding not to accept all card or other payment instruments of a payment card scheme** (Article 10.3).

→ Possible impact on ASECAP members

The MIF Regulation foresees that merchants shall in this case **inform consumers in a clear and unequivocal manner on the cards and payment instruments accepted or not**, and that the information be displayed prominently at the entrance of the shop, at the till or on the website (for e-commerce) or other applicable electronic or mobile medium, before the payer enters into a purchase agreement.

- This provision would require **installing new sign boards on motorways' roadsides**, which would be visible by the user before accessing the toll booth;
- This would **increase safety risks** by creating confusion for drivers.

→ ASECAP proposal

ASECAP proposes to foresee an exemption to this principle in case when this presents safety risks or when forbidden by law.

3. Electronic identification

The MIF Regulation introduces **new obligations on issuing payment service providers to ensure that their payment instruments are visibly and electronically identifiable** (article 10.4)

→ Possible impact on ASECAP members

- This provision could lead to **introducing new obligations on the merchants** ;
- It could imply the **replacement of payment cards** currently in circulation or an **upgrade of the payment terminals** used on motorways.

→ ASECAP proposal

ASECAP proposes to underline in this article that the **obligation imposed on issuing payment service providers shall not indirectly oblige the merchants to modify their current equipments.**

4. Authentication

The Commission's proposal for a Directive on payments services in the internal market and amending Directives (PSD2) foresees that **strong customer authentication be applied by payment service providers when the payer initiates an electronic payment transaction** (article 87.1)



→ **Possible impact on ASECAP members**

- This provision would imply **applying strong authentication obligations (PIN code inter alia)** to electronic payment transactions realized at the toll booth.

→ **ASECAP proposal**

ASECAP proposes to take into account the specific circumstances under which electronic payment transactions take place on motorways (the speed of the transaction, the low unit value of the transaction, the impossibility for the payer to perform multiple transactions in a short period of time) and their technical feasibility, and **to exempt therefore the motorways sector.**

THE ACTIONS UNDERTAKEN BY ASECAP

Considering the risks for motorways companies raised by some of the provisions of the electronic transactions package, ASECAP, as the European Association of Operators of Toll Road Infrastructures, drafted a **Position Paper** presenting its position on the two proposals.

The document highlights the provisions of the Regulation and of the Directive which are not suited for the motorway sector, presents their impact on motorways companies and calls for taking into account the particular circumstances in which payments are realized on motorways. The Position Paper also formulates **proposals for amendments which will be submitted to Members of the European Parliament** who are currently holding discussions on the package with a view of adopting a first position mid-January 2014.

**Position of the European association of motorway companies
(ASECAP) on the
“Electronic transactions Package”**

Proposal for a Regulation on interchanges fees for card-based payment transactions [COM(2013)550] and Proposal for a Directive on payments services in the internal market and amending Directives 2002/65/EC, 2013/36/EU and 2009/110/EC and repealing Directive 2007/64/EC [COM(2013)547]

ASECAP is the European Association of Operators of Toll Road Infrastructures. With a truly pan-European dimension, the Association brings together members that represent 173 companies and a network of about 46.000 km of motorways, bridges and tunnels, across 21 countries. This network forms a large part of the Trans-European Road Network.

As representative of the motorway companies, ASECAP closely follows the discussions currently held at the European Parliament on the “electronic transactions package” adopted on 24 July 2013 by the European Commission. ASECAP welcomes this initiative which will help further develop an EU wide market for electronic payments and benefit consumers, retailers and other market players.

In the first place, ASECAP would like to point out the important problem raised by **translation inconsistencies** between the different language versions of the proposal for a regulation on interchanges fees for card-based payment transactions (MIF Regulation). When referring to the different languages used by ASECAP members, there are different understandings of some provisions of the Regulation, notably of article 8.5 and 8.6. Based on the understanding we have of the two proposals, ASECAP would like to draw the attention of Members of the European Parliament **on the specificities of the motorway sector, as well as on some provisions which are not suited to the specific situation of motorways and can even be detrimental to the actors of the sector and/or the motorway users.**



A / Specificities of payment cards' use in motorway tolling

In some countries of the EU, payment cards are largely used by customers to pay the toll on motorways. It is not extraordinary that as much as 50% of the toll transactions are paid with this payment instrument.

These toll transactions have to be processed very quickly. At peak hour, for instance, more than 240 transactions per hour can be processed per toll booth. The average time between two payment transactions is of only fifteen seconds and the main part of this time is due to the stop and go of the vehicle. Any impairing of the transaction process would result in significant delays for the motorway users and in most cases would create or worsen traffic jams, which consequences are deterioration **not only of the service level, but also of the security of motorway users.**

At the toll booth, a great amount of information is displayed in an uncommon, sometimes even aggressive, environment. For these reasons, the exchange of information with the driver needs to be limited. The fact that the driver's movements are very restrained is another reason for **keeping the transaction process as simple as possible.**

Besides, the payment equipments used for payment card transactions on motorways is very specific and represent for the payment industry a relatively small market of high technology. The equipment has a high cost for motorway companies, and as a consequence a slow renewal rate. Last but not least, considering that the motorway sector is regulated, motorway companies cannot surcharge the user by transferring the cost related to interchange fees to the consumer; the objective pursued by the package of finding a balance between the rights of the consumer and the freedom of merchants cannot therefore be reached in the specific case of motorways.

B/ Detrimental provisions in the package

1. Co-badging and selection of application: The Proposal for a Regulation on interchanges fees for card-based payment transactions (MIF Regulation) introduces **the principle according to which the brand applied to the payment transaction shall be determined by the payer, when a payment device offers the choice between different brands of payment instruments** (article 8.5 and article 8.6).

As a first point, ASECAP would like to stress one more time the problem raised by **the translation inconsistencies of article 8.5** which lead to different understandings according to languages. There is a strong need to clarify this point through common definitions and a glossary in order to prevent from any misunderstanding.

Regarding the provision itself, ASECAP agrees with the fact that the choice of the brand applied to the payment transaction shall not be done at the detriment of the payer in case of co-badging. However, this provision is not suited with the specific situation of



motorways and is difficult to implement. In light of this broad use of electronic means of payment on certain motorways, giving the possibility of choosing the brand applied to the payment transaction to the payer will require an additional operation from the motorways user at the time of paying, leading to **lengthened transaction times at toll booths**. Considering that at peak hours the average time between two transactions on motorways is of 15 seconds, this will lead **automatically to queuing and will therefore imply a deterioration of the service provided to the user**.

The ergonomics of the toll booths which are today deployed throughout the EU shall also be taken into account; it does not fit with the requirements of article 8.5. as it would imply a complete re-configuration of the point of payment.

Considering these elements, articles 8.5 and 8.6 could be preferably deleted or rephrased as follows:

“Where a payment device offers the choice between different brands of payment instruments, the brand applied to the payment transaction at issue shall be determined by the payee”.

The fact that the choice of the brand shall not be done at the detriment of the payer is however a legitimate concern. Therefore, if evidence shows that it is necessary to limit the payee’s choice, ASECAP proposes to modify Article 8.5 as follows:

“Where a payment device offers the choice between different brands of payment instruments, the brand applied to the payment transaction at issue shall be determined by the payer at the point of sale, except in the case where, by default, the payee chooses a brand which has a low impact on the payer.”

Besides, article 8.6. could be rephrased as follows

“Payment card schemes, issuers, acquirers and payment card handling infrastructure providers shall not insert automatic mechanisms, software or devices on the payment instrument or at equipment applied at the point of sale which limit the choice of application by the payer when using a co-badged payment instrument, except in the case referred to in article 8.5”.

2. Honor All Card rules: The MIF Regulation introduces **new information requirements on merchants deciding not to accept all cards or other payment instruments of a payment card scheme (Article 10.3)**.

ASECAP supports the fact that the consumer shall be duly informed on the non-acceptance of certain cards and payment instruments of a given scheme before he enters into a purchase agreement. The modalities proposed for informing the consumer are however not adapted to the specific situation of motorways. Installing new sign boards visible by the user before accessing the toll booth, would add to the great amount of information which is already displayed on the roadside today, creating confusion for the user and increasing safety risks.



Article 10.3. could be completed as follows:

“That information shall be displayed prominently at the entrance of the shop, at the till or on the website or other applicable electronic or mobile medium, and shall be provided to the payer in good time before he enters into a purchase agreement with the payee, except in cases when this presents safety risks or when it is forbidden by law.”

3. Electronic identification: The MIF Regulation introduces **new obligations on issuing payment service providers to ensure that their payment instruments are visibly and electronically identifiable** (article 10.4)

This provision will enable payees to identify unequivocally which brands and categories of prepaid, debit, credit or commercial cards or card based payments based on these are chosen by the payer, and is -as such- positive. However, the fulfillment of this requirement would imply on the one side the replacement of payment cards currently in circulation, and on the other side, an upgrade of the payment terminals. Both operations may be very costly, unless a long transition period is provided, corresponding to the normal replacement schedule of the equipments. Thus, the requirement of article 10.4 shall not lead indirectly to introducing new technical requirements on payment terminals and to obliging therefore merchants to modify their practices in terms of payments.

ASECAP would therefore recommend amending article 10.4:

“**Issuing payment service providers shall ensure that their payment instruments are visibly and electronically identifiable, enabling payees to identify unequivocally which brands and categories of prepaid, debit, credit or commercial cards or card based payments based on these are chosen by the payer. However, this obligation shall not indirectly oblige the merchants to modify their equipments**”.

4. Authentication: Several specificities differentiate motorways transactions from transactions in other economic sectors, which are mainly: the speed of the transaction, as indicated previously, the low unit value of the transaction. For motorway sector, it is not possible to perform multiple transactions in a short period of time under the identification and authentication process introduced by the MIF regulation.

Meanwhile, the Commission’s proposal for a Directive on payments services in the internal market and amending Directives (PSD2) foresees that **strong customer authentication be applied by payment service providers when the payer initiates an electronic payment transaction** (article 87.1)

The specific circumstances under which electronic payment transactions take place on motorways shall in this respect be taken into account.

ASECAP proposes to reformulate article 87.1 as follows:



“Member States shall ensure that a payment service provider applies strong customer authentication when the payer initiates an electronic payment transaction unless EBA guidelines allow specific exemptions based on the risk involved in the provided payment service, *potential risks linked to the specific circumstances in which the transaction takes place and the technical feasibility. This requirement should apply proportionately to different economic activities.* This also applies to a third party payment service provider when initiating a payment transaction on behalf of the payer. The account servicing payment service provider shall allow the third party payment service provider to rely on the authentication methods of the former when acting on behalf of the payment service user”.

DECEMBER 2013



**Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on interchange fees for card-based payment transactions
24.7.2013 - COM(2013) 550 final - 2013/0265 (COD)**

PROPOSED AMENDMENTS

1) Chapter III – Business Rules

Amendment 1 (1st proposal) <i>Article 8.5.</i>	
Commission proposal	Proposed amendment
8.5. Where a payment device offers the choice between different brands of payment instruments, the brand applied to the payment transaction at issue shall be determined by the payer at the point of sale.	8.5. Where a payment device offers the choice between different brands of payment instruments, the brand applied to the payment transaction at issue shall be determined by the payee.
<i>Justification</i>	
<p><i>The specific situation of motorways shall be taken into account. Giving the possibility to the payer to choose the brand applied to the payment transaction will require an additional operation from the motorways user and will contribute to increase transaction times at toll booths. This would lead to queuing and therefore to a deterioration of the service provided to the user.</i></p> <p><i>The ergonomics of the toll booths which are today deployed throughout the EU shall also be taken into account, as these later do not fit with the requirements of article 8.5. as proposed by the European Commission.</i></p>	

Amendment 1 (2nd proposal) <i>Article 8.5.</i>	
Commission proposal	Proposed amendment
8.5. Where a payment device offers the choice between different brands of payment instruments, the brand applied to the payment transaction at issue shall be determined by the payer at the point of sale.	8.5. Where a payment device offers the choice between different brands of payment instruments, the brand applied to the payment transaction at issue shall be determined by the payer at the point of sale, except in the case where, by default, the payee chooses the brand which has the lower impact on the payer.
<i>Justification</i>	
<p><i>The specific situation of motorways shall be taken into account. Giving the possibility to the payer to choose the brand applied to the payment transaction will require an additional</i></p>	

operation from the motorways user and will contribute to increase transaction times at toll booths. This would lead to queuing and therefore to a deterioration of the service provided to the user.

The ergonomics of the toll booths which are today deployed throughout the EU shall also be taken into account, as these later do not fit with the requirements of article 8.5. as proposed by the European Commission.

Amendment 2

Article 8.6.

Commission proposal	Proposed amendment
<p>8.6. Payment card schemes, issuers, acquirers and payment card handling infrastructure providers shall not insert automatic mechanisms, software or devices on the payment instrument or at equipment applied at the point of sale which limit the choice of application by the payer when using a co-badged payment instrument.</p>	<p>8.6. Payment card schemes, issuers, acquirers and payment card handling infrastructure providers shall not insert automatic mechanisms, software or devices on the payment instrument or at equipment applied at the point of sale which limit the choice of application by the payer when using a co-badged payment instrument, <i>except in the case referred to in article 8.5.</i></p>
<p style="text-align: center;"><i>Justification</i></p> <p><i>The specific situation of motorways shall be taken into account. Giving the possibility to the payer to choose the brand applied to the payment transaction will require an additional operation from the motorways user and will contribute to increase transaction times at toll booths. This would lead to queuing and therefore to a deterioration of the service provided to the user.</i></p> <p><i>The ergonomics of the toll booths which are today deployed throughout the EU shall also be taken into account, as these later do not fit with the requirements of article 8.5. as proposed by the European Commission.</i></p>	

1) Chapter III – Business Rules

Amendment 3

Article 10.3

Commission proposal	Proposed amendment
<p>10.3. Merchants deciding not to accept all cards or other payment instruments of a payment card scheme shall inform consumers in a clear and unequivocal manner at the same time as they inform the consumer on the acceptance of other cards</p>	<p>3. Merchants deciding not to accept all cards or other payment instruments of a payment card scheme shall inform consumers in a clear and unequivocal manner at the same time as they inform the consumer on the acceptance of other cards and payment</p>

<p>and payment instruments of the scheme. That information shall be displayed prominently at the entrance of the shop, at the till or on the website or other applicable electronic or mobile medium, and shall be provided to the payer in good time before he enters into a purchase agreement with the payee.</p>	<p>instruments of the scheme. That information shall be displayed prominently at the entrance of the shop, at the till or on the website or other applicable electronic or mobile medium, and shall be provided to the payer in good time before he enters into a purchase agreement with the payee, except in cases when this presents safety risks or when it is forbidden by law.</p>
<p style="text-align: center;"><i>Justification</i></p> <p><i>The specific case of motorways shall be taken into account. Installing new sign boards which would be visible by the user before accessing the toll booth, would add to the great amount of information which is already displayed on the roadside today; this would create confusion for the user and increase safety risks. Besides, in several Member States, adding new sign boards which are not justified by safety requirements is not allowed by law.</i></p>	

1) Chapter III – Business Rules

<p>Amendment 4 <i>Article 10.4</i></p>	
<p style="text-align: center;">Commission’s proposal</p> <p>10.4. Issuing payment service providers shall ensure that their payment instruments are visibly and electronically identifiable, enabling payees to identify unequivocally which brands and categories of prepaid, debit, credit or commercial cards or card based payments based on these are chosen by the payer.</p>	<p style="text-align: center;">Proposed amendment</p> <p>Issuing payment service providers shall ensure that their payment instruments are visibly and electronically identifiable, enabling payees to identify unequivocally which brands and categories of prepaid, debit, credit or commercial cards or card based payments based on these are chosen by the payer. However, this obligation shall not indirectly oblige the merchants to modify their current equipments.</p>
<p style="text-align: center;"><i>Justification</i></p> <p><i>The obligation for issuing payment service providers to ensure that their payment instruments are electronically identifiable shall not lead indirectly to introducing new technical requirements and to obliging merchants to modify their current practices regarding payments. Motorway companies shall keep the possibility to proceed to identification of user through reading the card strip and shall not be imposed a specific technology.</i></p>	

**Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on payment services in the internal market and amending Directives 2002/65/EC,
2013/36/EU and 2009/110/EC and repealing Directive 2007/64/EC
24.7.2013 - COM(2013) 547 final - 2013/0264 (COD)**

PROPOSED AMENDMENTS

1) Chapter V – Operational and Security and Authentication

Amendment 1	
<i>Article 87.1.</i>	
Commission proposal	Proposed amendment
<p>87.1 Member States shall ensure that a payment service provider applies strong customer authentication when the payer initiates an electronic payment transaction unless EBA guidelines allow specific exemptions based on the risk involved in the provided payment service.</p> <p>This also applies to a third party payment service provider when initiating a payment transaction on behalf of the payer.</p> <p>The account servicing payment service provider shall allow the third party payment service provider to rely on the authentication methods of the former when acting on behalf of the payment service user.</p>	<p>1. Member States shall ensure that a payment service provider applies strong customer authentication when the payer initiates an electronic payment transaction unless EBA guidelines allow specific exemptions based on the risk involved in the provided payment service, <i>potential risks linked to the specific circumstances in which the transaction takes place and the technical feasibility.</i> This <i>requirement should apply proportionately to different economic activities.</i></p> <p>This also applies to a third party payment service provider when initiating a payment transaction on behalf of the payer.</p> <p>The account servicing payment service provider shall allow the third party payment service provider to rely on the authentication methods of the former when acting on behalf of the payment service user.</p>
<p><i>Justification</i></p> <p><i>The specific circumstances under which electronic payment transactions take place on motorways shall be taken into account when defining the scope of application of strong customer authentication; the use of two or more of factors of authentication as proposed by the Directive proposal could present risks in terms of privacy when taking place at a toll booth which are higher than at a classical point of sales. The technical feasibility of generalising a strong customer authentication shall also be considered in light of the ergonomics constraints of toll booths which do not allow for biometrics checking or mobile payments for instance.</i></p>	