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TERMS OF REFERENCE FOR THE SEPA COMPLIANCE OF CARD SCHEMES

The Eurosystem supports the creation of the Single Euro Payments Area (SEPA) which will enable retail payments in euro to be made throughout the euro area under the same basic conditions. Card payments represent an essential part of retail payments and card schemes are an important element of the SEPA project.

Against this background and acting as a catalyst, the Eurosystem has defined SEPA compliance for card schemes as the fulfilment of the criteria contained in the SEPA Cards Framework (developed by the European Payments Council, EPC) and of the criteria included in the Eurosystem's "Cards Report" of November 2006. Card schemes must fulfil these criteria in order to be considered, by the Eurosystem, to be SEPA-compliant.

In this document, the Eurosystem defines the terms of reference (ToRs) for the SEPA compliance¹ of card schemes on the basis of the SEPA compliance criteria.² It should be noted that the ToRs for the SEPA compliance assessment and the Oversight Framework for Card Payment Schemes correspond to two separate exercises both of which are of equal importance to the Eurosystem. The Eurosystem consulted national and international card schemes and the EPC Cards Working Group in developing the ToRs.

For a card scheme to be SEPA-compliant in line with the SEPA compliance criteria, a positive response (i.e. a "yes") is required to all the questions applicable to it.³

To achieve the desired transparency, the Eurosystem expects card schemes aiming to meet the SEPA compliance criteria to conduct a self-assessment and to make the answers to the questions publicly available on their websites by end-June 2009, using the table at the end of this document.

¹ The relevant documents on SEPA compliance are as follows:

- 1) the EPC's SEPA Cards Framework;
- 2) the Eurosystem's report entitled "The Eurosystem's view of a 'SEPA for Cards'", November 2006;
- 3) the Terms of Reference for the SEPA compliance of card schemes;

This list is not exhaustive; new documents may be added if necessary. For an explanation of the terms used, please refer to the glossary contained in the EPC's SEPA Cards Framework.

² Some of the criteria in the SEPA Cards Framework and the Eurosystem Cards Report had to be omitted or slightly amended owing to developments since they were first drafted. Any changes are indicated in a footnote.

³ The criteria are generally applicable to all card schemes and the same applies for the terms of reference. However, exceptions may apply to some three-party schemes, including three-party schemes with licensees, as described in the 6th SEPA Progress Report, pages 23-24. (<http://www.ecb.europa.eu/pub/pdf/other/singleeuropaymentsarea200811en.pdf>).

The *sub-questions* (i.e. those in italics) are merely intended to help the Eurosystem gauge the degree of progress of SEPA migration and integration.

Card schemes should communicate the answers to the sub-questions to the Eurosystem via the respective national central bank; the Eurosystem will treat the answers to the sub-questions confidentially as they may contain competitively sensitive information. There is no requirement to publish answers to the sub-questions.

Self-assessments are the selected method of SEPA compliance assessment for card schemes, in line with the general spirit of SEPA which is an industry-driven project. The self-assessment should be repeated whenever the scheme rules and proceedings undergo significant changes. Card schemes should inform the relevant national central bank when the self-assessment is to be reviewed.

1. SEPA compliance Terms of Reference for card schemes

A. Scheme practices

1. The scheme's rules should not prevent that merchants and cardholders⁴ are offered the same service from the scheme, wherever the scheme operates in the euro area – that various add-ons (i.e. the various additional functionalities to the basic card and terminal functions) should not hamper interoperability. (November 2006 report)

1.1 Is it ensured that scheme rules do not prevent that merchants and cardholders are offered the same service from the scheme, wherever the scheme operates in the euro area?

1.2 Is it ensured that scheme rules (especially those related to technical and business aspects) do not prevent that cards of other schemes are used at terminals where the cards of your scheme are accepted, despite the various add-ons (i.e. additional features to the basic payment function) offered by your scheme on cards and terminals?

a. What add-ons have been activated in your scheme, if any?

2. A scheme should be compliant with the transposition into national law of the PSD provisions about surcharging.⁵ (November 2006 report)

⁴ In this document, merchants and cardholders means merchants and cardholders located in SEPA and carrying SEPA-issued cards.

⁵ According to the PSD: "In order to promote transparency and competition, the payment service provider should not prevent the payee from requesting a charge from the payer for using a specific payment instrument. While the payee should be free to levy charges for the use of a certain payment instrument, Member States may decide whether they forbid or limit any such practice where, in their view, this may be warranted in view of abusive pricing or pricing which may have a negative impact

Is the scheme compliant with the transposition into national law of the PSD provisions about surcharging?

- a. *Does the scheme allow surcharging?*⁶
- b. *Has the scheme always allowed surcharging? Or is this a result of the transposition of the PSD into national law?*
- c. *In the knowledge of the scheme, is surcharging taking place in practice?*
- d. *Do you impose an “honour-all-cards” rule (i.e. the acceptance of all valid cards of a scheme, irrespective of the type of card)?*⁷
- e. *Do you have rules regarding the interchange fees that apply to cross-border issuing and acquiring (e.g. rules stipulating that in the case of cross-border acquiring, the interchange fee levels of the country of the merchant should be applied)?*

3. Card schemes must ensure that merchants (or ATM owners) are not prevented from accepting any card from another SCF compliant scheme. (SCF)

Are merchants or ATM owners accepting the cards of your scheme free to accept any card from another SCF compliant scheme?

4. SCF compliant schemes may not mandate any certification (certification of cards, terminals and/or network interfaces⁸) to be performed only by a proprietary (owned or controlled by the scheme⁹) certification body. (SCF)

Does your scheme allow certification of cards, terminals and network interfaces to be performed by certification bodies which are not proprietary?

- a. *Have your scheme’s cards, terminals and/or network interfaces been certified by different certification bodies? Have any procedural problems been encountered? Do you consider the certification procedure to be sufficiently flexible?*

on the use of a certain payment instrument taking into account the need to encourage competition and the use of efficient payment instruments.”

⁶ This question is applicable only if the national law does not prohibit surcharging.

⁷ The definition to be used here is that provided by the European Commission in its decision in the Visa International case in 2001 (COMP/29.373).

⁸ “certification of cards, terminals and/or network interfaces”: clarification added by the Eurosystem to the SCF requirement.

⁹ “owned or controlled by the scheme”: clarification added by the Eurosystem to the SCF requirement.

5. Any transfer of personal data¹⁰ in a non-aggregated form to countries that are not compliant with the EU rules should be avoided. (November 2006 report)

Is any transfer of personal data in a non-aggregated form to countries that are not compliant with the EU rules avoided?

a. Please explain how with EU legal requirements on data transfer.

B. One-off measures for schemes

6. A scheme should effectively remove from its rules clauses that function as commercial barriers to SCF compliance (e.g. a requirement to be member of the scheme in order to operate in a country). (November 2006 report)

Is it ensured that the scheme's rules do not include any clauses that function as commercial barriers to SCF compliance?

a. Please describe which commercial barriers have been removed and how. Are there any remaining commercial barriers? Please describe.

7. Medium to long term plans of the scheme should not contradict the objectives of SEPA as a high-level requirement. (November 2006 report)

Is it ensured that the medium to long term plans of the scheme are not contradicting the objectives of SEPA as a high-level requirement?

8. Each card scheme will make available to its participants – and upon request to overseers - a set of operational quality benchmarks, and how they are policed. (SCF)

8.1 Has your scheme made available to participants its set of operational quality benchmarks (e.g. system availability, maximum time foreseen for transaction authorisation)?

8.2 If requested, has your scheme made available to overseers its set of operational quality benchmarks?

a. What does this set include?

¹⁰ See Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

9. A scheme should implement a separation of SEPA card schemes' brand governance and management from the operations that have to be performed by service providers and infrastructures without any possibility for cross-subsidisation. (SCF, November 2006 report)

Is there a separation within your scheme of the scheme's brand governance and management from the operations (i.e. authorisation, clearing and settlement) that have to be performed by service providers and infrastructures without any possibility for cross-subsidisation?

a. How has this separation been implemented? At a legal level? At a financial level? At an informational level? Please describe.

10. Acquiring or equivalent in every scheme must be open to competition between acquirers or equivalent. (SCF)

Is acquiring or equivalent in your scheme open to competition within SEPA, i.e. can various acquirers or equivalent compete between them throughout SEPA?

a. Was this always the case or have changes been introduced?

C. Licensing – scheme participation

11. To qualify under the dispositions of the SCF, each card scheme must allow banks and payment institutions¹¹ to participate on the basis of transparent, non-discriminatory criteria. In particular, these criteria may no more distinguish between banks subject to supervision in the same country as the country of registration of the said card scheme, and banks subject to supervision by supervisory bodies from other SEPA countries, and conducting their business in the other SEPA countries. Furthermore, these criteria may no more distinguish between payment institutions subject to supervision in the same country as the country of registration of the said card scheme and payment institutions subject to supervision by supervisory bodies from other SEPA countries, and conducting their business in the other SEPA countries¹². (SCF)

11.1 Are the criteria for participation in your scheme transparent and non-discriminatory?

11.2 Does your scheme apply the same access criteria for participation to all banks within SEPA?

11.3 Does your scheme apply the same access criteria for participation to all payment institutions within SEPA?

¹¹ “and payment institution”: addition of the Eurosystem to the SCF requirement.

¹² “Furthermore,...countries”: addition of the Eurosystem to the SCF requirement.

- a. *Are any of the members of your scheme payment institutions? If not, have payment institutions expressed interest in becoming members of your scheme?*
- b. *What are or will be the main differences in access criteria for payment institutions compared with those applicable to banks?*

12. All SEPA banks and payment institutions¹³ must be able to offer basic card payment products and services throughout SEPA on the basis of a single license or comparable agreement¹⁴ from each card scheme without the requirement to obtain individual licenses or comparable agreements¹⁵ for each SEPA country. (SCF)

Is a single license or comparable agreement of your scheme sufficient to offer basic card payment products and services throughout SEPA?

- a. *In the scheme's knowledge, are your members actively issuing cards and acquiring card transactions in other countries?*

13. At their discretion, banks and payment institutions¹⁶ must be able across SEPA to enter solely into an issuing license. (SCF)

Are banks and payment institutions participating in your scheme able to act as issuers only?

14. At their discretion, banks and payment institutions¹⁷ must also be able across SEPA to enter solely into an acquiring license. (SCF)

Are banks and payment institutions participating in your scheme able to act as acquirers only?

15. A scheme may not require the use of any particular provider of processing services as a condition for participation. (SCF)

Are banks/payment institutions able to participate in your scheme without being required to use a particular provider of processing services?

¹³ “and payment institutions”: addition of the Eurosystem to the SCF requirement.

¹⁴ “or comparable agreement”: addition of the Eurosystem to the SCF requirement.

¹⁵ “or comparable agreements”: addition of the Eurosystem to the SCF requirement.

¹⁶ “and payment institutions”: addition of the Eurosystem to the SCF requirement.

¹⁷ “and payment institutions”: addition of the Eurosystem to the SCF requirement.

D. Transaction features

16. All transactions are to be authorized by the issuer, either on-line, or off-line by the chip. (SCF)

Are in your scheme all transactions – except for exceptions such as some low value transactions or specific environments such as tollways - authorised by the issuer, either on-line, or off-line by the chip?

17. All ATMs will offer English as well as the national language(s) and any other languages regarded as appropriate by the ATM owner. (SCF)

Is it inscribed in the scheme's rules that all ATMs accepting cards issued under your scheme, offer at least English as well as the national language?

18. Where several payment applications are contained in the same card and supported by the same terminal, cardholders and merchants¹⁸ will have the choice of which payment application they will use. (SCF)

Is it ensured that scheme rules do not prevent that both the cardholder and merchant have the choice of which payment application (e.g. debit or credit or choice among different schemes and brands) is used out of several ones contained in the same card and supported by the same terminal?

a. Are you aware of any practical difficulty in your country or elsewhere where the cardholder or the merchant is prevented from choosing the payment application to be used? Please describe.

E. Pricing, fees

19. Card schemes commit to provide their participants with SEPA-wide, transparent pricing structures (“scheme fees”), that will endeavour to allow for participation by the greater number of banks and payment institutions¹⁹ (without this intending to prevent commercial flexibility to conclude business deals in order to capture business opportunities e.g. through rebates”) ²⁰ In this context “transparent” shall mean that the nature of the service or activity thus remunerated is unambiguous for the scheme participant or user: prices may not be presented in a bundled manner when referring to services or activities of a different nature. (SCF)

¹⁸ “and merchants”: addition of the Eurosystem to the SCF requirement.

¹⁹ “and payment institutions”: addition of the Eurosystem to the SCF requirement.

²⁰ “without this intending to prevent commercial flexibility to conclude business deals in order to capture business opportunities e.g. through rebates”: addition of the Eurosystem to the SCF requirement.

Does your scheme apply a SEPA-wide, transparent pricing structure?

- a. *Have you made your services and pricing structure (including information about all eventual member fees, such as admission, periodical, transaction and package fees) publicly available?*

20. An SCF compliant card scheme is a scheme that allows unbundling of functions whilst applying the same pricing per card product to national euro and SEPA transactions of the same type.
(SCF)

Does your scheme apply the same pricing on scheme members per card product for SEPA euro transactions and for national euro transactions of the same type?

- a. *What difficulties did you face in achieving this?*

21. A scheme should disclose interchange fees and their calculation methodology, and submit them to the relevant authorities. (November 2006 report)

21.1 Has the scheme disclosed interchange fees and their calculation methodology?

21.2 Has the scheme submitted interchange fees and their calculation methodology to the relevant authorities?

- a. *What has been the response from the relevant authorities?*

22. A scheme should have a single interchange fee (if any) for the whole euro area within a given brand in the long run. (November 2006 report)

Is it foreseen that in the long run there will be a single interchange fee (if any) level for the whole euro area?

- a. *Is the scheme currently defining interchange fee levels? Do these differ between geographical areas?*
- b. *What problems do you expect to encounter in setting a single interchange fee for the whole euro area?*

F. Fraud strategy

23. A scheme should put in place a strategy on how to reduce fraud, especially cross-border fraud.
(November 2006 report)

Has the scheme put in place a strategy (e.g. technical rules) on how to reduce fraud, especially cross-border fraud?

- a. *What are the main elements of this strategy?*
- b. *Is the strategy shared with other schemes?*
- c. *Can you identify areas for further cooperation between schemes in this field?*

24. Card schemes acknowledge that preventing and fighting card fraud is within the scope of the SCF. As a consequence, any adhering card scheme agrees to support prevention activities, in accordance with the EPC Resolutions on fraud. (SCF)

Is the scheme supporting fraud prevention activities in accordance with the EPC resolutions on fraud?

- a. *What measures has your scheme implemented in this context?*
- b. *Do you have any concerns about the EPC resolutions in this field?*

G. Standards (including fraud prevention standards)

25. A scheme should contribute to the design of a consensus-based selection of standards with a clear commitment for implementation on time. (November 2006 report)

Is the scheme contributing to the design of a consensus-based selection of standards with a clear commitment for implementation on time?

- a. *Have you been informed of the content of the standards? Are you able to monitor work?*
- b. *Have you been participating in the design and maintenance of standards?*
- c. *How do you assess work so far? Any problematic areas?*
- d. *Do you expect any problems with implementing the standards?*

26. In particular all schemes will introduce a liability shift rule between magnetic stripe-based transactions and EMV-based transactions, and other incentivising measures to encourage the EMV migration (SCF)

Has the scheme introduced a liability shift between magnetic stripe-based transactions and EMV-based transactions and potentially other incentivising measures to encourage the EMV migration?

- a. *What other incentivising measures have been introduced by the scheme?*
- b. *What have been the effects of the introduction of the liability shift and, potentially, of other incentivising measures in terms of fraud prevention?*

27. In order for the objectives of the SCF to be achieved, SEPA-level interoperability must be ensured in the following four domains:

- cardholder to terminal interface
- cards to terminal (EMV)
- terminal to acquirer interface (protocols or minimum requirements)
- acquirer to issuer interface, including network protocols (authorization and clearing). (SCF)

Is interoperability ensured for the domains of i) cardholder to terminal interface, ii) cards to terminal, iii) terminal to acquirer interface and iv) acquirer to issuer interface domains?

a. *If not, what is the reason? Is there a problem with the standardisation work undertaken?*

28. Card schemes commit to make available to SEPA banks, payment institutions²¹ and card schemes, upon request, their terminal security requirements. Card schemes will engage in mutual recognition for type approval. Any terminal certified for SEPA transactions by a certification body in one SEPA country can be deployed in any SEPA country for acceptance of SEPA cards across all SCF compliant schemes. There may be no constraining, local requirement. (SCF)

28.1 Is the scheme ready to make available upon request to SEPA banks, payment institutions and card schemes its terminal security requirements?

28.2 Is the scheme engaged in mutual recognition of certificates for type approval?

28.3 Is it ensured that scheme rules do not prevent that any card, terminal and/or network interface, certified by an accredited body be deployed and used anywhere throughout SEPA²²?

a. *Have you faced any practical procedural difficulties?*

Summary table of the “yes/no” answers to the above questions

Question	Answer: yes or no
1.1	
1.2	

²¹ “payment institutions”: addition of the Eurosystem to the SCF requirement.

²² Question applicable once the certification framework for cards in SEPA has been established.

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8.1	
8.2	Please answer only if the scheme has been requested to make available to overseers its set of operational quality benchmarks.
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11.1	
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28.3	