The Czech National Bank’s opinion

on the European Commission consultation document

GREEN PAPER

Towards an integrated European market for card, internet and mobile payments

(of 11 January 2012)

This section contains the CNB’s general opinion on the consultation document and an opinion on selected issues of the consultation document, following the structure of the Commission document. The Czech National Bank comments in particular on issues relevant for the Czech market.

I. The CNB’s general opinion on the Green Paper

The Czech National Bank has been long pointing to unsuitability and harmfulness of regulatory interventions in the area of innovative payments, since excessive regulation in this area may prevent technological developments of the said payments. Moreover, owing to ever faster technological developments, newly prepared regulations are often outdated after they take effect and cannot respond precisely to new products.

The term “innovative payments” in the Green Paper covers various forms of means of payment: various forms of electronic money, some pre-paid and post-paid payment services, internet banking, “GSM banking”, payment cards, etc. However, a number of issues or characteristics mentioned in the Green Paper apply only to some of the above payment methods.

In our opinion it is necessary to primarily differentiate according to the amount paid by the said means of payment, where two basic groups of means of payments can be distinguished:

a) means of payment for higher amounts - e.g. transactions made by a payment card, internet banking applications, etc.

b) means of payment for lower amounts (means of payment for retail payments, micro-amounts) – in particular "m-payments" of mobile operators in the Czech Republic are currently used on the Czech market to pay micro-amounts of tens or hundreds of korunas (e.g. payments of parking fees, transport). For this reason, they are not subject to such security requirements as classic means of payment. This includes, for example, the obligation to allow blocking. The reason for this approach is that the “charged” amounts do not exceed several hundreds of korunas, i.e. if the user loses this means of payment or if this means of payment is misused, the loss will be similar to a loss of cash, which cannot be recovered from the issuer.
In this context, we deem it necessary to observe existing legislation and to clearly divide the existing categories of “mobile payments” into:

a) payments, for which the payment service is provided by a mobile operator in compliance with Item 7 of Annex to Directive on payment services in the internal market (2007/64/EC):

“Execution of payment transactions where the consent of the payer to execute a payment transaction is given by means of any telecommunication, digital or IT device and the payment is made to the telecommunication, IT system or network operator, acting only as an intermediary between the payment service user and the supplier of the goods and services.”

b) other “mobile” payments, for which the mobile phone is just a means of communication between the payment service provider and user (the payment service provider is an entity other than a mobile operator; although the user places the payments via a voice/data connection or SMS, the operator does not charge the user [excluding usual electronic communication service fees, e.g. Internet connection fees]. The operator usually does not even know about the payment transaction and acts only as a pure electronic communication service provider).

The CNB thus deems it sufficient to distinguish payments according to the legal nature of the user's act rather than according to which device the user uses. In practice, the point is with whom the user concluded the agreement to provide payment services, or who executes the payment transaction.

Although the CNB deems regulatory interventions in innovative payments to be inappropriate, it supports the introduction of the obligation of providers of such payments to sufficiently inform the user about the nature of and risks associated with these payments, and the user’s option to choose between innovative payments and another classic payment method.

In our opinion the current legislation regulating payments within Directive on payment services in the internal market (2007/64/EC) or Directive on electronic money (2009/110/EC) is sufficient.

The CNB would also like to point out that excessive regulation may have negative impacts on competitiveness of market participants. Numerous issues concern general legislation regulating competition. Generally speaking, the CNB supports protection of competition in the area of innovative payments.
II. The CNB’s opinion on the Green Paper questions

Questions

1) Under the same card scheme, MIFs can differ from one country to another, and for cross-border payments. Can this create problems in an integrated market? Do you think that differing terms and conditions in the card markets in different Member States reflect objective structural differences in these markets? Do you think that the application of different fees for domestic and cross-border payments could be based on objective reasons?

2) Is there a need to increase legal clarity on interchange fees? If so, how and through which instrument do you think this could be achieved?

3) If you think that action on interchange fees is necessary, which issues should be covered and in which form? For example, lowering MIF levels, providing fee transparency and facilitating market access? Should three-party schemes be covered? Should a distinction be drawn between consumer and commercial cards?

Answer of the Czech National Bank:

1) to 3) In our opinion it is not necessary to build a special legal framework. A contractual arrangement is sufficient. Different MIFs are part of a sound competitive environment. Every new redundant legal form of regulation means disproportionate burden for legal framework and increases legal uncertainty for recipients of legal form.

MIFs concern only four-party systems. Three-party systems should be left completely outside regulation, because acquirer and issuer is one person.

Questions

4) Are there currently any obstacles to cross-border or central acquiring? If so, what are the reasons? Would substantial benefits arise from facilitating cross-border or central acquiring?

5) How could cross-border acquiring be facilitated? If you think that action is necessary, which form should it take and what aspects should it cover? For instance, is mandatory prior authorisation by the payment card scheme for cross-border acquiring justifiable? Should MIFs be calculated on the basis of the retailer’s country (at point of sale)? Or, should a cross-border MIF be applicable to cross-border acquiring?

Answer of the Czech National Bank:

4) No, we have not noticed this problem in the Czech Republic.

5) We have not noticed this problem in the Czech Republic. This may also be due to the fact that the Czech Republic has a currency other than the euro. However, in our opinion restriction for cross-border acquiring might constitute an impediment to the freedom to provide services. The decisive criterion should be where the acquirer is established (i.e. where the acquirer holds an account for the merchant-acceptor).
Questions

6) What are the potential benefits and/or drawbacks of co-badging? Are there any potential restrictions to co-badging that are particularly problematic? If you can, please quantify the magnitude of the problem. Should restrictions on co-badging by schemes be addressed and, if so, in which form?

7) When a co-badged payment instrument is used, who should take the decision on prioritisation of the instrument to be used first? How could this be implemented in practice?

Answer of the Czech National Bank:

6) The text uses the term “co-badging”, which is also used as “co-branding” (co-branded card). Both terms denote multifunctional payment instruments which include multiple payment applications.

The very “co-badging” of certain devices has no importance for payment transactions. It is important whether the said card or device enable payments in two different systems with two different payment service providers. Otherwise, this could be confused with joint marketing actions of banks and non-banks (e.g. a payment card with an air company logo).

7) In our opinion the payment method should be chosen by the holder when paying.

Questions

8) Do you think that bundling scheme and processing entities is problematic, and if so why? What is the magnitude of the problem?

9) Should any action be taken on this? Are you in favour of legal separation (i.e. operational separation, although ownership would remain with the same holding company) or ‘full ownership unbundling’?

Answer of the Czech National Bank:

8) No, we have not noticed any problems in the Czech Republic.

9) Generally, we consider it problematic to define the boundary between a card system and a processing entity. These two roles may merge for smaller or new systems, and a forced separation would be inefficient and would prevent the creation of new products.

Questions

10) Is non-direct access to clearing and settlement systems problematic for payment institutions and e-money institutions and if so what is the magnitude of the problem?

11) Should a common cards-processing framework laying down the rules for SEPA card processing (i.e. authorisation, clearing and settlement) be set up? Should it lay out terms and fees for access to card processing infrastructures under transparent and
non-discriminatory criteria? Should it tackle the participation of Payment Institutions and E-money Institutions in designated settlement systems? Should the SFD and/or the PSD be amended accordingly?

Answer of the Czech National Bank:

10) In our opinion entities with a single licence (single passport) granted in line with payment system legislation should have access to payment systems with settlement finality.

During a more than two-year application practice of PSD (2009/64/EC) on national level there have been cases where banks rejected non-bank providers as clients, or offered conditions which were unacceptable for providers. These providers depend on credit institutions in order to be able to provide payment services. In our opinion an entity, which is licensed and supervised (similarly as credit institutions) by a respective national authority, should have equal conditions for the provision of its services. It might happen that credit institutions might set the terms and conditions to get rid of undesirable competition.

11) a) and b) Such common cards-processing framework should not be set up. This point of issue should be left on market self-regulation.

11) c) and d)

As said in answer to question No. 10) payment institutions and electronic money institutions should have access to payment and settlement systems with settlement finality. It is necessary to amend Directive 98/26/EC.

Questions

12) What is your opinion on the content and market impact (products, prices, terms and conditions) of the SCF? Is the SCF sufficient to drive market integration at EU level? Are there any areas that should be reviewed? Should non-compliant schemes disappear after full SCF implementation, or is there a case for their survival?

Answer of the Czech National Bank:

12) There is no domestic card scheme in the Czech Republic. We consider the content of SCF sufficient for support of market integration in the EU. As well it is necessary to keep place for competition and not to prevent the development of other systems.

Questions

13) Is there a need to give non-banks access to information on the availability of funds in bank accounts, with the agreement of the customer, and if so what limits would need to be placed on such information? Should action by public authorities be considered, and if so, what aspects should it cover and what form should it take?

Answer of the Czech National Bank:

13) Banking secrecy is legally anchored in the Czech Republic, which prohibits banks from disclosing information about funds available on bank accounts. Banking secrecy does not apply if agreed upon by the customer. In our opinion the introduction of the obligation to
disclose information, with the agreement of the customer, to other providers would cause a number of crucial problems – in particular, it is necessary to enable charging fees for information. A bank incurs undoubtedly costs relating to the disclosure of information and in our opinion the obligation to bear such costs provided in favour of a competing provider would be problematic not only in terms of the protection of competition but also in terms of fundamental legal principles.

Questions

14) Given the increasing use of payment cards, do you think that there are companies whose activities depend on their ability to accept payments by card? Please give concrete examples of companies and/or sectors. If so, is there a need to set objective rules addressing the behaviour of payment service providers and payment card schemes vis-à-vis dependent users?

Answer of the Czech National Bank:

14) In our opinion it is natural if a sector “depends” on a certain form of payment. E.g. internet payments are usually made with a payment card or electronic money. However, this should not imply that private relationships between the merchant and the provider should be regulated.

Nevertheless, we perceive the importance of the issue of competition.

Questions

15) Should merchants inform consumers about the fees they pay for the use of various payment instruments? Should payment service providers be obliged to inform consumers of the Merchant Service Charge (MSC) charged / the MIF income received from customer transactions? Is this information relevant for consumers and does it influence their payment choices?

Answer of the Czech National Bank:

15) Users themselves are usually not interested in the information regarding how much a merchant pays for card acceptance. In our opinion an important piece of information for users is whether merchants charge a fee for using a certain payment instrument (this information is guaranteed by PSD 2007/64/EC) or whether merchants refuse to accept this payment instrument.
Questions

16) Is there a need to further harmonise rebates, surcharges and other steering practices across the European Union for card, internet and m-payments? If so, in what direction should such harmonisation go? Should, for instance:

– certain methods (rebates, surcharging, etc.) be encouraged, and if so how?
– surcharging be generally authorised, provided that it is limited to the real cost of the payment instrument borne by the merchant?
– merchants be asked to accept one, widely used, cost-effective electronic payment instrument without surcharge?
– specific rules apply to micro-payments and, if applicable, to alternative digital currencies?

Answer of the Czech National Bank:

16) In our opinion surcharging should not be prohibited. Otherwise, no pressure will be exerted on providers to reduce prices. PSD (2007/64/EC) left this decision on Member States; however, a prohibition of discounts has been stipulated.

Although the Czech Republic did not make use of the option of prohibiting surcharges, we have virtually not encountered them in shops.

But, it is necessary to mention a special situation of a so-called social card – a payment card which is used for drawing social benefits (often special-purpose shopping – e.g. for buying food but not alcohol). It may happen here that the distributor of social benefits will require a free use of the card with a merchant for the holder.

Questions

17) Could changes in the card scheme and acquirer rules improve the transparency and facilitate cost-effective pricing of payment services? Would such measures be effective on their own or would they require additional flanking measures? Would such changes require additional checks and balances or new measures in the merchant-consumer relations, so that consumer rights are not affected? Should three-party schemes be covered? Should a distinction be drawn between consumer and commercial cards? Are there specific requirements and implications for micro-payments?

Answer of the Czech National Bank:

17) In our opinion the said rules are in contrary to the protection of competition. We do not consider such a cartel beneficial for the end-user.
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<td>18) Do you agree that the use of common standards for card payments would be beneficial? What are the main gaps, if any? Are there other specific aspects of card payments, other than the three mentioned above (A2I, T2A, certification), which would benefit from more standardisation?</td>
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<td>19) Are the current governance arrangements sufficient to coordinate, drive and ensure the adoption and implementation of common standards for card payments within a reasonable timeframe? Are all stakeholder groups properly represented? Are there specific ways by which conflict resolution could be improved and consensus finding accelerated?</td>
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<td>20) Should European standardisation bodies, such as the European Committee for Standardisation (Comité européen de normalisation, CEN) or the European Telecommunications Standards Institute (ETSI), play a more active role in standardising card payments? In which area do you see the greatest potential for their involvement and what are the potential deliverables? Are there other new or existing bodies that could facilitate standardisation for card payments?</td>
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<td>21) On e- and m-payments, do you see specific areas in which more standardisation would be crucial to support fundamental principles, such as open innovation, portability of applications and interoperability? If so, which?</td>
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<td>22) Should European standardisation bodies, such as CEN or ETSI, play a more active role in standardising e- or m-payments? In which area do you see the greatest potential for their involvement and what are the potential deliverables?</td>
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**Answer of the Czech National Bank:**

18) We do not agree. In our opinion such common standards would not bring any progress in this respect. Conversely, the regulation might result in a retreat of some non-banks (e.g. mobile operators) from this area.

19) In our opinion the current governance arrangements are sufficient.

20) In our opinion technical standardisation would not bring any progress in this respect. Conversely, in our opinion regulation might result in a retreat of some non-banks (e.g. mobile operators) from this area.

21) We would like to point out again that all types of m- and e-payments, as defined in the introduction to the Green Paper, cannot be assessed at once. It has to be always distinguished whether it is e-banking or m-banking, a service pursuant of item 7 of Annex to PSD (2007/64/EC)\(^1\), electronic money under EMD (2009/110/EC) etc.

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\(^1\) *Execution of payment transactions where the consent of the payer to execute a payment transaction is given by means of any telecommunication, digital or IT device and the payment is made to the telecommunication, IT system or network operator, acting only as an intermediary between the payment service user and the supplier of the goods and services.*
Protection of payment service users/electronic money holders is currently safeguarded by PSD and EMD. In our opinion technical standardisation would not bring any progress in this respect. Conversely, we believe that regulation might result in a retreat of some non-banks (e.g. mobile operators) from this area, for which payment services have been and are only an ancillary service to the main service.

22) In our opinion technical standardisation would not bring any progress in this respect. We do not support an active effort to involve the european entities into the standardisation process.

Questions

23) Is there currently any segment in the payment chain (payer, payee, payee’s PSP, processor, scheme, payer’s PSP) where interoperability gaps are particularly prominent? How should they be addressed? What level of interoperability would be needed to avoid fragmentation of the market? Can minimum requirements for interoperability, in particular of e-payments, be identified?

24) How could the current stalemate on interoperability for m-payments and the slow progress on e-payments be resolved? Are the current governance arrangements sufficient to coordinate, drive and ensure interoperability within a reasonable timeframe? Are all stakeholder groups properly represented? Are there specific ways by which conflict resolution could be improved and consensus finding accelerated?

Answer of the Czech National Bank:

23) and 24):

We would like to point out again that all types of m- and e-payments, as defined in the introduction to the Green Paper, cannot be assessed at once. It has to be always distinguished whether it is e-banking or m-banking or a service pursuant of item 7 of Annex to PSD (2007/64/EC)².

The service of m-payments, where the provider of the payment service is a mobile operator pursuant to item 7 of Annex to PSD, is well-developed in the Czech Republic, as fully interoperable between individual mobile operators.

Questions

25) Do you think that physical transactions, including those with EMV-compliant cards and proximity m-payments, are sufficiently secure? If not, what are the security gaps and how could they be addressed?

² “Execution of payment transactions where the consent of the payer to execute a payment transaction is given by means of any telecommunication, digital or IT device and the payment is made to the telecommunication, IT system or network operator, acting only as an intermediary between the payment service user and the supplier of the goods and services.”
26) Are additional security requirements (e.g. two-factor authentication or the use of secure payment protocols) required for remote payments (with cards, e-payments or m-payments)? If so, what specific approaches/technologies are most effective?

27) Should payment security be underpinned by a regulatory framework, potentially in connection with other digital authentication initiatives? Which categories of market actors should be subject to such a framework?

28) What are the most appropriate mechanisms to ensure the protection of personal data and compliance with the legal and technical requirements laid down by EU law??

Answer of the Czech National Bank:

25) On the national level we have not noticed this problem till now. Therefore, we do not comment further on this issue.

26) and 27):

The level of security always depends on the level of risks associated with the execution of payments, which depends strongly on the amount of executed transactions. Moreover, we are currently witnessing a dynamic development of technologies used, hence also specific technical solutions (including the manners of providing security of transactions). At the same time, it should be taken into account how an acceptable level of user-friendliness is provided, which is also related to the frequency of executed payments. For the above reasons, we do not recommend setting binding (technological) requirements (rule-based regulation). There is a possibility of setting general principles and requirements (principle-based regulation). In this context we thus do not consider it beneficial to prefer specific approaches and solutions. This also concerns the two-factor authentication, the use of which the CNB currently considers good practice on the financial market (e.g. in the area of internet banking), but does not require it in its regulation. We rather recommend that entities should be required to fulfil the duty to support specific applied solutions with an analysis of related risks.

28) The question is too general. Therefore, it is not possible to give concrete answer. Suitability of mechanisms is dependant on concrete type of product.

Questions

29) How do you assess the current SEPA governance arrangements at EU level? Can you identify any weaknesses, and if so, do you have any suggestions for improving SEPA governance? What overall balance would you consider appropriate between a regulatory and a self-regulatory approach? Do you agree that European regulators and supervisors should play a more active role in driving the SEPA project forward?

Answer of the Czech National Bank:

29) The CNB does not consider the strengthening of the role of public authorities in SEPA governance to be a correct solution. European regulators and supervisory authorities should not play a more active role in further development of the primary commerce SEPA project.
Questions

30) How should current governance aspects of standardisation and interoperability be addressed? Is there a need to increase involvement of stakeholders other than banks and if so, how (e.g. public consultation, memorandum of understanding by stakeholders, giving the SEPA Council a role to issue guidance on certain technical standards, etc.)? Should it be left to market participants to drive market integration EU-wide and, in particular, decide whether and under which conditions payment schemes in non-euro currencies should align themselves with existing payment schemes in euro? If not, how could this be addressed?

31) Should there be a role for public authorities, and if so what? For instance, could a memorandum of understanding between the European public authorities and the EPC identifying a time-schedule/work plan with specific deliverables (‘milestones’) and specific target dates be considered?

Answer of the Czech National Bank:

30) We have not encountered any problems in this respect in the Czech Republic. In our opinion harmonisation of payment systems in other currencies than the euro with the existing payment systems in the euro should be left on market participants and competent authorities of given states. The principle of subsidiarity of Community law must be respected.

31) It is not necessary to perform any other activities in this respect.

Questions

32) This paper addresses specific aspects related to the functioning of the payments market for card, e- and m-payments. Do you think any important issues have been omitted or under-represented?

Answer of the Czech National Bank:

32) The term “innovative payments” in the Green Paper covers various forms of means of payment: various forms of electronic money, some pre-paid and post-paid payment services, internet banking, “GSM banking”, payment cards, etc. However, a number of issues or characteristics mentioned in the Green Paper apply only to some of the above payment methods.

In our opinion it is necessary to primarily differentiate according to the amount paid by the said means of payment, where two basic groups of means of payments can be distinguished. For more details see the CNB’s general opinion on the Green Paper.