



EUROPEAN CENTRAL BANK

Nonbanks in the payments system: European and U.S. perspectives

Focus: regulatory environment

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The views expressed are those of the authors and do not necessarily reflect the views of the ECB
or the Federal Reserve.



EUROPEAN CENTRAL BANK

Contents

- I. EU regulatory environment
- II. U.S. regulatory environment
- III. Comparison



I. EU regulatory environment

Back-end processing of payments

Retail payment systems	Oversight by Eurosystem
Infrastructures of systemic relevance	Oversight (e.g. SWIFT overseen by G-10 central banks)
Outsourcing	
by banks	Banking supervision requirements
by ELMIs	E-money directive sets some requirements
by other front-end providers	Different treatment at national level (until now)

By “payment institutions”:
harmonised by Payment Services Directive



I. EU regulatory environment

Front-end provision of payment services/instrument

Banks	Prudential supervision (harmonised, banking directives)
ELMIs	Prudential supervision (harmonised, e-money directive)
By other categories of front-end providers	Different treatment at national level (until now)

By “payment institutions”:
harmonised by Payment Services Directive
(supervisory authorities to be designated by Member States)



I. EU regulatory environment

Front-end payment types

- “Payment instruments”: in general, fall within the scope of Eurosystem oversight
- Currently no general framework or general standards, but requirements targeted to certain instruments (e.g. security objectives for e-money)
- Some NCBs carry out oversight of payment instruments on a national basis
- New/innovative payment services (e-payments): central banks monitor innovation (e.g. <http://www.e-pso.info>)
- Eurosystem can develop a common framework if needed



I. EU regulatory environment

Other provisions

- **Customer protection (e.g. customer information requirements, execution times)** → **harmonised by Payment Services Directive**
- **Anti Money Laundering-Terrorist Financing** → **harmonised by AML-TF Directives and EU Council Regulation**
- **Competition** → **European Commission and National Authorities**

Various cases in the cards industry.

The recent Sector Enquiry found signs of possible market fragmentation in the same industry
- **Self Regulation** → **SEPA (impact on industry, infrastructure, instruments)**



EUROPEAN CENTRAL BANK

I. EU regulatory environment

Payment Institution

“payment institutions” means legal persons who have been granted authorisation in accordance with Article 6 of this Directive to provide and execute payment services throughout the Community (Art 4.)



I. EU regulatory environment

“PAYMENT SERVICES”

- (1) Services enabling cash to be placed on a payment account as well as all the operations required for operating a payment account.
- (2) Services enabling cash withdrawals from a payment account as well as all the operations required for operating a payment account.
- (3) Execution of payment transactions, including transfer of funds on a payment account with the user's payment service provider or with another payment service provider:
 - _execution of direct debits, including one-off direct debits;
 - execution of payment transactions through a payment card or a similar device;
 - execution of credit transfers, including standing orders.
- (4) Execution of payment transactions where the funds are covered by a credit line for a payment service user:
 - execution of direct debits, including one-off direct debits;
 - execution of payment transactions through a payment card or a similar device;
 - execution of credit transfers, including standing orders.
- (5) Issuing and/or acquiring of payment instruments.
- (6) Money remittance (*definition given in art 4*).
- (7) Execution of payment transactions where the consent of the payer to a payment transaction is transmitted by means of any telecommunication, digital or IT device and the payment is made to the telecommunication, IT system or network operator, acting solely as an intermediary on behalf of the payment service user.

II. U.S. regulatory environment

Area of Regulation	Description	Legal basis	Enforcement authority	Regulations or guidelines	Treatment of bank and nonbank organizations
Competition	Competitive implications of mergers, acquisition, and business practices	Antitrust laws	U.S. Department of Justice	Department of Justice Antitrust Division Manual	Equal
Consumer protection	Liabilities and responsibilities in check and electronic funds transfers	State check laws; Electronic Funds Transfer Act of 1978	For checks, state legal authorities; for electronic funds transfer, federal agencies (financial institution supervisory agencies or the Securities and Exchange Commission according to their jurisdiction) with the Federal Trade Commission covering retailers and others payment participants not covered by other agencies	For electronic funds transfer, the Federal Reserve Board's Regulation E specifies disclosure, payment authorization, transaction record, and dispute resolution requirements	Equal
Data security	Safeguarding and disclosing to customers the use of sensitive nonpublic customer information	Gramm-Leach-Bliley Act of 1999; various federal and state laws concerning unfair and deceptive acts in business transactions	Federal financial institution supervisory agencies; Federal Trade Commission	Federal Reserve Board's Regulation P	Unequal between financial and nonfinancial organizations
Prudential supervision	Periodic examination and ongoing monitoring of the financial health and prudential operation of the institution	Various laws enabling supervision of financial institutions; The Bank Service Company Act of 1962; state laws covering money transmitters	Federal financial institution supervisory agencies	State and federal guidance provided by supervisory agencies; Federal Reserve regulations covering payments, such as Regulations J (check collection) and CC (check funds availability)	Generally unequal with the possible exception of where banks outsource payment processing to nonbanks
Law enforcement	Efforts to counter trends in illegal data breaches, identity theft, and money laundering	USA Patriot Act of 2001; Bank Secrecy Act of 1970; state law	Federal Bureau of Investigation Cyber Operations group; Secret Service Electronic Crimes Task Force; Department of the Treasury Financial Crimes Enforcement Network; state and local law enforcement	Electronic Crimes Task Force website (www.fincen.gov/reg_guidance.html); FinCEN website (www.secretservice.gov/ectf.shtml)	Equal



III. U.S. - EU comparison

Some similarities...

- Expectation that banks that outsource will be responsible for controlling risk in outsourced activity
- Supervision of processors affiliated with banks
- Some reliance on self-regulation



III. U.S. - EU comparison

Some differences...

- ECB/Eurosystem have a clear legal mandate to oversee payment systems and regulatory authority; the Federal Reserve less so
- Supervision of nonbank processors is more uniform within the U.S. than across EU Member States, but the Payment Services Directive has brought harmonization
- Nonbank providers of payment services to end-users: in the US there are no equivalents to ELMIs or the “payment institutions” introduced by the Payment Services Directive