Topics of this issue:

1. A note to our readers

PaySys Consultancy would like to announce that from now on we are accepting "letters to the editor". Given the expertise of our readers we hope that this move will further enhance the quality of this publication. Please, send us your views to sepa-newsletter@paysys.de.

2. Italian government wants to reduce MSCs

The Italian government was planning to cap MSCs at 1.5% and to ban them for petrol purchases below 100€.[1] This plan was part of the approach to fight tax evasion. After some discussion, the initial proposal has been changed. Starting June 1, 2012, the industry has to implement its own strategy for lowering MSCs. The government will monitor future developments and if it finds the results unacceptable it will step in.

Our Comment

The current financial crisis seems to hit the card market in many ways. First, after the Lehmann bankruptcy, consumers became more cautious and card use went down. Second, in some countries like, for instance, the US there seems to have been a move away from cards (and the easy credit they provide) back to cash – in order to control spending. Now, in Italy, we can observe a completely different effect. In its bid to raise tax revenues and fight

[1] Duygu Tavan, Death of a merchant acquirer, Cards International, February 2012, p. 6-7 and Payment Cards and Mobile: Italy imposes merchant service charge cap, Jan./Feb. 2012, 10.

the black economy the Italian government wants to promote the use of cards at the cost of cash use. This is certainly an honourable endeavor. But we ask ourselves whether the current regulatory move will actually have the desired effect. It has been repeated again and again that the card market is a 2-sided market. It requires to have both sides, issuing and acquiring (or merchant and card holder), on board. Lowering MSCs makes it cheaper for merchants to accept cards. However, who will foot the bill? If acquirers have to take a hit, they will be less likely to subsidize terminals. That means that card payments may actually become more expensive for those merchants with low transaction volumes. If issuers have to face lower interchange fees, they will be less inclined to promote cards. In addition, they may start to charge higher prices for cards. This may lead to lower adoption rates by card holders. Thus, the overall effect may well be that cards are used less – not more.

Table 1: Card transactions per POS terminal in 3 countries

	2006	2007	2008	2009	2010
France	4.917	4.945	4.753	4.975	5.181
Germany	4.211	3.795	3.900	3.810	3.956
Italy	1.059	1.090	1.046	1.006	1.004

Source: BIS (Committee on Payment and Settlement Systems: Statistics on payment, clearing and settlement systems in the CPSS countries, Figures for 2010, September 2011 and own calculations.

In fact, when comparing Italy with France and Germany it becomes obvious that the average Italian POS terminal is not used very actively. A reduction of MSCs may well have the effect that merchants will be promoting card use more actively. But it may also have the effect that a lot of these terminals are shut-off altogether.

3. ELV: A life in SEPA?

On 14 February 2012, the European Parliament adopted the „Technical requirements for credit transfers and direct debits in euros“ (end-date regulation).[2] This decision was widely expected after an agreement between the EU Commission, the EU Council and the EU Parliament in December 2011. The new text has brought some last minute changes that

[2] European Parliament legislative resolution of 14 February 2012 on the proposal for a regulation of the European Parliament and of the Council establishing technical requirements for credit transfers and direct debits in euros and amending Regulation (EC) No 924/2009 (COM(2010)0775 – C7-0434/2010 – 2010/0373(COD))
http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2012-0037+0+DOC+XML+V0//EN#top

make ELV (the non-guaranteed, signature-based German POS payment system) possible in the future – at least from a legal point of view.

First, there is the provision that national legislatures may allow the use of national direct debit systems for card initiated direct debits until 1 February 2016 (Article 16 (4)).

Second, in the case of direct debits, the clearing records do not have to contain the name of the payer (Annex, Technical Requirements (3)(a)(iv)).

Third, BIC – in addition to IBAN - is not necessarily required (Article 5 (5) and (7)).

Finally, no charge may be levied for reading out card data in order to generate a direct debit mandate (Article 5 (8)).

Our Comment

The Commission and the ECB have always maintained that Europe needs more than two card schemes. They argue that three or more schemes are necessary in order to have competition in the field of cards. Therefore, it would be more than ironic if SEPA – a project initiated by the public authorities - would lead to the demise of ELV. Apparently, regulators have come around to see things in a similar fashion. The end-date regulation passed by the European Parliament (still to be confirmed by the EU Council) throws a lifeline to ELV. As things stand, ELV will be legally possible in the future.

That does not mean that ELV will survive, however. The EPC Rule Books differ from the Technical Annex of the end-date regulation. Therefore, in the future, it may well be impossible to base ELV on SEPA direct debits. For now, the EPC does not seem to be enthusiastic about paving the way for a European ELV. However, merchants, in particular German merchants, keep lobbying the EU Commission and seem to have found some support from DG Competition. Ironically, the action of DG Competition may also be the worst threat for ELV. As competition authorities regulate interchange fees for guaranteed card payment schemes downward, the business case for non-guaranteed payment systems such as ELV becomes more difficult.

4. UK government wants to restrict surcharging

Last year the consumer protection association "Which?" filed a super complaint with the Office of Fair Trading (OFT) against surcharging practices in the passenger transport sector (see the May 2011 edition of our SEPA newsletter). The OFT found that the way surcharging was implemented may be misleading customers. Price transparency is reduced because payment surcharges are often presented as "drip prices", i.e. they are appearing only after consumers have gone through a lengthy order process.

In order to remedy this, the OFT proposed to exempt debit card payments, the most widely accessible payment instrument, from surcharges.

In December 2011, the UK Government has decided to take action with respect to surcharging. It has announced that it will:[3]

"- Ban excessive surcharges on all forms of payment, not just debit cards;

- Extend the ban across most retail sectors, not just transport; and

- Become the first European country to act by implementing forthcoming European legislation early to ban this practice before the end of 2012."

The UK government points out that it does not want to prohibit surcharging completely. It just wants to prohibit "excessive" payment surcharges.

Our Comment

Surcharging is a controversial issue. For a long time, most card schemes have banned surcharging, making it impossible for merchants to charge card users directly an additional fee. As a consequence, card costs had to be recuperated in the general mark-up included in the price paid by all customers. Anti-trust authorities have not been happy with this state of affairs and increasingly, rules banning surcharging ("non-discrimination rules" or "no surcharge rules") have been prohibited. Thus, surcharging is also an issue in the Payment Services Directive (PSD). The PSD includes a paragraph prohibiting non-discrimination rules. However, member states have the right to decide whether they want to implement this paragraph or not (see Table 2). Thus, over the years, merchants in many countries have gained the right to surcharge for card payments.

Table 2: PSD transposition: the case of surcharging

Surcharging allowed	Surcharging forbidden/limited
Belgium, Bulgaria, Check Republic, Estonia, Germany, Ireland, Netherlands, Poland, Slovenia, Spain	Austria, Cyprus, Denmark, Finland, France, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Portugal, Romania, Slovakia, Sweden and the United Kingdom.

Source: European Commission, 2011: General report on the PSD-transposition by the Member States

[3] See: Government to bring forward legislation to tackle excessive card surcharges, 23 December 2011 (http://www.hm-treasury.gov.uk/press_148_11.htm)

The improvement of merchants' rights has probably made the anti-trust watchdogs happy but consumer protection agencies have not always been content with the results. The complaint of Which? makes this plain. The European Commission has also seen a need for regulatory intervention and has included surcharging in its new EU Consumer Rights Directive[4] (see also our June/July 2011 newsletter).

Given that surcharging can also be misused by rogue merchants it is understandable that regulators want to restrict the possible size of surcharges. At the same time, it is to be applauded that surcharges are not prohibited outright because surcharging can be seen as a kind of safety valve if there is market power on the issuing side of the market.

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[4] See Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:304:FULL:EN:PDF