



EBA/RTS/2016/05

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EBA FINAL draft Regulatory Technical Standards

on separation of payment card schemes and processing entities
under Article 7 (6) of Regulation (EU) 2015/751

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Abbreviations

ABC	activity-based costing
CP	consultation paper
EBA	European Banking Authority
EU	European Union
IFR	Interchange Fee Regulation (EU) 2015/751
NDA	non-disclosure agreement
RTS	regulatory technical standards

1. Executive summary

The Interchange Fees for Card-Based Payment Transactions Regulation (EU) 2015/751 (IFR) aims to facilitate the creation of a single market for card payments across the EU, by ensuring a level playing field that facilitates greater competition between card schemes as well as between processing services providers. To that end, Article 7(6) IFR conferred on the EBA the mandate to develop draft RTS establishing the requirements with which payment card schemes and processing entities have to comply to ensure the independence of their accounting, organisational and decision-making processes.

In order to deliver the mandate, the EBA organised a workshop in June 2015 with a sample of domestic and international four-party card schemes, three-party card schemes, processing entities, and card standardisation bodies in the EU. This was followed by the EBA's Consultation Paper in December 2015 as well as by a public hearing in January 2016, which was attended by 50 representatives from card schemes, processing entities and other interested parties. The EBA received 16 responses to the Consultation Paper, all of which supported the general aims of the RTS as well as the provisions proposed therein. However, several respondents raised concerns related to specific aspects of the RTS, which led to the EBA re-considering particular aspects of its approach and which thereby resulted in the following provisions being amended or clarified.

With regard to accounting independence, the EBA deleted the requirement in chapter 2 of the RTS for assets and liabilities to be separated, because the EBA recognises that there may be methods for passing costs within a group that do not require a balance sheet separation. Furthermore, in order to address a concern related to cross-subsidisation, the EBA inserted an additional provision (as Article 5, which requires any transfer of funds between card schemes and processing entities to be fully explained). The RTS also now clarify that the reliance on alternative methods for accounting separation is possible only where expenses cannot be allocated via ABC.

With regard to organisational independence, the EBA amended the definition of 'senior management' in Article 2 to clarify that members of senior management are part of the payment card scheme or processing entity and are, therefore, also subject to the provisions that are applicable to staff generally. It also amended Article 11 to allow that, where payment card schemes and processing entities are part of a same legal entity or group, staff of payment card schemes and processing entities remain eligible to participate in general all-employee share plans and benefits arrangements provided that this does not incentivise staff to give preferential treatment to either the payment card scheme or the processing entity. Finally, an additional clarification to Article 14 has been introduced with regard to the meaning of 'sensitive information'.

With regard to decision-making independence, the EBA amended article 16 to clarify that measures to mitigate conflicts of interest between the payment card scheme and the participating processing entity management bodies include setting limits to the number of

directorships which may be held by the same person at the same time in the management body of the payment card scheme and of the participating processing entity.

2. Background and rationale

2.1 Background

1. On 8 June 2015, the Interchange Fees for Card-Based Payment Transactions Regulation (EU) 2015/751 (IFR) entered into force in the EU and has been applicable from 9 June 2016. The IFR aims to facilitate the creation of a single market for card payments across the EU by ensuring a level playing field that facilitates greater competition.
2. In addition to more widely known provisions, such as the capping of the interchange fees for the most frequently used cards, the IFR stipulates an additional measure that also aims to facilitate greater competition, namely the separation of payment card schemes and processing entities, to ensure effective and sustainable competition among processing services providers. To that end, Article 7(6) IFR confers on the EBA the mandate to develop draft RTS establishing the requirements with which payment card schemes and processing entities must comply to ensure the independence of their accounting, organisational and decision-making processes.
3. Prior to developing these requirements, the EBA held a workshop with market participants in June 2015, and gathered a sample of domestic and international four-party card schemes, three-party card schemes, processing entities and card standardisation bodies in the EU, in order to assess the status quo and to collect the initial views of the industries' that would have to comply with the future RTS of the EBA. In addition, the EBA received valuable input from national competent authorities and market participants that had not participated in the workshop.
4. Having assessed these different inputs, the EBA published on 8 December 2015 a CP on draft RTS for the separation of payment card schemes and processing entities under the IFR¹. In order to allow future respondents to the CP to refine their submissions to the EBA, the EBA also convened on its premises a 'public hearing', which took place on 19 February 2016. During the hearing, the EBA explained the rationale behind the requirements that had been published in the Consultation Paper, and external stakeholders were invited to ask questions. The public hearing was attended by 50 individuals, including representatives from processors, domestic and international card schemes, consultants and national authorities.
5. The consultation period closed on 8 March 2016. The EBA received 16 responses to the CP, 9 of which were published, with permission, on the EBA website.

¹ See <http://www.eba.europa.eu/regulation-and-policy/payment-services-and-electronic-money/regulatory-technical-standards-on-payment-card-schemes-and-processing-entities-under-the-ifr>

2.2 Rationale

6. The EBA has assessed all of the responses and has arrived at the main conclusions set out below with regard to the requirements that do and do not require amendment. They are presented using the structure of the RTS, i.e. the three aspects of independence provided in Article 7(6) IFR, namely, accounting, organisational and decision-making processes. This is followed by the EBA's feedback on comments received regarding the implementation of the IFR more generally. Additional details are provided in the feedback table in section 4.2.

Accounting independence

7. One respondent questioned whether the accounting separation reporting should also cover the balance sheet. In their view, accounting separation was required to ensure that no cross-subsidisation can occur between the processing and scheme activities, and to achieve that objective, a separation of profit and loss reporting should be sufficient, without the need to cover the balance sheet also.
8. By way of response, the EBA would like to clarify that the requirement to separate balance sheets aims to ensure that amortisation costs allocated to the scheme and/or processing entities in profit and loss reporting can be justified for those assets that are shared and included in the annual financial statements of the scheme and processing entities. However, the EBA recognises that there might be certain methods for passing the costs related to the use of assets owned within a group that may not require a balance sheet separation. Against this background, the EBA concluded that the reference to separated assets and liabilities in chapter 2 of the draft RTS should be deleted.
9. One respondent, while agreeing with the provisions in the draft RTS, suggested that, in order to improve transparency and to ensure that no cross-subsidisation can occur between the processing and scheme activities, any transfer of funds between card schemes and processing entities must be fully explained. The EBA agrees with this view and therefore inserted an additional article in the draft RTS.
10. Another respondent highlighted the fact that there might be less costly alternative methodologies for cost allocation than the ABC methodology suggested in the draft RTS for accounting separation. Another respondent, by contrast, considered that methodology to be the most appropriate method by which to allocate costs between a payment card scheme and processing entities.
11. In light of these diverging views, the EBA concluded that, in order to ensure a harmonised implementation of the RTS, Article 4 did not require any amendment. Against this background, the reliance on alternative methods for accounting separation shall be possible only where expenses cannot be allocated using ABC as defined in Article 4(2)(d) of the draft RTS on which the EBA had consulted. In the event that an alternative accounting method is

implemented, this method shall be documented in a supporting note that explains the basis for allocation and the rationale for that basis.

12. Another respondent suggested clarifying that the requirements under accounting separation should apply, not to all processing entities, but only to those entities belonging to a company that also has a scheme entity, or to those situations in which the processing entity and the scheme entity have the same shareholder. By way of response, the EBA underlines that the IFR is neutral with regard to the issue of legal separation and is equally neutral with regard to situations in which the activities of card schemes and processing are offered by the same entity or by two different entities. All payment card schemes and processing entities are covered by the IFR. Whenever processing activities are offered in the context of participation in a scheme, the processing entity and the payment card scheme must be independent according to the criteria of organisation, accounting and governance in Article 7 IFR as specified in the RTS. Against this background, the EBA amended recital 10, Articles 3 and 5 of the final draft RTS to specify that the requirement should apply irrespective of the underlying obligations and organisational arrangements between the payment card scheme and processing entities.

Organisational independence

13. While several respondents expressly supported the EBA's innovation scenario proposed in Article 10 of the draft RTS on which the EBA consulted, one respondent raised a concern about the need to inform all processing entities participating in the scheme about the development of a new solution. In the respondent's view, this requirement can pose problems in terms of industrial property rights. In order to address this concern, another respondent suggested that payment card schemes should enter into a NDA with all processing entities participating in the payment card scheme. The EBA assessed the issue, and, as it agrees with the latter view, concluded that Article 10 does not require any amendment.
14. Some respondents asked for clarification over whether or not members of senior management as defined in the draft RTS are also subject to the requirements in the draft RTS that are applicable to staff. The EBA confirms that members of senior management are part of the staff and has therefore amended the definition of 'senior management' contained in Article 1 of the draft RTS to avoid any possible misinterpretation.
15. Several respondents suggested that Article 11 of the draft RTS in relation to remuneration should be amended to allow that, where payment card schemes and processing entities are part of the same legal entity or group, staff of payment card schemes and processing entities remain eligible to participate in general all-employee share plans and benefits arrangements. In the respondent's view, this would motivate staff and make them feel that they belong to the same company despite the fact that they work in separate units. The EBA assessed this point of view and concluded that it agrees to the extent that the remuneration linked to the overall performance of the company would not create an incentive for staff to provide the

payment card scheme or the processing entity with preferential treatment or privileged information that is not available to other competitors. The EBA amended the draft RTS in Article 11 to clarify accordingly.

16. Finally, several respondents asked the EBA to provide greater detail on the definition of 'sensitive information', as the lack of detail introduces, in their views, a degree of operational uncertainty. The EBA is of the view that defining a specific list of sensitive information would be too static and would need to be updated at regular intervals to be able adequately to reflect market developments. Instead, a high-level definition of sensitive information as provided in the draft RTS allows for some flexibility to adapt to the specific circumstances at a national level. Consequently, the EBA has concluded that it should not provide a list of sensitive information but has amended Article 14 of the final draft RTS to clarify that sensitive information relates to information which, as a result of that information not being shared with other competitors, may provide a competitive advantage to either the payment scheme or the processing entity.

Decision-making independence

17. While a majority of respondents agreed with the requirements proposed in the draft RTS, one respondent suggested that each card scheme should be compelled to appoint at least one non-executive director with industry experience to oversee the separation of the brand and processing.
18. Having assessed this suggestion, the EBA considers that, in order to ensure the independence of the card scheme and processing entities in terms of decision-making processes, it is not necessary to require such an appointment. Instead, the EBA is of the view that it is the responsibility of payment card schemes and processing entities to appoint suitable persons to ensure that any conflict of interest is addressed, either by appointing suitable persons to the two separate management bodies or, if the management body is shared between the card scheme and processor, by ensuring an appropriate composition of the common management body. Consequently, the EBA did not amend the requirements proposed in the CP according to the respondent's proposal. However, the EBA amended article 16 to clarify that measures to mitigate conflicts of interest for the decision making process between the payment card scheme and the participating processing entity include setting limits to the number of directorships which may be held by the same person at the same time in the management body of the payment card scheme and of the participating processing entity.

The implementation of the RTS

19. Several respondents expressed concerns in relation to the limitation of the EBA's scope of action with regard to ensuring the consistent implementation of the IFR. In their views, the IFR requires a consistent interpretation and implementation across EU Member States. They were of the view that the absence of an authority that provides guidance on the

interpretation of the IFR and that monitors its implementation may undermine the objectives that the IFR is trying to achieve and may be damaging to the industry.

20. The respondents suggested that the EBA clarify at least how the different competent authorities should cooperate when enforcing the draft RTS to entities offering services in more than one EU country or how the draft RTS will apply to entities operating in the EU but domiciled outside the EU.
21. By way of response, the EBA reiterates what it had already explained in paragraph 10 of the CP, namely that the EBA has full legal powers to develop the RTS as conferred by the IFR but will not be able to ensure the consistent implementation of the RTS across EU Member States or to address any other issue of insufficient regulatory or supervisory convergence that may arise in this market segment. This follows because the IFR has not brought the card payment schemes, processing entities, and overseeing authorities into the scope of action of the EBA.
22. However, the EBA understands that the Commission and EU Member States may provide further guidance in relation to the implementation of the IFR.
23. Another respondent commented that, given the application date of the IFR of 9 June 2016 and the significance of the changes required, the lack of timely guidance to the industry in the form of final RTS that can be adopted prior to the application of the IFR makes it challenging for companies to comply with Article 7 of the IFR. It is the respondent's view that substantial time will be required for companies to implement the changes required by Article 7 of the IFR in a way that ensures the ongoing stability of the payments infrastructure.
24. By way of response, the EBA re-iterates the view expressed in paragraph 12 of the CP, which is as follows:
 - a. Article 7(1)(a) of the IFR will apply to payment card schemes and processing entities from 9 June 2016, as provided in Article 18(2) of the IFR, even if the EBA final RTS do not yet apply on 9 June 2016.
 - b. From 9 June 2016, card schemes and processing entities will have to ensure their independence in terms of accounting, organisational and decision-making processes. In so doing, they may choose to take into account the final draft RTS that are being published by the EBA herewith, despite the fact that the draft RTS are not yet legally binding. Once the final RTS are formally adopted by the Commission, the card schemes and processing entities will be legally bound to comply with the RTS.
 - c. Until the RTS are formally adopted by the Commission, the authorities that will be designated 'competent authorities' by Member States pursuant to Article 13 IFR will ensure compliance with Article 7(1)(a). When so doing, they may also take into account the final draft RTS published by the EBA herewith and are invited to liaise

closely with the Commission to ensure a consistent implementation of the obligations deriving from Article 7(1)(a) pending the adoption of the final draft RTS.

3. EBA FINAL draft Regulatory Technical Standards on separation of payment card schemes and processing entities under Article 7 (6) of Regulation (EU) 2015/751

COMMISSION DELEGATED REGULATION (EU) .../..

of XXX

supplementing Regulation (EU) 2015/751 of the European Parliament and of the Council on interchange fees for card-based payment transactions with regard to regulatory technical standards establishing the requirements to be complied with by payment card schemes and processing entities to ensure the application of independence requirements in terms of accounting, organisation and decision-making process

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,
Having regard to Regulation (EU) 2015/751 of 29 April 2015 of the European Parliament and of the Council on interchange fees for card-based payment transactions² and in particular Article 7(6) thereof,

Whereas:

- (1) In order to specify the requirements ensuring separation of payment card schemes and processing entities, it is appropriate to define certain terms in relation to the accounting, organisation and the decision making process of payment card schemes and processing entities, independently of the legal form adopted by those entities.
- (2) Payment card schemes and processing entities should have accounting processes in place that enable them to produce financial information on separated profit and loss accounts and explanatory notes to that financial information. Those requirements

² OJ L 123, 29.4.2015, p. 1.

should not replace or amend accounting principles and standards or requirements concerning the annual financial statements that already apply to payment card schemes and processing entities.

- (3) For that purpose, it is appropriate to specify how expenses and revenues should be allocated under those accounting processes. Those accounting processes should be duly documented, in particular in relation to transfers of funds between payment card schemes and processing entities.
- (4) Payment card schemes and participating processing entities should produce financial information in compliance with the requirements of this Regulation at least annually and the information should be subject to the review of an independent auditor. That financial information as well as its review by the independent auditor should be made available to competent authorities upon their request in order to allow them to ensure enforcement of independence requirements.
- (5) Payment card schemes and processing entities that are not established as two separate legal persons should at least be organised as two different internal business units. Staff of the payment card scheme and staff of the processing entity, including senior management, should be independent and accommodated in separated workspaces equipped with restricted controlled access to ensure the compliance of staff with independence requirements for the organisation and the decision-making process of those payment card schemes and processing entities.
- (6) Payment card schemes and processing entities should be allowed to develop new solutions for innovation purposes and to cooperate to achieve that purpose, with no prejudice to and in accordance with independence requirements. Therefore the staff of payment card schemes should be able to perform tasks related to the design, update or implementation of processing services only where specific conditions ensuring compliance with independence requirements are met.
- (7) Remuneration frameworks for staff of the payment card scheme and of the processing entity should not be set on the economic performance of the processing entity or the payment card scheme respectively to avoid any incentives for staff of the payment card scheme or of the processing entity to provide each other with preferential treatment or privileged information not available to their competitors. Where payment card schemes and processing entities are part of the same legal entity or group, staff of payment card schemes and of processing entities should remain however eligible to participate in general all-employee share plans and benefits arrangements to the extent that those plans and benefits avoid any incentives for staff of the payment card scheme or of the processing entity to provide each other with preferential treatment or privileged information not available to their competitors; those remuneration policies and those plans and benefits should be made fully available to competent authorities upon their request.
- (8) It is appropriate to specify that when the payment card scheme and the processing entity are part of the same legal entity or group, rules for ensuring compliance of staff with the current regulation should be laid down in a code of conduct that should be made public.

- (9) Payment card schemes and processing entities should be allowed to use shared services provided that this usage does not result in disclosing sensitive information between them and that the conditions for sharing the services, including the financial conditions under which these services are offered, are duly documented in a single document. Such document should be made available to competent authorities upon their request in order to allow them to ensure the application of independence requirements. Specific conditions for the sharing of the information management system should be introduced. Sharing of sensitive information between payment card schemes and processing entities which may provide either the payment scheme or the processing entity at a competitive advantage compared to other competitors should however be prohibited.
- (10) It is appropriate to set out conditions for the composition of the management bodies of the payments card schemes and processing entities, irrespective of their legal form and organisational arrangements, to ensure that potential conflicts of interest for the decision making process between the payment card schemes and processing entities are appropriately mitigated. Furthermore, payment card schemes and processing entities should have separated annual operating plans approved by their relevant management bodies. Such separated annual operating plans should be made fully available to competent authorities upon their request, in order to allow them to ensure enforcement of independence requirements.
- (11) This Regulation is based on the draft regulatory technical standards submitted by the European Banking Authority ('EBA') to the Commission.
- (12) EBA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council³,

³ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 287, 29.10.2013, p. 5).

HAS ADOPTED THIS REGULATION:

CHAPTER I GENERAL PROVISIONS

Article 1 Subject matter

This Regulation establishes the requirements to be complied with by payment card schemes and processing entities to ensure the application of point (a) of Article 7(1) of Regulation (EU) 2015/751.

Article 2 Definitions

For the purposes of this Regulation, the following definitions shall apply:

- (1) ‘management body’ means a payment card scheme’s or processing entity's body or bodies, which are appointed in accordance with national laws, which are empowered to set the entity's strategy, objectives and overall direction, and which oversee and monitor management decision-making, and include the persons who effectively direct the business/ of the entity;
- (2) ‘senior management’ means those natural persons within a payment card scheme or processing entity who exercise executive functions and who are responsible and accountable to the management body for the day-to-day management of the payment card scheme or processing entity ;
- (3) ‘remuneration’ means all forms of fixed and variable remuneration, including payments made or benefits, monetary or non-monetary, awarded directly by or on behalf of the payment card scheme or processing entity to employees;
- (4) ‘shared services’ means any activity, function or service performed by either an internal unit within a payment card scheme or processing entity or a separate legal entity and executed to the benefit of both the payment card scheme and the processing entity.
- (5) ‘group’ means a parent undertaking and all its subsidiary undertakings as defined in point (11) of Article 2 of Directive (EU) 2013/34 of the European Parliament and of the Council⁴;

⁴ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 331, 15.12.2010, p. 12).

CHAPTER II ACCOUNTING

Article 3 Financial information

1. Payment card schemes and participating processing entities, irrespective of the underlying obligations and organisational arrangements between them, shall have accounting processes in place that enable them to produce financial information on separated profit and loss accounts and explanatory notes to that financial information.
2. The financial information referred to in paragraph 1 shall comply with the applicable accounting framework for preparing financial statements of payment card schemes and processing entities.

Article 4 Allocation of expenses and revenues

The financial information referred to in Article 3(1) shall be based on an allocation of expenses and revenues between the payment card scheme and the processing entity in accordance with the following rules:

- (a) expenses and revenues that are directly attributable to the provision of processing services shall be allocated to the processing entity;
- (b) expenses and revenues that are directly attributable to the payment card scheme shall be allocated to the payment card scheme;
- (c) expenses and revenues that are not directly attributable to the provision of processing services or to the payment card scheme shall be allocated on an activity-based costing ('ABC'), which involves allocating indirect costs and revenues according to the actual consumption by the processing services entity or by the payment card scheme;
- (d) expenses and revenues that are not directly attributable and cannot be allocated on ABC shall be allocated according to an accounting methodology documented in a supporting note

The supporting note referred to in point (d) shall indicate for each allocated costs and revenues under that methodology:

- (a) the basis for the allocation;
- (b) the rationale for that basis.

Article 5 Documentation of transfer of funds between payment card schemes and processing entities

1. Payment card schemes and processing entities shall produce specific explanatory notes for any transfer of funds between them, including the provision of services

or the use of shared services referred to in Article 12, specifying the prices and fees of those services, irrespective of any underlying obligations and organisational arrangements between them. Those explanatory notes shall be included in the financial information referred to in Article 3(1).

2. Where payment card schemes and processing entities belong to the same legal entity or group, the specific explanatory notes referred to in paragraph 1 shall provide evidence that the prices and fees for the provision of services between them or the use of shared services do not differ from prices and fees for same or, in absence, comparable services charged between payment card schemes and processing entities not belonging to the same legal entity or group.

Article 6

Review and frequency of financial information

1. The financial information produced in accordance with Articles 3, 4 and 5 shall be reviewed by an independent and certified auditor.
2. The review referred to in paragraph 1 shall be provided in the form of a report ensuring:
 - (a) a trustworthy and fair view of the financial information produced by payment card schemes and processing entities;
 - (b) consistency and comparability of the financial information with the accounting frameworks for preparing financial statements of payment card schemes and processing entities;
 - (c) consistency of the financial information with previous years' allocation policies or, where such consistency is lacking, an explanation as to why the allocation policy has been changed and a restatement of previous years' figures.
3. The financial information referred to in Articles 3, 4 and 5 shall be submitted to the auditor referred to in paragraph 1 annually and shall be made fully available to the competent authorities upon their request.

CHAPTER III ORGANISATION

Article 7

Functional separation

Payment card schemes and processing entities that are not established as two separate legal entities shall be organised in two separate business internal units.

Article 8

Separation of workspaces

Payment card schemes and the processing entities that are located in the same premises shall be organised in separate workspaces equipped with restricted and controlled access.

Article 9
Independence of senior management

The senior management of payment card schemes or of the payment card scheme business unit shall be different from the senior management of processing entities or of the processing entity business unit, and act autonomously.

Article 10
Independence of staff

1. The staff of payment card schemes shall be different from the staff of processing entities.
2. The staff of payment card schemes and of processing entities may perform tasks related to the provision of shared services as referred to in Article 12.
3. The staff of the payment card scheme may perform tasks related to the design, update or implementation of any processing services in the initial phase of development of new solutions, provided that:
 - (a) those tasks are necessary for innovation purposes;
 - (b) the payment card scheme informs all processing entities participating in the payment card scheme at the same time and under the same conditions of the development of the new solution for processing services;
 - (c) the processing entities are selected on a non-discriminatory basis.
4. The staff of a processing entity may perform tasks related to the design of the single set of rules, practices, standards and implementation guidelines for the execution of card-based payment transactions, provided that:
 - (a) the tasks related to the design of the single set of rules may be performed by other processing entities on a non-discriminatory basis;
 - (b) the design of those rules involves a representative sample of all processing entities participating in the payment card scheme.

Article 11
Remuneration

1. Processing entities shall adopt remuneration policies that do not create incentives for their staff to provide a payment card scheme with preferential treatment or privileged information which is not available to other competitors. Remuneration of their staff shall therefore reflect the performance of the processing entity and shall not be directly linked to the performance of the payment card scheme to which the processing entity provides services.
2. Payment card schemes shall adopt remuneration policies that do not create incentives for their staff to provide a processing entity with preferential treatment or privileged information which is not available to other competitors. Remuneration of their staff shall therefore reflect the performance of the payment card schemes and shall not be directly linked to the performance of a processing entity.

3. The staff of payment card schemes and processing entities that are part of the same legal entity or group shall be allowed to participate in general all-employee share plans and benefits arrangements where those plans and arrangements offer an appropriately weighted basket of shares or some other appropriate index that ensures compliance with paragraphs 1 and 2.
4. Remuneration policies referred to in paragraph 1 and 2 and plans and benefits referred to in paragraph 3 shall be made fully available to competent authorities upon their request.

Article 12
Use of shared services

1. The use of shared services between payment card schemes and processing entities shall not imply the disclosure of sensitive information, as referred in Article 14, between payment card schemes and processing entities.
2. Payment card schemes and processing entities making use of shared services shall describe in a single document the list of shared services and the conditions, including the financial conditions, under which they are provided.
3. The single document referred to in paragraph 2 shall be made available to competent authorities upon their request.

Article 13
Use of a shared information management system

1. An information management system that is shared by a payment card scheme and a processing entity shall ensure that:
 - (a) the staff of the payment card scheme and of the processing entity are separately identified via the authentication procedure to access the information management system;
 - (b) users only have access to information which they are entitled to in compliance with this Regulation. In particular, any sensitive information referred to in Article 14 of a processing entity shall not be accessed by the staff of the payment card scheme and any sensitive information of a payment card scheme shall not be accessed by the staff of the processing entity.
2. The shared information management system shall be maintained in a way that ensures that no sensitive information, as referred to in Article 14, is shared between payment card schemes and the processing entities.

Article 14
Sensitive information

Payment card schemes and processing entities shall not share information of a sensitive nature that provide a competitive advantage to either the payment scheme or the processing entity where such information is not shared with other competitors.

Article 15
Code of conduct

1. Payment card schemes and processing entities which belong to the same legal entity or group shall define and disclose publicly on their website a code of conduct, setting out how their respective staff shall act to ensure compliance with this Regulation.
2. The code of conduct shall, in particular, define rules to prevent the sharing of sensitive information referred to in Article 14 between payment card schemes and the processing entities.

CHAPTER IV
DECISION-MAKING PROCESS

Article 16
Independence of the management bodies

1. Payment card schemes and processing entities shall ensure that the composition of their management bodies mitigates conflicts of interest for the decision making process between the payment card scheme and the participating processing entity, including by setting limits to the number of directorships which may be held by the same person at the same time in the management body of the payment card scheme and of the participating processing entity.
2. The management bodies of payment card schemes and the processing entities that belong to the same legal entity or group shall approve and periodically review conflict of interest policies for managing and monitoring the compliance with this Regulation, such as the code of conduct referred to in Article 15.
3. For the purposes of paragraph 2 and where it is disproportionate to set limits to the number of directorships which may be held by the same person in accordance with paragraph 1, payment card schemes and processing entities shall establish:
 - (a) a dedicated composition of the management body responsible for decisions related to the payment card scheme activities, with the exemption of shared services referred to in Article 12, and which shall be composed of members of the management body that do not perform any executive function in relation to processing activities. Those members shall advise the management body on the payment card scheme strategy in compliance with this Regulation and assist the management body in overseeing the implementation of that strategy by senior management;
 - (b) a dedicated composition of the management body responsible for decisions related to the processing activities, with the exemption of shared services referred to in Article 12, and which shall be composed of members of the management body that do not perform any executive function in relation to payment card scheme activities. Those members shall advise the management body on the processing entity strategy in compliance with this Regulation and assist the management body in overseeing the implementation of that strategy by senior management;

- (c) where part of the same legal entity, independent reporting lines from senior management of the payment card scheme business unit and the processing entity business unit respectively to the management body.
- 4. The organisational arrangements established in accordance with paragraph 3 shall be made available to competent authorities upon their request.
- 5. The management body shall retain overall responsibility for compliance with this Regulation.

Article 17

Annual operating plan independence

- 1. Payment card schemes and processing entities shall have separate annual operating plans determining the budget, including capital and operating expenditures and possible authority delegations to engage such expenditures, which shall be submitted to their respective management body for approval or, where relevant, to the management body referred to in Article 16.
- 2. The separated annual operating plans shall be made fully available to competent authorities upon their request

CHAPTER V
FINAL PROVISIONS

Article 18

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission
The President

4. Accompanying documents

4.1 Cost-benefit analysis / impact assessment

Article 10(1) of the EBA Regulation provides that when any regulatory technical standards (RTS) developed by the EBA are submitted to the Commission for adoption, they should be accompanied by an analysis of ‘the potential related costs and benefits’. This analysis should provide an overview of the findings regarding the problem to be dealt with, the solutions proposed and the potential impact of these options.

A. Problem identification and baseline scenario

The migration from cash and paper to efficient electronic payment instruments has been found to stimulate the overall economy, consumption and trade in European retail markets⁵. Card payments are an increasingly important segment of the EU financial services market and constitute the most important and fastest growing non-cash payment instrument in the EU⁶.

Evidence indicates, however, that there are market imperfections and barriers to competition in the market for card payments in the EU⁷, particularly with regard to the relationship between payment card schemes and the entities in charge of processing payment transactions⁸.

When initiating a card payment, the payment transaction needs to be processed in order for:

- a. the transaction to be authorised by the payment service provider of the payer (issuer) and the amount to be deducted from the correct payment account of the payer; and
- b. the payment to arrive at the right payment account of the payee.

For this purpose, the merchant (payee) makes use of the services of a processing provider. This provider manages the communication and IT processes needed to execute the payment transaction, whereas the card scheme is responsible for the commercial and contractual framework applying to the payment transaction, i.e. the rules, practices and standards for the execution of card payments.

Currently, card payment schemes often offer their own services for processing card payment transactions, which compete with services offered by other external independent card processing providers. Processing services offered by card payment schemes are usually referred to as the

⁵ ECB: Retail payments and the real economy (2013)

⁶ ECB: Payment statistics

⁷ European Competition Network: Information Paper on competition enforcement in the payments sector (2012); COM DG Competition: Competition policy brief on the interchange fees regulation (2015);

⁸ ECB: Card payments in Europe – A renewed focus on SEPA for cards (2014)

default scheme processing infrastructure and ensure the reachability of all issuers and all acquirers participating in the scheme.

This situation has given rise to concerns that schemes offering processing services grant beneficial treatment to their own processing services to the detriment of processing competitors, thus leading to a distortion of competition in the processing market.

One possible form of discrimination is to put processing competitors at a disadvantage when pricing the access to the scheme infrastructures. Discrimination can also be non-pricing related and can take the form, for example, of giving preference to the requirements of internal operations over those of competing operators when establishing the conditions of access to the infrastructure.

Without regulatory intervention, the problems and distortions described above would persist.

B. Policy objectives

These standards are intended to help create a single market for card payments across the EU⁹, by ensuring a level playing field environment that will allow for more competition, in particular by increasing competition in the card processing business area, and that will protect consumers in Europe¹⁰ (general objectives). In order to address the above issues and to ensure effective and sustainable competition among processing services providers, Article 7(6) IFR confers on the EBA the mandate to develop draft RTS establishing the requirements with which payment card schemes and processing entities must comply to ensure the independence of their accounting, organisational and decision-making processes (operational objectives) as set out in Regulation 7.1(a).

In so doing, the IFR aims to prevent potential discrimination between different processors, allowing the processing market to become more competitive. As stated in recital 33 IFR, independence should allow all processors to compete for customers of the schemes. It should, in particular, ensure that payment schemes and their processing entities do not discriminate, for instance by providing each other with preferential treatment or privileged information (specific objectives) that is not available to their competitors in their respective market segment. This would impose excessive information requirements on their competitors in their respective market segments, cross-subsidising their respective activities or requiring shared governance arrangements.

⁹ COM: Green paper on retail financial services (2015) and COM: Green Paper towards an integrated European market for card, internet and mobile payments (2012).

¹⁰ EBA: Consumer trends report (2015), EBA: 2016-2018 multi-annual work programme and EBA: Annual report 2015 (forthcoming).

C. Options considered

In pursuit of the above objectives, a number of options for technical specifications are discussed in relation to the following:

- General

- To develop and publish a list of services covered by the definition of processing (Option 1.1)
- To abstain from developing a list of services covered by the term processing (Option 1.2)

- Accounting

- To disclose separated financial statements only to competent authorities (Option 2.1)
- To disclose separated financial statements to the public (Option 2.2)

- Organisation and decision-making¹¹

- To require the processing function to be performed by a separate business unit (Option 3.1)
- To abstain from requiring a separate business unit for the processing function (Option 3.2)
- To allow payment card schemes and processing entities to use shared services (Option 4.1)
- To prohibit the use of shared services by payment card schemes and processing entities (Option 4.2)
- To allow for the derogation of requirements to facilitate innovation in card payment services (Option 5.1)
- To take no specific measures to encourage innovation in card payment services (Option 5.2)
- To prohibit any sharing of sensitive information between payment card schemes and processing entities (Option 6.1)
- To allow payment card schemes to request financial information from processing entities for risk management purposes (Option 6.2)

¹¹ For reference see EBA: GL on internal governance (2011).

D. Cost-benefit analysis¹² and preferred options

These RTS are expected to mainly affect the payment card schemes, the entities processing card payment transactions, the acquirers and issuers, the payees (merchants), the payers (consumers) and the internal market for card payment services, particularly in terms of its competition characteristics.

Regarding the need to identify a list of services falling under the scope of processing, Article 2(27) IFR provides that ‘“processing” means the performance of payment transaction processing services in terms of the actions required for the handling of a payment instruction between the acquirer and the issuer’. As explained in the background and rationale of these final draft RTS, inputs provided during the workshop that the EBA conducted with market participants showed that there are different views about the list of services that should fall under the scope of ‘processing’ as defined by the IFR.

Given the definition of ‘processing’ provided in the IFR, the EBA is of the view that there is no possibility to further define the list of processing services falling under the scope of these RTS. Although the EBA recognises that the current definition may allow for different interpretations and may therefore hinder a consistent implementation of the RTS by competent authorities and market participants, the EBA would not be able to provide that clarity until card schemes and overseeing authorities have been brought into its scope of action.

Furthermore, defining a specific list of services that would fall under the scope of processing would be too static and would need to be updated at regular intervals to adequately take market developments and innovations in card payment services into account. Instead, relying on the definition of processing included in the IFR facilitates the adaptability of these RTS to future developments and enables specific circumstances at national level to be addressed. Consequently, abstention from developing a list of in-scope payment card services is preferred (Option 1.2).

Regarding the accounting independence of payment card schemes and processing entities, the disclosure of information is commonly associated with costs for payment card schemes and processing entities. The additional disclosure of financial statements to the public would only increase the information available on those processing entities that are related to card payment schemes. Such a requirement could have unintended consequences and could lead to an uneven playing field between competing processing entities. Consequently, it cannot be expected to be proportionate and sufficiently beneficial to the functioning, and, in particular, the intensity, of competition in the internal market for card payment services, thus leaving Option 2.1 as the preferred option.

¹² As a reference see also COM: Impact Assessment accompanying the proposals for a Payment Services Directive and an Interchange Fees Regulation (2013);

While the mandate given to the EBA is to develop draft RTS establishing the requirements with which payment card schemes and processing entities must comply to ensure the independence of their accounting, organisational and decision-making processes, the EBA is of the view that the setting up of an independent business unit as a minimum would be proportionate and should indeed be required (Option 3.1). This requirement is essential for ensuring independence in terms of accounting, organisational and decision-making processes. In addition, it will give a clear signal to the market of the expectations of NCAs and is thus beneficial for the consistency of supervision.

Allowing the use of shared services by payment card schemes and processing entities is expected to limit the costs of the implementation of these technical standards for payment service providers. As the policy objectives would be sufficiently achieved, Option 4.1 is preferred.

Regarding innovation, it is acknowledged that the market for payment services is dynamic in the sense of its innovative potential. Those innovations, however, are usually associated with high initial investments by leading payment service providers. Often, innovation is facilitated by the support (including financial) of a related large card payment service provider. In order to avoid excessively impeding innovation in the payment services market, the derogation of certain requirements of these technical standards (e.g. in relation to staff independence) is proposed (Option 5.1).

Regarding organisational independence, the sharing of sensitive information between payment card schemes and processing entities can impact competition in the European payment cards market. The prohibition of any sharing of sensitive information between payment card schemes and processing entities is expected to prevent competitive distortions due to the asymmetrical distribution of information. It could prove challenging to define eligible purposes for the sharing of information in a sufficiently clear manner, rendering it difficult to implement and supervise this in a harmonised way. The supposed benefits of the sharing of sensitive information to the functioning of the internal market for payment card services and the protection of its consumers are less obvious. Consequently, the prohibition of any sharing of sensitive information between payment card schemes and processing entities is the preferred option (Option 6.1).

4.2 Feedback on the public consultation

The EBA publicly consulted on the draft proposal contained in this paper. The consultation period lasted for 3 months and ended on 8 March 2016. A total of 16 responses were received, 9 of which were published on the EBA website.

This paper presents a summary of the key points and other comments that arose from the consultation, the analysis and discussion triggered by these comments and the actions taken to address them if deemed necessary.

In many cases, several industry bodies made similar comments, or the same body repeated its comments in its response to different questions. In such cases, the comments, and the EBA's analysis, are included in the section of this paper that the EBA considers most appropriate.

Changes to the draft RTS have been incorporated as a result of the responses received during the public consultation.

Summary of key issues and the EBA's analysis

The responses received during the consultation were generally supportive of the draft RTS. Some respondents suggested amendments to the requirements to ensure independence in terms of accounting in order to increase transparency and to ensure that no cross-subsidisation can occur between the processing and scheme activities.

Most respondents also supported the requirements in relation to organisational independence. However, for payment card scheme and processing entities that are part of the same legal entity or group, several respondents asked the EBA to consider the potential need to amend the requirements related to the staff remuneration. Several respondents also asked the EBA to clarify the definition of sensitive information.

Finally, while a majority of respondents agreed with the requirements in relation to decision-making independence, one respondent suggested that each payment card scheme should be compelled to appoint at least one non-executive director with industry experience to be responsible for overseeing the separation of the brand and the processing.

The EBA's assessment of the specific responses is presented in the table below.



Summary of responses to the consultation and the EBA's analysis

Comments	Summary of responses received	The EBA analysis	Amendments to the proposals
General comments			
Definition of processing under the IFR	<p>Several respondents commented that the definition of processing is clearly provided in the IFR and covers all actions occurring between the acquirer and the issuer, which includes authorisation (routing of transactions between acquirers and issuers), clearing and settlement services.</p> <p>Two of these respondents were in favour of the EBA endorsing the definition provided in the IFR and not providing any further detail.</p> <p>Another two of these respondents instead suggested clarifying that any activity outside the acquirer-to-issuer domain be excluded. One of these respondents suggested that the EBA clarify the list of services covered in the draft RTS.</p>	As indicated in paragraph 26 of the Consultation Paper, given the definition of “processing” provided in the IFR itself, the EBA is of the view that there is no possibility to further define the list of processing services falling under the scope of these RTS.	None.
	Several respondents suggested clarifying the notion of ‘group’ by referring to other EU regulation such as EMIR (EU 648/2012).	The EBA agrees with the view of the respondents and added a definition of ‘group’ in Article 1 of the final draft RTS, by referring to the definition of group contained in Directive (EU) 2013/34.	The definition of group has been inserted in Article 1.
Legal separation	One respondent indicated that the term ‘separate entities’ should be used throughout the RTS and that ‘business units’ should not be mentioned, as it would imply that situations could exist in which the activities are carried out within the same legal	As indicated in paragraph 30 of the Consultation Paper, ‘these draft RTS must not be read as implying that payment card schemes and processing entities are required to implement a legal separation.’	Article 7 has been amended to specify that organisation in two business internal units is applicable



Comments	Summary of responses received	The EBA analysis	Amendments to the proposals
	<p>entity.</p> <p>By contrast, another respondent indicated that the performance of scheme governance functions does not necessarily imply the implementation of a scheme governance function in a separate legal entity with its own accounting, but could for example be achieved via a consortium of banking associations without a formal body and without separate accounting. This respondent suggested that the draft RTS be amended in such a way to allow for the possibility of organising scheme governance outside a separate legal entity.</p>	<p>This means that situations may exist in which the activities of processing and card scheme management are carried out within the same legal entity but that processing and payment card scheme entities shall ensure at all times their independence in terms of accounting, organisational and decision-making processes.</p> <p>Where not established as two separate legal entities, payment card schemes and processing entities shall be organised in two separate business internal units.</p>	<p>where payment card schemes and processing entities are not established as two separate legal entities.</p>
Compliance with the draft RTS	<p>One respondent suggested that the EBA clarify in its draft RTS how compliance with Article 7 IFR will be achieved for schemes operating in several Member States. The same respondent suggested that the EBA clarify that such compliance should be ensured by only one competent authority, which should be the competent authority of the Member State in which the registered office of the scheme is located.</p> <p>One respondent asked for clarification on how the draft RTS will apply to entities operating in the EU but domiciled outside the EU.</p> <p>One respondent suggested that national authorities should be empowered to require that</p>	<p>The EBA considers that this issue is related to the implementation of the IFR, which is outside the scope of the mandate conferred on EBA under Article 7 IFR. Given that the IFR has not been fully brought into the scope of action of the EBA, the EBA is unable to employ any of the other means that it uses to ensure the consistent supervision of the IFR.</p> <p>Akin to the previous comment above, this issue is related to the implementation of the IFR, which is outside the scope of the mandate conferred on the EBA under Article 7 IFR.</p> <p>The EBA considers that such a requirement is outside the mandate conferred under Article 7 IFR, since</p>	<p>None.</p> <p>None.</p> <p>None.</p>



Comments	Summary of responses received	The EBA analysis	Amendments to the proposals
	<p>entities processing transactions in their market submit a document that is signed and endorsed by an independent organisation (e.g. an auditor) verifying that the brand and processing separation rules are in place and are being obeyed. Ideally, this document should be submitted to national regulators on an annual basis.</p>	<p>such a report is an option offered by Article 7(2), which provides that:</p> <p><i>'The competent authority of the Member State where the registered office of the scheme is located may require a payment card scheme to provide an independent report confirming its compliance with paragraph 1'</i></p>	
<p>Scope of the RTS</p>	<p>One respondent requested that the EBA clarify in its draft RTS that a three party card scheme acting as a four party card scheme be subject to the separation requirements for its entire operations across the EEA, including its proprietary business.</p> <p>One respondent requested that the EBA clarify that the requirements contained in the draft RTS apply only when payment card schemes are offering processing services or vice versa.</p>	<p>The EBA underlines that the scope of application of Article 7 to three party schemes is already defined in the IFR, in particular in:</p> <ul style="list-style-type: none"> - Article 1(4) IFR which provides that 'Article 7 does not apply to three party payment card schemes.' - Article 1(5) IFR, which provides that: 'When a three party payment card scheme licenses other payment service providers for the issuance of card-based payment instruments or the acquiring of card-based payment transactions, or both, or issues card-based payment instruments with a co-branding partner or through an agent, it is considered to be a four party payment card scheme. [...]' <p>The EBA underlines that the IFR is neutral as regards the issue of legal separation and is equally neutral as regards the question of whether or not the activities of card schemes and processing are offered by the same entity or by two different entities. All payment</p>	<p>None.</p> <p>Recital 10, and Articles 3 and 5 of the final draft RTS have been amended to specify that the</p>



Comments	Summary of responses received	The EBA analysis	Amendments to the proposals
	<p>One respondent suggested that the EBA clarify in the draft RTS that payment card schemes that are legally separated from processing entities are not exempted from the requirement set out in the RTS, in particular chapters 3 and 4.</p>	<p>card schemes and processing entities are within the scope of the IFR. Whenever processing activities are being offered in the context of participation in a scheme, the processing entity and the payment card scheme must be independent according to the criteria of organisation, accounting and governance set out in Article 7 IFR, and as specified in further detail in the RTS of that article.</p> <p>The EBA already clarified in paragraph 30 of the CP [emphasis added] that: 'Furthermore, these draft RTS must not be read as implying that payment card schemes and processing entities are required to implement a legal separation. However, if a scheme decides to implement a legal separation with a processing entity on a voluntary basis, it should do so in a way that ensures compliance with these draft RTS.' The EBA therefore sees no need for further clarification.</p>	<p>requirements apply irrespective of the underlying obligations and organisational arrangements between the payment card scheme and processing entities.</p> <p>None.</p>
Harmonised implementation of the RTS	<p>Several respondents expressed concerns in relation to the limitation of the EBA's scope of action with regard to the IFR. In their views, the IFR would deserve a harmonious and homogeneous interpretation and implementation. They underlined that failing to rely on a co-ordinating authority to guide the interpretation and to monitor the implementation of Regulation (EU) 2015/751 would fail to deliver on its objectives and would lead to yet another round</p>	<p>As indicated in paragraph 10 of section 3.1 of the Consultation Paper, the EBA underlines that it will develop the RTS as mandated in the IFR. As stated in Article 13(1), Member States shall designate competent authorities that are empowered to ensure the enforcement of this regulation, including compliance with the present RTS. However, the EBA will not be able to ensure the consistent implementation of the RTS across EU Member States or to address any other issue of insufficient regulatory or supervisory convergence that may</p>	None.



Comments	Summary of responses received	The EBA analysis	Amendments to the proposals
	of damaging legislation.	arise in this market segment. This follows because the IFR has not added card payment schemes, processing entities, and overseeing authorities to the scope of action of the EBA.	
Objective of the draft RTS	<p>One respondent suggested that the draft RTS should aim to improve the access to payments services for all parties across the value chain and to ensure that payment institutions have access to settlement in all currencies, under fair terms.</p> <p>One respondent suggested that in order to achieve the objective of non-discrimination between different processors, the draft RTS could require the delivery of a basic service for card authorisation, clearing and settlement.</p>	<p>The EBA considers that this issue falls outside the scope of the EBA mandate under Article 7 IFR. The EBA underlines that access by PI to payments services is addressed by Articles 35 and 36 of Directive (EU) 2015/2366 [PSD2].</p> <p>The EBA considers that this issue is outside the scope of the EBA mandate under Article 7 IFR.</p>	<p>None.</p> <p>None.</p>
Responses to questions in Consultation Paper EBA/CP/2015/24			
Question 1			
Article 1	<p>One respondent was of the view that Article 1 of the draft RTS provides a practical and reasonable definition of the relevant terms.</p> <p>However, several respondents requested that the EBA clarify that 'senior management' as defined in Article 1 would also be considered part of the staff of the card scheme or processing entities, so that</p>	<p>The EBA confirms that senior management is considered part of the staff and agrees with the respondent that a clarification would be beneficial. The EBA has therefore amended the definition of</p>	<p>None.</p> <p>Article 2 of the final draft RTS has been amended and now reads as follows : '(1)</p>



Comments	Summary of responses received	The EBA analysis	Amendments to the proposals
	<p>any requirement contained in the draft RTS applying to staff would also apply to senior management.</p> <p>One respondent asked the EBA to clarify the term 'management body' contained in Article 1 but did not provide any explanation regarding the lack of clarity that may arise from the current definition of this term.</p>	<p>'senior management' contained in Article 1 to avoid any possible misinterpretation.</p> <p>Given that the respondent did not provide any rationale for the clarification, the EBA was not able to consider the relevance of this comment. No amendment has therefore been made</p>	<p>'senior management' means those natural persons within a payment card scheme or processing entity who exercise executive functions and who are responsible and accountable to the management body for the day-to-day management of the payment card scheme or processing entity'.</p> <p>None.</p>
Article 2	One respondent was of the view that Article 2 covers the requirement for independence, but was concerned that the meaning of 'independence' was not provided in the IFR.	The EBA points out that the meaning of independence in terms of accounting, organisational and decision making processes is provided in the final draft RTS included in chapters 2, 3 and 4.	None.
Question 2			
Chapter 2	One respondent agreed with the provisions in the draft RTS but suggested that, in order to improve transparency, any transfer of funds between card	The EBA agrees with the view of the respondent and inserted Article 5 in the final draft RTS accordingly.	A new Article 5 has been inserted in the final draft RTS in



Comments	Summary of responses received	The EBA analysis	Amendments to the proposals
	schemes and processing entities should be fully explained.		relation to the 'Documentation of transfer of funds between payment card schemes and processing entities'.
Chapter 2	One respondent suggested that, in order to enable competent authorities to assess the management reports submitted by the payment card schemes and processing entities in their jurisdiction, the addressees should set out in the management report the types and number of transactions that generate the revenues reported, as well as the share of revenues and transactions (by type) generated by the five largest customers.	The EBA does not consider the additional information requirement suggested by the respondent as necessary for the competent authority to be able to assess compliance with chapter 2 of the final draft RTS and consider that this would entail unnecessary additional costs for the addressees of the RTS.	None.
Chapter 2	Two respondents were of the view that the requirements under accounting separation should be fully met when implementing a legal separation and therefore asked for confirmation in the draft RTS that, in this case, chapter 2 of the draft RTS would not apply.	The EBA underlines that, if the legally separated entities provide separate accounting reports in accordance with chapter 2 of the RTS, the financial information requested under Article 6 of the RTS consists of the respective accounting reports of the legally separated entities.	None.
Chapter 2	One respondent suggested that the draft RTS require more transparency in terms of the fees charged by scheme and processing entities to the end users.	The EBA considers that this issue falls outside the scope of the mandate conferred on the EBA under Article 7 IFR.	None.
Chapter 2	One respondent suggested that, in order to ensure fair market access and a level playing field for all	The EBA considers that this issue is already covered by Article 7(1)(b) of the IFR and is outside the scope	None.



Comments	Summary of responses received	The EBA analysis	Amendments to the proposals
	participants in the payment processing market, the draft RTS should forbid the bundling of scheme and processing fees.	of the EBA mandate under Article 7 IFR.	
Chapter 2	One respondent acknowledged that the mandate given to the EBA was to address the separation of accounting, organisational and decision-making processes. However, the respondent suggested that the objective of the IFR and the related RTS was to prevent possible unfair commercial practices or cross-subsidisation. The respondent therefore suggested adding a requirement that, when a scheme entity and a processing entity have a common shareholder, the independent audit of the account reporting will ensure that the scheme entity is not applying reduced scheme fees or specific rebates to members by using a processing entity under their control.	The EBA considers that this issue is already covered by Article 7(1)(b) of IFR and is outside the scope of the EBA mandate under Article 7 (IFR).	None.
Chapter 2	One respondent suggested clarifying that the requirements under accounting separation should apply not to any processing entity, but only to those belonging to a company that also has a scheme entity or when the processing entity and the scheme entity have one common shareholder.	As explained above, the EBA underlines that the IFR is neutral on the issue of legal separation and is equally neutral on the question of whether or not the activities of card schemes and processing entities are offered by the same entity or by two different entities. All payment card schemes and processing entities are within the scope of the IFR. Whenever processing activities are being offered in the context of the participation to a scheme, the processing entity and the payment card scheme must be independent according to the criteria of organisation, accounting and governance set out in Article 7 IFR and as specified in further detail in the	Article 3 of the final draft RTS have been amended to specify that the requirements apply irrespective of the underlying obligations and organisational arrangements between the payment card schemes and processing entities.



Comments	Summary of responses received	The EBA analysis	Amendments to the proposals
		RTS.	
Article 3	One respondent asked the EBA to clarify the term 'financial information' referred in Article 3.	As explained in recital 3 of the draft RTS, payment card schemes and processing entities should have accounting processes in place that enable them to produce financial information related to separated profit and loss accounts and explanatory notes to this financial information. These requirements are not meant to replace or amend accounting principles and standards or the annual financial statements that apply to payment card schemes and processing entities.	None.
Article 3.1	One respondent considered the request for separate balance sheet reporting to be too costly and unnecessary for preventing cross-subsidisation, which is the main aim of the IFR regulation. The same respondent justified this statement by underlining that some assets could be owned by one entity within a group and that the scheme/processing entities would then be charged for the use of the asset. In that case, the assets separation would not be, in their views, necessary since directly allocated in the P and L.	<p>In the draft RTS, the EBA had required a balance sheet separation to ensure that amortisation costs allocated to the schemes and/or processing entities in the profit and loss account can be justified for those assets that are shared and included in the annual financial statements of the scheme and processing entities.</p> <p>However, when considering the respondent's comment, the EBA recognises that there might be methods for passing the costs related to the use of assets owned within a group that may not require a balance sheet separation. Against this background, the EBA arrived at the view that the reference to separated assets and liabilities in chapter 2 of the final draft RTS should be deleted.</p> <p>Separated assets and liabilities can therefore be</p>	Chapter 2 has been amended by deleting references to assets and liabilities separation or separated balance sheets.



Comments	Summary of responses received	The EBA analysis	Amendments to the proposals
		provided by the addressees in order to justify amortisation costs when applicable.	
Article 4.2	<p>One respondent was of the view that the ABC accounting methodology proposed for accounting separation is too costly in relation to the objectives of the IFR. Against this background, this respondent suggested that transfer pricing methods accepted by tax authorities or time-driven activity-based costing should be allowed.</p> <p>By contrast, another respondent was of the view that the ABC accounting methodology is the most appropriate method by which to allocate costs between a payment card scheme and a processing entity that operate under the same roof.</p> <p>One respondent suggested that a new requirement should be added to Article 4.2 stating that payment card schemes and processing entities shall have separated annual budgets, including capital and operating expenditures, directly allocated to their respective P&Ls.</p>	<p>The EBA considers time-driven activity-based costing to be a specific implementation methodology of ABC which is compliant with the requirements contained in Article 4(1) of the draft RTS.</p> <p>However, the EBA considers that, in order to ensure a harmonised implementation of the RTS, the reliance on an alternative method for accounting separation should be possible only where expenses cannot be allocated on an ABC basis, as defined in Article 4(2)(d) of the draft RTS. In that case, the alternative accounting method implemented shall be documented in a supporting note explaining the basis for allocation; and the rationale for that basis.</p> <p>The EBA considers that this suggestion is already covered by Article 17 of the draft RTS, which states that ‘Payment card schemes and processing entities shall have separated annual operating plans determining the budget, including capital and operating expenditures and possible authority delegations to engage such expenditures, which shall be submitted for approval to their respective management body or, where relevant, to the management body of the payment card scheme and processing entity under the conditions defined in Article 16.’</p>	<p>None.</p> <p>None.</p>



Comments	Summary of responses received	The EBA analysis	Amendments to the proposals
Article 5	<p>One respondent suggested that the EBA amend the term 'audit' in the title of Article 5 to 'review', as it would entail additional controls which would go beyond those ones contained in Article 5(2).</p>	<p>The EBA agrees with the view of the respondent and has amended the title of this article accordingly. In addition, the EBA clarified that the auditor shall be certified.</p>	<p>The title of Article 6 of the final draft RTS has been amended and now reads as follows: 'Review and frequency Audit of financial information'.</p> <p>Point 1 of article 6 was also amended to specify that the auditor shall be certified.</p>
Article 6	<p>Two respondents indicated that, in order to ensure a level playing field with payment card schemes and processing entities that have implemented a legal separation, payment card schemes and processing entities that are part of the same company must make public their financial statements for the two business units, in addition to the proposed requirements in Article 6 of the draft RTS for them to disclose the statements to the relevant competent authorities.</p> <p>By contrast, another respondent supported the proposal under Article 6 of the RTS that the financial information required is made available to the relevant competent authorities only on request and that there is no wider obligation to publish such information. In the respondent's view, any publication requirement would create a significant regulatory and competitive distortion, as other</p>	<p>The EBA considers that, in order to ensure the independence of card scheme and processing entities in terms of accounting, it is not necessary to require the publication of the financial information required under chapter 2 of the draft RTS.</p>	None.



Comments	Summary of responses received	The EBA analysis	Amendments to the proposals
	<p>processors would not be subject to the same transparency requirements.</p> <p>Finally, one respondent suggested that the review of the financial information per business unit (schemes and processing) should be performed by an independent auditor that is different from the one auditing the global accounts for external publication.</p>	<p>In relation to the review of the financial information under Article 6 of the final draft RTS, the EBA considers that reliance on an independent and certified auditor is sufficient to ensure that the review complies with the objectives set out in Article 6.2.</p>	<p>None.</p>
Question 3.			
Chapter 3	<p>One respondent suggested that the draft RTS should clarify the roles, responsibilities and remits of the two separated entities, so as to be clear who would have to be approached for what services.</p>	<p>The EBA considers that the delineation between processing and scheme activities is provided in the IFR itself and is therefore outside the scope of the EBA mandate under Article 7 IFR.</p>	<p>None</p>
Chapter 3	<p>One respondent suggested that staff involved in carrying out processing activities should be organisationally separate from the staff involved in card scheme activities and subject to separate reporting lines. These rules could then also be reinforced by the physical separation of offices, or by secured areas within office buildings, as well as by different management structures separating the structure responsible for the separated entity from the rest of the group, thus preventing influence and control by group members.</p>	<p>The EBA considers that this suggestion is already covered by chapter 3 of the draft RTS on organisational independence.</p>	<p>None.</p>
Article 7	<p>One respondent suggested to the addition in Article 7 of the RTS of the requirement that</p>	<p>The EBA considers that this issue is outside the scope of the EBA mandate under Article 7 IFR.</p>	<p>None.</p>



Comments	Summary of responses received	The EBA analysis	Amendments to the proposals
	<p>payment card schemes put in place a certification procedure to allow a processing entity to process card payments and to prevent payment card schemes from blocking certified processing entities from entering into mutual agreements for interchanging scheme payment transactions, provided that those agreements comply with the operational and financial risk management policies defined by the respective scheme.</p>		
Article 8	<p>One respondent welcomed the EBA's recognition that it is unnecessary for the RTS to require that payment card schemes and processing entities be located on separate premises. However, the same respondent suggested that a restricted controlled access would not necessarily be the most effective means of ensuring the compliance of staff with the requirements set out in chapters 3 and 4 of the draft RTS and recommended requiring the set-up of appropriate firewalls with regard to the management of separate workspaces. The respondent suggested that these firewalls could be assessed by the national competent authorities and by the European Central Bank as part of its assessment of European card schemes.</p> <p>Another respondent suggested adding that mutual access to respective workplaces should be granted on the same principle of non-discrimination with regard to other competing Schemes and Processing entities.</p>	<p>The EBA considers that the separation of workspaces, combined with the other requirements contained in chapter 3, is appropriate and sufficient to ensure organisational independence between the payment card scheme and processing entities.</p>	None.



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Article 10 - Definition	<p>One respondent asked that the RTS clarify what is meant by ‘processing entities participating in the payment card scheme’ and whether this include ‘processing entities’ that are ‘business units’ of a competitor of the payment card scheme.</p>	<p>The EBA hereby clarifies that processing entities participating in the payment card scheme refers to processing entities providing services to the scheme, including processing entities that may be part of the same group of a competitor of the payment card scheme.</p>	None.
Article 10	<p>Several respondents expressly supported the acknowledgement of the innovation scenario proposed in Article 10 of the RTS.</p> <p>One respondent indicated that the provisions in Article 10(3) requiring that “the payment card scheme shall inform all processing entities participating in the payment card scheme at the same time and under the same conditions about the development of a new solution” can pose problems in terms of Industrial Property Rights.</p> <p>One respondent suggested that, in order to address this concern, the payment card scheme should enter into NDAs with all processing entities participating in the payment card scheme.</p> <p>Another respondent commented that non-EU schemes, which are not subject to the same rules, may develop new products outside the EU using their own processing entities and, therefore, create a competitive advantage in the development of specific solutions before deploying it across all processors.</p>	<p>The EBA agrees with the view of the respondent that, in order to address the issue of the protection of industrial property rights, payment card schemes can decide to enter into NDAs with all processing entities participating in the payment card scheme.</p> <p>Regarding the issue of non-EU payment card schemes, the EBA takes note of the comment but cannot assess its merits given the scope of the mandate conferred on the EBA in the IFR.</p>	None.



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	<p>Another respondent suggested that the RTS be more precise concerning the independence of staff and suggested some amendments to Article 10.</p>	<p>Given that the respondent did not provide any rationale for the suggested amendments, the EBA was unable to assess the extent to which the suggested amendments would improve the requirements. No amendment was therefore made.</p>	<p>None.</p>
<p>Article 11</p>	<p>Several respondents suggested that Article 11 of the draft RTS in relation to remuneration should be amended to allow that staff remuneration could be linked, at least in part, to the company's overall performance, so as to motivate staff and make them feel that they belong to the same company despite the fact that they work in separate units. In particular, one respondent underlined that their current global performance remuneration was too attenuated to create an incentive for individuals to collaborate.</p> <p>One respondent also suggested that Article 11 should be clarified, since the distinction between the performance of the processing entity and that of the payment card scheme can exist only in cases in which the processing entity has activities which are other than those resulting from a single and unique payment card scheme.</p>	<p>The EBA agrees with the respondent's view, to the extent that the remuneration linked to the overall performance of the company would not create an incentive for staff to provide the payment card scheme or the processing entity with preferential treatment or privileged information that is not available to other competitors. The EBA has amended Article 11 accordingly.</p> <p>The EBA underlines that this requirement applies to all processing entities, in order to ensure a fair competitive market regardless of whether processing entities offer services to one or several schemes.</p>	<p>Article 11 has been amended .</p> <p>None.</p>
<p>Article 12</p>	<p>One respondent asked the EBA to define the criteria allowing payment scheme and processing entities to rely on shared services and to ensure that the list of shared services is reviewed and approved by the EBA or the national regulator</p>	<p>The EBA considers that these suggestions are already covered in Article 12 of the draft RTS, which specifies that:</p> <ul style="list-style-type: none"> - The use of shared services between payment card schemes and processing entities shall not 	<p>None.</p>



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	where they are located.	<p>imply the disclosure of sensitive information, as referred to in Article 14, between payment card schemes and processing entities.</p> <ul style="list-style-type: none"> - Payment card schemes and processing entities making use of shared services shall define in a single document the list of shared services and the conditions, including the financial conditions, under which they are provided. 	
Article 13	<p>One respondent suggested that card schemes should be required to have physically separate IT systems for their brand and processing activities which are operated independently. However, the respondent also commented that, if their IT systems were to be integrated at a group level, 'Chinese Walls' should be required to ensure that no information is being leaked between the separate processing entity and the rest of the group.</p> <p>One respondent underlined that Article 13 may be redundant compared with the requirements of competition law and that the EBA should ensure that it does not create a double control of the same actions and preoccupations.</p>	<p>The EBA considers that this suggestion is already covered by Article 13 of the draft RTS.</p> <p>The EBA considers that this issue is related to the implementation of the IFR, which is outside the scope of the mandate conferred on the EBA under Article 7. In addition, the EBA will not be able to ensure the consistent implementation of the RTS because the IFR has not added card payment schemes, processing entities, and overseeing authorities to the EBA's scope of action.</p>	<p>None.</p> <p>None.</p>
Article 14	Several respondents asked the EBA to clarify the definition of sensitive information, as it introduces	The EBA is of the view that defining a specific list of sensitive information would be too static and would	Article 14 has been amended to clarify that



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	<p>in their views a level of operational uncertainty with regard to what constitutes sensitive information. Some respondents suggested that it would be preferable if the RTS were to list the types of information to be considered sensitive.</p> <p>One respondent also suggested that Article 14 of the draft RTS goes beyond the scope of Article 7 IFR, because Article 14 of the draft RTS would limit the ability of a scheme to benefit from information held by its processing unit with a view to competing with other schemes or payment transaction providers. The respondent further asserted that the aim of the RTS should be to create a level playing field between processors, and that this should constitute a common ground for the draft RTS, and that 'any proposals which cannot be justified as necessary and proportionate</p>	<p>need to be updated at regular intervals to adequately take account of market developments. Given that the EBA's RTS will be directly applicable to EU law, any future revisions to such law would not be easy to bring about.</p> <p>The EBA therefore prefers to rely on the general definition of sensitive information as defined in the draft RTS instead, which should also facilitate the adaptability of the requirements to specific circumstances at national level.</p> <p>Consequently, the EBA has concluded that it should not provide a list of sensitive information but that it should provide further clarification in Article 14 that sensitive information relates to information which, as a result of that information not being shared with other competitors, may provide a competitive advantage to either the payment scheme or the processing entity.</p> <p>The EBA confirms that Article 14 of the draft RTS limits the ability of a scheme to benefit from information held by its processing unit with a view to competing with other schemes or payment transaction providers.</p> <p>The EBA is of the view that this requirement is compliant with the mandate conferred on the EBA in Article 7 IFR and is also supported by recital (33) IFR, which states that [emphasis added] '<i>Payment card schemes and processing entities</i> should not discriminate, for instance by <u>providing each other</u></p>	<p>sensitive information relates to information which, as a result of that information not being shared with other competitors, may provide a competitive advantage to either the payment scheme or the processing entity</p> <p>None.</p>



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	to advance this specific aim would be without any legal basis’.	<i>with preferential treatment or privileged information which is not available to their competitors on their respective market segment, imposing excessive information requirements on their competitor in their respective market segment, cross-subsidising their respective activities or having shared governance arrangements. Such discriminatory practises contribute to market fragmentation, negatively impact market entry by new players and prevent pan-Union players from emerging, hence hindering the completion of the internal market in the area of card- based payments and internet and mobile payments based on cards, to the detriment of merchants, companies and consumers.’</i>	
Article 15	<p>One respondent considered that the code of conduct should not be made publicly available, but should rather be available to national competent authorities and to the European Central Bank as part of its assessment of European card schemes.</p> <p>Another respondent was of the view that the code of conduct should apply not only to staff, but also to senior management, and suggested that senior management be added in Article 15(1).</p> <p>One respondent suggested that the insertion of a new Article 15(3) requiring that the Code of Conduct enshrines the principle of non-</p>	<p>Given that the respondent did not provide any rationale for this suggestion, the EBA was not able to assess the merit of this suggestion. The EBA however amended article 15 to specify that the code of conduct should be made publicly available on the websites of payment card schemes and processing entities which belong to the same legal entity or group.</p> <p>The EBA confirms that senior management is part of the staff and amended the definition of ‘senior management’ to avoid any possible misinterpretation.</p> <p>The EBA considers that this issue is already covered by Article 7(1)(c) IFR and that it is outside the scope</p>	<p>None.</p> <p>Article 2 of the final draft RTS has been amended as explained above.</p> <p>None.</p>



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	discrimination in all relationships between payment card schemes and certified processing entities.	of the EBA mandate under Article 7 IFR.	
Question 4			
Chapter 4	One respondent suggested that persons responsible for the management of the payment card scheme should not participate in company structures of the processing entity responsible, directly or indirectly, for the day-to-day operation of the processing activities and that the processing entity shall have effective decision-making rights, independent from the payment card scheme, with respect to assets necessary to operate, maintain or develop the processing entity. In particular, so the respondent continued, this would enable the processing entity to approve the annual financial plan.	The EBA considers that this suggestion is already covered by chapters 3 and 4 of the draft RTS.	None.
Chapter 4.	One respondent suggested that payment card schemes should establish compliance programmes that set out the measures taken to ensure that discriminatory conduct towards any external processing entity is excluded and to ensure that observance of it is adequately monitored.	The EBA considers that this issue is already covered by Article 7(1)(c) IFR and that it is outside the scope of the EBA mandate under Article 7 of the IFR.	None.
Article 16	One respondent suggested that the RTS should carefully consider how Article 16(3), which implies the potential for the 'same management body' to be in existence for the two separated entities, can be enacted and made clearly consistent with	Given that these draft RTS must not be read as implying that payment card schemes and processing entities are required to implement a legal separation, the EBA believes that the issue is sufficiently addressed by the provisions in	None.



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	<p>Article 9, which calls for the complete independence of the senior management teams of the two entities.</p> <p>Another respondent also requested further clarification of the term 'conflict of interest'.</p> <p>One respondent suggested that each card scheme should be compelled to appoint at least one non-executive director with industry experience to have a specific remit regarding overseeing the brand and processing separation.</p> <p>One respondent proposed to start Articles 16(1) and 16(2) with "Where part of the same legal entity or group [...]."</p>	<p>Article 16(3), which ensures an independent reporting line from senior management to the management body, combined with a dedicated composition of the management body for decision-making on the processing and scheme activities respectively.</p> <p>Given that the respondent did not provide any rationale for this suggestion, the EBA was not able to assess the merits of the suggestion.</p> <p>The EBA considers that, in order to ensure the independence of card scheme and processing entities in terms of decision-making processes, it is not necessary to require the appointment of one non-executive director with industry experience to oversee the brand and processing separation.</p> <p>Instead, the EBA is of the view that it is the responsibility of payment card schemes and processing entities to appoint suitable persons to ensure that any conflict of interest is addressed, either by appointing suitable persons to the two separate management bodies or, if the management body is shared between the card scheme and processor, by ensuring an appropriate composition of the common management body.</p> <p>The EBA has assessed the merits of the proposal and has come to the conclusion that article 16(1) will apply independently of whether the processing entities and the payment card scheme are part of</p>	<p>None.</p> <p>None.</p> <p>Article 16(2) is amended and now reads as follows: 'The management</p>



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		<p>the same legal entity or group, to ensure that payment card schemes and processing entities do not discriminate, for instance by providing each other with preferential treatment or privileged information that is not available to their competitors in their respective market segments.</p> <p>The EBA agrees with the view of the respondent that Article 16(2) be amended.</p>	<p>bodies of payment card schemes and the processing entities that belong to the same legal entity or group shall approve and periodically review conflict of interest policies for managing and monitoring the compliance with this Regulation, such as the code of conduct referred to in Article 15.'</p>
Question 5			
	<p>One respondent indicated that, in their view, while the final goal is to open the processing of card and card-based payment transactions to effective competition, the independence of schemes and infrastructures in terms of accounting, organisational and decision-making processes enshrined in the Regulation will not ensure the level of competition that many banks that are scheme users, would like to attain.</p> <p>In the respondent's view, a truly effective level of competition will be ensured only where banks' scheme users can contract processing services for card payment transactions regardless of the card</p>	<p>The EBA considers that this issue is outside the scope of the mandate conferred on the EBA under Article 7 (IFR).</p>	<p>None.</p>



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	<p>payment scheme selected by their customers.</p> <p>As a consequence, the respondent suggested that legislative measures should be taken to remove any barrier that prevents processing entities from entering into agreements between themselves in order to route scheme payment transactions to the particular processing entity that is certified under the respective scheme, provided that those agreements comply with the operational and financial risk management policies defined by the respective scheme.</p>		
	<p>One respondent suggested that, given the deadline of 9 June 2016 and the significance of the changes required, the lack of timely guidance to the industry in the form of final RTS does increase the challenge for companies to comply with Article 7 as of 9 June 2016. Given the time which will be required to implement the changes required by Art 7 IFR in a sensible manner (e.g. ensuring the ongoing stability of the payments infrastructure), the respondent was of the view that the preparations of the companies would have to draw heavily on the draft RTS guidance.</p>	<p>As stated in paragraph 12 of the Consultation Paper, the EBA hereby re-iterate the following clarification:</p> <ul style="list-style-type: none"> - Art 7(1)(a) of the IFR will apply to payment card schemes and processing entities from 9 June 2016, as provided in Article 18(2) of the IFR, even if the EBA final RTSs do not yet apply on 9 June 2016. - From June 2016, card schemes and processing entities will have to ensure their independence in terms of accounting, organisational and decision-making processes. In so doing, they may choose to take into account the final draft RTS that should by then be published by the EBA, although this will not be legally binding. Once the final RTS are formally adopted by the Commission, the card schemes and processing entities will be legally bound to comply with the RTS. - Until the RTS are formally adopted by the Commission, in their respective jurisdiction the 	<p>None.</p>



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		<p>competent authorities – when designated pursuant to Article 13 IFR – shall ensure compliance with Article 7(1)(a), and when so doing may also take into account the final draft RTS prepared by the EBA. In this case, the authorities are invited to liaise closely with the Commission to ensure a consistent implementation of the obligations deriving from Article 7(1)(a) pending the adoption of the final draft RTSs.</p>	

