

EBA/Op/2017/01

---

16 February 2017

---

# Opinion of the European Banking Authority

---

On the European Commission's intention to partially endorse and amend the final draft regulatory technical standards submitted by the EBA establishing 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 the decision-making process

## Introduction and legal basis

On 26 July 2016, the European Banking Authority (EBA) submitted to the European Commission for endorsement the final draft regulatory technical standards (RTS) under Article 7 of Regulation (EU) 2015/751<sup>1</sup> on interchange fees for card-based payment transactions (IFR).

The RTS establish requirements to be complied with by payment card schemes and processing entities to ensure the application of independence requirements under Article 7 of the IFR in terms of accounting, organisation and the decision-making process.

By letter dated 5 January 2017, the Commission, acting in accordance with the procedure set out in the fifth and sixth subparagraphs of Article 10(1) of Regulation (EU) No 1093/2010,<sup>2</sup> informed the EBA that it intends to partially endorse the RTS, with amendments.

The EBA's competence to deliver an opinion on the Commission's proposed amendments to the RTS is based on the sixth subparagraph of Article 10(1) of Regulation (EU) No 1093/2010.

In accordance with Article 14(5) of the Rules of Procedure of the Board of Supervisors,<sup>3</sup> the Board of Supervisors has adopted this Opinion.

---

<sup>1</sup> Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions (OJ L 123, 19.5.2015, pp. 1–15).

<sup>2</sup> 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 331, 15.12.2010, p. 12).

## General comments/proposals

The Commission has communicated its intention to endorse Section 2 of the draft RTS, on 'Accounting', but to amend Sections 3 and 4, on 'Organisation' and 'Decision-making process'.

With regard to Sections 3 and 4, the Commission has submitted six proposed amendments:

- a. The Commission disagrees with the proposed derogation for the independence of staff in Section 3 on the basis that it considers it not to be supported by the IFR.
- b. The Commission considers that Article 9 of the RTS does not control the mobility of staff between payment card schemes and processing entities when they are part of the same group; therefore, the Commission proposes to prevent the practice of 'revolving doors' by imposing a two-year ban before senior managers can move from one entity to another.
- c. The Commission has doubts that the schemes can objectively ensure compliance with general benefits arrangements under Article 11(3) of the RTS when terms such as 'appropriate weighted basket' or 'other appropriate weighted index' are used.
- d. The Commission is of the view that the words 'or indirectly' should be added to Article 11(1) and (2) of the RTS.
- e. The Commission is of the view that Article 15 of the RTS does not provide guidance on the content of the code of conduct; therefore, the Commission proposes to subject the code to a review by national authorities and to define enforcement mechanisms.
- f. The Commission is of the view that Article 16 of the RTS lacks criteria that specify under which conditions directorships may be held by the same person at the same time.

By way of general response, the EBA points out that the IFR aims to enhance competition in the internal market for card-based payments, by requiring a qualitative and organisational separation of payment card schemes and processing entities. However, the IFR does not require structural or legal separation. In fact, letter (j) of Article 17 of the IFR explicitly provides that three years after entry into force of the Regulation, i.e. by 9 June 2019, the Commission is required to submit a report to the European Parliament and to the Council on 'the application in practice of the rules on separation of payment card scheme and processing, and the need to reconsider legal unbundling'.

As a result, the EBA developed the RTS with a clear understanding that the requirements on separation would have to be drafted such that they assumed neither a legal/structural separation nor integration and were equally applicable in both scenarios. The EBA deems such an approach to be not only legally required in order not to prejudge a policy choice that the legislators have clearly reserved for a future revision of the IFR, but also functionally desirable given that the absence of the imposition of specific legal structures retains a degree of proportionality that is aimed at facilitating

---

<sup>3</sup> Decision adopting the Rules of Procedure of the European Banking Authority Board of Supervisors of 27 November 2014 (EBA/DC/2011/01 Rev4).

the development of smaller and innovative players in what is a concentrated market for card-based payments.

However, several of the amendments proposed by the Commission appear to assume that card schemes and processing entities are, or should be treated as if they were, legally and structurally separated. The EBA is of the view that several of the Commission's proposals might result in a disproportionate, difficult and/or ambiguous application of the RTS for those payment card schemes and processing entities that are not legally separated, or that are organised in separate undertakings within the same relatively small group with limited availability of staff and resources. The cumulative effect of the Commission's proposals would therefore significantly affect the ability of small undertakings to compete.

Finally, the EBA notes that, as reflected in recital 23 to Regulation (EU) No 1093/2010, it was the intention of the legislators that technical standards would be subject to amendment by the Commission if they were incompatible with Union law, did not respect the principle of proportionality or ran counter to the fundamental principles of the internal market for financial services as reflected in the *acquis* of Union financial services legislation. The EBA considers that a number of the Commission's amendments exceed this role.

## Specific comments/proposals

### **a. The Commission disagrees with the proposed derogation for the independence of staff in Section 3 on the basis that it considers it not to be supported by the IFR.**

The EBA notes that there is no obligation in the IFR to separate staff. The RTS are therefore at liberty to specify the conditions under which the sharing of staff may occur for the specific purpose of innovation. The Commission implies in its letter that the EBA disregarded comments provided at an earlier stage; on the contrary, the EBA had explicitly included the reasoning and justification for this provision, and did so in recital 6 to the RTS.

The Commission is concerned that the sharing of staff may lead to the sharing of confidential information. While the EBA appreciates that this risk exists, the RTS explicitly provide that the confidentiality requirements in Article 12 apply also when staff are shared. In other words, the staff who are being shared to work on an innovative product or service are not allowed to share any confidential information. Article 10 imposes additional conditions to prevent a scheme favouring its processing entity above others when undertaking innovation tasks, namely that these tasks must be necessary; that the payment scheme shall inform all processing entities; and that the processing entities be selected on a non-discriminatory basis.

The EBA is of the view that not allowing staff to be shared for the purpose of innovation may lead to an unfair competitive advantage for the larger processing entities and payment schemes, given that they have easier access to more diverse and numerous in-house resources than smaller entities. The problem is amplified by the situation of international competition in the card market, as international payment card schemes and international processors will still be able to develop new market solutions outside Europe without any restrictions. In the revised technical standards set out in Appendix 1 to this Opinion, and in order partially to address the Commission's concerns, the EBA

has therefore reintroduced the paragraph that had been deleted by the Commission but has made clearer the link to the requirements applied to entities in Article 12, including the obligation not to divulge confidential information and the obligation that the code of conduct detail the ethics guidelines for such cooperation.

- b. The Commission considers that Article 9 of the RTS does not control the mobility of staff between payment card schemes and processing entities when they are part of the same group; therefore, the Commission proposes to prevent the practice of ‘revolving doors’ by imposing a two-year ban before senior managers can move from one entity to another.**

The EBA is of the view that the Commission’s proposal of a two-year ban on staff mobility for senior managers is unduly restrictive. By way of comparison, Directive 2014/56/EU,<sup>4</sup> for example, imposes only a minimum one-year ban on a statutory auditor or a key audit partner carrying out a statutory audit on behalf of an audit firm. Similarly, practices in the financial services industry and beyond suggest that, with regard to the ability of an employer to restrict a former employee to compete for a specific period of time, the period tends to vary from three months to a maximum of two years, but the latter is applied only if there is a substantiated justification for imposing such a lengthy period. Finally, the EBA notes that such an obligation may not be easily enforceable in cases where the entities are not legally separated, which in turn may create an incentive for entities not to legally separate.

The EBA considers that the requirement proposed by the Commission should be subject to an impact assessment, but suggests that, if the Commission is minded to introduce without such assessment, then it should be restricted to a period of one year. The Delegated Act in the Annex has been amended accordingly.

- c. The Commission has doubts that the schemes can objectively ensure compliance with general benefits arrangements under Article 11(3) of the RTS when terms such as ‘appropriate weighted basket’ or ‘other appropriate weighted index’ are used.**

The Commission is also concerned that the requirement for general benefits arrangements under Article 11(3) to be implemented through ‘appropriate weighted baskets’ or ‘other appropriate weighted index’ is incompatible with the objective of neutral remuneration frameworks on the basis that a proportion of the benefits to the employee will be related to the performance of an entity for which he or she is not working. By contrast, the EBA is of the view that the origin of the benefits does not necessarily imply a lack of objectivity as long as any potential conflicts are identified and documented. In addition, the EBA is of the view that deleting the reference to the share plans and benefits arrangements could lead to unintended consequences, such as difficulties in the hiring or retention of personnel due to employees’ demotivation and lack of incentives.

---

<sup>4</sup> Directive 2014/56/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts (OJ L 158, 27.5.2014, pp. 196–226)

Furthermore, the EBA is of the view that it is likely to be unduly burdensome for entities to divide share plans and benefits arrangements when they are organised within the same legal person. Without Article 11(3), for example, the RTS would make sense only if card schemes and processing entities were legally separated, which is not what the IFR requires, and is not the only type of separation that the RTS have to address.

The EBA therefore disagrees with the removal of Article 11(3) and has reintroduced it in the amended Delegated Act.

**d. The Commission is of the view that the words ‘or indirectly’ should be added to Article 11(1) and (2) of the RTS.**

The EBA agrees with the Commission’s proposal to add ‘or indirectly’. However, the EBA cautions that, while the requirement may be easy to implement when the two entities are separated, it may be more difficult in cases where the entities are business units of the same legal entity and some elements of share plans and benefits arrangements are not easily divisible between them.

**e. The Commission is of the view that Article 15 of the RTS does not provide guidance on the content of the code of conduct; therefore, the Commission proposes to subject the code to a review by national authorities and to define enforcement mechanisms.**

The EBA has no objection to adding a reference in the RTS to the need for the code of conduct to set the requirements for effective enforcement mechanisms. The EBA also has no objection to introducing additional requirements for a review to be carried out by national authorities.

However, the EBA notes that national authorities are already empowered under Article 7(2) of the IFR itself to supervise the separation requirements, and that any addition to the RTS such as that proposed by the Commission might therefore overlap with the Level 1 text. The EBA also thinks that the wording proposed by the Commission is ambiguous and could be read as suggesting that national authorities would have to approve such codes. The EBA has modified the additional requirement proposed by the Commission in Article 6(3), to clarify that the code of conduct is to be made available to competent authorities upon their request. The EBA has also removed the reference to ‘the same legal entity or group’ on the basis that these RTS apply to all entities whether or not they are legally separated.

**f. The Commission is of the view that Article 16 of the RTS lacks criteria that specify under which conditions directorships may be held by the same person at the same time.**

The Commission proposes several amendments to Article 16, with a view to establishing objective criteria for holding directorships in both entities. The Commission does not, however, define clear and objective criteria; it simply suggests referring to ‘clear and objective criteria’ in the RTS themselves. The EBA’s intention in the RTS was to ensure that entities identify the number of directorships that can be shared, assuming that the same number of directorships can be shared, which is the case where there is no legal separation between the entities. Under the terms of the Article, if entities are unable to identify the number, they are required to set up separate management bodies for the two different entities, to ensure objectivity and independence.

Furthermore, Article 16(4) requires that the organisational arrangements be made available to competent authorities upon request, as a result of which the EBA considers the Commission's proposed addition to Article 16(1) to be redundant.

The important element of managing conflicts of interest, which should be the ultimate focus of the RTS, regardless of how the entities are set up, is clearly addressed in Article 16(2).

The EBA therefore rejects the amendments proposed by the Commission in relation to this particular Article, on the basis that implementing them would create the assumption that the entities should be legally separated, which is beyond the mandate given to the EBA and the Commission, as the IFR itself does not mandate such legal separation.

## Conclusions

The EBA submits to the Commission the amended draft regulatory technical standards set out in the Annex to this Opinion.

This Opinion will be published on the EBA's website.

Done at London, 16 February 2017

[signed]

Andrea Enria

Chairperson

For the Board of Supervisors



# Appendix 1 – Revised draft RTS

---



Brussels, **XXX**  
[...] (2016) **XXX** draft

**COMMISSION DELEGATED REGULATION (EU) No .../..**

**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)

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE DELEGATED ACT**

Article 7(6) of Regulation (EU) 2015/751 ('the Regulation') empowers the Commission to adopt, following submission of draft standards by the European Banking Authority (EBA), and in accordance with Articles 10 to 14 of Regulation No (EU) 1093/2010, delegated acts specifying the requirements ensuring separation of payment card schemes and processing entities.

In accordance with Article 10(1) of Regulation No (EU) 1093/2010 establishing the EBA, the Commission shall decide within three months of receipt of the draft standards whether to endorse the drafts submitted. The Commission may also endorse the draft standards in part only, or with amendments, where the Union's interests so require, having regard to the specific procedure laid down in those Articles.

### **2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT**

In accordance with the third subparagraph of Article 10(1) of Regulation No (EU) 1093/2010, the EBA has carried out a public consultation on the draft technical standards submitted to the Commission in accordance with Article 7(6) of Regulation (EU) 2015/751 ('the Regulation'). A consultation paper was published on the EBA internet site on 8 December 2015, and the consultation closed on 8 March 2016. Moreover, the EBA worked in close cooperation with the ECB, and invited the EBA's Banking Stakeholder Group set up in accordance with Article 37 of Regulation No (EU) 1093/2010 to provide advice on them. Together with the draft technical standards, the EBA has submitted an explanation on how the outcome of these consultations has been taken into account in the development of the final draft technical standards submitted to the Commission.

Together with the draft technical standards, and in accordance with the third subparagraph of Article 10(1) of Regulation No (EU) 1093/2010, the EBA has submitted its Impact Assessment, including its analysis of the costs and benefits, related to the draft technical standards submitted to the Commission. This analysis is available at <https://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>, pages 21-25 of the Final Draft Regulatory Technical Standards package.

### **3. LEGAL ELEMENTS OF THE DELEGATED ACT**

These Regulatory Technical Standards (RTS) specify the requirements with which payment card schemes and processing entities must comply to ensure the independence of their accounting, organisation, and decision-making processes.

They require payment card schemes and processing entities to (i) have accounting processes in place to produce annual information related to separated profit & loss accounts reviewed by an independent and certified auditor; (ii) have separate workspaces; and (iii) ensure the independence of senior management, management bodies and staff.

They lay down requirements related to the use of shared services and a shared information management system, the treatment of sensitive information, a code of conduct, and the separation of annual operating plans.

**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 transactions<sup>5</sup> 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 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.

---

<sup>5</sup> OJ L 123, 29.4.2015, p. 1.

- (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 promote the independence of senior managers when two entities are part of the same group and prevent the practice of '*revolving doors*', senior managers should be prohibited from taking on work for the other side of the business for a minimum duration of one year after they have left the entity they are working for.
- (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 based directly or indirectly 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 with effective sanctions and enforcement mechanisms 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 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. These conditions shall be made available to competent authorities upon their request. 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 Council<sup>6</sup>,

HAS ADOPTED THIS REGULATION:

---

<sup>6</sup> 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).

## 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 Council<sup>7</sup>;

---

<sup>7</sup> 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.

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 together with the review by the independent auditor 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 internal business 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. They shall not be allowed to take on work for the other side of the business for a minimum duration of one year after they have left the entity for which they are working.

*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 and no confidential information is to be shared in accordance with Articles 12(1) and 14;
  - (d) payment card schemes and processing entities should detail the ethics guidelines of the cooperation of their staff for innovation purposes in the code of conduct, explaining how they intend to comply with the requirements of this Regulation in those specific circumstances.
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 or indirectly 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 or indirectly 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 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. The code of conduct shall also set effective enforcement mechanisms.
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. The code of conduct shall be made available to competent authorities upon their request.

**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*  
[\[...\]](#)