**GBIC Comments on Consultation Paper EBA/CP/2015/24 “Draft Regulatory Technical Standards on separation of payment card schemes and processing entities under Article 7 (6) of Regulation (EU) 2015/751”, 8 December 2015**

**1. Do you agree with the proposals outlined in Section 1 of the draft RTS regarding general provisions?**

“Die Deutsche Kreditwirtschaft” as common body of the German banking industry (GBIC = German Banking Industry Committee) perfectly agrees with the underlying aim of the Draft RTS to separate scheme governance from processing in order to increase competition and efficiency in card payments.

The proposed draft RTS tries to achieve this aim by requiring separate accounting for each, the processing services and the scheme governance body. This principle, however, seems not to take into account that scheme governance does not necessarily imply the implementation of a separate legal entity with a separate accounting just for performing scheme governance functions.

girocard, the card payment scheme operated by GBIC, has implemented an effective separation of scheme governance and processing, but without separate accounting for the scheme governance function. Contrary to many other schemes in Europe, girocard has not implemented a for-profit scheme governance body, but the scheme governance is organised as a consortium of banking associations without a formal body and without separate accounting.

With some 100 million cards participating to girocard, more than 750.000 POS devices and more than 60.000 ATMs, girocard is one of the leading card payment schemes in Europe.

„Die Deutsche Kreditwirtschaft“ (DK) - composed of Bundesverband Deutscher Banken e.V. (BdB), Bundesverband der Deutschen Volksbanken und Raiffeisenbanken e.V. (BVR), Bundesverband Öffentlicher Banken Deutschlands e.V. (VÖB) and Deutscher Sparkassen- und Giroverband (DSGV) - acts as the Governance Authority of the girocard scheme.

The girocard scheme is based on contractual agreements between these associations, which they have concluded for and on behalf of their member banks. Accordingly, the scheme governance is not performed by a separate legal entity with its own accounting, but via a joint committee (DK Arbeitsstab “Kartengestützte Zahlungssysteme”) of the banking associations, which is supported by sub-committees and institutions to which certain tasks have been outsourced. The joint committee is defined in the agreements and the member banks of the associations have acknowledged these agreements and especially, that the scheme governance is performed by this committee.

Since the associations themselves do by their very nature not participate to the girocard scheme - neither as acquirer nor as issuer or technical service provider - a complete unbundling of the provision of services from the scheme management is ensured.

The Governance Authority and its contractual relations can be schematically described as follows:



Banks participating to the CPS have to comply with the rules set out in the respective DK agreement and they are allowed to outsource activities to technical service providers. Processing entities, like authorisation switches or POS terminal network providers can participate to the scheme based on standard contracts. With respect to the payment guarantee given to merchants for POS transactions, the scheme has established an additional contractual framework to include retailers into the scheme (i.e. the payment guarantee of the issuing bank vis-à-vis the retailer and the obligation of the retailer to pay the merchant fee to the issuing bank).



This structure ensures maximum competition in the provision of processing services whereas the governance authority of the scheme is not a legal entity with a dedicated accounting.

Since the above structure has proven to be very effective in terms of increasing competition and efficiency in card payments, the draft RTS should not prevent such a structure which does not require a separate legal entity with its own accounting just for the governance of the scheme.

**2. Do you agree with the proposals outlined in Section 2 of the draft RTS regarding accounting?**

No. The performance of scheme governance functions does not necessarily imply the implementation of the scheme governance function in a separate legal entity with its own accounting.

Accordingly it is proposed to change the draft RTS in a way, not to exclude the possibility to organize scheme governance different than in a separate legal entity. The aim of separation of scheme governance and processing could equally be achieved by just requiring processing entities not to engage in any scheme governance functions, regardless, whether these scheme governance functions are performed in a consortium or in a separate legal entity. This, automatically, would prevent processing entities to integrate any scheme governance activities into their accounting, their organization or their decision making processes. Whereas processing services due to their very nature can only be performed by legal entities, the provision of scheme governance functions does not necessarily imply a legal entity.

**3. Do you agree with the proposals outlined in Section 3 of the draft RTS regarding organisation?**

We agree with the aim of functional separation of scheme governance and processing. This, however, does not imply setting up a separate business unit for the purpose of scheme governance. Scheme governance functions can be organised differently, i.e. not requiring a separate business unit with its own staff etc.. Nevertheless, the aims on separation of workspaces and independence of senior management and staff from processing activities can be ensured even when there is no separate legal entity for scheme governance purposes. The same is valid for the remuneration of staff, the use of shared services, of shared information management systems and sensitive information.

**4. Do you agree with the proposals outlined in Section 4 of the draft RTS regarding independence of decision-making process?**

We agree with the aim of independent decision making processes within payment schemes and within processing entities. The RTS should, however, take into account, that payment scheme governance may be organised without setting up a separate legal entity with its own accounting for scheme governance functions. Accordingly, a scheme governance body may not have the necessity to establish a financial budget etc.

**5. Do you have any other comments?**

No.