

The application of the Interchange Fee Regulation in the UK: Phase 2



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1. The Interchange Fee Regulation (IFR) in the UK

- We are the main competent authority for monitoring and enforcing the IFR in the UK. The Treasury has also assigned roles to other bodies, including the Financial Conduct Authority (FCA).
- In May 2016 we published a consultation on draft guidance explaining how we will monitor and enforce compliance with the IFR business rules provisions (Articles 7, 8, 9 and 10) that came into force on 9 June 2016.
- We received responses to our consultation from 23 stakeholders. In this policy statement we summarise the main points raised and our responses.
- We have published our final guidance on our approach to monitoring compliance with the IFR alongside this document.

Background

- 1.1** On 29 April 2015, the European Parliament and the Council of the European Union adopted the Interchange Fee Regulation (IFR), which was published in the Official Journal of the European Union on 19 May 2015.¹
- 1.2** The IFR caps the interchange fees on debit and credit card transactions where both the issuer and acquirer are located in the European Economic Area (EEA). It also sets out a number of business rule provisions that require affected parties to amend their business practices (unless their current practice already complies with the provisions).
- 1.3** The Payment Systems Regulator (PSR) is the main competent authority for monitoring and enforcing the IFR in the UK. The Treasury has also assigned roles to other bodies, including the Financial Conduct Authority (FCA).²
- 1.4** In our consultation paper CP16/3, published on 19 May 2016, we asked for stakeholders' views on our approach to monitoring and enforcing compliance with the IFR provisions that came into force on 9 June 2016. Our approach was set out in draft guidance, which we published with the consultation paper.
- 1.5** This was Phase 2 of our consultation. In Phase 1 we had consulted on our approach to monitoring and enforcing compliance with the IFR provisions that came into force on 9 December 2015, issuing final guidance in March 2016.
- 1.6** Alongside this policy statement we have published final guidance on our approach to monitoring and enforcing compliance with the IFR, combining the final guidance on Phase 2 with that already published for Phase 1.

¹ http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2015.123.01.0001.01.ENG

² The Statutory Instrument that gave the PSR its powers was published on 17 November 2015: www.legislation.gov.uk/ukSI/2015/1911/contents/mades

Responses to our consultation

- 1.7** We received responses from 23 stakeholders. Respondents were generally supportive of our guidance, while asking us to reconsider some points. These included:
- our approach to monitoring compliance with technical separation under Article 7(1)(a)
 - the requirements for co-badging under Article 8(2)
 - the requirements for unblending under Article 9
 - the categories of cards for visual and electronic identification under Article 10(5)
- 1.8** Some stakeholders argued that our approach was wrong in law in a number of respects (because they believed we had misapplied the IFR or misstated its provisions in our draft guidance). Some of these respondents also set out the practical implications of the draft guidance, including costs, the impact on competition and the impact on consumers.
- 1.9** In the remainder of this policy statement, we summarise the main points raised by respondents, set out our responses and explain how we have revised our guidance (if at all). As well as the changes to the guidance described below, we have made a number of minor edits to correct typing mistakes or to make certain points clearer.

Article 7: Separation of payment card scheme and processing entities

- 1.10** In our draft guidance on Article 7 of the IFR, we explained that the European Banking Authority (EBA) will specify the requirements for the accounting, organisation and decision-making independence of payment card schemes and processing entities. We also explained our approach to monitoring compliance with other elements of this Article.
- 1.11** Relatively few respondents commented on our draft guidance on this Article. Of the comments we received, a number were related to our monitoring and enforcement approach and the sharing of information between competent authorities. We discuss these issues in paragraphs 1.45 to 1.57 (*Monitoring compliance with Articles 7, 8, 9 and 10*).
- 1.12** On the requirements of Article 7(1)(a), several respondents welcomed the statement in the draft guidance that the requirements for separating payment card schemes and processing entities will be those contained in the Regulatory Technical Standards (RTS) developed by the EBA. These respondents stated that a single approach will be required across all EU Member States and welcomed the fact that we recognise this in our guidance.
- 1.13** However, one respondent stated that the draft guidance went beyond the RTS in relation to restrictions on sharing information, because the RTS only imposes such restrictions on sensitive information (i.e. the RTS states that the restriction applies to information that provides a competitive advantage to the scheme or processing entity). The same respondent stated that the RTS restriction on sharing sensitive information is unduly wide, as it includes information provided to the scheme by its processing entity. The respondent stated that the restriction in the RTS is invalid because it is *ultra vires* (i.e. it goes beyond the legal parameters of Article 7(1)(a) of the IFR).

- 1.14** On Article 7(1)(b), one respondent asked if payment service providers (PSPs) must identify the processing and scheme elements of the scheme fee separately in their invoicing, to show that there is no cross-subsidisation of costs between card schemes and processing activities. One other respondent asked us to provide guidance on how to meet this requirement. In the absence of clear guidance, the respondent stated that different schemes could classify broadly similar activities differently (as 'processing' or 'scheme').
- 1.15** On Article 7(4), two respondents asked us for examples of what constitutes territorial discrimination. One respondent suggested it may include technical or operational requirements that have a discriminatory effect.
- 1.16** On Article 7(5), one respondent stated that the selection of a particular message format by a scheme does not restrict interoperability. It said the draft guidance is not clear on the fact that card schemes may adopt their own messaging format as long as they do not prevent translation services being used to allow payment processors to connect to their systems.

Our response

On Article 7(1)(a), our draft guidance sought to inform stakeholders that the mandatory requirements for separating payment card schemes and processing entities are those set by the EBA's RTS. However, we acknowledge that our description of restrictions on sharing information in the draft guidance could be read as going beyond the RTS.

We will apply the RTS restrictions on sharing sensitive information in our monitoring activities (including the sharing of sensitive information in both directions between the scheme and processing entity).

On Article 7(1)(b), the IFR does not require PSPs to identify the processing and scheme elements separately in their invoicing. The provision applies only to payment card schemes and processing entities. We do not consider it appropriate to provide detailed guidance on the types of activities that are classified as 'scheme' and 'processing', as these are both terms defined in the IFR. The RTS sets out the requirements for separating scheme and processing entities; the cross-subsidisation requirement applies to these separated entities.

On Article 7(4), there can be many different arrangements that could constitute territorial discrimination and it would be impossible to cover them all. Given this, we do not consider that we can (or should attempt to) provide exhaustive guidance on the types of practices that may be deemed to be 'territorial discrimination' in payment card schemes' processing rules. We also consider that parties should not look to the competent authority for a 'blacklist' of practices. We will assess whether there has been territorial discrimination in each case, but it is each party's own responsibility to ensure that its practices comply with the law.

We acknowledge that the guidance on Article 7(5) should be clearer that processing entities and card schemes may use any of the standards developed by international or European standardisation bodies.

Changes to guidance

We have amended the guidance on Article 7(1) to reflect the wording of the EBA RTS and to explain that restrictions on sharing information apply where the information may give a competitive advantage to the payment card scheme or processing entity.

We have clarified the guidance on Article 7(5) to explain that:

- processing entities may use any of the standards developed by international or European standardisation bodies
- schemes may not restrict interoperability among processing entities within the EEA, regardless of which international or European standard they have adopted

Article 8: Co-badging and choice of payment brand or payment application

- 1.17** Our draft guidance on Article 8(2) of the IFR stated that if an issuer offers more than one payment brand, an eligible consumer may demand one co-branded card-based payment instrument (for example, one plastic card carrying both brands), instead of receiving separate card-based payment instruments for each brand (two plastic cards).
- 1.18** Many respondents raised concerns with this description. The two most common comments were that:
- issuers need only provide a co-badged card-based payment instrument to a customer if the issuer has chosen to offer a co-badging service (i.e. the phrase 'such a service' in Article 8(2) refers to the co-badging service)
 - if co-branding is mandatory, issuers could offer co-badging via a mobile phone and need not issue co-badged plastic cards³
- 1.19** Some respondents explained that the legislative history of the IFR supports the view that co-badging should be issuer-led (i.e. not mandatory). These respondents stated that:
- mandatory co-badging was not foreseen in the European Commission's green paper on card, internet and mobile payments⁴
 - the European Commission's feedback statement⁵ explicitly acknowledged that there was little support for mandatory co-badging
- 1.20** The respondents also stated that the provision did not appear in the early drafts of the IFR but was introduced by the European Parliament. The respondents stated that, while the European Parliament's wording clearly gave consumers the right to demand a co-badged card, this provision was amended during the trilogue process so that it only applies if the issuer already offers a co-badging service. In this context, the respondents consider that the purpose of Article 8(2) is to require that issuers who offer co-badged products do so on a non-discriminatory basis.

³ One respondent asked that we clarify that a mobile/digital wallet is not a card-based payment instrument. We concur with this view and consider that it is clear from the IFR definition of a card-based payment instrument.

⁴ Published on 11 January 2012: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011DC0941&from=EN>

⁵ Published on 9 June 2016: http://europa.eu/rapid/press-release_IP-16-2161_en.htm

- 1.21** Many respondents also explained that adapting to an environment of co-badged plastic cards would be extremely expensive for both the issuing and acquiring sides of the market. Some respondents stated that it would be difficult to justify these costs as:
- there is limited consumer demand for co-badged plastic cards
 - many of the benefits of co-badging are already being delivered by mobile wallets, which will become increasingly important over time⁶
- 1.22** Respondents also said merchants would not welcome co-badged cards because they would create consumer confusion and delays at points of sale. Several said mandatory co-badging would reduce competition between payment card schemes, because it might lead issuers to participate in fewer schemes. One respondent stated that the co-badging requirements should apply only to different brands of the same product category (i.e. credit, debit, etc.).
- 1.23** One respondent asked if the co-badging requirements in Article 8(2) apply only to new products or to existing products too, and if issuers can refuse co-badging requests if they are not technically feasible. Another respondent stated that the information to be provided to consumers should be on the brands available to the consumer and not on those offered in the market generally.
- 1.24** One respondent asked us to clarify the IFR requirement that ‘payment card schemes shall not impose reporting requirements ... in relation to transactions for which their scheme is not used’ (Article 8(4)). It asked whether this means that issuers and acquirers do not need to report statistics to the schemes for ‘on-us’ transactions (where the acquirer and issuer are the same entity).
- 1.25** On Article 8(5), one respondent stated that there is an inconsistency in the way the draft guidance defines ‘discrimination’. It said that while paragraph 1.21 of the draft guidance suggested that any form of favouring one payment brand over another could, at least potentially, be considered to be discrimination, paragraph 2.23 suggested that technical service providers will be obliged to discriminate between payment brands or applications if a merchant asks them to.
- 1.26** The same respondent stated that the draft guidance on Article 8(5) incorrectly imposes an obligation on ‘schemes, issuers, acquirers, processing entities and other technical service providers’ to ‘ensure that there is no discrimination in the way they handle transactions under different payment brands’. The respondent stated that this goes beyond the wording of the IFR because the IFR:
- does not impose obligations on any specific individual or group
 - does not impose a positive obligation on ‘schemes, issuers, acquirers, processing entities and other technical service providers’ to ‘ensure’ that there is no discrimination
- 1.27** On Article 8(6), one respondent asked us to clarify if merchants can request their acquirer, processing entity or technical service provider to place a mechanism at the point of sale (POS). Another respondent asked how we expect acquirers to tell their retailers that ‘the option to install automatic mechanisms in POS equipment’ exists.
- 1.28** One respondent stated that the guidance should clarify beyond doubt consumers’ right of choice of payment brand or application. The respondent stated that transparency at POS is crucial, so our guidance should say that the merchant should:
- display all possible payment brands on the co-badged card-based payment instrument
 - include a clear and legible mechanism for the consumer to override the merchant’s selection

⁶ Some respondents provided statistics to support these statements.

The respondent also stated that merchants should not override a consumer's selected brand if the technical feasibility exemption applies, and merchants should not fabricate technical unfeasibility.

Our response

We welcome consultation respondents' constructive comments on this Article.

On Article 8(2) we acknowledge stakeholders' views that an entirely plausible reading of the IFR is that the requirement for issuers to provide a co-badged payment instrument if requested by a customer applies where the issuer has chosen to offer a co-badging service to its customers. We note stakeholders' comments that this reading would avoid the potentially negative impacts on competition in the market of a mandatory, consumer-led co-badging requirement for plastic cards and the costs and challenges associated with implementation of such a mandatory requirement in respect of co-badged plastic cards. We will monitor and enforce compliance with Article 8(2) on the basis that, where an issuer provides co-badged payment instruments, a consumer may demand a co-badged instrument rather than two separate instruments.

Article 8(4) does not give issuers /acquirers the right to refuse to report statistics to schemes in respect of on-us transactions carried out under the brand of the scheme. The requirements of Article 8(4) apply where a transaction is completed using one scheme on a co-badged payment instrument and prevent any other scheme present on that instrument from requesting statistics relating to transactions completed under the first scheme.

We do not agree that the draft guidance contained an inconsistency in its use of the word 'discrimination'. Paragraph 1.21 related to Article 8(5) whereas paragraph 2.23 related to Article 8(6). Article 8(5) concerns the handling and routing of a transaction after it has been initiated at a point of sale. Article 8(6) refers to the selection of the payment brand or payment application used to initiate a transaction.

Merchants may request that their service provider installs an automatic mechanism at the point of sale to make a priority selection of a particular payment brand or payment application. It is for the merchant to request this service: there is no requirement in the IFR for acquirers or other parties to inform merchants of this possibility.

Consumers have the right to choose the payment brand or application wherever this is technically feasible. The consumer will need to see sufficient information to enable this choice. However, there are limited situations – in particular in transport settings – in which it will not be technically feasible for a consumer to override a merchant's selection because a screen and keypad is not available.

Changes to guidance

We have clarified that where an issuer provides co-badged payment instruments a consumer may demand a co-badged instrument rather than two separate instruments.

Article 9: Unblending

- 1.29** Our draft guidance on Article 9(1) stated that it applies where an acquirer is proposing new prices to a new or existing customer. Some respondents asked if the provision is triggered for all new contracts, even if prices have not changed. One respondent asked how rolling contracts would be considered.
- 1.30** On the requirements of Article 9(1), some respondents asked for clarity on the number of separate merchant service charges (MSCs) that acquirers must offer, expressing concern that their pricing could become unnecessarily complex. One respondent stated that a single card can attract a wide range of different interchange fee levels depending on the nature of the transaction. As such, the respondent stated our draft guidance would require acquirers to identify more than 100 separate MSCs, many of which would have the same monetary value. The respondent said it would be appropriate to indicate separate MSCs for different brands and categories of cards and that these may be aggregated where brands or categories have the same interchange fee.
- 1.31** Some respondents also asked for further clarity on the requirement for merchants to request blended MSCs in writing. Some stakeholders said it would be appropriate for new merchants to decide whether or not to have blended MSCs during the pre-contract stage, so that the blended charges would form part of their contract. One respondent asked if the Article means that, for new contracts, merchants must 'reject' the unblended pricing before the acquirer can show them blended prices. Similarly, we were asked whether a merchant must sign a contract providing for unblended prices before it can request a blended price in writing.
- 1.32** One respondent asked for more clarity on whether the blending of international cards could also be included, where a merchant requests it in writing.
- 1.33** Some respondents stated that our draft guidance was incorrect in its statement that acquirers must comply with merchant requests to offer blended MSCs (where the individual components are not broken down). The respondents stated that the IFR requires acquirers to provide an unblended rate, unless the merchant makes a different request, but that there is no requirement for the acquirer to offer a blended rate.
- 1.34** Our draft guidance stated that Article 9(2) applies to all existing agreements with merchants and to any new agreements. Few respondents commented on the requirements of this provision, although some asked if it means that merchants can request a breakdown of the elements of scheme fees, and if acquirers must justify any price changes.
- 1.35** One respondent stated that the PSP paying the interchange fee does not always contract directly with the merchant, and intermediaries sometimes provide part of the acquiring service. The respondent asked for clarity on what should be included in the MSC, given that the acquiring service could include more than one party.
- 1.36** Two respondents asked us to produce a sample template for acquirers to use to provide this information, so as to ensure, and be able to monitor, the quality and clarity of information being provided to payees.

Our response

The requirements of Article 9(1) apply whenever a new contract is negotiated or agreed, whether for a new customer or an existing customer, even if the price for existing customers does not change. The requirements also apply whenever an acquirer proposes new pricing to an existing customer, including within a rolling contract.

Under Article 9(1) issuers are required to identify separate MSCs for each category and brand of payment card. However, if two or more of the brands or categories have the same interchange fee – or if they have no interchange fee – they may identify a single MSC for these cards. It must be clear which brands or categories have the same MSC. The example given in the draft guidance incorrectly suggested that a separate MSC must be provided for each unique interchange fee.

Merchants may decide whether or not to request a blended rate in writing. Merchants do not need to ‘reject’ an unblended offer or sign a contract providing for unblended rates before making a request for blended rates in writing. However, the acquirer must be able to demonstrate that the merchant provided a written request for a blended rate in respect of that contract. If there is no evidence of a written request, acquirers must offer and charge unblended MSCs to their merchant customers.

The IFR does not prevent international cards from being included in the blended rate if a merchant requests this in writing. Nor does it require acquirers to offer a blended rate.

The IFR requires acquirers’ agreements with merchants to show the total MSC and the applicable interchange fee and scheme fees for each category and brand of payment cards. It does not require acquirers to provide a more detailed breakdown of scheme fees and does not specify any requirements for acquirers to justify any changes in fees (subject to other legal requirements and contractual arrangements).

The requirement to identify the MSC, interchange fee and scheme fees separately applies to all acquiring relationships. The entity that contracts with the merchant to accept and process card based payment transactions (which may not be the acquirer of record) must show the MSC (the fees and charges that are payable on each transaction), scheme fees and interchange fees in their agreements.

We do not currently intend to require acquirers to use a specific template to show the MSC and the separate fees. The requirements on acquirers are clear and each acquirer may decide how to present the information, as long as they meet those requirements.

Changes to guidance

We have updated the guidance to both more clearly explain when the requirements of Article 9(1) are triggered and to clarify the requirements of that provision.

We have deleted the statement that acquirers must comply with merchant requests to offer blended MSCs.

Article 10: ‘Honour All Cards’ rule

1.37 Our draft guidance on Article 10:

- set out the kinds of Honour All Cards rule (HACR) that can and cannot be imposed
- described merchants’ obligations to inform consumers of limited card acceptance
- identified the categories of card-based payment instruments for the purpose of visual and electronic identification

- 1.38** On Articles 10(1), (2) and (3), some respondents said the draft guidance was incorrect in stating that scheme rules and merchant service contracts cannot require a merchant with an acquirer located in the EEA:
- who accepts one type of a scheme-branded commercial card issued by an issuer located in the EEA to accept all types of these cards
 - who accepts a scheme-branded card issued by an issuer located in the EEA to also accept cards branded with the same scheme issued by an issuer located outside the EEA, or vice versa
- 1.39** For the first bullet point, respondents said that the IFR does not exempt any interchange fee unregulated cards in a common interchange category from the HACR.
- 1.40** For the second bullet point, respondents said transactions on cards issued by an issuer located outside the EEA are outside the scope of the IFR, so should not be included within the prohibition of Article 10(1). They said this would cause confusion and frustration to the detriment of consumers, and that it is particularly inappropriate that a merchant accepting international cards can decline to accept EEA cards, creating a perverse situation for EEA consumers.
- 1.41** One respondent also said it is unclear, from the guidance and from the IFR itself, whether a card scheme having two different branded consumer credit cards attracting the same merchant service charge and interchange fee, can treat both cards as one product in terms of the HACR. The respondent considers that a scheme could require payees to accept cards from the other brand, provided that those cards are of the same category and have the same merchant service charge or interchange fee.
- 1.42** On Article 10(5), one respondent stated that the visual identification should include the words 'consumer' or 'commercial'. It did not agree that issuers should be able to choose whether to include the word 'consumer'. However, other respondents agreed with our statement in the draft guidance that cards can be identified as consumer cards by the absence of the word 'commercial'.
- 1.43** Many respondents stated that the IFR lists four categories of payment instruments for electronic and visual identification: prepaid cards, debit cards, credit cards and commercial cards. These respondents stated that the draft guidance incorrectly sub-categorises commercial products into credit, debit and prepaid. Some respondents stated that the draft guidance is out of line with the approach taken by the Cards Stakeholders Group⁷ and incorporated into both MasterCard and Visa's operating regulations. Therefore, they felt the approach described in the draft guidance would lead to unnecessary cost, technical difficulties, and inconsistencies in the operation of commercial payment instruments inside and outside the EEA.
- 1.44** Two respondents said the final guidance should make it clear that cards issued for commercial purposes that do not fall within the definition of 'commercial cards' could be labelled 'Corporate credit card' or 'For business use' in order to distinguish them from consumer cards.

Our response

Under Article 10(1), the HACR cannot be used to require a merchant who accepts some cards to accept other cards of the same brand. Although Articles 10(2) and 10(3) provide for limited exceptions, these do not include commercial cards. Therefore the limitation imposed by Article 10(1) applies.

⁷ As detailed in the SEPA Cards Standardisation Volume 7.1, Bulletin 01 (29 February 2016).

We also still consider that a merchant who accepts a card issued by an issuer located in the EEA cannot be required to also accept cards issued by an issuer located outside the EEA. This is indicated in Article 10(1). The only exceptions to this rule are those described in Articles 10(2) and 10(3), but they do not include cards issued outside the EEA. Therefore the limitation imposed by Article 10(1) applies.

However, we acknowledge that a merchant who accepts a card issued by an issuer located outside the EEA can be required to also accept cards issued by an issuer located in the EEA. The scope of the IFR is transactions where both the issuer and acquirer are in the EEA, and so the issuer referred to in Article 10(1) must be in the EEA.

Consumer cards do not need to be specifically identified with the label 'consumer', as these cards can be identified by the absence of the label 'commercial'. The IFR does not contain any restrictions on the design of plastic cards, including the text used on those cards⁸, as long as payers and payees can unequivocally identify a card's brand and category.

However, we acknowledge that the view that there are four categories of payment instruments for electronic and visual identification is a plausible reading of the IFR, and is consistent with the approach already implemented by industry to comply with the IFR.

Changes to guidance

We have updated the description of banned HACRs to reflect the fact that scheme rules and merchant service contracts can require a merchant who accepts cards issued by an issuer located outside the EEA to also accept cards issued by an issuer located inside the EEA.

We have updated the guidance to show that the IFR describes four categories of payment instruments for electronic and visual identification.

Monitoring compliance with Articles 7, 8, 9 and 10

- 1.45** Relatively few respondents commented on our approach to monitoring compliance. Those that did tended to seek greater clarity on our approach.
- 1.46** Some respondents said that, while they support a joined-up approach to supervision by the PSR and FCA, they would appreciate greater clarity on how we will collaborate with the FCA in practice – for example, in terms of the types of cases that would be reviewed by the FCA rather than us. They also asked for confirmation that compliance reports sent to the PSR would be shared with the FCA, where appropriate.
- 1.47** One respondent asked for greater clarity on how we would monitor and enforce card-based payment transactions where there is more than one competent authority (i.e. intra-EEA cross-border transactions).
- 1.48** One respondent asked for confirmation that we would accept complaints from sources other than those directly affected by any compliance breaches (for example, from trade associations).
- 1.49** In addition to these general comments, some respondents raised specific points on our approach to monitoring compliance with individual Articles.

⁸ Subject to other legal requirements – for example, in respect of consumer credit cards.

Article 7

- 1.50** On Article 7(1), one respondent asked us to confirm how we will supervise card schemes without a registered office either in the UK or in the EU. Other respondents asked for greater clarity on how we will engage with competent authorities in other Member States, including on the sharing of information between competent authorities.
- 1.51** On the latter point, one respondent said that monitoring compliance with Article 7(1)(a) is entirely a matter for the competent authority for the Member State where a payment card scheme has its registered office. The respondent argued that our draft guidance undermines the fact that the same approach to separation will apply across the EEA, particularly if we take a different view to another competent authority. The respondent indicated that it could not produce bespoke compliance reports for different national competent authorities and would prepare a standard response instead.
- 1.52** One respondent requested a transitional period to allow card schemes to compile evidence that they are complying with Article 7(1)(a). Two respondents asked us to confirm how technical separation of a card scheme and processing entity could be demonstrated and achieved.

Article 8

- 1.53** One respondent said that, as Article 8 is part of a Europe-wide set of rules and procedures, we should be mindful of the burden on payment card schemes when requiring them to produce compliance reports. It urged us to be flexible about the content, format and timing of the reports, as bespoke compliance processes may not be practicable if schemes have to simultaneously address multiple different compliance requirements in multiple Member States.
- 1.54** Another respondent stated that the complaints-led approach leaves significant potential for firms to operate without complying with the requirements. It stated that a large number of merchants and payees may not be aware of the acquirers' requirements and their own rights, or that we will not know about any issues unless they complain to us.

Article 9

- 1.55** One respondent said that the guidance should explicitly state that all acquirers need to confirm to us by a given date that they have informed all their retailers of the options open to them under Article 9.

Article 10

- 1.56** One respondent reiterated its comments on Article 8, urging the PSR to be flexible about the content, format and timing of Article 10 compliance reports.

General comment – EEA European Free Trade Association (EFTA) states

- 1.57** One respondent raised a point of wider application, covering all aspects of IFR monitoring and enforcement (for both the Phase 1 and Phase 2 provisions). This respondent stated that the timetable for adoption of the IFR by the EEA EFTA states is unclear, and we should ensure that references to the EU and EEA are consistent with the actual adoption of the IFR.

Our response

We will work with the FCA to monitor compliance with the provisions for which we have joint responsibility. For these provisions, we will share compliance reports sent to us with the FCA. A decision on whether the PSR, FCA or both regulators would work on a potential issue of non-compliance would be taken on a case-by-case basis, taking account of the roles and responsibilities of each regulator.

We will work with our counterparts in other European countries to monitor compliance with the IFR. The roles of UK and non-UK competent authorities may differ from case to case, so it is not possible to describe the roles of each authority precisely for, say, breaches of the IFR where there is more than one competent authority.

For all Articles, any party may make a complaint about breaches of the IFR in the UK.

We agree that competent authorities should work together to ensure compliance with Article 7(1)(a). We are working with our counterparts in other countries to develop an appropriate mechanism for monitoring compliance with this provision. This includes arrangements for requesting and sharing information between interested competent authorities (such as compliance reports, for example).

However, we do not agree that monitoring compliance with this provision is entirely the responsibility of the competent authority of the territory where the scheme has a registered office. Indeed, some schemes that operate in the EEA do not have a registered office in a Member State but must be subject to monitoring and enforcement by a competent authority. Article 7(2) does not take away the right of a competent authority in any Member State to ensure that schemes operating there comply with that State's legal requirements.

On Articles 8, 9 and 10, we consider that the approach described in our draft guidance is the most appropriate way to monitor compliance. As noted in the draft guidance, we will discuss the content, timing and arrangements for compliance reports separately with each scheme and acquirer.

On the issue of the IFR being applied to the EEA EFTA states, we note that this will not happen immediately. However, our guidance is intended to have lasting effect. Therefore, the guidance is written as if the IFR already applies in the EEA EFTA states, even if this is not yet formalised. Our monitoring and enforcement approach will be consistent with the formal adoption of the IFR through EEA processes.

Changes to guidance

We have amended the discussion on how we will work with other competent authorities to monitor compliance with Article 7(1)(a), and clarified the approach for schemes that do not have a registered office within the EEA.

Annex 1

Consultation respondents

American Express
Association of Credit Card Issuers in Europe
Bank of America Merrill Lynch
Barclays
Baringa Partners
British Retail Consortium
CMS Payments Intelligence
Electronic Money Association
First Data
Global Payments
HSBC
JCB International Europe
Lloyds Banking Group
MasterCard
MBNA
Optima Consultancy
PaySafe
Raphaels Bank
Sainsbury's
TSB
UK Acquirer Forum
UK Cards Association
Visa Europe

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