Report to the ERPB Working group on access to and acceptance of cash

10 June 2021

The Cash Management Companies Association

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Executive Summary

This report is submitted by ESTA (a "*level 2 organisation*" according to the ERPB nomenclature) in lieu of a response to the questionnaire requested by the ERPB working group Co-chairs on 22 April 2021.

As a member of the ERPB working group for around 8 weeks, ESTA, supported by other organisations, sought to foster debates on a number of possible issues of relevance to "*obstacles to cash acceptance*". The strong resistance from a number of organisations of the ERPB in the banking and PSP sectors prevented this from happening. This report therefore covers a number of critical issues, which from ESTA's perspective must be considered in the report of access to and acceptance of cash as defined in the mandate of the ERPB working group. Ignoring these issues would jeopardize the meaningfulness and the credibility of the end report.

The first critical aspect is to take stock of the fact that the decline of cash is not happening just by chance. Looking at what a number of central banks are saying on the matter, it appears provoked by the conflict of interest that exists in the realm of the stakeholders primarily responsible for making cash available to the public. Having their own, more profitable, payments instruments to offer to their clients, banks have very little interest, if any, in cash and are publicly and recurrently acting against it. None has actually decided to go fully cashless. If they did, they would lose most of their retail customers. However, as in a concerted action driven by their common interest, they reduce cash services to the public, and sometimes even sponsor retailers to become cashless, to accelerate the phase out of cash. Their short-term cost of such actions will be offset by the increase of fees once cash will no longer be competing, making such practices predatory in their essence. If any other product or service than cash would be at stake, there is no doubt that such practice would be declared contrary to fair practice and competition rules.

The role of banks in the decline of cash is highlighted by the Central banks of three countries, Sweden, Finland and Norway, which all put the emphasis on their role, in different ways, to reduce the place of cash in the economy. This paper reviews the consequences of the reduction of cash services by banks, and how this amounts to passing on the cost of cash to cash users, a topic that some members of the ERPB categorically refused to discuss, although it is critical to understanding the evolution of cash in the EU.

The second part of the paper covers the impact of COVID and how the pandemics has accelerated the non-acceptance of cash for fallacious arguments of risk of contamination by COVID. Despite a number of Central Banks reacting promptly to these allegations and rebutting them, the damage is done and cash has regressed strongly, even in very cash-friendly countries such as Germany. However, despite the promise that "*contactless is the safest payment methods"* necessary to help in containing contamination, the major surge in contactless payments has not contributed to containing the pandemics, but has offered new market shares, particularly in micropayments, to card operators and additional income related to the volume of contactless payments. In other words: no public interest, but many private benefits in relation to the increase of contactless payments in relation to COVID.

However, increasing limits of contactless payment is not without consequences to card holders. This report raises the question of whether consumers and card holders are correctly informed and in particular whether consumers are aware of their increased liability resulting from the increase of payments limits. Here again, the development of contactless leads to passing on part of the liability for fraud from banks & PSPs to card holders, in a way which is probably unknown to most card holders.

The third and last part of the paper reviews some essential conditions for the future of cash, from the need to confirm that legal tender means "*mandatory*" acceptance of cash. The outcome of the Court ruling on C-422/19 and C-423/19 of the European Court of Justice is core to this, a discussion which unfortunately was not possible within WS3 of the working group. It seems rather obvious that this discussion is critical to the issue of acceptance of cash, at least to apprehend what a retailer should understand from it. The EU legislator should confirm that the notion of "non-absolute" mandatory acceptance still means that the level of obligation to accept cash is very high, based on the fact that legal tender is enshrined in primary law and, since it has been defined precisely in secondary law, it has gained direct effect. The matter is more political than legal in essence.

Other steps also look critical for the future of cash, namely adopting specific measures for retailers, such as guaranteeing the availability of change money – the absence of change money is the perfect stealth weapon of the war on cash. It also implies the need to define a "*right to pay in cash*", based on the fact that the status of legal tender must imply a high level of certainty to cash users that cash will be accepted as a payment.

The last section in this third part reviews what may possibly be seen as the most critical threat to the cash industry, when banks organise their own utilities for cash processing, closing a significant part of the market and pushing price down to an unsustainable level for a number of cash management companies. This part is one that has not been developed so far in the economic literature on cash, however it needs to draw the attention of policy-makers and competition authorities. This part of the report is particularly relevant to the questions 93 and 94 of the ERPB working group questionnaire, although it covers a more substantial aspect of "market developments" than that covered by the questionnaire.

This report leads to one simple and straightforward conclusion and solution to all issues raised in the mandate of the ERPB working group: to avoid any further progress of the reduction in cash in circulation, **those responsible for the phase out of cash should stop immediately acting against it.** Their own commercial interests will not suffer very much from it.

ESTA hopes that this report will usefully complement the ERPB report in areas where it is unlikely that the working group will venture, due to its composition and structure. ESTA remains at the disposition of the ERPB or the ECB to clarify any point covered in this report.

The Cash Management Companies Association

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By mid-April 2021, in reaction to the impossibility to foster discussion on a number of obstacles to acceptance of cash, ESTA withdrew from the ERPB working group and announced that it would submit its own report. ESTA has elicited not to respond to the questionnaire it received from the ERB working group, due to the very narrow scope it offered to the many issues covered in the mandate of the ERPB working group. The ESTA contribution focuses on a number of critical issues to cash that the ERPB working group should address, but is unlikely to be able to do due to its composition.

When talking about cash, it is essential to keep a few aspects in mind. Cash is the only public money available to consumers, households and businesses. It is not a commodity. Any new reduction in the place of cash in society is a new step towards the privatisation of money. Most electronic payments available, card or non-card based, are not European and ESTA shares the concerns expressed in the Commission public consultation on retail payments of 2020 of the need to address the risk of dependence on non-European operators for payments.

Cash is a public good and a public infrastructure.[1] Once emitted:

- it is instantly available,
- it can be stored independently from anyone,
- it can be used without control of anyone, without fees, without restriction,
- it does not require any infrastructure to be used
- it works without intermediaries
- it allows property rights to be established independently from any third party
- it provides protection against any intrusion
- it is the only means that allow non-banks to withdraw their deposits from banks without having to spend them if they do not want it.

These features probably explain the likes and dislikes of cash, depending on which categories of stakeholders see them positively or not. Only cash allows for all the above together. None of the electronic payment instruments does that, let alone any one of the above features. One important additional feature might be added:

- there has never been any antitrust procedure against cash emitters. Consumers holding cash have no reasons to fear that they are misused for any illicit profit made behind their back.

The latter point is critical as unfortunately it cannot be said for card operators, as the recent case against MasterCard and Visa just show.[2] The other serious issue is the level of fees charged by e-payment PSPs. While moderate as long as there is competition, a cashless society would undoubtedly see an increase of the fees supported by consumers and merchants. It is striking for example that MasterCard UK announced a few weeks after Brexit and the end of the applicability of the MIF regulation in the UK that it would increase the level of its MIF fivefold.[3]

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[1] For more details, cf. Cash Matters' paper " *Virtually Irreplaceable: Cash as Public Infrastructure (cashmatters.org)"*

[2] See cases Sainsbury's Supermarkets Ltd v Visa Europe Services LLC and others; Sainsbury's Supermarkets Ltd and others v Mastercard Incorporated and others.

[3] Financial Times: "*MasterCard to increase fees for UK purchases from EU, 25 January 2021*"

ESTA
The Cash Management Companies Association

Introduction

By email of 22 April 2021, the Secretariat of the ERPB working group on access to and acceptance of cash has solicited ESTA's views on a number of questions, out of the 98 questions worked out by the ERPB WS. The email states:
"For the facilitation of the stock-taking exercise, stakeholder-specific questionnaires have been prepared for the relevant stakeholders from both the cash supply and the demand side, aiming at getting an overview of

- the factors influencing the bank branch and ATM networks;
- various initiatives aiming at ensuring adequate cash withdrawal and lodgement facilities, especially for smaller and medium sized enterprises;
- obstacles regarding the acceptance of cash and initiatives aiming to ensure acceptance of cash also in the future;
- alternative ways where other actors (e.g. retailers, post offices) could offer services to provide access to cash (i.e. cashback, cash-in-shops, etc.), including possible obstacles hindering such cash services."

The questionnaire sent to ESTA does not cover all issues raised. However all are of utmost importance to understand the situation which cash is encountering and, although this is not the part of the mandate of the Working Group, identify solutions that will fulfil Mr Panetta's objective recalled in the email that "consumers keep the freedom to choose their payment method", which ESTA fully agrees as the statement goes, is of "*the utmost importance*".

However, "*the focus of the ERPB being on cashless payment, explaining its composition*",[4] it can hardly be expected that the ERPB will look meaningfully at cash issues, as the focus of its composing members is very much to get rid of it: "*Entrusting a group with the task of helping to preserve cash, which has hitherto seen its task as making cash superfluous, has quickly proved to be problematic*".[5] This report therefore aims at completing the ERPB stock-taking exercise where it is unlikely to go.

I. Looking at Cash Deficits and the Difficulties to Access Cash

It is critical for the ERPB's working group on cash to take a look at the reasons behind the fall of cash in a number of countries. It would be very inappropriate to draw any conclusions on access to cash or acceptance of cash without looking in detail into the process that leads cash to be phased out. A report aiming at "*taking stock*" of situations and obstacles to the use and circulation of cash that would ignore these aspects is likely to miss the big picture of the evolution of cash, both in relation to the current situation and in that of the future of cash.

The decline of cash is not occurring just by chance. As pointed out by a number of central banks, the question is who, if any, is driving it and whether it is the outcome of a deliberate commercial strategy of credit institutions and payment services providers. If so, part of the solution to the issue might be in a change of attitude towards cash and/or in the hands of the legislator.

It may also be the result of a lack of appetite for cash by the people or the convenience of contactless, and if so the reasons need to be understood, and particularly in relation to the information of card holders on the consequences of the increased limits of contactless. This part is considered in a later section of this report.

[4] Letter from Mr. Fabio Panetta to ESTA, 8 December 2020
[5] Norbert Haering, Money and More; 3 May 2021

To respond to this first question, this report looks at the point of view of two major stakeholders, Central banks on one side and the payment/financial sectors on the other, and how they have assessed the evolution of cash in the economy. It may not come as a coincidence that the three most vocal central banks on the issue of the phase out of cash are from Scandinavian countries where the proportion of cash has gone down fastest in the economy.

Cashless, particularly contactless, is progressing rapidly and substitutes for cash. To illustrate but one of the conquests of cash in private life of cash users, one quote of Tuomas Välimäki, Board Member of the Bank of Finland, will tell more than tens of pages:

> ***"As a personal aside, I was struck with amazement when I discovered how much of a church's collection plate can end up disappearing into a bank's service fees."***
>
> *Tuomas Välimäki, 28 November 2018*

A cashless environment would be a transparency nightmare. Indeed, the bank will know inter alia which of their customers are going to religious offices (and which religion), how often, and how much they donate each time they go. And of course, because this is also the objective of a cashless society, banks and payment services providers will also take their commission on each of the donations.

In ESTA's views, the remedy to the issue identified in the ERPB mandate is very simple and straightforward: those who are actively acting against cash and speaking publicly against it should stop and let consumers decide on their own. As ESTA pointed out, the members of a number of associations in the ERPB, while disserting on obstacles to access and acceptance of cash in the working group, still actively promote them outside, as can be seen for example by repeated calls to pay contactless to prevent contamination by COVID.

1. The Conundrum of Cash: it is Made Available to the Public through its "*Worst Enemy*"

Cash is public money and its future must be driven by the public, not by banks which have conflicting interests and are pushing cash out. Cash is made available to the public possibly through its '*worst enemy*'.

The conundrum of cash is that it is made available to the public essentially through the banking sector, which has a limited interest in cash and is offering competing payment services to its customers. It therefore sees cash as a cost and the phase out of cash as an opportunity. Banks are commercial entities that pursue their own specific interest and profits. As put by the EPC,[6] banks make no direct revenue from cash and the EPC is longing for the "*long awaited cashless society*".[7] There is in principle nothing wrong about that, except when it has dire implications on the place and role of cash as a *public* good.

Arguably, no private interests should be allowed to act openly against a public good.

[6] EPC; "New SECA Framework", 2016, at page 24
[7] Infographic "Cost efficiency of Cash, 20 June 2016, available on the EPC website

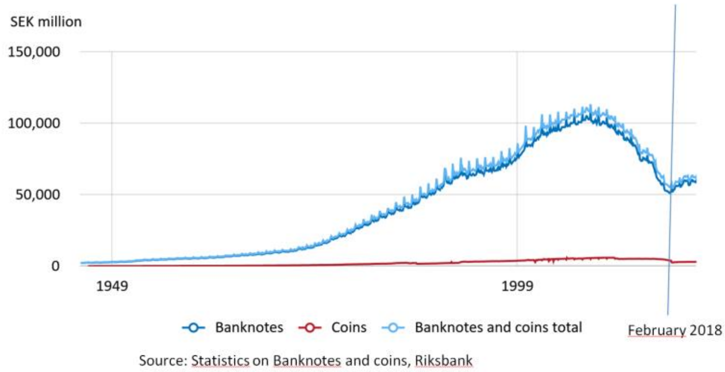
This peculiarity of the distribution of cash to the public, i.e. cash being made available by its main economic competitor, is unique and unseen on any other markets for goods or services. It explains the main thrust of the situation of cash, whether in the Eurozone or elsewhere in the world. What would one expect in terms of sales of a product whose distribution is in the hands of its main competitor?

2. The Swedish Context: the Demise of Cash is not a Fatality, it is Provoked

Understanding the underlying environment of the cash cycle is of critical importance to the mandate of the ERPB Working Group.

Sweden is a country where the level of cash has dropped so low that it is facing a real risk of demise: it is the country where cash use and cash in circulation have gone down fastest and furthest.

Sweden is not part of the Eurozone and its relevance to the ERPB work may therefore be seen as remote. However the country provides undoubtedly an accurate blueprint of the demise of cash and of the role of the banking sector in achieving it, as pointed out by the Riksbank itself in a report of March 2018.[8] The report gives insights into factors having contributed to the current situation.



As can be seen from the report:

- The decline of cash in circulation in Sweden starts by the end of 2008 and ends in the early months of 2018 (see graph above). During this period, two wide notes swaps took place: first a replacement of older notes and then the introduction of a new series). Before that phase of changeover, according to the Riksbank, banknotes in circulation had increased by 33% in the 10 years preceding 1998-2007.

- A vast change of coins was also implemented during the period.

- For each banknote swap, the redemption time of old notes and exchange with new ones was *very* short: just a few months (9 to 12 months). After an initial period where notes could be swapped in commercial banks, they could only be exchanged physically in one single office of the Swedish central bank, in Stockholm. Notes kept by holders after the redemption time would be their loss. The short redemption periods were meant to reduce the overlap of co-existing old and new series of notes, and therefore reduce the inherent cost to banks.

[8] "Banknote and coin changeover in Sweden: Summary and evaluation" report from the Riksbank, March 2018 (page 7) available at https://www.riksbank.se/globalassets/media/sedlar--mynt/sedel--och-myntutbytet-2015-2017/engelska/evaluation-banknote-and-coin-changeover-in-sweden.pdf

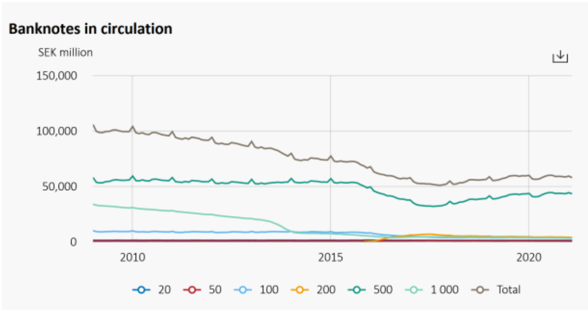
The commercial banking sector was critical to the process. The Riksbank's evaluation report states that the short redemption period of nine months was arranged "*through an agreement with the Swedish Bankers' Association and the national federation of savings banks.*" It also states that, when considering the process, "*the Riksbank was aware that the timetable would lead to complications for the general public in that there would be a number of different dates to keep track of*". However it considered that "*the interests of the cash market were more important and that the timetable that the market itself had suggested created the conditions for the smooth implementation of the changeover*".[9]

The report of the Riksbank points to the dubious role of banks: "*During the planning of the changeover, the banks had promised the Riksbank to help their customers have a smooth banknote and coin changeover. Despite this, several banks had continued to reduce the number of offices handling cash.*"[10] As the counterpart of short redemption deadlines that they had obtained, not all banks thought to assist the public by maintaining cash services during the changeover period, as they had committed to do.

This is critical to the demise of cash in Sweden: the Riksbank indeed considers that "*all indications are that part of the decline is due to banknotes and coins that have become invalid not being replaced by new ones*."[11] After enduring a stream of inconvenient notes and coins exchanges, cash users were probably unhappy with their money expiring on them.

All old notes and coins became invalid by 30 June 2017. By 31 December 2017, the Riksbank had got 92 per cent of the old banknotes and 52 per cent of the old coins back since the start of the changeover in 2015. This implies that the public was left with significant numbers of banknotes and coins having become invalid. It does not need more than the loss of few notes to upset individual members of the public.

Of interest is that now that no more banknotes and coins swaps are in sight for a while, for the first time in years, the number of Swedish krona banknotes in circulation is growing again since the beginning of 2018.[12]



The Riksbank further notes: "*The changeover was implemented in a situation where the use of cash in society is declining.* […] *The banks continued to reduce the number of offices handling cash and an increasing number of shops stopped accepting cash payments. The result of this was that the general public found it more difficult to get rid of their old banknotes and coins than it was expected to be when the changeover was first planned*."[13]

It further observed: "*Even if the banks are responsible for the distribution of banknotes and coins, they have no statutory obligation to provide cash. The banks determine themselves the kind of cash service they will offer the public*."[14] The Swedish Parliament Committee of Inquiry on the Riksbank

[9] Dito, at page 20 (emphasis added)
[10] Riksbank evaluation report, March 18, at page 26
[11] Dito, page 7 "
[12] Riksbank web site
[13] Riksbank evaluation report, March 18, at Page 46
[14] Riksbank evaluation report, March 18, at page 8

on "secured access to cash" [15] noted that in 2016, only 40% of bank branches were offering cash services, whilst Sweden has a much lower number of ATMs compared to other European countries.[16]

Compared to other European countries, Sweden has a much lower number of ATMs (p. 82 & p.77). The report further warns that the reduced use of cash shall be reinforced by actors speeding up the process, by dramatically and suddenly deteriorating access to cash services (p.138).

In Sweden, there are very clear fingerprints on who is behind the demise of cash.

3. Norges Bank's and Bank of Finland's Views on the Phase out of Cash

The same views are shared by the Central Bank of Norway. In a presentation at the Future of Cash conference in Paris on 12 April 2016, Leif Veggum, director at the Norges Bank made a number of statements on the role of banks in the reduction of cash in his presentation.[17]

Banks have adapted their approach to cash by promoting the changeover from cash to other solutions, whereby they make cash less available, they publicly argue against cash, and they promote their own solutions on which they can charge fees. As the Bank of Norway states, banks have a "*self-interest in phasing out cash*", to reduce costs and promote their own competing products.

The same observations were made by Tuomas Välimäki, a board member of the Bank of Finland in a speech of 28 November 2018, where he made the following remarks:

- The number of banks' branches offering cash services has declined rapidly, and "*where the service exists, opening hours of branches are often quite limited*". The subsequent reduction of cash services, whilst this is "*hardly surprising*", has in many places been "*too rapid*", so that "*many citizens feel that they have been deprived of services they rely on*".

- Despite this, the use and demand of cash remain considerable. A great number of citizens rely on cash, and "*it must be emphasised that we are not talking about just the elderly or other specific demographics*".

- Banks have imposed fees on cash services, on cash withdrawals and a handing fee on cash deposits too.

- People must have the right to access *their own money*: "*surely, people must be able to access their money other than by spending it*".

- Banks should consider their cash policies and fees carefully by banks: if withdrawals and deposits are subject to fees, bank customers will adapt their behaviour: deposit less and withdraw larger amounts than needed, increasing the amount of currency in active circulation. Money hidden under the mattress is money removed from the finance base of banks – "*Banks would do well to consider these points when they determine their cash related service fees*".

[15] The interim report "Tryggad tillgång till kontanter" – delbetänkande av Riksbankskommittén (SOU 2018:42).
[16] Report, at pages 82 and 77
[17] Leif Veggum, "*the impact of the Reduction of commercial Banks' footprint on the Norwegian cash cycle*"; Fture of Cash conference, 12 April 2016. The full presentation is available from ESTA

> ***"Deposits are statutory debt that a bank owes its customers – surely a lender should not have to pay a surcharge for collection of debt."***
>
> Tuomas Välimäki, Bank of Finland

As BEUC says in a position paper, fees on ATMs are "*charges for their use, which means that in some cases consumers have to pay to withdraw the money that is in their bank account*".[18] Most people think that cash is free and should remain free: after all, this is their cash which they earned through their work. Why should they be charged for using what already belong to them? When their cash is paid on a bank account, they pay fees for this bank account. To withdraw their cash they need a card which again is not free (except for big spenders[19]).

4. Reduction of Cash Services: Passing on the Cost of Cash from Banks to Cash Users

The reduction of cash services in bank branches or the closure of ATMs, which is part of the rationalisation of the cost structure of the banks, leads in effect to a shift of the cost of cash from banks to cash users, whether retailers or consumers.

> ***"Where cash services provide a strong competitive hedge between banks, their global reduction at sector level annihilates it."***

Cash has "*no direct revenues*" for banks, as stated by the EPC in its 2016 New SECA framework, and it is seen as a cost for them. Interestingly, however, no bank has gone cashless as it surely would lose most of its customers. Instead, the reduction of cash services is done at 'industry' level. Thus, there is no point for a customer to leave and go to another bank, as it would probably have no better cash service in another credit institution. Where cash services provide a strong competitive hedge between banks, their global reduction at sector level annihilates it.

But since cash services are reduced, either through bank branches closure, reduction of cash services in specific branches or elimination of cash services in other branches, the end result is still the same: consumers have less of it and must travel longer distances to access their cash. In other words, the reduction of cash services by the banking sector, which serves the purpose of cost reduction, inevitably translate into longer distances, more time and finally higher cost for cash users. Banks transfer their costs of providing cash to cash users.

This is a very serious issue as it discourages cash users from using cash. It makes cash more cumbersome to accept by merchants if they have to travel longer distances to deposit their cash. Or, if as a consequence, they store more cash for a longer time in their premises, with a subsequent increased risk of robbery compared to a situation where no excess cash is kept longer than necessary, as would be the case in a smoothly operating cash market.

[18] BEUC « *cash vs cashless – consumers need a right to use cash* », BEUC-X-2019-052 - 25/09/2019

[19] Cards are free to big spenders who also benefit from car loyalty schemes and rewards programme, to which small spenders have no access, which also fuels the analysis that card payments contribute to a "*transfer of wealth from the poor to the rich*".

> ***"Banks should fear the day when the public will consider that cash is becoming so scarce that it will lose confidence in its ability to withdraw its deposits from the bank."***

Similarly, when a bank removes its ATM where it the last one in a remote area, it forces de facto local retails to take over the responsibility to supply cash to local populations. This has a cost for the retailer, since it leads it to handling more cash than is justified by the normal course of its trade, and forces it to act as an ATM. The banks reduce their costs by removing ATMs, and the cost of cash supply is transferred to local shops.

Cash is for banks as for other services they offer: unless they invest in it, it will not be profitable for them. Since they have other payment services to offer, they have no incentive to do that and they prefer promoting other products than cash. They should fear the day when the public will consider that cash is becoming so scarce that it will lose confidence in its ability to withdraw its deposits from the bank.

II. Cash and COVID-19

1. COVID as an Accelerator of Non-acceptance of Cash

In March and April 2020, whist the entire world was fighting COVID19, the European Banking Authority and the Commission received two position papers from the two world-leading card operators advocating the increase of contactless limits, with the following messages, also widely relayed in numerous media:

At the same time, these companies also requested postponement in the deadline for readiness of SCA. As can be seen in these papers, the use of cash is said to be "*extremely risky*" and clearly associated with a risk of contamination to COVID. Conversely, card/contactless payments are presented as a "*safe*" alternative, i.e. as a protection against contamination (despite the fact that paying contactless does not imply contactless shopping).

VISA

1. Introduction

In order to limit the transmission of COVID-19, Visa is seeing increased interest from markets and individual clients to increase contactless limits across Europe to facilitate consumers' ability to make card or mobile payments more easily and securely without having to enter their PIN.

Visa is committed to working with clients, local governments and regulators to support any

Source: Visa Position Paper Contactless limits & SCA readiness in COVID-19 context; March 2020 mastercard

Contactless limits virus spreading

Using cash is extremely risky. Handling and exchanging banknotes and coins help virus spreading. The virus may survive several hours on surfaces. During this period, the same banknotes and coins may be handled and exchanged multiple times. Central banks are enacting measures to sanitize cash. It is, however, impossible to sanitize all the cash in circulation. This is why merchants are increasingly becoming cashless.

Contactless is safest payment method. Contactless payments may limit virus spreading by ensuring social distancing. The cashier does not need to touch the card. The cardholder does not need to touch the POS terminal. Often, these terminals are touched by thousands of people on the same day (e.g., groceries, pharmacies, healthcare). The cardholder and the cashier can remain at a safe distance. Less physical contact means less virus spreading.

Less physical contact with POS terminal. Contactless transactions limit virus spreading as long as the cardholder does not need to digit the PIN on the terminal. This is what already happens with mobile NFC payments, for which

Source: Covid-19 Contactless and SCA transition, position paper 15 April 2020

Coronavirus: et si vous abandonniez le cash?

Carte bancaire sans contact, smartphone les moyens de paiements se multiplient. ©BELGA

DOMINIQUE LIESSE | 20 mars 2020 13:29

La fédération financière belge lance un appel à la population pour tenter de limiter au maximum l'utilisation de l'argent cash, vecteur important de contamination.

On sait que les pièces et les billets sont de véritables **nids à microbes** et vecteurs passifs, donc, de la contagion du coronavirus. **Une solution: le paiement électronique** préconisé, par ailleurs, dans de nombreuses grandes surfaces.

Source: Les Echos, 20 mars 2020

"Febelfin calls on the people to seek to limit at most the use of cash, as an important channel of contamination."

A number of Central Banks all over the world have strongly publicly rebutted allegations that cash could be an aggravating factor of contamination. They stressed that a porous surface as that of a banknote was not permitting viruses to be active for very long. Studies have shown that plastic surfaces, such as that of plastic money, were likely to keep active viruses for a much longer time. The European Central Bank has mandated in April 2020 a study with three European labs to look at the matter. The initial results show that a virus decays slightly faster on a porous banknote surface than it does on other surfaces, and that the contamination on human fingers from a banknote after 30 minutes is almost zero, i.e. the time it takes for possible droplets to dry. When touching a banknote, the amount of virus potentially transmitted is so low that the risk of infection is insignificant. The cash industry and the public still expect the official communication of the ECB on these reassuring results.

"Despite a very substantial increase in contactless payments in 2020, the contamination has continued to accelerate. The promised trade-off* 'contactless for safety' *did not materialise."

However, the damage is done. The consequences of this kind of allegations and risks were very visible, with a large number of retail refusing payments in cash – sometimes against the law (e.g. in France and Belgium) through fear of contamination. However, despite a very substantial increase in contactless payments in 2020, and the subsequent sharp decrease in cash payments (40 to 60% depending on countries and retails), the contamination has continued to accelerate and spread widely in the Eurozone and outside. The trade-off '*contactless for safety*' promised by the two world-leading card operators' position papers did not materialise. However, they obtained what they wanted, and have captured a large part of the biggest chunk of cash payments, namely micropayments. The bonus, and not the least, for e-payment operators is the huge data mining offered on a big chunk of very low payments from their customers on which they knew nothing before COVID.

A survey by the Bank of England in July 2020 showed that "*71% of respondents were using less cash compared with before the pandemic.*" The main reasons cited by respondents for using less cash were "*retailers not accepting cash* (44%) *and concerns about handling cash* (35%)". As the authors suggest, "*The latter may be due to concerns that the virus could be transmitted via banknotes*".[20]

2. Card Operators Sponsoring Cashless Retails

Also of concern, as a major obstacle to the acceptance of cash, is the campaign of some electronic payment stakeholders to sponsor cashless transition by rewarding retailers moving to full cashless. The first of the kind is a campaign by Visa in the US, exported in the UK and other countries, where VISA would select shops going cashless and pay a premium a few years ago. In 2020, a similar campaign started in Italy, with Nexi paying back to merchants all fees related to payment below 5 euros, i.e. where cash has its main market share.

> ***"People do not realise it costs us more if they pay electronically and even more if they pay over the phone."***
>
> *A retailer in Scotland*

In any other product or service market, the actual sponsoring by companies with worldwide market dominance to bar market access to their main competition would be seen as an unacceptable abuse of market dominance, if they sponsor retailers to discard products from the competition. Maybe this is only allowed as cash is a public good, and no one but monetary authorities is owning it and responsible for it.

This is a predatory market strategy which aims at the elimination of cash. Once cash is no longer here, fees on micropayment will be restored and probably will increase substantially, as e-micropayments are proportionally more expensive than larger payment to process. The increase of electronic payments due to COVID had a very visible impact on retailers charges. A report from the BBC in Scotland showed in 2020 that "*the surge in electronic payments due to Coronavirus has left small retailers with hundreds of pounds of extra charges each month*". As a small retailer said in the report, "*People do not realise it costs us more if they pay electronically and even more if they pay over the phone*".[21]

Therefore, despite the boom towards electronic payments, supported by aggressive commercial strategies, cash remains accepted in most shops. The reason is that a number of "*smaller sized retailers operate and survive on very low margins so that it is uneconomical for them to give up share of each transaction to PSPs and banks*".[22] As mentioned above, the increase of payment fees they bear can be quite substantial.

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[20] Ellen Caswell, Miranda Hewkin Smith, David Learmonth and Gareth Pearce, "*Cash in the time of Covid*", Quaterly Bulletin 4/2020, Bank of England,

[21] Angie Brown "*Hidden lockdown costs 'crippling' business owners"* BBC Scotland News, 17 July 2020

[22] Dito

3. The Untold Story of the Contactless Transition

As seen above, the sanitary crisis has accelerated the transition from cash to contactless by fear of transmission of COVID-19, fears fueled for some part by the contactless industry. This is a very serious obstacle to acceptance of cash which plays both ways, by reinforcing retailers' reluctance to accept cash and by pushing consumers away from cash. There is, however, more to the story than just a swap of payment instruments, as most consumers might be keen to think.

As ESTA has continuously argued, '*contactless'* also means '*security less'*, as anyone with the card in their hand can initiate a payment. So much so that the 2nd payment services directive refers to contactless as an "anonymous" payment, as there is no way to identify the initiator of the payment.

ESTA considers that, in the debate on substitution between cash and contactless and particularly in relation to the sanitary crisis, consumers and card holders are insufficiently informed of the implications of the increased contactless facility of their card. Very often, card holders do not choose a card with NFC functions and only take the one sent by their credit institutions. In any case, they do not choose the limit of contactless payments associated with the NFC function.

Very little information is provided to bank's customers/card holders when a new card with NFC function is provided to them, whether they requested it or not. And therefore, very few consumers know that, according to Art 74 of the second payment services directive, a contactless payment is deemed to be an "*anonymous*" payment (i.e. the payment initiator cannot be identified), and the Directive also provides that card holders are entirely liable for any misuse of the contactless function until they declare the loss or the theft of their card to their bank. All illegitimate payments made in between will be their loss.

When it was decided in Spring 2020 to increase the contactless limit from 30 to 50 euros, very few card holders understood that this also increased they own liability to that limit, or several times this limit if a number of fraudulent payments are made before they realise their cards are missing and alert their bank to block them.

> ***"Contactless means security less. Card holders are fully liable for fraudulent payments using the NFC function of their cards. They just do not know it."***

The card industry is currently calling to further increase the limit – the debate is already on in the UK with an increase in the limit to 100 GBP, which is welcome by the Government. In essence, the higher the limit of contactless payment, the lesser risk card operators and banks face in relation to card fraud, under the provision for anonymous payments under PSD2. A substantial part of the liability for card fraud is therefore transferred from the bank/card company to the card holder. For a thief, a contactless card is a good business, it is worth most likely at least once the maximum limit, or several times this limit until the card is blocked by the bank, and all at the cardholder's cost.

Card holders need to be fully informed about the risk of functions they may not have asked for. As advocated by some consumer organisations, they need to be able to decide what is the maximum of contactless limit they need, based on their habits of payments and on the awareness of the related level of liability they wish to accept. Very likely, if consumers and card holders were to know that they are liable in case of fraudulent NFC payments, they would be unlikely to agree to the increase of their contactless payment limit. Some may just not want to have any contactless function on their card.

4. Cash and the Versatility of e-Payments

The longer-term issue for e-payment is the versatility, and short term 'shelf life' of payments solutions offered to customers. Cards have been used for several decades now, however, in countries such as *"India and Indonesia, without legacy infrastructure and the inertia to switch from cards or card-powered payments, payers have skipped the cards and embraced mobile wallets and transfers altogether*."[23] So cards may well be gone before cash is, as in most cases during the recent history of electronic payments, new electronic payments have substituted for older electronic instruments rather than for cash. The next iteration is undoubtedly a move from card-based payments to smart wallets. In emerging economies, the move is supported by an age pyramid of the population with a high share of 15-34 years, a category of age very eager to embrace new technologies. In Europe, the different shape of the age pyramid will not allow for a transfer as swift as in emerging countries. However, the process of substitution within e-payments is already in place.

Cash in the contrary, is very stable and the conditions for the use of cash do not change over time. Cash is a back-up that ensures the continuation of payments over the evolution of technology. Creating obstacles to cash and to its acceptance in retail is likely to raise a problem at some point when the evolution of technology for e-payment will be such that non-interoperable systems will succeed to each other, preventing those not yet owning the new technology to make payments. The continuation of cash will also ensure, as seen above, that fees for e-payment remain 'reasonable'.

III. The Conditions for the Sustainability of Cash

1. Acceptance of Cash and Legal Tender

As seen above, the key driver for the decline of cash is the limitation of cash services available to the public which make cash impracticable. The fact that retailers face difficulties in the management of their cash, and increased costs due to longer distances to deposit it to their banks or higher risk resulting from holding more cash than they would wish in their shops, lead them to be inclined to refuse it as a payment. This has been a critical issue in Sweden, in addition to the public's defiance of cash resulting from the cumbersome note swaps.

The issue is therefore how the notion of legal tender should be understood and what it precisely entails. Cash being the only central bank money, and as such the only public form of money, it has a status that no other form of money has. As Central Bank money, no payee in Europe, and particular in the Eurozone, can doubt of the certainty of cash as an IOU from its emitter. No one would be justified

[23] Brian Peddy, Glory, in ACMA newsletter, March 2021.

to refuse cash solely on the basis of doubts as to its value. A reliable indicator of this is that demand of cash increases when uncertainty does, as it is the case since the beginning of the pandemic.

During the 8 weeks ESTA participated in the ERPB working group, it has not been possible to organise any discussion on the court ruling on joint cases C-422/19 and C-423/19. In a facilitators' and secretariat's coordinating meeting on 29 March, the suggestion by ESTA to organise a discussion around the ruling in WS3 was criticised, as not being core to the mandate of the Group. It may sound unexpected not to discuss a case on legal tender, when the mandate of a working group suggests to look at "*obstacles to the acceptance of cash*".

The purpose of a debate would have been to apprehend what a retailer should understand from the ruling in relation to his position on cash. What does a "*non-absolute mandatory acceptance of cash*" means for a retailer when a customer in his shop insists in paying in cash?

> **"Non-absolute *mandatory acceptance of cash does not mean a weak obligation. Fundamental rights in the Charter are not* absolute, *but no-one would claim they are weak rights".***

Similarly, should a consumer, or more generally a payer, be entitled to expect with a certain level of certainty that his cash will be accepted by retailers?

Legal tender for cash is provided in Art 128 TFEU, without, however, defining what this means concretely. It is further defined in a Recommendation of 2010. In a recent case, the EUCJ considered that the EU legislator has granted a non-absolute mandatory acceptance of cash. The reasoning is based on the fact that the compulsory acceptance of cash is enshrined in a non-binding act, namely a Recommendation.

However, the Court says nothing on the nature of this non-absolute mandatory acceptance of cash other than that it is… non-absolute. With the exception of certain categories of the population, those with no choice, does it say clearly that cash must be accepted. The question is how a retailer can tell whether a consumer in his retail has the choice or not?

The fact is that no obligation, and no right, is ever *absolute* in essence. The EU Charter of Fundamental Rights itself provides in its article 52 that the rights proclaimed in the Charter may be restricted under specific circumstances. That does not mean that the rights in the Charter are weak, only that they are not *absolute*. Similarly, a non-absolute mandatory acceptance should not be understood as a weak obligation. It is a strong obligation, only subject to restricted limitations, for example on the basis of "good faith".

The reason behind ESTA's assessment is based on the fact that, following a very rich jurisprudence of the Court, primary law may have a direct effect. This depends on three main conditions: that the measure is clear, sufficiently precise and does not need any further act, notably from Member States, to be enacted. With the Recommendation of 2010, which has explained the definition of legal tender entailed in Article 128, the concept has become clear and precise, and therefore Article 128 has obtained a direct effect, once the notion of legal tender has been clarified by the legislator – whether this was done in a binding or non-binding act has a lesser importance, as primary law is higher in the hierarchy of norms, particularly when it has a direct effect.

The EU legislator should therefore clarify what a "*non-absolute*" mandatory acceptance of cash should mean further to the Court ruling. It could do that possibly through a communication, in the light of the EU primary and secondary law as suggested above.

2. Establishing a "*Right to Pay in Cash*"

Mandatory acceptance of cash is essential to the future of cash. Cash is in competition with other commercial organisations with considerable market power to promote their products. It goes as far as promoters of electronic payments subsidising retails for going 100% cashless, or offer to pay back any commissions for payments under 5 euros, i.e. where cash has its main market share.

Monetary authorities should be wary of such practices, whose aim is to end cash. Cash is a volume driven industry which requires a critical mass of cash in circulation to be sustainable. Each time something is done to promote electronic money against cash, it is a new step towards its unsustainability which is achieved. The generous organisations which offer to pay back payment fees on micropayments will only do so as long as cash exists. However, payment fees will increase sharply once consumers will have no choice. The precedent of the end of the MIF regulations for cross border card payments in the UK post Brexit is telling: once the transitory phase to Brexit was over, and the MIF regulation no longer applied anymore in the country, it took only three weeks for some card operator to increase the MIF… fivefold on payments from the EU. It highlights what the consequence of predatory competition might mean in the future for European consumers and payers if cash is allowed to drop to such a level where it will become unsustainable.

There is no better way to oppose the commercial market power of e-payment operators towards the phase out of cash than to establish a strong "*right to pay in cash*" to match the non-absolute mandatory acceptance of cash by retailers and merchants. Consumers must have the right to resist retailers' opposition to accept cash, particularly when such refusal is indeed "subsidised" by e-payment operators. It also meets the requests by consumer organisations to preserve the freedom of choice for payment instruments.

3. Guaranteeing the Provision of Change Money

The experience of Sweden shows the perfect stealth approach to the war on cash, which consisted in the difficulty for retailers to obtain change money. Little attention has been brought to this issue; however this is critical for allowing smooth payments.

Cash-related legislations in countries which have adopted them do not look at retailers' specific needs for accepting cash in a smooth manner for their business. Cash measures must take into consideration the retailers' needs as change money and cash depositing facilities are core to effective and smooth cash payment.

4. Competition Policy and the Sustainability of Cash Processing

This section deals with a very significant type of market development which is experienced, in different forms of shapes, in a number of countries. It relates to the trend that can be seen with banking institutions organising their own CIT/CMC utilities, which often include an exclusive purchasing obligation foreclosing any procurement to a third party. This section covers ESTA's response to questions 93 and 94 of the ERPB working group questionnaire, albeit extending it to areas not initially considered by the drafters of the questionnaire. It is among the critical issues that ESTA was not able to address in the ERPB working group.

It is sometimes said that the CIT/CMC market structure, with an evolution towards duopolistic or monopolistic situations, is an issue for the sustainability of cash likely to raise concerns. Nothing could be further from the truth.

The reasons for the concentration trends in specific markets are well identified: they lie in the low level of their margin, the importance of economies of scale and a high level of maturation/saturation of the market. The other critical factor is that the market leaves only little place for operations with a national coverage, which is often required for being able to compete for significant business opportunities.

Barriers to entry are usually limited. In most cases, the main barrier will be that of the regulatory licenses, when it is required, and the relevant vetting of employees. However this needs to be put into perspective as in any case the level of barriers to market entry is not what explains the market structure. Despite the level of concentration, the CIT/CMC market remains very competitive. This can be explained by a number of reasons:

- First, it is very easy for any customer to 'sponsor' a new entrant on any market by granting it a market of sufficient size: should any large customer be unhappy with the market situation, it can therefore call in a new operator at relatively short notice. It should be said that in such cases, the entry into the market of a new operator sponsored by a customer would mean a loss of business to an 'incumbent' which may well put its position on that market at risk; In some countries (e.g. Belgium) the newcomer has some obligations to retain the staff of the outgoing incumbent in case of change of CIT operators;
- Second, the market power is essentially with the demand side, the customers, who can impose their market conditions to suppliers. Even if in a monopolistic situation, a CIT/CMC operator will have very little market power, and any significant customer would be able to 'sponsor' the entry on the market of a new operator.

The competition risk is not with independent CIT/CMC operators engaged in a fair and level playing field competition. It is with CIT structures put in place by groups of banks to compete with independent groups.

Evidence of this is provided in markets such as the Netherlands, Portugal, Romania or Sweden where commercial banks have put in place their own CIT operations. Irrespective of their specific legal form, these structures can be very detrimental to independent CIT operators. The situation is different in each country; however some common features are usually observable:

- In most cases, these structures are put in place by a group composed of the largest commercial banks. The activity of these structures is essentially composed of the business derived from their shareholders/“constituents”, which makes these structures very dependent on these banks, or acting in effect in no other capacity than as an auxiliary to their parent companies;

- The market share of cash processing for the banks can present up to $4/5^{th}$ of the market, leaving very little place for independent CIT/CMC operators;
- In some cases, these operations would foreclose a very significant part of the market to third operators, thereby eliminating competition for a substantial part of products and services, particularly when they include exclusive purchasing arrangement from their stakeholders;
- The dominance of these structures on a national market pull prices downwards through some kind of predatory price competition;
- In essence, what these structures may create are in fact market *anomalies*, placing a substantial chunk of the market in a non-competition zone, and forcing the competing part of the market to adjust by pulling prices downwards.

In the longer run, these factors bear the risk, if not the promise, that any competing alternative to banks operated CIT disappears from the market. When looking at the sustainability of cash, this needs to be looked at carefully. Competition authorities in Member states have not always been able to assess the medium to long-term consequences of these operations and their impact on the CIT market, which should not be allowed to eliminate competition in respect of any substantial part of the products and services.

Conclusions

With cash being legal tender, there is a *legitimate expectation* from the public that cash will be accepted, except in exceptional circumstances. Legal tender must mean *legal certainty* of acceptance.

This report suggests looking at the issue of access to and acceptance of cash from a broader perspective and addressing the ‘root causes’ of the phase out of cash. When doing so, the issue at stake becomes fairly simple: cash is phased out only because it is pushed out. There is nothing unavoidable in the process and it can easily be reverted, if those behind it were simply stopping acting against cash.

If goodwill is not enough, monetary authorities should take a different approach to the matter and not contemplate the crawling privatisation of money passively. Under EU legislation and the obligation for banks to provide accounts with basic features which includes cash services, the legal framework is in place already. Possibly, its implementation may require some clarification.

Cash is a public good. It is there for the people and it is an essential element of democracy. No one should be able to act openly against a public good. Public authorities, and notably monetary authorities, have the duty to protect it. If not for themselves, at least for the people they serve.

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