ESTA
The Cash Management Companies Association

Response from ESTA to the UK consultation on access to cash

23 September 2021

Executive Sumary

This report is submitted by ESTA in response to HM Treasury consultation on access to cash. The report raises a number of critical issues when considering the future of cash and its sustainability.

The first critical aspect is to take stoke of the fact that the decline of cash is not happening just by chance. It is provoked by the conflict of interest that exists in the realm of the stakeholders primarily responsible to make 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 acting against it. None has actually decided to go fully cashless, as otherwise they would lose their private customers. However, as in a concerted action driven by a 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.

The second part of the paper covers the impact of COVID and the acceleration that the pandemics on 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 contain 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.

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 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. Not everyone in society can use electronic payments, some consumers are denied any card by their banks, but all consumers should be able to make payments, if only in cash. It is critical to redefine legal tender as the obligation to accept cash as a payment, not just as the settlement of a debt.

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 – and the need to define a "*right to pay in cash*", based on the fact that the status of legal tender must imply a certain level of certainty to cash users that cash will be accepted as a payment.

Section IV finally responds to some specific questions where ESTA has a view.

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Introduction – ESTA's reasons for responding to a UK consultation

The UK HM Treasury has launched a consultation on the critical issue of access to cash.

ESTA, the European Cash Management companies' association, is happy to provide this submission to HM treasury. In doing so, ESTA is fully aware of the current context post-Brexit and after careful consideration whether it was appropriate for an EU association to respond to a UK consultation in 2021, we have decided that it was worthwhile to do it for a number of grounds:

- A number of ESTA members are based in the UK or active in the country;
- ESTA has gathered a strong experience in assessing and analysing trends in cash and their underlying reasons, which are by and large of relevance to the UK;
- ESTA has given much thoughts on what might provide a sustainable environment for cash in the future, and we believe some of its features are also of relevance to the UK.

When doing so, however, ESTA feels we are not competent to respond to specific questions of the consultations such as those on the organisation of access to cash within the UK, and how rules should converge or diverge between Great Britain and Northern Ireland. Nor do we feel entitled to respond on which authority should be responsible for access to cash, other than emphasising that this responsibility cannot be left to commercial banks, by reason of their conflict of interest.

This response is adapted from on a more comprehensive report sent by ESTA in June 2021 to the ECB led "European Retail Payment Board" and its working group on "access to and acceptance of cash". 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 of 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 British, let alone European.

Cash is a public good and a public infrastructure. 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 don't 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 instrument does that. Some of these characteristics above are available to cash only. 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 on 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.[1] 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, once the EU MIF regulation was no longer enforceable in the UK.[2]

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

It is critical to take a look at the reasons behind the fall of cash in a number of countries, and in the UK. 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.

The decline of cash is not occurring just by chance. The question is who, if any one, 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 the hands of the legislator.

It may also be the result, as some payment services providers claim, of a lack of appetite for cash by the people or the convenience of contactless, and if so the reasons need to be understood. This part is considered in a later part of this submission.

To understand the reasons behind the decline of cash, it is interesting to look at the point of view of two major stakeholders of the cash cycle, Central banks and the payment /financial sectors 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.

Until now, new electronic payment instruments have mostly substituted for previously available electronic payment instruments. With cashless though, things have changed: cashless is progressing rapidly and clearly substitutes for cash. To illustrate but one of the conquests of cash in private life and the intimacy 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*

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

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

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 solution to declining cash 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, some stakeholders in the cash cycle, and in particularly those primarily responsible for making it available to the public, namely banks, still actively promote their own cashless instruments. As if this was not enough, they also actively and powerfully act against cash. This was particularly the case for example with the repeated calls to pay contactless to prevent contamination by COVID.

1. The Conundrum of Cash: it is made available to the public by 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 pubic 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 their 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 European Payment Council (EPC),[3] banks make no direct revenue from cash and the EPC is longing for the "*long awaited cashless society*".[4] 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.

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 a substantial part of the world. What would one expect in terms of sales of a product which distribution is in the hands of its main competitors?

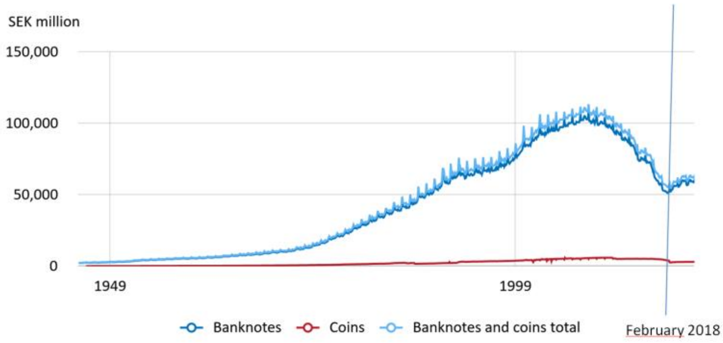
2. The Swedish Context: Demise of Cash is not a Fatality, it is Provoked

Understanding the underlying environment of the cash cycle is of critical importance to the future of cash. Sweden is a country where the level of cash had dropped so low that cash is facing its demise: it is the country where cash use and cash in circulation have gone down fastest and furthest.

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.[5] The report gives insights into factors having contributed to the current situation.

[3] New SECA Framework, 2016, at page 24
[4] Infographic "Cost efficiency of Cash, 20 June 2016, available on the EPC website
[5] "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

As can be seen from the report, the banking sector is directly responsible for thesharp decline of cash in the country, and this happen initially through the programme of replacement of bank notes and coins series. This is the way the Swedish Central bank describes the process:



Source: Statistics on Banknotes and coins, Riksbank

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). It coincides with a vast operation of swap of old banknotes (two series of swaps) with new series, and similarly a large swap of coins.

Before that phase of changeover, according to the Riksbank, banknotes in circulation had increased by 33% in the 10 years preceding 1998-2007.

For each banknote swap, the redemption period for old note was very short . (9 to 12 months). After an initial period when notes could be swapped in commercial banks, they could only be exchanged physically *in one single office of the Swedish central bank.* The reason for the short redemption was to reduce the cost of commercial banks by reducing the overlap of co-existing old and new series of notes. Notes kept by holders after the short redemption period would be their loss.

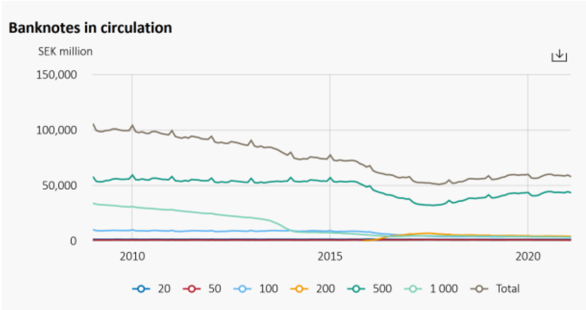
The commercial banking sector was critical to the process. The Riksbank's evaluation report states that the short redemption period of nine months was arranged "*through an agreement with the Swedish Bankers' Association and the national federation of savings banks."* It also states that, when considering 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*".[6]

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.*"[7] 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 committed.

As The Riksbank puts it: "*all indications are that part of the decline is due to banknotes and coins that have become invalid not being replaced by new ones*."[8] After enduring a stream of inconvenient notes and coins exchanges, cash users were probably uncomfortable with their money expiring on them. By end of 2017, 92 per cent of the old banknotes and 52 per cent of the old coins back since the start of the changeover in 2015. Therefore, a significant value of cash was lost by the public during the process.

[6] Dito, at page 20 (emphasis added)
[7] Riksbank evaluation report, March 18, at page 26
[8] Dito, page 7 "

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.[9]



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*."[10]

In Sweden, there are very clear fingerprints on who's 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.[11]

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 from 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.

[9] Riksbank web site
[10] Riksbank evaluation report, March 18, at Page 46
[11] 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

- 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 in considering these points when they determine their cash related service fees*".

> ***"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, the European Bureau of consumers associations, 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*".[12] 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[13]).

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, lead to a shift of the cost of cash from banks to cash users, whether retailers or consumers.

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 for banks, their global reduction at sector level annihilates it.

But since cash services are reducing 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 more cost for cash users.

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

[13] 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*".

This is a very serious issue as it discourages cash users to use 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 in a smoothly operating cash environment.

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

Similarly, when a bank removes its ATM which is the last one in a remote place, 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 handle more cash than is justified by the normal course of trade, and force them to act as an ATM. The banks reduce their costs of maintenance and replenishing by removing it from this place; instead the cost of cash supply is transferred to local shops. Cash back is therefore only a bad solution. Whilst the banks still charge their fees for their basic account services, which include cash deposits and cash withdrawals, it actually provides much less cash services and retailers are de facto acting as an ATM, having to process more cash than they should to offset for the failure of banks to do so.

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 they will lose confidence in their ability to withdraw their deposits from their 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 European Commission received two position papers from the two world-leading card operators advocating for the increase of contactless limits, with the following messages, also widely relayed in numerous media:

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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* [the Belgian Financial Federation] *calls on the people to seek to limit at most the use of cash as an important channel of contamination."

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

At the same time, these companies also requested postponement in the deadline for readiness of SCA.

In these papers, as can be seen, the use of cash was declared as "*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).

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 allowing viruses to be active for very long. Studies have shown that plastic surfaces, such as that of plastic money, were likely to keep an active virus for a much longer time. The European Central Bank has mandated in April 2020 a study with three European labs on the matter. The results published in July 2021 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.

However, the damage is done. The consequences of this kind of allegations on risks were very visible, with a large number of retail refusing payments in cash – sometimes against the law (e.g. in France and Belgium) by fear of contamination. However, despite a very substantial increase in contactless payments in 2020, and the subsequent sharp decrease of cash payment (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 in writing by the two world-leading card operators' position paper did not materialise. However, they obtained what they wanted, and have captured a large part of the biggest chunk of cash payment, namely micropayments. The bonus, and not the least, for e-payment operators is the huge data mining offered on very low payments from their customers on which they knew nothing, before COVID!

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 in 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 don't 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 nothing but 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 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 don't realise it costs us more if they pay electronically and even more if they pay over the phone*".[14]
Recently, a number of UK associations have also complained against the soaring costs of cards and electronic payment.[15]

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

[15] https://www.kamcity.com/namnews/uk-and-ireland/general/retailers-urge-government-to-take-urgent-action-on-soaring-payment-card-costs/

Therefore, despite the boom towards electronic payments, as it may be 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. As mentioned above, the increase of payment fees they bear can be quite substantial.

ESTA calls for such aggressive marketing against cash, i.e. a public good, to be restricted. The same way as any supplier of goods or services might be found in breach of competition by subsidising a third party not to distribute or accept competitors' products or services, it should be declared against competition rules for e-payment providers to subsidise retails going cashless. As we all know, this is predatory and once cash will not be an alternative anymore, PSPs fees will increase very significantly.

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 transition of COVID-19, fears fueled for some part by the payment 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, which has been transposed in the UK and continues to apply albeit without its reference to EU law, refers to contactless as an "anonymous" payment, as there is no way to identify the initiator of the payment.[16]

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 implication 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, deemed to be "*anonymous",* 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.

ESTA fully understands that the EU 2nd PSD is no longer of relevance in the UK, however the transposition act in UK law still is.

[16] For the sake of clarity, "anonymous" does not refer to the fact that the payer in unknown, but only to the fact that the person initiating the payment cannot be known, in the absence of PIN or signature needed for the payment.

When it was decided in spring 2020 to increase the contactless limit from 30 to 45 GBP, very few card holders understood that this also increase they own liability to that limit, or several times this limit if fraudulent payments are made before they realise they are missing their card(s) and alert their bank to block them.

The card industry is currently calling to further increase the limit – the debate is already on in the UK with an increase of the limit to 100 GBP by 15 October 2021[17] 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 the UK transposition act of 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 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-enabled 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."[18] So cards may well be gone before cash does, as in most cases over 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 which the high share of 15-34 years in their population, 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'.

[17] https://www.bbc.com/news/business-58354855
[18] Brian Peddy, Glory, in ACMA newsletter, March 2021: page

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 payments impracticable. The fact that retailer 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 is in doubt of the certainty entailed in cash as an IOU from its emitter. No one is entitled to refuse cash on the basis of lack of confidence in this form of money.

The future of cash therefore calls for stricter rules of acceptance of cash. As per the ank of England's website, legal tender in the UK is defined as the ability to settle a debt in cash, not, however, to make a payment. To flag the inconsistency that this definition might lead to, two consumers sitting together in a pub would face a different situation: one would be entitled to pay in cash after having consuming their order (as this is a debt) while the other not having yet started would not be allowed to settle the bill in cash, as this is not yet a debt.

The rule should be clarified. As a public money, it should be illegal for any retailer to refuse cash except on the basis of fair grounds (e.g. a payment made of too many coins, or a banknote denomination not commensurate to the price to pay). Not everyone can use electronic payments, some consumers are denied cards by their banks, and all should be able to pay, if only in cash.

5. 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 up to a point where the promoters of electronic payments subsidise retails for going 100% cashless, or offer to pay back any commissions for low value payments, i.e. where cash has its main market share.

Monetary authorities should be wary of such practices, which aim is to demise 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 anymore. 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 payment from the EU![19] 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.

[19] Financial Times, "*Mastercard to increase fees for UK purchases from EU*", 25 January 2021, https://www.ft.com/content/39f553a0-00c5-48ad-a8ee-0b9fd75554b0

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 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.

6. 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 on 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 measure must take into consideration the retailers' needs as change money is core to effective and smooth cash payment.

IV. Responses to Questions of the Consultation

As mentioned in the introduction, ESTA does not feel entitled to respond to all questions raised in the Consultation document. However, some questions are of critical importance to the future of cash.

Question 1: Do you agree that legislation should provide the government with powers to set geographic requirements to ensure the provision of withdrawal and deposit facilities to meet cash needs through time?

Yes. It belongs to the government to pass legislation in order to ensure that cash remains accessible to the public. However, the precedent of Sweden, where such legislation was passed (with specific requirements for maximum distance to an ATM or a cash dispenser) is not enough. A smooth operation of the cash cycle requires more than just availability of withdrawal and deposit facility of cash. Retailers need to have access to change money, which is critical for making cash payment practicable. There is no better way than restricting change money to make cash payment cumbersome. Retail specific measures are also indispensable – something that Sweden has not yet considered.

The other critical point is to consider the channels through which cash is made available to the public, and where it can be deposited by the public or retailers. The banking sector is intrinsically conflicted as it has its own, more profitable, payment instruments to offer. The obligation that legislation would impose should look at the effective performance, not just an infrastructure of cash points.

Legislative requirements have to be set against the background that cash is made available to the public through its worst enemy, and that there will always be a temptation by those operators to rationalise costs, which will unavoidably mean reducing the cost of cash facilities and increase revenues from other (electronic) payment services.

The most effective way of ensuring that cash works smoothly is to ensure that cash is not only available to those who need it, but also accepted in retail with only good faith restrictions, and that retailers can deal with the cash they collect efficiently, in terms of deposit facilities but also crediting on their account. It seems that the only legislative requirement currently considered would only look at the infrastructure, when it should also look at how cash can be used (i.e. acceptance).

Question 2: Do you agree that legislative geographic requirements should target maximum simplicity?

ESTA would submit that the requirements envisaged should target "*maximum efficiency*". Maximum simplicity for the banking sector may not be good enough for the public and for retailers. The requirements to put in place must be gauged on the criteria of how the cash cycle operates for all parties.

Question 3: Do you agree that geographic requirements should initially be set to provide a level of reasonable access to all areas, reflecting the current distribution of cash access facilities?

"Reasonable access" may be a subjective criteria, as what is reasonable for one party may not be for another party. "Reasonable access" has to be assessed from the point of view of the purpose of cash, as a public good for those categories of the population which need it most.

Question 6: Do you agree that requirements should be targeted at the largest payment account providers?

The approach developed in section 3 of the consultation document might potentially create market distortions if obligations were to apply to some and not to all market operators. ESTA is of the view that cash services should be universal, as cash is a public good. Financial institutions and other operators should be allowed, under full respect of competition rules, to organise themselves on how relevant requirements are to be met. ESTA would be wary, however, if this led UK financial institutions to set up a cash-related utility, as they exist in some EU countries, which would be in competition with the cash industry and undermine the level playing field, putting the industry further at risk, after the significant reduction of the circulation of cash during the pandemics.

Question 7: Are there other factors beyond those listed that the government should take into consideration when designating firms?

Cost of cash is of paramount importance. As mentioned above in this submission, retailers in the UK have raised serious concerns in relation to soaring fees of electronic payments instruments. Many small shops are operating on very low margins, and these PSP fees represent a significant increase of their operating costs. Also, we have raised earlier in this submission the issue of how some card operators have increased very substantially their interchange fees, once the EU regulations capping these fees were no longer effective in the UK.

Similarly, capping fees of firms operating cash services is therefore essential: if this is not under control, fees charged for cash services are likely to increase beyond any reasonable level. It should be recalled that basic account services include cash withdrawals and deposits, and fees charged by banks for these accounts do include these services already.

Questions 8, 9, 10 and 11 on the relevant agency acting as a regulator in the UK

ESTA has no views on which agency, whether national or regional, should be appointed for monitoring and enforcing cash requirements other than stating that it should not be left to the banking sector, due to its inherent conflict of interest.

Question 12: Do you have any other views regarding the future role of the regulators in protecting cash

Yes! As said above, the protection of cash requires amending the definition of legal tender and making acceptance of cash compulsory, only subject to reasonable restrictions (e.g. limitation in the number of coins for making a payment or using a commensurate denomination for the payment considered).

The Government should also prohibit any aggressive marketing of electronic payment providers, such as sponsoring retails to become 100% cash less, or restricting their ability to speak openly against cash (e.g. “using cash is extremely risky” or any denigrating campaigns against “filthy cash”). Maybe a model for that would be the rules on comparative advertising and/or unfair commercial practices, possibly also competition rules. Anyone is free to advertise the benefits of its goods and services, but should not be allowed to denigrate its competitors.