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## I. EU regulatory environment

### Back-end processing of payments

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By “payment institutions”: harmonised by Payment Services Directive
## I. EU regulatory environment

### Front-end provision of payment services/instrument

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By “payment institutions”: harmonised by Payment Services Directive (supervisory authorities to be designated by Member States)
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Front-end payment types

• “Payment instruments”: in general, fall within the scope of Eurosystem oversight

• Currently no general framework or general standards, but requirements targeted to certain instruments (e.g. security objectives for e-money)

• Some NCBs carry out oversight of payment instruments on a national basis

• New/innovative payment services (e-payments): central banks monitor innovation (e.g. http://www.e-pso.info)

• Eurosystem can develop a common framework if needed
I. EU regulatory environment

Other provisions

• Customer protection (e.g. customer information requirements, execution times) → harmonised by Payment Services Directive

• Anti Money Laundering-Terrorist Financing → harmonised by AML-TF Directives and EU Council Regulation

• Competition → European Commission and National Authorities

Various cases in the cards industry.

The recent Sector Enquiry found signs of possible market fragmentation in the same industry

• Self Regulation → SEPA (impact on industry, infrastructure, instruments)
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Payment Institution

“payment institutions” means legal persons who have been granted authorisation in accordance with Article 6 of this Directive to provide and execute payment services throughout the Community (Art 4.)
I. EU regulatory environment

“PAYMENT SERVICES”

1. Services enabling cash to be placed on a payment account as well as all the operations required for operating a payment account.

2. Services enabling cash withdrawals from a payment account as well as all the operations required for operating a payment account.

3. Execution of payment transactions, including transfer of funds on a payment account with the user's payment service provider or with another payment service provider:
   - execution of direct debits, including one-off direct debits;
   - execution of payment transactions through a payment card or a similar device;
   - execution of credit transfers, including standing orders.

4. Execution of payment transactions where the funds are covered by a credit line for a payment service user:
   - execution of direct debits, including one-off direct debits;
   - execution of payment transactions through a payment card or a similar device;
   - execution of credit transfers, including standing orders.

5. Issuing and/or acquiring of payment instruments.

6. Money remittance (definition given in art 4).

7. Execution of payment transactions where the consent of the payer to a payment transaction is transmitted by means of any telecommunication, digital or IT device and the payment is made to the telecommunication, IT system or network operator, acting solely as an intermediary on behalf of the payment service user.
## II. U.S. regulatory environment

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<td>Antitrust laws</td>
<td>U.S. Department of Justice</td>
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<td>Consumer protection</td>
<td>Liabilities and responsibilities in check and electronic funds transfers</td>
<td>State check laws; Electronic Funds Transfer Act of 1978</td>
<td>For checks, state legal authorities; for electronic funds transfer, federal agencies (financial institution supervisory agencies or the Securities and Exchange Commission according to their jurisdiction) with the Federal Trade Commission covering retailers and others payment participants not covered by other agencies</td>
<td>For electronic funds transfer, the Federal Reserve Board’s Regulation E specifies disclosure, payment authorization, transaction record, and dispute resolution requirements</td>
<td>Equal</td>
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<tr>
<td>Data security</td>
<td>Safeguarding and disclosing to customers the use of sensitive nonpublic customer information</td>
<td>Gramm-Leach-Bliley Act of 1999; various federal and state laws concerning unfair and deceptive acts in business transactions</td>
<td>Federal financial institution supervisory agencies; Federal Trade Commission</td>
<td>Federal Reserve Board’s Regulation P</td>
<td>Unequal between financial and nonfinancial organizations</td>
</tr>
<tr>
<td>Prudential supervision</td>
<td>Periodic examination and ongoing monitoring of the financial health and prudential operation of the institution</td>
<td>Various laws enabling supervision of financial institutions; The Bank Service Company Act of 1962; state laws covering money transmitters</td>
<td>Federal financial institution supervisory agencies</td>
<td>State and federal guidance provided by supervisory agencies; Federal Reserve regulations covering payments, such as Regulations J (check collection) and CC (check funds availability)</td>
<td>Generally unequal with the possible exception of where banks outsource payment processing to nonbanks</td>
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</tbody>
</table>
III. U.S. - EU comparison

Some similarities…

- Expectation that banks that outsource will be responsible for controlling risk in outsourced activity
- Supervision of processors affiliated with banks
- Some reliance on self-regulation
III. U.S. - EU comparison

Some differences…

• ECB/Eurosystem have a clear legal mandate to oversee payment systems and regulatory authority; the Federal Reserve less so

• Supervision of nonbank processors is more uniform within the U.S. than across EU Member States, but the Payment Services Directive has brought harmonization

• Nonbank providers of payment services to end-users: in the US there are no equivalents to ELMIs or the “payment institutions” introduced by the Payment Services Directive