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Internal Market and Services DG

FINANCIAL INSTITUTIONS

Retail issues, consumer policy and payment systems

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WORKING PAPER
ON
SEPA MIGRATION END-DATE

DISCLAIMER

The information contained in this document has been prepared by the Commission services and is only intended for consultation purposes. It does not purport to represent or prejudge the final position that the Commission will take on the basis of the results of the impact assessment that is currently being finalised and which should accompany the formal Commission proposal.

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- (1) Self-regulatory efforts have proven not sufficient to drive forward concerted migration to SEPA on both the supply and demand sides. Only a rapid and comprehensive migration to pan-European credit transfers (SCT) and direct debits (SDD) will generate the full benefits of an integrated EU payments market.
- (2) In its Council conclusions on SEPA of 2 December 2009, the ECOFIN Council has acknowledged the importance of a SEPA end-date and recognized that "establishing definitive end-dates for SEPA Direct Debit and SEPA Credit Transfer migration would provide the clarity and the incentive needed by the market, ensuring that the substantial benefits of SEPA are rapidly achieved and that the high costs of running both legacy and SEPA products in parallel can be eliminated". It therefore invited the Commission, in collaboration with the ECB and in close cooperation with all actors concerned, "to carry out a thorough assessment of whether legislation is needed to set binding end-dates for SDD and SCT and to come up with a legislative proposal should a thorough impact assessment confirm the need for binding end dates".
- (3) On 10 March 2010, the EP adopted a Resolution inviting the Commission to set a clear, appropriate and binding SEPA migration end-date which should not be later than end-2012¹.
- (4) The Commission services have carried out, in close cooperation with the ECB services, further to discussions with Member States and market participants representatives, an assessment which clearly concludes that the market can not manage migration alone and there is a need of binding legislation fixing a mandatory date for SEPA migration.
- (5) The attached document provides for a number of issues which would have to be covered when setting mandatory end-dates for both credit transfers and direct debits. The following main principles could be envisaged:
 - Broad scope, covering the execution of all credit transfers and direct debit transactions denominated in euro within the EU. Nevertheless, some payment transactions such as payment card transactions, money remittance and payment transactions through means of any telecommunication, digital or IT device which do not result in a credit transfer or direct debit would fall out of its scope.
 - Alignment of the definitions, as much as possible, with those under the Payment Services Directive 2007/64/EC (the PSD).
 - Separate end-dates should be set for credit transfers and direct debits respectively.
 - Those separate end-dates should apply to 'regular' credit transfers and direct debits in a first stage, but so-called legacy niche products should also be phased out after an appropriate transitional period.

¹ Resolution P7_TA(2010)0057, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2010-0057+0+DOC+XML+V0//EN>.

- A mixed approach consisting in the setting of common standards and general essential requirements, considered to be the most appropriate for defining pan-European payment instruments. These essential requirements should apply to the whole payment service transaction domain, from payment user to payment user through their respective PSPs. This ensures the reaping of all SEPA benefits which are generated on the demand (payment service user) side of the market.
 - Reachability of payment service providers for credit transfer transactions, along the lines of the reachability obligation for direct debit transactions under Article 8(1) of Regulation (EC) No 924/2009 and interoperability of payment systems.
 - No obstacles to the opening of a payment account so users can have a single payment account for the execution of all their payment transactions within the EU.
- (6) The Commission services would welcome, **by 23 June 2010**, your views on the attached document and its impact to markt-sepa@ec.europa.eu.

COMMISSION SERVICES' WORKING DOCUMENT**SEPA MIGRATION END-DATE****Scope**

- The envisaged action would not aim at covering all SEPA payments. However, its scope is quite broad, covering the execution of all credit transfers and direct debit transactions denominated in euro within the EU.
- Debit cards and credit cards are out of the scope. SEPA card schemes and rulebooks, comparable to those for credit transfers and direct debits, have not yet been designed by the industry. Since common standards for SEPA card payments are still under development, it would be premature to cover them.
- Payment transactions through means of any telecommunication, digital or IT device and which do not result in credit transfers or direct debits to or from a payment account identified by BBAN or IBAN are also excluded.
- In addition, some other payment transactions such as money remittance would also fall out of its scope since they are not comparable to classic credit transfers and direct debits.
- The definitions of the terms used in this document have been aligned, as much as possible, with those under the PSD. However, when required, due to the limited scope in comparison with the PSD, some of the definitions have been tailored for the needs of this proposal. A **Glossary** can be found at the end of this document.

Rules would be laid down for the execution of credit transfer and direct debit transactions denominated in euro within the EU where both the payer's payment service provider and the payee's payment service provider are, or the sole payment service provider in the payment transaction is, located in the EU and rules on payment account opening.

The following transactions/transfers would not be covered:

- (a) Credit transfers and direct debits carried out between payment service providers for their own account.
- (b) Payment card transactions.
- (c) Payment transactions through means of any telecommunication, digital or IT device, if they do not result in a credit transfer or direct debit to or from a payment account identified by BBAN or IBAN.
- (d) Money remittance transactions where funds are received from a payer, without any payment accounts being created in the name of the payer or the payee, for the sole purpose of transferring a corresponding amount to a payee or to another payment service provider acting on behalf of the payee, and/or where such funds are received on behalf of and made available to the payee.

Reachability, interoperability and facilitating measures

- For a credit transfer to be executed, the payee's account must be reachable. A reachability obligation for direct debits already exists under Article 8 of Regulation (EC) No 924/2009. It is therefore envisaged to insert a reachability clause to encourage the successful take-up of SEPA credit transfers.
- Interoperability is key for the smooth functioning of payment systems, which should interact with each other across the EU using the same standards, so that there are no technical obstacles to the processing of payments by the actors on the market. The concept of full interoperability was already used in the Framework Directive for electronic communications networks and services in 2002.
- Facilitating measures should be foreseen such as IBAN and BIC communication and conditions under which credit transfers should not be refused.

Reachability

A payment service provider of a payee reachable for a national credit transfer transaction on the payment account of that payee should be reachable for credit transfer transactions initiated by a payer through a payment service provider located in any Member State.

Interoperability

Payment systems should be interoperable. The processing of credit transfers and direct debits should not be hindered by technical obstacles nor business rules and shall be carried out under a scheme whose rules should be the same for cross-border and domestic credit transfer and direct debit transactions.

Facilitating measures

- A payee accepting credit transfers should communicate its IBAN and the BIC of its payment service provider to its payers, every time a credit transfer is requested.

In case of direct debit transactions, a payer should communicate its IBAN and, where applicable, the BIC of its payment service provider to its payee only once before the first direct debit transaction.
- A payer using credit transfers to transfer funds from his payment account to other payment accounts with payment service providers located in the same Member State should not refuse credit transfers to payment accounts with payment service providers located in another Member State and reachable in accordance with the abovementioned reachability provision.

End-dates, essential requirements and standards for credit transfers and direct debits

- Establishing a SEPA migration end-date aims at creating a fully integrated payments market with effective competition for credit transfers and direct debits.
- Based on the necessary migration efforts and the usual investment cycles for payment systems, it is envisaged to define a separate end-date for credit transfers in the short term (e.g. one year after entry into force of a possible binding instrument) and a different one for direct debits in the mid-term (e.g. two years after entry into force of a possible binding instrument). These end-dates should apply to euro area Member States, while non-euro area Member States would be granted a transitional period, based on their limited euro payment transaction volumes.
- The proposed way forward for setting end-dates is based on a combined approach of making certain important standards used by the payment industry mandatory and defining essential requirements (see Annex on Essential Requirements, page 11 and following) applying to both payment service providers and customers. This would allow achieving the goal of full SEPA migration, while staying neutral and opening as to how the payments industry will develop the SEPA instruments further. Any further improvement or innovation would have to be in line with the requirements set by the legislator.

- At the latest, by [e.g. 12 months after the date of the entry of the force of a possible binding instrument] credit transfers should meet the essential requirements mentioned in points 1 and 2 of the Annex on Essential Requirements (see page 11 and subsequent) and use the standards set out below.
- At the latest, by [e.g. 24 months after the date of the entry of the force of a possible binding instrument] direct debits should meet the essential requirements mentioned in points 1 and 3 of the Annex on Essential Requirements (see below) and use the standards set out below.
- Earlier dates than those mentioned above may be set at national level.
- Payment service providers and payment service users should use the IBAN for the identification of payment accounts regardless whether both the payer's payment service provider and the payee's payment service provider are or the sole payment service provider in the payment transaction is, located in the same Member State or whether one of the payment service providers is located in another Member State.
- Payment service providers should use message formats based on ISO 20022 when transmitting payment transactions to another payment service provider or a payment system.
- Where a payment service user initiates or receives bulk payments, message formats based on ISO 20022 should be used.
- In order to take account of technological and market developments, the Commission may be allowed to adopt delegated acts which are necessary to update the essential requirements regarding reachability, interoperability, the standards mentioned in the above paragraphs as well as the essential requirements presented in Annex (see page 11).

Waiver for niche products

- In many Member States, there are certain legacy payment instruments which could be considered credit transfers or direct debits but which have very specific functionalities, often due to historical or legal reasons. Examples for such instruments are dematerialised bills of exchange, promissory notes, or other products which are tailored for specific user groups. The transaction volume of such products is usually marginal, they could therefore be considered as niche products. The definition of an end-date needs to specify whether such niche products are in- or out-of-scope of a legacy instrument phase-out.
- It is envisaged that Member States might exempt those niche products fulfilling certain conditions (e.g. domestic transactions, market share below a threshold) during a certain period of time after which all legacy products would have to be phased out.

At national level it should be possible to waive all or some of the requirements stated regarding the SEPA migration until [e.g. 36 months after the entry into force of the possible binding instrument] for those credit transfer or direct debit transactions with a market share, based on ECB statistics, of less than 10 % of the total number of credit transfer or direct debit transactions, in that Member State.

Payment account opening

- To complement mandatory end-dates for credit transfers and direct debits, an additional measure is envisaged to fully address the competition aspect of market integration.
- Discriminatory requirements based on nationality or place of residence to open a payment account should be prohibited. It is conceivable that in some cases there may be differences in the conditions of cross-border payment account access. However, these differences must be directly justified by objective criteria. Such an approach has also been taken in the Services Directive².

The general conditions of access to a payment account which is made available to the public at large by a payment service provider should not contain any discriminatory provisions, relating to the nationality or place of residence of the payment service user, without prejudice to the possibility of providing for differences in the conditions of access where those differences are directly justified by objective criteria.

² See Article 20(2) of the Directive on services in the internal market (2006/123/EC).

Competent authorities and penalties

- As in the PSD and in the cross-border payments Regulation 924/2009, it would be important that competent authorities are empowered to take necessary measures to ensure compliance with the obligations laid down in a possible legislative initiative.
- This should be accompanied by proportionate and dissuasive penalties for failure to comply with them.

Transitional provisions

- Euro payments represent relatively small volumes within non-euro area Member States as well as in comparison with the total volumes of euro payments in the EU.
- Therefore, a quick and full migration of euro payments in non-euro Member States would not be essential for the success of SEPA. The approach of a deferred application in non-euro Member States has previously been used in the payments policy area and it is also suggested to replicate it here.

Annex: Essential requirements

- (1) The following requirements would apply to both **credit transfer** and **direct debit transactions**:
- The remittance data field should allow for a minimum of 140 characters and payment schemes should allow for up to 980 characters.
 - Remittance reference information and all the other data elements provided in accordance with points 2 and 3 of this Annex, should be passed in full and without alteration between payment service providers throughout the payment chain.
 - Once data is available in electronic form payment transactions should allow for a fully automated, electronic processing in all process stages throughout the payment chain (end-to-end straight through processing), enabling the entire payment process to be conducted electronically without the need for re-keying or manual intervention. This should also apply to exceptional handling of credit transfer and direct debit transactions.
 - Payment schemes should not set any minimum threshold for the amount of the payment transaction allowing for credit transfers and direct debits up to a maximum of EUR 999 999 999.99.
- (2) Supplementary to the requirements mentioned in point (1), the following requirements should apply to **credit transfer** transactions:
- The following mandatory data elements should be provided by the payer to his/her payment service provider and passed throughout the payment chain to the payee:
 - (a) The name of the payer
 - (b) The IBAN of the account of the payer
 - (c) The amount of the credit transfer
 - (d) The IBAN of the account of the payee
 - (e) The name of the payee
 - (f) The payer's reference of the credit transfer transaction
 - (g) The remittance information
 - In addition, the following mandatory data elements should be provided by the payer's payment provider to the payee's payment service provider:
 - (a) The BIC code of the payer's payment service provider (if not agreed otherwise)
 - (b) The BIC code of the payee's payment service provider (if not agreed otherwise)
 - (c) The identification code of the payment scheme
 - (d) The settlement date of the credit transfer
 - (e) The payer's payment service provider reference number of the credit transfer message.

- (3) In addition to the requirements mentioned in point (1), the following requirements should apply to direct debit transactions:
- Before the first direct debit transaction and/or one-off direct debit transactions and with each subsequent direct debit transaction, the payee should send the mandate related information to his payment service provider. The payee's payment service provider should transmit such mandate related information to the payer's payment service provider with each direct debit transaction.
 - A payer should have the possibility to instruct his payment service provider to limit a direct debit collection to a certain amount and/or its periodicity.
 - In case, where the agreement between the payer and the payee excludes a refund right, at the request of the payer, the payer's payment service provider should check each direct debit transaction, whether the amount of the submitted direct debit transaction corresponds with the amount agreed in the mandate, before debiting the payer's account, based on the mandate-related information received from the payee's payment service provider.
 - The payer should have the possibility to instruct his payment service provider to block any direct debits to payer's account or to block any direct debits coming from one or more specified payees or to authorise direct debits coming from one or more specified payees.
 - The due date (day when the payment is due to the payee), the settlement date (day on which settlement takes place) and the debit date (day on which the payer's account is debited) must be the same date.
 - Consent should be given to both payee and to the payment service provider of the payer and mandates should be stored, including its future modifications and/or cancellation, by the payee or by a third party on behalf of the payee.
 - The following mandatory data elements should be provided by the payee to his payment service provider and passed throughout the payment chain to the payee:
 - (a) The type of direct debit (recurrent, one-off, first, last or reversal)
 - (b) The name of the payee
 - (c) The IBAN of the payment account of the payee to be credited for the collection
 - (d) The name of the payer
 - (e) The IBAN of the payment account of the payer to be debited for the collection
 - (f) The unique mandate reference
 - (g) The date of signing of the mandate
 - (h) The amount of the collection
 - (i) The unique mandate reference as given by the original payee who issued the mandate (if the mandate has been taken over by another payee than the payee who issued the mandate)
 - (j) The payee's reference of the collection
 - (k) The identifier of the payee
 - (l) The reason for amendment of the mandate (if the mandate has been amended)
 - (m) The identifier of the original payee who issued the mandate (if the mandate has been taken over by another payee than the payee who issued the mandate)
 - (n) The remittance information from the payee to the payer

- In addition, the following mandatory data elements should be provided by the payee’s payment service provider to the payer’s payment service provider:
 - (a) The BIC code of the payee’s payment service provider
 - (b) The BIC code of the payer’s payment service provider
 - (c) The name of the payer reference party (if present in dematerialised mandate)
 - (d) The identification code of the payer reference party (if present in dematerialised mandate)
 - (e) The name of the payee reference party (if present in the dematerialised mandate)
 - (f) The identification code of the payee reference party (if present in dematerialised mandate)
 - (g) The identification code of the payment scheme
 - (h) The settlement date of the collection
 - (i) The payee’s payment service provider’s reference of the collection
 - (j) The type of mandate
 - (k) The due date of the collection

Glossary

- **'credit transfer'** means a payment service for crediting a payee's payment account, where a payment transaction or a series of payment transactions is initiated by the payer on the basis of the consent given to his payment service provider
- **'direct debit'** means a payment service for debiting a payer's payment account, where a payment transaction is initiated by the payee on the basis of the payer's consent
- **'payer'** means a natural or legal person who holds a payment account and allows a payment order from that payment account, or, where there is no payment account, a natural or legal person who gives a payment order
- **'payee'** means a natural or legal person who is the intended recipient of funds which have been the subject of a payment transaction
- **'payment account'** means an account held in the name of one or more payment service users which is used for the execution of payment transactions
- **'payment system'** means a funds transfer system with formal and standardised arrangements and common rules for the processing, clearing and/or settlement of payment transactions
- **'payment scheme'** means a set of rules, practices and standards, which is separated from any infrastructure or payment system that supports its operation between the scheme participants across the EU
- **'payment service provider'** means any of the categories referred to in Article 1(1) of Directive 2007/64/EC and the legal and natural persons referred to in Article 26 of that Directive, but excludes those institutions listed in Article 2 of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions benefiting from a Member State waiver exercised under Article 2(3) of Directive 2007/64/EC
- **'payment service user'** means a natural or legal person making use of a payment service in the capacity of either payer or payee, or both
- **'payment transaction'** means an act, initiated by the payer or by the payee of transferring funds, irrespective of any underlying obligations between the payer and the payee
- **'payment order'** means any instruction by a payer or payee to his payment service provider requesting the execution of a payment transaction
- **'IBAN'** means an international payment account number identifier, which uniquely identifies an individual account with a unique payment service provider in a Member State, the elements of which are specified by ISO 13616, set by the International Organization for Standardisation (ISO)
- **'BIC'** means a code that unambiguously identifies a payment service provider, the elements of which are specified by ISO 13616, set by the International Organization for Standardisation (ISO)
- **'ISO 20022'** means a standardised process for electronic finance messages set by the International Organization for Standardisation (ISO)