

## ROADMAP

<b>TITLE OF THE INITIATIVE</b>	Follow up to Green Paper: Towards an integrated European market for card, internet and mobile payments <sup>1</sup> , incl. the reviews of Directive 2007/64/EC on payment services in the internal market (PSD) <sup>2</sup> and Regulation (EC) No. 924/2009 on cross-border payments in the Community <sup>3</sup>		
<b>LEAD DG – RESPONSIBLE UNIT</b>	MARKT H3	<b>DATE OF ROADMAP</b>	10/2012
This indicative roadmap is provided for information purposes only and is subject to change. It does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content and structure.			

### A. Context and problem definition

<p>(1) What is the political context of the initiative?</p> <p>(2) How does it relate to past and possible future initiatives, and to other EU policies?</p> <p>(3) What ex-post analysis of existing policy has been carried out? What results are relevant for this initiative?</p>
<p>The integration of the European market for electronic retail payments is one of the priorities defined in the Digital Agenda, more specifically under the Digital Single Market. The legal framework of the European retail payments market has been established with the PSD in 2007. The Single Euro Payments Area (SEPA) aims at achieving further market integration for the different retail payment instruments and payment means. At the end of 2010, the Commission proposed a Regulation establishing technical requirements for credit transfers and direct debits in euros which was adopted by the EP and Council in 2012 and ensures full migration to pan-European core payment instruments by 2014<sup>4</sup>.</p> <p>However, the retail payments market is very dynamic and experienced a significant innovation pace in the last few years. Hence there are a number of regulatory gaps and market failures in the markets for card, internet and mobile payments which this initiative aims to address.</p>
<p>What are the main problems which this initiative will address?</p>
<p>The Green Paper on payments aimed at identifying potential barriers for market integration. It was followed by a broad-scale public consultation which helped to identify specific problems and potential remedies. In parallel, the on-going review of the implementation and impact of the PSD revealed a number of gaps in the current legislative framework and inconsistencies in its implementation and application. The main problems to be addressed by this initiative include:</p> <ul style="list-style-type: none"> <li>• Un-level playing field between service providers due to (a) restrictive business rules and practices and (b) problems of market access. Examples for (a) include restrictions based on multi-lateral interchange fees between banks hindering cross-border competition and rules imposed by card schemes that limit the capability of merchants not to accept premium cards associated with higher costs or to steer consumers towards more efficient payment instruments. Examples for (b) include the refusal by banks for third party providers to access information on payment accounts, even in those cases where access would be allowed by the account owner.</li> <li>• Ambiguous and to some extent outdated scope of the current legislation, in particular the PSD, leading to regulatory arbitrage and a legal vacuum for a number of new market players, for example certain categories of new internet payment and mobile payment providers or payments in so-called limited networks.</li> <li>• Inconsistent application of some of the PSD provisions and options between MS; diverging administrative and supervisory practices at national level. Inconsistent practices can be witnessed for example in the areas of exemptions of certain payment activities from the scope of the Directive, the application of prudential requirements for payment institutions, the use of the so called pass-porting regime for payment Institutions, and the liability regime for payment services users in case of unauthorised payments.</li> <li>• Diverse charging practices for payment services from retailers to consumers across MS, often leading to confusion or complaints. In particular, this applies to surcharging and rebating practices between merchants and consumers. For example, while surcharging is allowed in 13 MS, with very diverse usages, it is forbidden in the 14 others but not always be respected.</li> <li>• Technical barriers, often imposed at national level, and a lack of standardisation and inter-operability among service providers, leading to obstacles for a genuine Single Market</li> </ul>

Who will be affected by it?
Stakeholders across the payments market. On the payment service user side, the use of electronic and innovative payment means will be facilitated for consumers and merchants, including small 'brick & mortar' and web merchants. On the payment service providers side the regulatory framework will be clarified and updated. This affects banks, payment institutions and other payment service providers, in particular those, often smaller, new providers that are currently operating in a non-level playing field.
Is EU action justified on grounds of subsidiarity? Why can Member States not achieve the objectives of the proposed action sufficiently by themselves? Can the EU achieve the objectives better?
Many of the issues identified above present obstacles for the development of a genuine Single Market, notably as regards the uptake of e-commerce. Cross-border competition is often either not possible or not compelling for market actors due to rules imposed at national level. Other problems mentioned above relate to gaps in and the inconsistent application of the existing regulatory environment at European level established by the PSD. Such gaps and divergences lead to incoherent requirements for payment services providers, ultimately resulting in regulatory arbitrage across MS and to inconsistent experiences for payment service users, discouraging them from using e-commerce and m-commerce across borders.

## B. Objectives of the initiative

What are the main policy objectives?
The general objective is to create an efficient and competitive Single Market in card, internet and mobile payments for consumers, retailers and payment service providers. Specific objectives are to: <ul style="list-style-type: none"> <li>• Create a level playing field between the providers of payment services</li> <li>• Establish a pan-European environment from which innovative and value-adding payment services can be launched for the benefits of payment service users</li> <li>• Ensure consumer protection and a consistent payment service user experience across all MS</li> <li>• Update the existing legal framework where it has been surpassed by recent market developments</li> </ul>
Do the objectives imply developing EU policy in new areas?
No. Retail payments have historically been subject to EU policy through the PSD, the Cross-Border Payments Regulation (2560/2001 and subsequently 924/2009) and the aforementioned, recently adopted Regulation establishing technical requirements for credit transfers and direct debits in euros. At a more detailed and technical level, innovative payment means, such as internet payments and mobile payments are a new field for EU policy which needs to be incorporated in the existing regulatory framework.

## C. Options

(1) What are the policy options (including exemptions/adapted regimes e.g. for SMEs) being considered? (2) What legislative or 'soft law' instruments could be considered? (3) How do the options respect the proportionality principle?
The following main policy options could be considered: <ul style="list-style-type: none"> <li>• 'Do nothing'</li> <li>• 'Soft law': Commission Communication or Recommendation addressing the main hurdles for integration</li> <li>• Legislative proposal following the currently on-going review process for the PSD and cross-border payments Regulation</li> <li>• New legislative instrument</li> </ul> <p>Exemptions or adapted regimes for SMEs need further assessment. The current PSD provides for specific rules for "microenterprises".</p>

## D. Initial assessment of impacts

What are the benefits and costs of each of the policy options?

- 'Do nothing': the status quo represents certain hurdles for a competitive, efficient and innovative retail payments market in the EU. 'No action' could result in a competitive disadvantage versus other regions in terms of payments modernisation, in particular regarding e- and m-commerce.
- 'Soft law': some of the identified problems, in particular around standardisation, inter-operability and innovation should be primarily led by the market but would benefit from 'morale persuasion' by the Commission. These could be addressed in a reviewed governance model (see separate Roadmap on Improving the governance of SEPA).
- Legislative instrument: the majority of the other identified problems could be addressed in a revision following the currently on-going review of the PSD and cross-border payments Regulation. This would result in an enhanced regulatory framework, adapted to recent market developments. In particular, the approach would address the facilitation of a level playing field between incumbent market actors and new payment providers which often are SMEs.
- New legislative instrument: Due to inherent links between the identified problems and the already existing legal instruments, in particular the PSD, a new legislative instrument would not seem to be the most efficient legislative approach.

Could any or all of the options have significant impacts on (i) simplification, (ii) administrative burden and (iii) on relations with other countries, (iv) implementation arrangements? And (v) could any be difficult to transpose for certain Member States?

A more consistent regulatory framework as envisaged by this initiative would lead to simplification, especially for those market actors that operate across borders. Specific difficulties for transposition are not foreseen, given that the original PSD has already been transposed by all MS.

- (1) Will an IA be carried out for this initiative and/or possible follow-up initiatives?
- (2) When will the IA work start?
- (3) When will you set up the IA Steering Group and how often will it meet?
- (4) What DGs will be invited?

Possible legislative proposals will be subject to an IA to be finalised in Q1 2013.

The work on the IA has already been launched.

A first IA Steering Group meeting took place on 19 October 2012. Two further meetings are foreseen.

Invited DGs: SG, LS, COMP, SANCO, CNECT, ENTR, ECFIN, EMPL, JUST, HOME, TAXUD

- (1) Is any option likely to have impacts on the EU budget above € 5m?
- (2) If so, will this IA serve also as an ex-ante evaluation, as required by the Financial Regulation? If not, provide information about the timing of the ex-ante evaluation.

No.

## E. Evidence base, planning of further work and consultation

- (1) What information and data are already available? Will existing IA and evaluation work be used?
- (2) What further information needs to be gathered, how will this be done (e.g. internally or by an external contractor), and by when?
- (3) What is the timing for the procurement process & the contract for any external contracts that you are planning (e.g. for analytical studies, information gathering, etc.)?
- (4) Is any particular communication or information activity foreseen? If so, what, and by when?

An evaluation of the PSD and cross-border payments Regulation is currently being carried out. This includes a conformity assessment of the national implementing measures of the PSD in all 27 Member States which has been finalised in 2011. An external study on the economic impact of the PSD is currently in its final stages, next to on-going consultations of the advisory bodies for the payments policy, i.e. the Payments Committee (representing Member States) and the Payment Systems Market Expert Group (representing non-governmental stakeholders from the demand and supply side of the payments market). The final report of the external study will be published in Q1 2013. The Commission report on the implementation and the impact of the PSD should be published as a package, together with the possible legislative proposal.

Which stakeholders & experts have been or will be consulted, how, and at what stage?

A broad-scale public consultation was undertaken on the basis of the Green Paper on payments. More than 300 replies from a broad variety of stakeholders were received. Furthermore, the advisory bodies for the payments policy, i.e. the Payments Committee and the Payment Systems Market Expert Group are being consulted on an on-going basis, including on the basis of issues papers on the PSD review and of the review of regulation 924/2009.

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<sup>1</sup> Commission Green Paper 'Towards an integrated European market for card, internet and mobile payments', <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0941:FIN:EN:PDF>

<sup>2</sup> Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:319:0001:0036:EN:PDF>

<sup>3</sup> Regulation (EC) No 924/2009 of the European Parliament and of the Council of 16 September 2009 on cross-border payments in the Community,

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:266:0011:0018:EN:PDF>

<sup>4</sup> Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:094:0022:0037:EN:PDF>