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Eric Ducoulombier
Head of Unit,
DG FISMA D3 – Retail Financial Services and Payments,
European Commission

5 January 2023

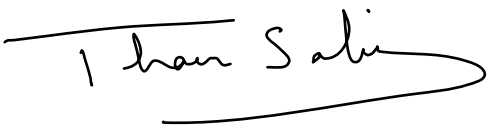
Dear Eric,

EMA response to COM(2022) 546 - European Commission's proposal for amending Regulations (EU) No 260/2012 and (EU) 2021/1230 as regards instant credit transfers in euro

The Electronic Money Association is the trade body for electronic money issuers and innovative payment service providers. Our members include leading payments and e-commerce businesses providing online/mobile payments, card-based products, electronic vouchers, crypto asset exchanges, electronic marketplaces, merchant acquiring services and a range of other innovative payment services. Most EMA members operate across the European Union ("EU") and globally on a cross border basis. A list of current EMA members is provided at the end of this document.

Please find our response below.

Yours sincerely,



Dr Thaer Sabri
Chief Executive
Electronic Money Association.

EMA response to COM(2022) 546 - European Commission's proposal for amending Regulations (EU) No 260/2012 and (EU) 2021/1230 as regards instant credit transfers in euro

The EMA welcomes the Commission's proposals to improve the supply of instant payments across Europe, and tackle the key issues that have hampered the uptake of instant payment in euro. We share the Commission's view that SEPA instant payments have the capacity to form the foundations to support the EU retail payments strategy. Whilst also creating the opportunity for PSPs to develop innovative payment solutions based on instant payment infrastructure, often to address market issues that arise when payments are expensive, slow, and inconvenient for both business and consumer users.

We detail our observations on the proposed amendments to the SEPA regulation (EU 260/2012) below.

Article 5a. - Instant credit transfer transactions

We welcome the proportionality applied in the Commission's proposal, which will exclude electronic money ("EMI") and payments institutions ("PI") from the initial scope of the requirement to provide instant credit transfers, as they do not have the right to directly access some key payment systems under The Settlement Finality Directive (Directive 98/26/EC). Furthermore, we maintain our view that access to designated SFD settlement payment systems should be extended to allow direct participation by PIs and EMIs through an amendment to the Settlement Finality Directive (SFD). Open, non-discriminatory access to payment systems will create a level playing field for non-bank PSPs, and is crucial for widening the uptake of instant payments ("IPs") to the degree envisaged by the Commission.

We also note that customer demand for offering the ability to send and receive instant euro payments is not present in all existing uses of standard SEPA credit transfers. And the requirement to provide instant credit transfers through all customer interfaces (or channels) through which standard credit transfers are available is a complex. A clear success factor for increasing the supply of instant payments and driving consumer and business usage of instant payments will be PSPs' ability to develop competitive, user-friendly, and reliable instant payment services that deliver convenience and advantages for end users.

Therefore, we consider that further clarification on the scope of which 'PSU Interface', or channels, that IPs should be made available to customers (under proposed Art 5a (2a)) could provide the maximum opportunity to achieve the Commission's objectives for instant payments.

Article 5b. Charges in respect of instant credit transfers

The EMA considers that it is important that the right incentives are in place to make SEPA instant payments competitive over time, and in general, introducing pricing

regulation may not support competition and innovation in the market, but rather risk unintended consequences such as restricting consumer choice.

However, we recognise that the fees charged for IPs may prevent emerging instant payment-based propositions (such as those offered by PISPs for retail and e-commerce payments) from competing with other payment instruments as envisaged in the EU Retail Payments Strategy, and a solution has to be found.

Article 5c - Discrepancies between the name and payment account identifier of a payee in case of instant credit transfers

The EMA supports the Commission's aims for the account identifier-payee name check requirements, or confirmation of payee ("CoP") to help protect consumers and build trust in instant payments. We also agree with the Commission's impact assessment that CoP checks can be a valuable tool for reducing the number of erroneous and misidentified payees, which in turn can lower the risk of payments being misdirected by accident or because of fraud.

We recognise that including the requirement for CoP checks in the proposed IP regulation provides a way to galvanise and co-ordinate the market in providing greater protection for transactions at risk of misdirection. However, we note a number of practical implications of the proposed requirements in Article 5c. of the proposed instant payment regulation, which if left unaddressed, may risk widespread customer confusion when initiating IPs, and be counterproductive to the Commissions' objective of fostering the development of competitive home-grown and pan-European market-based payments solutions. We discuss these in more detail below.

Scope

Role of payee's PSP – as currently drafted, Art 5c (1) places the obligation to identify discrepancies between the payment account identifier and payee account name on the payer's PSP. It is implicit that the payee's PSP will have to provide assistance (in some form) with the process to identify any discrepancies, as the obligation on the payer's PSP would be impossible to achieve otherwise.

In order to provide a level playing field between PSPs and ensure a consistent approach to identifying discrepancies in all member states, we suggest that Art 5c. is expanded to explicitly include the obligations on the payee PSP to receive and respond to CoP check requests from the payer's PSP.

Access channels – the 'PSU interface' is defined in the proposed regulation as encompassing all methods (paper and electronic) for initiating an IP through any customer channel (face to face, online, mobile), and Art 5c(5) requires that CoP checks are applied regardless of the PSU interface used.

We consider that it is impractical and unnecessary for CoP to be applied for every IP transaction, on all customer payment channels, accessed in every use case. For instance, consider e-commerce payments and payments at physical POS, the risk of misdirected payments is low as the payee's PSP has an established business

relationship with the merchant. A CoP check will introduce friction, which risks creating consumer confusion, and undermines the Commission's objective of increasing the use of IP for retail payments.

We propose adopting a risk-based approach to applying CoP in payment channels. This would include allowing exemptions in Article 5c from applying checks in access channels for use cases where the risk of misdirected payments is low, in particular for e-commerce and POS channels.

Furthermore, Art 5c implies that all IP transactions will require a CoP check regardless of whether the payer has an established relationship with the payee (trusted beneficiary), or has conducted CoP for a previous transaction, and no changes have been made to the payee details since the last transaction. This could again result in unnecessary checks being performed to the detriment of the payer's experience and little potential for fraud mitigation.

In-line with a risk-based approach, we suggest that Art 5c is amended so that CoP checks are only required when an IP is initiated to a new payee (within the required access channels), if details of an established payee (trusted beneficiary) have changed since the last transaction was made, or if the payer's PSP identifies a risk of fraud.

We also suggest that Art 5c. provides for specific exclusions of certain types of transactions. For instance, the requirement to perform CoP checks would not apply to transactions:

- From an account where the account can only be used to send funds to one other account in the payer's name (or the payer is one of the names on the beneficiary account);
- In connection with the provision of merchant acquiring services,
- In connection with the provision of payment processing services to other PSPs, and
- Which form a bulk payment.

Nonetheless, PSPs should not be precluded from voluntarily performing CoP checks on an exempt transaction based on their risk assessment of the transaction.

Reachability of all payment accounts that can receive IPs (impact on e-money accounts) - We welcome the exemption of e-money institutions (EMIs) and payment institutions (PIs) from the mandate to provide IPs under article 5a of the proposed regulation, but note that EMIs and PIs are required to provide CoP checks if they do opt to offer IPs to their customers.

Many EMIs provide accounts to their customers that do not have a uniquely associated IBAN. For instance, EMIs often allow their customers to fund their e-money account using IPs: the e-money account has a unique identifier, and the customer initiates an IP to a bank account to fund the e-money account. However, the unique identifier of the bank account is associated with the e-money institution rather than the e-money account holder. The EMI reconciles the funds received into the bank account (in the name of the EMI) and issues e-money to the relevant customer e-money account (in the customers'

name). In this scenario, a CoP check applied to an IP transaction intended for a beneficiary e-money account may fail unless the implemented CoP solution can accommodate secondary account identifiers for the e-money account.

Similarly, intermediate PSPs who do not access the SCT Inst payment scheme directly may receive IP transactions for their customers into an account with an IBAN associated with the PSP name rather than the individual customers. Again, an account identifier-name check applied to an IP transaction intended for a beneficiary customer of the intermediate PSP would fail unless the implemented solution can accommodate this scenario.

This complexity could lead to payer confusion as well as unintentionally shift fraud risk to EMIs and other PSPs.

The regulation implementation timescales in Art 5c (6) should be increased to allow sufficient time for analysis of the impact on accounts that may not be reachable by a unique account identifier, and hence CoP check solutions. Furthermore, the Regulation should include specific clarifications that CoP solutions must cater for complex account identifier mappings by design to ensure a level playing field for all PSPs receiving instant credit payments.

Charging for Confirmation of Payee (CoP) checking service

The EMA welcomes the Commission's proposal in the Explanatory Memorandum that PSPs may charge for the use of the CoP service as we believe that the costs and benefits of providing CoP service may not apply equally to all PSPs.

For smaller PSPs there is the risk that the costs of implementation and ongoing operation of the checking service may exceed the additional misdirected payments or fraud prevented by the solution. However, we note that the ability for PSPs to charge is not referenced in the proposed regulation recitals or included in Art 5c.

We suggest that the ability to charge for use of a CoP service should be included in Art 5c to avoid inconsistent application, and a fragmented approach amongst PSPs. Furthermore, the intention in the Explanatory Memorandum is not clear as to whether it is anticipated that both the payer and the payee's PSP will be able to charge for the checks i.e. the payer's PSP for sending the check, and the payee's PSP for responding to the check request. The regulation should be clear which PSP can make the charge to their PSU for the CoP check.

Implementation Approach

Pan-european approach - We fully agree with the Commissions' suggestion in the Impact Assessment Report that PSPs should decide on the implementation approach for the CoP checking service, and it is likely that an industry-wide arrangement or scheme will be needed to ensure a successful pan-European approach.

Standards for the exchange of messages and harmonised rules between PSPs, and common practice for presenting the outcome of the checks to payers will be critical to ensuring interoperability between existing CoP services, and delivering a consistent payer experience in every Member State.

Timeframes – to allow for effective implementation and coordination that avoids any disruption to customers and does not unintentionally shift fraud risk, for example, to smaller firms, the implementation timeframes need to be achievable. Experience from jurisdictions in which CoP has already been adopted (UK, Netherlands) illustrate that the proposed implementation timelines currently envisaged may not be feasible.

Developing a CoP service is complex and will require coordination at pan-European, national, and individual PSP levels. Whilst we agree with the Commission's assessment that some PSPs may be able to leverage recent investments in API interfaces under PSD2, these APIs offer a fundamentally different service to CoP, and there are still numerous operational, technical and legal challenges that will need to be considered and resolved.

In the UK, the use of 'confirmation of payee' was initially mandated on the major banks in 2019; rollout and use by smaller PSPs and those operating without their own unique sort codes/account numbers (for instance some building societies, and e-money issuers) is on-going, and isn't likely to complete until 2024.

The proposed timeframes also do not take account of the critical dependency for many PSPs on vendor solutions to deliver their CoP service. The availability of vendor solutions with sufficient bandwidth to accommodate multiple implementations across the PSP community (up to 3200 PSPs as identified by the Commission), and time for PSPs to undertake sufficient due diligence, procure a solution, and on-board a supplier is extremely challenging.

The result could be a long tail of PSPs waiting to implement their CoP solution, thereby reducing the benefits and risking poor customer adoption.

All wide-scale payment initiatives require a staged and EU-wide coordinated approach, with careful consideration of the impact on all stakeholders involved. We strongly recommend that the implementation timescales for the CoP checks are extended to improve the likelihood of success, and remove the risk of unintended consequences for consumers and PSPs.

We would suggest that implementation could be phased in a way that focuses on delivering the best possible customer outcome where the customer detriment is most apparent. We also note that the implementation timescales critically depends on the architectural design that the market decides to adopt for the solution. For instance, there are currently two main models for account identifier-name solutions - one where a centralised databases contain account identifier-account name mapping which is queried by PSPs making the checks; the other model is where the payee's PSP responds directly (or via a service partner) to individual account identifier-name check queries from payer's PSPs.

Experience in jurisdictions that have implemented CoP services also highlights that there is a risk that initial volumes of false negative responses (no matches and close matches for correctly inputted payments) are high. PSPs (and their solution vendors) require time to optimise name-matching solutions so as not to impact on the use of instant payments, including abandoned payments. To mitigate against this risk, we suggest that a

coordinated testing phase is essential, and PSPs should have account identifier-name checks operating for several weeks before the regulation comes into force. PSPs are unlikely to be able to take these mitigating actions if the implementation timescales are not extended.

Given the dependency on the market reaching agreement on a pan-European approach for CoP, the availability of vendor solutions, and the potential impact on instant payment services on which customers already rely, we believe that a minimum of 36 months from entry into force is a realistic timescale for the market to implement such a complex solution.

Article 5d. Screening of PSUs with regard to Union sanctions in case of instant credit transfers

The EMA supports the Commission's objective of removing the barrier that different approaches for sanctions screening of cross-border intra-EU transactions, and the subsequent impact this can have on successfully carrying out instant payment transactions.

The EMA considers that the benefit of daily re-screening is unclear. Unless there is a new sanctions list, existing customers should not have to be re-screened as the result will be identical and screening the same data against an identical sanctions list will not result in a different outcome. Daily re-screening will however have a commercial impact as it results in additional cost as sanctions list service providers will charge for these repeated screenings. Where the same false- positives have to be discarded daily, this gives rise to operational effort and cost without an actual benefit. We would welcome greater clarity within the Regulation on the meaning of re-screening in the sense that it is not a repeat screen with the same result every day.

Prescribing a sanction- screening approach for IP transactions will also have a wider, fundamental impact on other products offered by PSPs: **PSPs will effectively have to operate two separate sanction screening approaches**:

- For different payment products: one for IP transactions involving daily re-screening and a separate approach for other products involving the screening of the counterparty to meet their regulatory obligations under EU sanctions legislation. Additional complexity will be added where customers use multiple products as these will be subject to different sanction screening obligations.
- For different sanctions lists: Firms under an obligation to screen against US or EU Member State national sanction lists next to the EU's sanction list will not be able to rely on the sanction screening undertaken by other scheme participants for IPs as screening will presumably be limited to EU lists. Again, PSPs will have to sanction screen the payee to ascertain that they do not make assets available to sanction targets under e.g. US or national lists where these are not included in the EU list.

Whilst we support a harmonised approach to sanction screening, we do not believe that re-screening, and therefore the de-facto obligation to operate two separate sanction screening approaches, is the most effective use of PSPs' resources and the unintended consequences should be considered. The EMA does not believe that the cost of re-screening and the operation of two separate sanction screening approaches will result in cost savings that will offset cost incurred due to obligations under other provisions in the regulations.

The EMA suggests that Art 5d should be amended to require that sanctions screening of the customer-base is conducted whenever a new list is issued. Where all participants in the IP scheme follow this approach, the policy goal should be achieved without mandatory daily re-screening. We would also welcome an approach that will not (unintendedly) result in having to operate two separate sanction screening approaches.

The timeline for implementing the sanctions screening obligations should be expanded to allow PSPs to adapt their systems to these new requirements. We would suggest a timeline of 24 months from entry into force.

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