



## EACB Comments

### On the Commission working paper on SEPA migration end date

June 2010

The **European Association of Co-operative Banks** (EACB) is the voice of the cooperative banks in Europe. It represents, promotes and defends the common interests of its 28 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the cooperative banks' business model. With 4.200 locally operating banks and 63.000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 160 million customers, mainly consumers, retailers and communities. The cooperative banks in Europe represent 50 million members and 750.000 employees and have a total average market share of about 20%.

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*The voice of 4.200 local and retail banks, 50 million members, 160 million customers*

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## Introduction

EACB is thankful for the opportunity to comment on the initial proposals put forward by the European Commission in its consultation paper of 2 June. EACB appreciates the general support from the Commission for finding a solution to the end date question and recognises the difficulty facing the Commission in coming forward with concrete proposals. You will find the reflections from the EACB members in the below comments and hope that you will take them into consideration.

## General comments

EACB is generally in favour of a Regulation as the means to address the end date for migration. A directive would leave too much room for national discretions and add complexity to an already complex matter and risks creating competitive disadvantages between services providers in different countries.

The Commission chooses not to regulate the SEPA schemes for competition reasons. We sincerely regret this choice as it is not in line with initial ambitions formulated for SEPA by the European Commission, which de facto meant a request to the European banking industry to develop a set of SEPA schemes which could replace the national schemes.

In addition, not regulating the SEPA schemes creates a serious risk that the proposed legislative initiative does not reach its objective i.e. the elimination of “the high costs of running both legacy and SEPA products in parallel<sup>1</sup>”. Indeed, instead, it creates the possibility for multiple, competing direct debit schemes and competing credit transfer schemes to develop. So while the proposed legislative initiative would resolve PSPs of the obligation and costs involved in maintaining legacy systems, it would at the same time - combined with the obligation for PSPs to be reachable - create the obligation for those same PSPs to maintain multiple SEPA schemes. Finally, not referring to the schemes but only to essential requirement would reduce the force of the present self regulation – which imposes strict rules – and open the door to the development of differing interpretation and implementation of the scheme at bank level.

Having reviewed the end date question with our members once more and in line with what was said above, we have come to the conclusion that an essential requirements approach is not the right approach. Indeed we would like to urge the Commission to suppress the annex in its entirety. Instead – if the Commission really cannot make a reference in its legislation to the two core SEPA schemes itself - we would prefer a more high level, technology neutral approach whereby the Commission formulates high level requirements as follows:

- Taking into consideration the fact that the Payment Service Directive (2007/64) and Regulation 924/2009 already address some issues that are relevant to support migration, it would suffice to address the following:
- For Direct Debits
  - Banks providing direct debit services under the legacy system in their respective Member State are obliged to agree on/put in place and to adhere by date “x” on a set of inter-bank rules, practices and standards which will allow the banking industry in the EU to offer a direct debit product to Customers.

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<sup>1</sup> Working paper page 1, point (2)



- These interbank rules, practices and standards will cover basic retail, non urgent, mass payments in euro in the EU (or EEA)<sup>2</sup>. They will allow for direct debits to be processed according to the same standard whether it concerns a payment from a customer account to a customer account in the same EU member State or a payment from a customer account to a customer account between two EU member states.
  - They will provide the basis for a direct debit product which will provide Customers (e.g. individuals, small and medium-sized enterprises, corporates and government entities) with a straightforward instrument possessing the necessary reliability, predictable execution time and reach.
  - Direct Debits to be performed under these rules will be fully automatable and based on the use of open standards and the best practices of straight through processing ('STP') without manual intervention, except for exceptional cases.
- For Credit transfers
- Banks providing credit transfer services under the legacy system in their respective Member State are obliged to agree on/put in place and to adhere by date "x" on a set of inter-bank rules, practices and standards which will allow the banking industry in the EU to offer a credit transfer product to Customers.
  - These interbank rules, practices and standards will cover basic retail, non urgent, mass payments in euro in the EU (or EEA)<sup>3</sup>. They will allow for credit transfers to be processed according to the same standard whether it concerns a payment from a customer account to a customer account in the same EU member State or a payment from a customer account to a customer account between two EU member states.
  - They will provide the basis for a credit transfer product which will provide Customers (e.g. individuals, small and medium-sized enterprises, corporates and government entities) with a straightforward instrument possessing the necessary reliability, predictable execution time and reach.
  - Credit transfers to be performed under these rules will be fully automatable and based on the use of open standards and the best practices of straight through processing ('STP') without manual intervention, except for exceptional cases.
- Customers should be asked to deliver IBAN/BIC of the payee, unless otherwise agreed with their bank.

This approach would also solve another problem of the present approach i.e. the fact that it creates a dependency on the regulator for making adjustments to the schemes, which in effect seems to turn scheme development into a public sector function rather than a private sector one.

What is further missing in the proposal is a provision mandating the phasing out of national euro payment legacy systems covering basic, retail, non urgent, mass payments. A regulation addressing migration, should address an obligation to introduce something new but also an obligation to phase out the old.

When it comes to the end date for Direct Debit in particular, a practical solution should be found for continued legal validity of existing direct debit mandates to avoid a very expensive migration of direct debit mandates (especially in Germany). We note that the paper does not indicate how the Commission intends to approach this important topic and would welcome some more information on it.



## Detailed comments

### Introduction

We agree that the supply side cannot manage migration alone, as this would have required that scheme development would have been allowed to run its natural course, i.e. the supply side would have been allowed to develop SEPA like solutions over a longer period of time in response to demand from users. In the case of SEPA, supply had to cut short the natural scheme development and to pre-empt demand in an effort to answer the macro-economic objective of the internal market.

### Definitions

It is difficult to understand why it is so easily proposed to accept differing definitions between the Payment Services Directive, the end date legislation and other payments related legislation. In principle, the definitions should be aligned. Compelling reasons should be given when and why this principle can not be followed.

### Scope

For the purpose of the present Position Paper it will be assumed that “payment card transactions” mean both payments with cards, and cash withdrawals with cards from an ATM. This should however be clarified.

### Reachability

The present wording on reachability leaves open the possibility that if more than one credit transfer / direct debit scheme develops, PSPs should be reachable for all schemes. To meet the mentioned reachability obligations payment service providers will have to contract with one or several clearing and settlement mechanisms. It can be observed that this could turn into a cumbersome and costly exercise for many payment service providers, who would then prefer to become “indirect participants” to save costs. Whilst such an arrangement may at first sight look more economical than a direct participation, indirect participation reduces the liquidity of the indirect participant and at times its collateral management capability. In addition, it adds one or several steps to transaction execution which may make it difficult for the indirect participant to fully meet its scheme obligations or customer service levels, and it increases counterparty credit risk for the indirect participant. Therefore, in order to preserve a level playing, any mandate as to full reachability must be accompanied by a mandate to clearing and settlement mechanisms ensuring not only an absence of discrimination as to access conditions, but also an absence of any transaction volume related pricing discrimination.

### Interoperability

The wording of the paragraph on interoperability is confusing. It is not clear to us what the reason is for adding “ 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” in a provision on interoperability. We would propose to delete this sentence from this paragraph. It would be better placed in a formulation for a high level approach as we proposed under our general remarks above. In addition, we would recommend defining the word interoperability in the definitions.



## **Facilitating measures**

EACB is supportive of the text under the first bullet point “A payee....transaction” but would introduce the wording “unless otherwise agreed with their bank”. It is not convinced, however, of the added value of the text under the second bullet. As it concerns a push payment, the payer could always simply not make the payment if he/she really does not want to pay to a payment account with a payment service provider located in another Member State. The proposed text does not change that.

## **Euro versus non Euro**

EACB would in principle prefer a uniform applicability of the end date regulation to euro payments across the EU. Given that a transitional period has already been introduced by Regulation 924 for Direct Debit, it would seem difficult not to do so for the end date regulation. Both periods should however be aligned.

For credit transfers denominated in euro the case for a transitional period is more difficult to make. The geographical scope for the migration should be all EU Member States – not only eurozone countries. Post-migration any EU credit/payment institution should be able to reach any other EU institution using a SEPA Scheme – not reverting to the use of a legacy cross-border system.

## **Essential requirements and standards**

See under general remarks.

## **Payment Account opening**

As far as EACB is concerned, the proposed provision is out of scope of the intended legislative initiative on end date(s) for migration. In any case, the approach proposed by the paper oversimplifies the question of opening of payment accounts. Indeed, the obligations and the resulting liabilities imposed on banks by the Anti Money Laundering Directive and Financial sanctions legislation, should be referred to here.

## **Waiver for niche products**

Current niche products covering very specific niche functionalities, which are not available at SEPA level, should be out of scope of the envisaged regulation. Such niche products remain the responsibility of national banking communities.

### **Contact:**

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