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NOTE

From: General Secretariat of the Council

To: Permanent Representatives Committee

Subject: Council conclusions on the Commission Communication on a
'Retail Payments Strategy for the European Union'

Delegations will find attached the Council Conclusions on a 'Retail Payments Strategy for the European Union', as prepared by the Financial Services Committee, and finalised by the Economic and Financial Committee on 4 March 2021.

Council conclusions on the Commission Communication on a
‘Retail Payments Strategy for the European Union’

THE COUNCIL OF THE EUROPEAN UNION:

1. HIGHLIGHTS the significant improvements brought about by the Single Euro Payment Area (SEPA) and by the harmonisation of retail payments legislation;
2. CONSIDERS that the emergence of new payment solutions entails a number of policy challenges for the EU, in terms of regulation and supervision, particularly in terms of security, consumer protection, competition, data protection, anti-money laundering and combating the financing of terrorism (AML/CFT);
3. ACKNOWLEDGES that strong consumer protection as well as convenient and adequately priced solutions are the most important drivers in the adoption of payment solutions, and HIGHLIGHTS that a strong focus on consumer protection will be vital in achieving the European Union’s strategic goals in the retail payments area;

4. Is CONCERNED with the restrictions that operators of technical infrastructures may pose to payment service providers which could result in significant vulnerabilities for the European payments ecosystem, hindering competition, innovation and the emergence of pan-European payment solutions.
5. HIGHLIGHTS the rapid expansion of global remittances accompanying migration flows;
6. NOTES that the COVID-19 pandemic confirmed the vital importance of safe, accessible and convenient digital payment methods for remote and face-to-face transactions, while ACKNOWLEDGING that, in most Member States, cash remains important in retail payments, in particular for certain segments of population;
7. NOTES that most domestic payment solutions based on cards or instant payments currently do not work across borders, which can constitute an obstacle for cross-border payments in shops and e-commerce; CONSIDERS that the lack of interoperability between existing national solutions, schemes and infrastructures, which is also linked to the to the lack of EU-wide common standards in some areas, contributes to fragmentation in the EU retail payments market;
8. NOTES that there have been a number of new public and private developments recently, with a view to the adoption of common European infrastructures, schemes and rules;

9. However, given the risk of inconsistencies and further market fragmentation, AGREES that the development of a clear vision and the placing of future actions under a single, coherent and overarching policy framework are of crucial importance, while ACKNOWLEDGING that the EU is a single market with several currencies, and that consumer preferences vary across Member States;
10. CONSIDERS that the EU's retail payments market should be competitive, innovative, inclusive, and based on safe, efficient and accessible infrastructures, supporting Europe's economic and financial sovereignty;
11. RECALLS the Council conclusions on anti-money laundering and countering the financing of terrorism (approved by the Council in a written procedure ended on 5 November 2020)¹.
12. RECOGNISES that the specificities, and the pace and scale of technological change in the payments' sector call for specific and targeted policy measures that go beyond the horizontal scope of the digital finance strategy² and therefore WELCOMES the very comprehensive Communication from the Commission on a 'Retail Payments Strategy for the European Union';

¹ doc. 12608/20

² doc. 11048/20

13. AGREES with the identified closely interlinked ‘pillars’ for strategic action, which look at (1) the increasingly digital and instant nature of payment solutions with pan-European reach, (2) innovation and competitiveness issues, (3) access, efficiency and interoperability aspects of retail payment systems and other support infrastructures, and (4) the international dimension, and HIGHLIGHTS, in particular, the objectives of promoting the widespread use of instant payments , along with other payment solutions, having a legislative toolkit that can meet the challenges created by the move towards digitalisation, and promoting an innovative, open, resilient, safe and inclusive payments ecosystem;
14. REMINDS the Commission that, since this is a medium-term strategy, it needs to be duly evaluated on an ongoing basis, and updated where relevant, particularly as the state of play differs between Member States;

Increasingly digital and instant payment solutions

15. CONSIDERS that legislative action may be needed to promote adherence to the SEPA Instant Credit Transfer (SCT Inst.) scheme and to its additional functionalities (e.g. requests to pay, QR codes and proxy lookup services), and that other ways to foster its adoption could be explored, also by leveraging on already available infrastructure, namely TARGET Instant Payment Settlement (TIPS), and CALLS therefore on the Commission, to act, if necessary following an impact assessment, in a phased and proportionate way, duly considering the appropriate scope and relevant exemptions;

16. WELCOMES the priority given to enhance consumers' and businesses' trust, especially in instant payments, notably by assessing consumer protection aspects, in particular a confirmation-of-payee functionality, while properly assessing the challenges in terms of AML/CFT, data protection as well as operational, liability and liquidity risks for payment service providers and infrastructures resulting from instant payments;
17. SUPPORTS the Commission's efforts to foster the development of pan-European solutions, notably by addressing the challenges that actors wishing to offer pan-European solutions may face and removing disproportionate obstacles for uptake by merchants and consumers of instant and other digital payments at the point of interaction, whilst duly considering the benefits for end-users;
18. CONCURS that national competent authorities should swiftly investigate and remedy breaches of the SEPA Regulation;
19. AGREES that an enhancement of the interoperable EU eID framework, as specified in the eIDAS Regulation, in combination with appropriate harmonisation of 'know your customer' procedures, could further facilitate the registration, identification and authentication of users in payments, especially across borders, and ACKNOWLEDGES the importance of continuously monitoring developments and new technologies in this area.

20. ENCOURAGES the preparation of a study on the level of acceptance of digital payments, before any possible legislative proposal is developed to increase the latter, while HIGHLIGHTING that there are significant differences in that regard across the EU;
21. ACKNOWLEDGES that cash continues to play an essential role in retail payments, including for those who are financially or digitally excluded and, in certain cases, as a safeguard in the case of malfunctions in payment systems and infrastructures, and that both, cash and digital payments, should be broadly available and accepted, in response to user demand and preferences;
22. ENCOURAGES the promotion of digital and financial literacy to tackle the risk of financial exclusion, and AGREES that it should be ensured that approaches to applying strong customer authentication do not lead to the exclusion of certain categories of payment service users (PSUs);
23. ACKNOWLEDGES the potential benefits of central bank digital currencies (CBDC), including as regards the digitalisation of the economy and sovereignty of the EU, and HIGHLIGHTS the complexity of this issue and the importance of conducting a careful and thorough analysis of the potential adverse effects, in particular on business models of financial intermediaries and other services' providers, financial stability, monetary policy, data protection and privacy;

24. In this context, SUPPORTS the work carried out by the Eurosystem on a euro retail CBDC (or ‘digital euro’) and RECOGNISES the important role of the Commission and the Eurogroup in its development, whilst taking into account the respective roles and mandates provided for in the Treaties and ensuring full transparency to non-euro area Member States;

Innovation and competitiveness issues

25. WELCOMES a comprehensive review of the implementation of the Payment Services Directive 2 (PSD2), after its full deployment and taking into account the challenges encountered in its implementation, focusing in particular on assessing: i) the appropriateness of the scope of application (including as regards technical service providers), and the need for further clarification of existing concepts and rules; ii) the interplay with other sectoral legislation, notably the E-money Directive, the Anti-money laundering Directive, the GDPR as well as ongoing legislative developments; iii) the evolution to ‘open banking’, the handling of privacy-related risks, and the interplay with EDPB guidelines in that respect; iv) its impact on competition, including the increasing role of Big Tech and FinTech; v) its effectiveness in limiting fraud and enhancing consumer protection, including strong customer authentication (SCA);

26. NOTES the contribution of open banking to an innovative and competitive market, and SUPPORTS further efforts towards application programming interfaces (API) interoperability and to evaluate if further standardization could ensure that open banking delivers its full potential, while HIGHLIGHTING the importance of enabling PSUs to easily control the use of their data;
27. CONSIDERS that open finance may bring additional impetus to innovation and that it should therefore be duly taken into consideration, while ensuring a level playing field and an adequate level of consumer protection, and taking into account the lessons learnt from PSD2, the potential impacts on the business models of financial intermediaries and the potential risks involved (e.g. privacy-related risks);
28. CONSIDERS it important to continuously seek to find the right balance between fraud risks and convenience. In this context, SUPPORTS in particular an evaluation of the existing legal limits on contactless payments and campaigns to raise consumer awareness, taking into account recent experience during the COVID-19 pandemic;
29. AGREES that actions are needed to ensure greater consistency and a technologically neutral approach in the various pieces of legislation on retail payments, so as to allow for a level playing field in the EU on provision, supervision and oversight of payment services; and INVITES the Commission to assess the roles of the different players in the payments ecosystem, such as technical service providers, and to regulate them where necessary;

Access and interoperability aspects

30. SUPPORTS an extension of the scope of the Settlement Finality Directive (SFD) to include e-money and payment institutions, providing that the potential risks are carefully assessed and adequately mitigated;
31. SUPPORTS legislative action to secure a right of access, under fair, reasonable and non-discriminatory conditions, to technical infrastructures that are considered necessary to support the provision of payment services such as near field communications (NFC);

The international dimension

32. CONSIDERS that further initiatives to facilitate linkages between instant and other digital payment systems at the global level, including those that take into account the recommendations and standards developed in international fora, are relevant for reducing the cost and increasing the speed and convenience, of transferring money across borders, while ensuring compliance with AML/CFT frameworks;
33. NOTES the numerous obstacles to be overcome in this area, particularly the different regulatory practices among jurisdictions, the opacity of -fees and the lack of interoperability of IT and payment infrastructures, and SUPPORTS the facilitation of linkages when third-country jurisdictions offer an appropriate level of consumer protection, fraud prevention, AML/CFT and compliance with GDPR requirements;

34. ENCOURAGES the adoption of the ISO 20022 global standard in order to facilitate the inclusion of richer data in payment messages, while acknowledging that the end of 2022 for international payments is a demanding deadline;
35. AGREES that the application to one-leg transactions of the maximum execution time currently applicable in two-leg transactions and its inherent challenges could be carefully assessed in the context of the PSD2 review, bearing in mind the consequences, in particular in terms of liability, for payment services providers located within the EU and sending funds to third countries;
36. SUPPORTS public and private initiatives in various Member States leading to faster, cheaper and more convenient remittances, in compliance with consumer protection, fraud prevention, AML/CFT and GDPR standards;
37. INVITES the Commission to promote in low and middle income countries, and within the framework of EU development policy, access to payment accounts and the development of globally interoperable payment solutions.
