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From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	2 March 2023
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
Subject:	Opinion of the European Economic and Social Committee on the proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) No 260/2012 and (EU) 2021/1230 as regards instant credit transfers in euro

Delegations will find attached the above-mentioned opinion.

The document is available in all language versions and can be downloaded from the EESC's website:
<https://dmsearch.eesc.europa.eu/search/opinion>

Encl.



OPINION

European Economic and Social Committee

Instant payments regulation

Proposal for a Regulation of the European Parliament and of the Council amending
Regulations (EU) No 260/2012 and (EU) 2021/1230 as regards instant credit transfers in euro
[COM(2022) 546 final – 2022/0341 (COD)]

INT/1005

Rapporteur: **Christophe LEFÈVRE**

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Referral	European Parliament, 21/11/2022 Council of the European Union, 16/11/2022
Legal basis	Article 114 of the Treaty on the Functioning of the European Union
Section responsible	Single Market, Production and Consumption
Adopted in section	27/01/2023
Outcome of vote (for/against/abstentions)	64/0/1
Adopted at plenary	22/02/2023
Plenary session No	576
Outcome of vote (for/against/abstentions)	146/1/1

1. Conclusions and recommendations

- 1.1 The EESC welcomes this regulation on instant credit transfer in euro, as in recent years, the Committee has provided an opinion on retail payments¹ and one on the European economic and financial system² to contribute to the single financial market, simplify cross-border operations, and secure financial operations between consumers, businesses and SMEs.
- 1.2 The EESC is of the opinion that the reachability of service for European consumers and businesses is crucial for the success of instant payments (IPs) in the EU. The more payment service providers (PSPs)³ will start offering IPs, the more successful IP in the EU will become. IPs will be available to all citizens and businesses holding a bank account in the EU and in EEA countries. The proposal aims to ensure that IPs in euro are affordable, secure and processed without hindrance across the EU.
- 1.3 The EESC is of the opinion that the sending bank should not request a fee for checking the match between the international bank account number (IBAN) and the beneficiary's name but that it should be included in the price of the IP itself. The EESC recommends the requirement for PSPs not to charge more for IPs in euro than for regular credit transfers in euro, especially if the IBAN check regime is extended to all Single Euro Payments Area (SEPA) payments.
- 1.4 The EESC would like the IBAN check not to be limited to IPs but also extended to classic credit transfers until they are provided by PSPs.
- 1.5 E-money institutions (EMIs) and payment institutions (PIs) are for the time being excluded from the scope of this regulation. This exemption should be withdrawn once these institutions are granted access to the payment systems, after the modification of the Settlement Finality Directive (98/26/EC)⁴. Non-bank PSPs should be covered by the regulation as long as their offer of payment services includes operating a payment account and execution of credit transfers. Until that date, it is necessary to clarify how IBAN check and liability rules are applied when these third parties are used to initiate IPs.
- 1.6 However, as this regulation modifies Regulation 260/2012, it must be clarified that investment services are excluded from Directive 2015/2366 (Payment Service Directive 2, article 3(i)).
- 1.7 The EESC considers that the European Commission should:
- make the service enabling customers to be notified when a mismatch is detected between the payee's name and IBAN mandatory and without specific fee;
 - ensure that when a mismatch is detected during the IBAN check processing by the receiving bank, this bank informs the sending bank of the situation;

¹ [OJ C 220, 9.6.2021, p. 72.](#)

² [OJ C 341, 24.8.2021, p. 41.](#)

³ A PSP is a provider of payment services as defined in Annex I to Directive 2015/2366 (PSD2), such as a credit institution, payment institution or electronic money institution.

⁴ [OJ L 166, 11.6.1998, p. 45.](#)

- ensure that when a mismatch is detected and the consumer decides nevertheless to confirm the IP, the sending bank is no longer responsible if the beneficiary is not the right one;
 - propose targeted measures to improve the fight against fraud as IBAN will only affect the authorised push payments (APP).
- 1.8 To avoid differing interpretations of the application of sanctions, the EESC recommends including and explaining in the regulation provisions to ensure the uniform application of EU law:
- how PSPs operating in several countries should assess such situations and what steps PSPs should take;
 - how such information will be shared within the EU;
 - how the issue of compensation for damages will be dealt with in such cases;
 - to refer to just one list of persons or entities subject to EU sanctions that is adopted by way of Council Regulations under Article 215 TFEU and that should be made available to PSPs immediately. This information should constitute the official list of persons or entities subject to EU sanctions (restrictive measures).
- 1.9 The European Commission should set out the explanatory part of the regulation in detail so that it covers the general EU position and provides an interpretation of the sanctions applicable to goods and services regarding sanctions that apply to the import, export, transport, prohibition, etc. of certain goods, etc.
- 1.10 PSPs could monitor sanctions more effectively by having internal monitoring lists and the right to refer to other countries' lists (US, UK, etc.), thus reducing reputational and correspondent banking risks (current market practice). The specific measures here include:
- establishing internal monitoring lists, which would normally include entities involved in sanctions violations or sanctions risks, dual-use items, etc.;
 - using the list provided by the national competent authority (NCA) in accordance with the EU anti-money laundering (AML) legislation.
- 1.11 The EESC supports the idea to allow EMIs and PIs to participate in payments systems as direct participants and also sees potential in expanding the EC's proposal on IPs to the EU seven non-euro Member States which are part of the Single European Market.

2. **The Commission proposal**

- 2.1 IPs are a form of credit transfer whereby funds pass from the payer's account to the payee's in a matter of seconds, at any time, day or night, on any day of the year. This distinguishes IPs from other credit transfers, which are processed by payment service providers PSPs only during business hours, with the funds credited to the payee only by the end of the following business day.
- 2.2 In the EU, the architecture for IPs in euro already exists. It comprises several payment systems offering instant settlement, and the SEPA instant credit transfer scheme (SCT Inst. Scheme).

2.3 In its Communication of 24 September 2020⁵, the Commission announced proposed legislation requiring PSPs in the EU to offer IPs in euro by end-2021. Moreover, in its Communication of 20 January 2021⁶, the Commission reiterated the importance of its retail payments strategy and of digital innovation in finance. Subsequently, it included an initiative on IPs in its work programme for 2022⁷.

2.4 The proposal to make IPs in euro will be available to all citizens and businesses holding a bank account in the EU and in EEA countries, whether the account is held in Euro or in another EU currency. The proposal aims to ensure that IPs in euro are affordable, secure, and processed without hindrance across the EU. This proposal will support innovation and competition in the EU payments market, in full conformity with existing rules on sanctions and fighting financial crime. It will also contribute to the Commission's wider objectives on digitalisation and open strategic autonomy. This initiative aligns with the Commission's priority of delivering an economy that works for people and creates a more attractive investment environment.

3. **General comments**

3.1 In recent years, the EESC has provided an opinion on payments⁸ and one on the European economic and financial system⁹ to contribute to the single financial market, simplify cross-border operations, and secure financial operations between consumers, businesses and SMEs.

3.2 At the end of 2022, a little more than 13%¹⁰ of all credit transfers in euro were instant, also:

- 1 in 3 EU PSPs do not offer IPs in euro;
- in the Euro Zone, 70 million payment accounts do not allow their holders to send money and receive IPs in euro;
- up to 9.4% of cross-border euro IPs are rejected by payment providers because of inefficient sanction screening.

3.3 Analysis of the European Commission demonstrates up to EUR 200 billion currently locked in the financial system are released on any given day for productive use, resulting in economic benefits in the range of EUR 1.34 to EUR 1.84 billion per year. That evaluation does not consider the increasing inflation in Europe of 10 to 30% in some countries resulting from the Russian war in Ukraine and the COVID-19 pandemic.

3.4 For consumers, businesses, SMEs and retailers, IP results in a more secure transaction as the money is received immediately. In an additional choice of payment, i.e. in cross-border

⁵ COM(2020) 592 final of 24 September 2020.

⁶ COM(2021) 32 final of 19 January 2021.

⁷ COM(2021) 645 final of 19 October 2021.

⁸ [OJ C 220, 9.6.2021, p. 72.](#)

⁹ [OJ C 341, 24.8.2021, p. 41.](#)

¹⁰ <https://www.europeanpaymentscouncil.eu/what-we-do/sepa-instant-credit-transfer>.

European payments, cost savings on payment guarantees that are not needed improved cash-flow management.

3.5 IPs will also increase the choice of means of payment in physical shops (a so called Point-of-Sale, PoS). In physical shops for the time being payments are only possible in cash or by card. For cross-border transactions only international card schemes are used in practice. With this legislation it will be possible to use IPs for cross-borders payments.

3.6 The EESC welcomes:

- a requirement for PSPs providing a regular euro credit transfer service to offer sending and receiving of IPs in euro;
- a requirement for sanctions screening in the form of very frequent checking of clients against EU sanctions lists (as is already done in certain Member States for domestic payments), rather than for each individual transaction;
- a requirement for PSPs to provide a service enabling customers to be notified when a mismatch is detected between the payee's name and the payment account identifier, which is usually the IBAN, as supplied by the payer.

3.7 The EESC recommends the requirement for PSPs not to charge more for IPs in euro than for regular credit transfers in euro, especially if the IBAN check regime is extended to all SEPA payments.

4. **Specific comments**

4.1 As this regulation modifies Regulation 260/2012¹¹, it has the same scope. Nevertheless, it is unclear whether these new rules also apply to investment services. Those services are excluded from Directive 2015/2366 (PSD2 article 3(i))¹². It would be useful to clarify this exclusion. Checking the match between the IBAN and the beneficiary's name is a task for the receiving bank for which it has to invest. But this bank does not know who the sender is and has no relationship with him or her. Consequently, this bank cannot request a fee from the sender. The sending bank could request a fee from the sender but that would be illogical as the work is done mostly by the receiving bank. The EESC is of the opinion that the sending bank should not request a fee for this service but - if at all- this should be included in the price of the IP itself, and not charged separately as a per transaction fee, because then it could have an adverse effect on the willingness of payers to use the service and hence on the safety of transactions for the payers.

- The EESC has also doubted whether the IBAN check is a purely optional service to which the consumer has to opt-in for each transaction or for all its transactions. In some situations (e.g. a mobile payment) it can be very complicated to manage and can also worsen the service convenience for the payer – he or she would be compelled to make a decision each time when the credit transfer is initiated and unnecessarily click more times than needed.

¹¹ [OJ L 94, 30.3.2012, p. 22.](#)

¹² [OJ L 337, 23.12.2015, p. 35.](#)

- The EESC would like the IBAN check not to be limited to IPs but also extended to classic credit transfers until they are provided by PSPs.
 - EMIs and PIs are for the time being excluded from the scope of this regulation. This exemption should be withdrawn once these institutions are granted access to payment systems, after the modification of the Settlement Finality Directive. Non-bank PSPs should be covered by the regulation as long as their offer of payment services includes operating a payment account and execution of credit transfers. Until that date, it is necessary to clarify how IBAN check and liability rules are applied when these third parties are used to initiate IPs.
- 4.2 The EESC is of the opinion that for the success of IPs in the EU the reachability of service for European consumers and businesses is crucial. Therefore, the more PSPs will start offering IPs, the more successful IP in the EU will become. Thus, the EESC supports the idea to allow EMIs and PIs to participate in payments systems as direct participants and also sees potential in expanding the EC's proposal on IPs to the EU seven non-euro Member States which are part of the Single European Market.
- 4.3 The EESC considers that, in addition to the proposed regulation, the European Commission should:
- enable customers to be notified by instant electronic notification, when a mismatch is detected between the payee's name and IBAN or any other identifier used, as supplied by the payer. This service must be mandatory and without specific fee;
 - ensure that when a mismatch is detected during the IBAN check processing by the receiving bank, then this bank informs the sending bank of the situation. Thus, the sending bank informs its consumer of this mismatch and the payment transaction is suspended;
 - ensure that when a mismatch is detected and the consumer decides nevertheless to confirm the IP, it is completely clear to the consumer that if they have not indicated the right beneficiary the sending bank is no longer responsible if the beneficiary is not the right one;
 - propose targeted measures to improve the fight against fraud as IBAN will only affect the authorized push payments (APP). This can be done in coordination with the development of the Request to Pay Scheme set up by the European Payment Council which is also the manager of the SCT Instant Payment scheme.

5. **Sanctions**

- 5.1 A very high proportion of cross-border payments in euro are unjustifiably rejected by PSPs due to problems in verifying the application of penalties. The public authorities responsible for enforcing sanctions provide PSPs with information on the companies subject to sanctions by virtue of control or ownership. Unfortunately, it is not uncommon for public authorities in different countries to have different interpretations of the criteria or the reasons for a change of ownership and to give different opinions on the application of sanctions to such undertakings. As a result, a company may be sanctioned in one country but not in another. Therefore, it would be important to:

- a) include and explain in the regulation provisions to ensure the uniform application of EU law:
 - how PSPs operating in several countries should assess such situations and what steps PSPs should take;
 - how such information will be shared within the EU;
 - how the issue of compensation for damages will be dealt with in such cases.
 - b) set out the explanatory part of the regulation in detail so that it covers the general EU position and provides an interpretation of the sanctions applicable to goods and services, such as use by the EU in the case of goods and services. Sanctions that apply to the import, export, transport, prohibition, etc. of certain goods.
- 5.2 PSPs could monitor sanctions more effectively by having internal monitoring lists and the right to refer to other countries' lists (US, UK, etc.), thus reducing reputational and correspondent banking risks (current market practice). The specific measures here include:
- establishing internal monitoring lists, which would normally include entities involved in sanctions violations or sanctions risks, dual-use items, etc.;
 - using the list provided by the national competent authority (NCA) in accordance with the EU anti-money laundering (AML) legislation.
- 5.3 The European Union may have a different interpretation than non-EU countries regarding sanctions. In order to be compliant with internal and foreign policy, the EESC recommends that the Member States be required to ensure that supervisory authorities make information on persons or entities designed in relation to EU restrictive measures adopted by way of Council Regulations under Article 215 TFEU available to PSPs under their supervision immediately. This information should constitute, the official list of persons or entities subject to EU sanctions (restrictive measures). This list should be provided by the national competent authority (NCA) in accordance with the EU anti-money laundering (AML) legislation.

Brussels, 22 February 2023

Christa SCHWENG

The president of the European Economic and Social Committee
