

Comments

on the European Commission's proposal
for a regulation on instant credit transfers
COM(2022) 546 final

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The **German Banking Industry Committee** is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public-sector banks, the Deutscher Sparkassen- und Giroverband (DSGV), for the savings banks financial group, and the Verband deutscher Pfandbriefbanken (vdp), for the Pfandbrief banks. Collectively, they represent more than 2,200 banks.

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1 **Perspective:** the proposed regulation goes beyond merely promoting the market

Secure, instant, 24/7 – these are the buzzwords of our era. Products and services are available round the clock, 365 days a year. This has become the new normal for the globally interconnected consumer experience. Splitting bills easily, ordering books late at night or checking out from businesses in seconds using your contactless card or smartphone has become a reality. The European banking industry has made massive strides in recent years to meet the needs of customers by providing them with convenient payment solutions available around the clock. These also include payment solutions that meet customer demand for specific use cases where a transfer must be made available to the payee in seconds. German banks and savings banks have played a pivotal role in supporting the development of the European Payments Council's rulebook on instant credit transfers in euro.¹ In terms of this offering, it is a pioneer in Europe and instant credit transfers have largely established themselves alongside the more traditional standard SEPA transfer. At the European level, too, the banking industry has geared its introduction of instant credit transfers to the needs of customers in the respective member states. As a result, the majority of payment accounts in 15 EU countries already have access to instant credit transfers.

In addition, the new infrastructure created in the course of introducing instant credit transfers has the potential to unlock further product innovation. For example, German banks and savings banks already offer their customers person-to-person instant payments via mobile devices with giro pay's 'send money' function.² Other initiatives are looking at creating instant payment methods for use in retail, i.e. for shops or e-commerce.

The regulation³ now being proposed by the European Commission recognise the success of instant credit transfers. However, the proposals go well beyond merely promoting the market. The proposed, far-reaching restrictions on the freedom of the payment service provider to design their products and set their prices as they see fit are not justified as there is no recognisable market failure. Lacking is a holistic view of the many customer-friendly payment solutions already in place and the proposals themselves pursue the questionable goal of almost completely overhauling all credit transfers. Contrary to the assumptions of the European Commission, in many use cases, changing over to instant credit transfers makes no sense.

Legally mandating the almost exclusive use of instant credit transfers is a deep intervention into the dynamics of the market and would lead to greater costs for both banks and customers, with no certainty of providing any benefits whatsoever by doing so.

Furthermore, instant credit transfers should not be equated with the product innovations mentioned above that build on their infrastructure (e.g. payment solutions for the "Point of Interaction" such as in physical stores or E-Commerce). In fact, a statutory price intervention and a unilateral cost burden for the account-holding banks as a result of inappropriate requirements will likely have an inhibiting effect on innovation with respect to these promising initiatives: the development and implementation of new products is more likely to be hampered than promoted. Any positive contribution by the legislation to unlocking the potential

¹ SEPA Instant Credit Transfer.

² Formerly KWITT.

³ European Commission proposal for a regulation of the European Parliament and of the Council amending regulations (EU) 260/2012 and (EU) 2021/1230 as regards instant credit transfers in euro of 26 October 2022 (COM(2022) 546 final), subsequently referred to as EU SEPA Regulation and EU Price Regulation.

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associated with instant credit transfers will require a much stronger focus on the actual needs of the banking industry and its customers.

Against this background, the following areas that are addressed by the proposed regulation deserve particular scrutiny:

- **Requirement for banks to be available to receive instant credit transfers:** realistic deadlines needed, a complete replacement of SEPA standard credit transfers is not feasible (see section 2).
- **Requirement to offer instant credit transfers:** need to focus on online channels that make sense for customers (see section 3).
- **Equal charges for instant and non-instant credit transfers (price regulation):** disproportionate interference in well-functioning competition; failure to recognize the higher complexity of instant credit transfers (see section 4).
- **Mandatory matching of the payee's name and IBAN:** will do little to prevent fraud while containing a risk of abuse to the detriment of customers (see section 5).
- **Dispensing with transaction-related sanctions screening:** take account of interaction with other rules and regulations (see section 6).

The sections will also discuss necessary amendments that could at least cushion the potentially negative effects of the proposed regulation: In addition to realistic implementation deadlines, this would include a more targeted consideration of customers' channels and business models linked to instant credit transfers, as well as mitigating against the risks of abuse resulting from the proposed regulation as outlined in Section 5.

2 Requirement for banks to be available to receive instant payments: realistic implementation deadlines needed, a complete replacement of SEPA standard credit transfers is not feasible

Proposed requirement: The European Commission proposes adding a new Article 5a to the SEPA Regulation⁴ which would require all banks making payment accounts available for incoming instant credit transfers. Institutions based in a country within the euro area would have to comply with this requirement within six months of the regulation coming into force (other EU member countries: within 30 months).

Assessment:

- Making payment accounts accessible for instant credit transfers throughout the EU may offer advantages and increase its attractiveness to payers and institutions that already use or would like to offer instant credit transfers. Equally, this would promote product innovation that would build on the infrastructure created by instant credit transfers.
- Nevertheless, the proposed implementation period of six months is far too short. Institutions that already offer instant credit transfers have reported needing to make

⁴ 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.

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extensive changes to their own IT systems. And this regularly extends beyond payment settlement systems in the narrower sense (e.g. in the context of compliance review processes, liquidity management etc.). An appropriate implementation period would be at least 36 months from when the regulation comes into force.

- Furthermore, the requirement is not appropriate for institutions that have low payment volumes due to their size or because they specialise in a particular area and do not offer their customers electronic or online payment accounts or certain institutions with special business models. Such a requirement would lead to high costs that would be thoroughly disproportionate to the number of times they would actually use instant credit transfer scheme. Supervisory bodies in the member states must be given the scope to exempt these institutions from this requirement where appropriate.
- The same applies to banks based outside the euro area since, despite any obligation to do so, they will probably not face a significant degree of customer demand for instant credit transfers denominated in euros.
- The legislator should not give the impression that the SEPA standard credit transfer system is superfluous. It is required to process the high number of recurring transactions efficiently and at reasonable cost (more than 25 billion per annum in the SEPA area) on behalf of customers (e.g. salary and pension payments). In addition, it will remain to be crucial for SEPA payments in third countries. The SEPA standard credit transfer also serves as an established backup in cases where instant credit transfers cannot be executed or processed.
- As the legislative process progresses, it must be determined whether the proposed amendment to the definitions in Article 5 of the SEPA Regulation correctly reflect the actual characteristics of instant credit transfers.⁵

3 Requirement to offer instant credit transfers: need to focus on online channels that make sense for customers

Proposed requirement: To add a new Article 5a to the SEPA Regulation which forces banks to give their payment service users the option of placing instant credit transfers. This is to be made possible via all available customer channels or order channels (payment service user [PSU] interface) where credit transfers are also offered. It is also to include the option of batch processing or placing paper-based payment orders. Institutions based in a country within the euro area would have to comply with this requirement within 12 months of the regulation coming into force (other EU member countries: within 36 months).

Assessment:

- Placing instant credit transfers via all available customer channels or order channels is not technically practicable and often makes no sense from the PSU's point of view. The instant credit transfer scheme was developed to meet actual customer needs which are linked to the use of online banking and mobile banking apps on smartphones. This is

⁵ For example, the proposed requirement in Article 2(1a), letter c of the SEPA regulation relating to the amount of time in seconds that the payee's payment account must be credited with the amount transferred does not correspond to requirements in the European Payments Council rulebook. These are explicitly not linked to the placement of the payment order but to the point in time determined by the payer's payment service provider after which necessary availability checks have been completed.

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also reflected in product innovations already established or in the planning stage that build on the infrastructure created for instant credit transfers, such as offers designed for the "Point of Interaction" (e.g. physical stores or E-Commerce). Here, too, it is assumed that the consumer will use web-based applications or mobile apps. A requirement to offer instant credit transfers must therefore be limited to online customer channels that are relevant for instant credit transfers and reflect actual customer behaviour, and it must strike a reasonable balance between the costs and the benefits. This will require giving payment service providers the option to decide individually which channels can be used to place instant payment orders.

- In particular, there should be no requirement to offer the option of placing payment orders for instant credit transfers in a paper-based form, by automated teller machine, by telephone or e-mail since these channels will not always be able to meet the requirements of this regulation due to the way they are processed. This is because instant credit transfers are designed so that when authorised by the customer, they are immediately executed by the payment service provider. This is generally not possible via the order channels mentioned above and therefore ought not to be required by law.⁶
- It is doubtful whether a legal requirement to accept orders from corporate customers in large numbers in the form of batch processing (file submission, bulk payments) is appropriate (example: salary payments for a large business with tens of thousands of employees). The European Payments Council rulebook recognises that this should be understood as an optional offer.⁷ It is important to note that there are particular challenges involved with the batch processing of instant credit transfers and it may not be possible for every specific type of batch processing protocol.
- With this in mind, the proposed new definition for a PSU interface contained in Article 2(1b) of the SEPA Regulation should be amended as follows:

'PSU interface' means ~~any a~~ method, device or procedure through which the payer can place ~~a paper-based or an~~ electronic payment order to its PSP for a credit transfer, including online banking, ~~and~~ mobile banking application, ~~automated teller machine, or in any other way on the premises of the PSP;~~

- Furthermore, the proposed Article 5a(2)(a) of the SEPA Regulation should be amended as follows:

they [PSPs] shall ensure that payers are able to place a payment order for an instant credit transfer through ~~at least one the same~~ PSU interfaces ~~as the ones~~ through which those payers can place a payment order for other credit transfers.
- As a result, paragraph 3 of the proposed new Article 5a of the SEPA Regulation, which refers to submitting multiple payment orders as a package, should be deleted.
- Any requirement must allow for an appropriate deadline for implementation of at least 36 months as well as the possibility of issuing exceptions at member state level (see section 2).

⁶ This is explicitly acknowledged, for example in relation to paper-based payment orders, in Article 83(1) of the EU Payment Services Directive with a longer execution period.

⁷ See Chapter 4.5.1 of the European Payments Council's SEPA Instant Credit Transfer Scheme Rulebook.

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4. Equal charges for instant and non-instant payments (price regulation): disproportionate interference in well-functioning competition; failure to recognise the higher complexity of instant credit transfers

Proposed requirement: The Commission proposes adding a new Article 5b to the SEPA Regulation and a new paragraph 5 to Article 3 of the Regulation on cross-border payments,⁸ under which charges levied on payers and payees for instant credit transfers may not be higher than those for corresponding non-instant credit transfers in euros. Payment service providers headquartered in the euro area will have to ensure this within six months of the regulation coming into force (other EU member states: within 30 months).

Assessment

- There is no objective justification for regulating the price of instant payments and such a step would undermine the confidence in the principles of a market economy that is essential for investment decisions.
- Competition works well in the EU, with a very large number of providers (banks and other payment service providers) offering consumers and businesses a wide range of different account and fee models. When explaining why it sees a need to regulate prices, the European Commission fails to mention or take account of the competitive situation and the breadth of services already on offer. This applies both to offers of payment services for consumers and – even more so – to offers aimed at corporate clients. In this segment, competition is still more intense and clients have a high level of professionalism, which calls the appropriateness of price regulation even more into question.
- The use of instant credit transfers and the development of payment solutions based on their infrastructure are still in their infancy in Europe, albeit with high growth rates and equally high potential. Market mechanisms need time to evolve and translate a technological innovation into broad acceptance by providers and customers and thus into associated economic effects.
- Price regulation risks creating the wrong incentives and hampering innovation. The Commission proposal would frustrate the actual goal of the regulation, namely to promote innovative offers in the European payments sector.
- Processing payments within a few seconds and 365 days a year involves more complex processing structures and higher operating costs. Unlike regular SEPA credit transfers, instant payments are checked and executed immediately and the funds are transferred to the payee within seconds. The payment service provider must connect to a special settlement system (such as TIPS – TARGET Instant Payment Settlement). Regular SEPA credit transfers, by contrast, can be settled on a daily basis, with outgoing and incoming payments offset against each other in the interbank space. Enabling instant credit transfers to be executed within seconds at any time requires much more dynamic liquidity management of banks' settlement accounts (24/7, 365 days a year) compared to that for SEPA credit transfers, which is time-consuming and costly. This additional work and expense may well justify product-related price differences. A blanket cross-subsidisation of

⁸ Regulation (EU) 2021/1230 of the European Parliament and of the Council of 14 July 2021 on cross-border payments in the Union.

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charges is not appropriate and is at odds with the "user pays" pricing principle – a principle that national and EU case law has repeatedly upheld.

- Lawmakers should take this into account and, should they retain this price intervention policy, grant payment service providers adequate scope for price differentiation, e.g. thorough allowing reasonable markups.

5. **Mandatory matching of the payee's name and IBAN** will do little to prevent fraud while containing a risk of abuse to the detriment of customers

Proposed requirement: The Commission proposes adding a new Article 5c to the SEPA Regulation, under which the payer's payment service provider, before executing an instant credit transfer, will have to verify that the payee's name and IBAN match. If a discrepancy is detected, the payer will have to be notified before they authorise the payment. This service will have to be made available through all customer and ordering channels. Payment service providers based in the euro area will have to ensure this within 12 months of the regulation coming into force (other EU member states: 36 months).

Assessment

- Given the sheer number and variety of known fraud scams, including in the area of social engineering, the banking industry believes this proposal will not offer the comprehensive protection against fraud anticipated by the European Commission. Regrettably, the European Commission fails to present any convincing or quantified evidence indicating that a check of this kind has the potential to effectively reduce the actual risks and thus justify the associated high implementation costs.
- What is more, the envisaged notification service risks opening the door to large-scale abuse. Though the European Commission's intended purpose is to prevent fraud, anyone could (mis)use the service to find out whether a natural or legal person is the holder of a given payment account. Since the service does not require the actual execution of an instant credit transfer, the proposed regulation would offer virtually no effective obstacles to the service being misused to capture customer data. This may expose consumers, especially, to new risks in the context of social engineering or other scams by third parties (such as data and identity theft). Lawmakers should recognise this risk and weigh it carefully against the supposed advantages. In particular, the as yet unpublished views of the European Data Protection Supervisor should be considered in this assessment.⁹
- In addition, the failure to take a holistic view means there is a danger of the proposal running counter to other legal requirements designed to promote efficient payments processing and prevent fraud. It is at odds, for example, with the principle established by the European Payment Services Directive of executing payments on the basis of a customer identifier (normally the IBAN, so-called "IBAN primacy") and the major efficiency gains thus achieved since 2009 for institutions and their customers. Furthermore, the Payment Services Directive already contains provisions designed to protect customers from errors or fraud. These include both specific measures¹⁰ and principles-based requirements.¹¹ What

⁹ According to recital 23, the European Data Protection Supervisor has been consulted but has not yet issued an opinion.

¹⁰ For example, payment authorisation and strong customer authentication processes allow the payer to check the payment details once again before the payment is executed.

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they all have in common is that they are not limited to individual payment methods but are generally applicable and risk-based. In the interests of better regulation, lawmakers should evaluate the proposed requirements with existing rules and regulations in mind and consider whether an isolated addition to the SEPA Regulation, which would override national law implementing the Payment Services Directive in member states, is likely to yield meaningful results.

- If, despite these objections, an obligation is nevertheless introduced to verify that the payee's name matches their IBAN, the wording of the requirement needs to be improved. Among other things, the payee's payment service provider should be subject to an obligation establishing a clear legal basis for it to disclose the information while at the same time adequately reflecting the liability situation in case an error occurs (since the payer's payment service provider will not normally have the required information). Paragraph 1 of the proposed new Article 5c of the SEPA Regulation should therefore be worded as follows:

With regard to instant credit transfers, a **payer's payee's** PSP shall verify whether the payment account identifier and the name of the payee provided by the payer match. Where they do not match, that PSP shall notify the payer's **PSP** of any discrepancies detected and the degree of any such discrepancy. **The payer's PSP shall forward this information to the payer.** The PSPs shall provide that service immediately after the payer provided to its PSP the payment account identifier of the payee and the name of the payee, and before the payer is offered the possibility to authorise the instant credit transfer.

- Furthermore, not only the payer but also the payee should be permitted to opt out of the disclosure of information. This could be achieved by adding wording to paragraph 3 of the proposed new Article 5c of the SEPA Regulation that mirrors the wording relating to the payer.
- The regulation should also limit any verification obligation to consumer payments since the higher degree of professionalism of corporate clients and other non-consumers calls the appropriateness of the requirement even more into question given the associated costs.
- These costs are likely to be substantial. To minimise them in the interests of providers and users of payment services, any obligation should relate to a *single* widely used channel designed for initiating electronic payments to be designated by the bank (see also section 3 of our comments). With our argument outlined in the previous bullet point in mind, the question arises as to whether it would really make good sense and be technically feasible to integrate the requirement into the existing highly efficient batch processing in the corporate client segment without imposing an additional burden on businesses. Paragraph 5 of the proposed new Article 5c of the SEPA Regulation should therefore be amended as follows:

The service referred to in paragraph 1 shall be provided to the payer ~~regardless of the~~ **through at least one** PSU interface used by the payer to place a payment order for an instant credit transfer.

- Establishing the necessary intercompany processes across Europe will require extensive planning and coordination, followed by corresponding technical implementation by payment service providers. Realistically, a period of at least 36 months will be needed.

¹¹ Take, for example, the requirement for payment institutions to document security control and risk mitigation measures taken to ensure adequate protection of payment service users from identified risks, including fraud and illicit use of sensitive and personal data under Article 5(1)(j) of the Payment Services Directive.

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6. Dispensing with mandatory transaction-related sanctions screening: take account of interaction with other rules and regulations

Proposed requirement: The Commission proposes adding a new Article 5d to the SEPA Regulation, under which no individual transaction-related sanctions screening in accordance with Article 215 of the TFEU will be carried out when executing instant credit transfers. Instead, payment service providers should continually verify whether any of their payment service users are listed persons or entities. If a payment service provider fails to carry out this verification process, the introduction of administrative penalties and liability for damages caused to the other payment service providers involved in a payment is proposed.

Assessment

- This requirement addresses the particular challenges of sanction screening that has to be carried out in a matter of seconds and the resulting false positive hits that would doubtless result. In principle, the European Commission's proposed solution could help to mitigate these challenges.
- The banking industry and member states will nevertheless need to take a critical look at the proposal during the ongoing legislative process owing to interaction with other rules and regulations. This concerns, in particular, the high sensitivity of compliance with European sanctions and embargo regimes and the interplay with other external requirements as well as banks' own measures to prevent financial crime and the technical preconditions for an efficient operationalisation of the required daily verification.
- It is, moreover, open to question whether there is any objective justification for limiting this proposal to instant credit transfers or whether this solution should instead cover all (mass) payments within the European Union.
- With this in mind, we recommend a thorough analysis of the Commission's proposal and dialogue with the banking industry regarding such interaction.