

POSITION PAPER



ESBG position paper on the proposal for a Regulation (2022/0341 (COD)) as regards instant credit transfers in euro

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1. Introduction

The European Savings and Retail Banking Group (ESBG) has been supporting the development and roll out of instant payments since their introduction, inter alia by encouraging its member banks to adhere to the European SEPA Instant Credit Transfer (SCT Inst) scheme on a voluntary basis. The first cross-border SCT Inst transaction in Europe took place between two ESBG member banks, as did the first transaction on TIPS. Instant payments allow frictionless transfers in euro within a few seconds in and between all European countries; and as the SCT Inst scheme is home-grown and pan-European, this supports the ambition to strengthen European sovereignty in the payments sector.

While the Commission believes that the uptake of instant payments is plateauing, in terms of number of PSPs adhered to the SCT Inst scheme, we consider that adherence should be measured in terms of number of (consumer) accounts reached, rather than in terms of adhering banks, and therefore we would like to stress the importance of a more balanced approach in this respect. Nevertheless, we welcome that a differentiation has been made between banks within the euro area and banks within other EU member states when it comes to adhering to the scheme. Furthermore, there should be an opt-in / opt-out possibility for non-Euro member states, as was the case when the Euro Cross-border regulation was introduced due to the fact that these member states need to build two services: the instant payment service in their respective national currency and the Euro instant one, while in the Euro area only Euro instant service is required. In addition, there will be foreign exchange complexity in relation to non-euro-PSPs, including addressing the risk of currency exchange. We also welcome the proposal's attempt to streamline the approach to sanctions screening, which we have been advocating for as a key element to make instant payments effective while remaining safe.

The ESBG also welcomes the proposal's focus on consumer protection, a long-standing priority for all its member banks. The ESBG especially supports the decision to leave the concrete implementation of services known as Confirmation of Payee (CoP) to the market, which demonstrates full trust in the ability of the industry to find the best solutions based on the specific needs of each Member State.

Finally, while taking note of the Commission's position on the charging principles, the ESBG highlights that a long term sustainable business model benefiting all stakeholders is the key not only to ensuring the success of instant payments, but also to fostering their innovative potential in the European ecosystem. Besides, ESBG believes that pricing for payment transactions should be free of any price regulation, as is the case for pricing for most items consumers or corporates buy and sell to each other. Any regulation aiming on pricing risks to distort the market and/or the service level and quality offered and to distort the competition, in



addition to creating an unlevel competitive situation between banks and payment initiation service providers. The payments market is provided for by commercial entities and the PSD2 opened up this market for new entrants – where one side of the market will now face a restriction on their freedom to price instant payments (banks), while another side of the market, notably the non-banking sector, has all the freedom to price their services leveraging instant payments freely whilst the underlying services are offered by actors (banks) whose pricing abilities are restricted.

2. ESBG position

The ESBG believes in the potential of instant payments and roots for the development of home-grown, pan-European solutions. In what follows below, this paper will lay down the position of ESBG members on the different Articles that are part of the proposal.

2.1. Definitions and scope

As a preliminary observation, all the proposed implementation timelines seem way too short. Moreover, we believe the scope of the regulation should be reduced. We especially find the requirement to offer instant payments through all customer channels to be unreasonable, with little to no real benefits for Payment Service Users (PSUs). Indeed, the SCT Inst scheme was developed to enable use cases linked to the connected world, notably the use of online banking and mobile banking apps on smartphones. A requirement to offer instant credit transfers must therefore be limited to those online customer channels that are relevant for instant credit transfers and that reflect actual customer behaviour, in order to ensure a reasonable balance between the costs and the benefits of providing such a service. More in detail, we are of the opinion that paper-based orders and orders placed via Automated Teller Machines (ATMs), telephone or e-mail (so called MOTO transactions) should be exempted from the general obligation to provide instant payments, mostly due to the specific way these types of orders are processed. Indeed:

- Paper based orders are usually collected at the bank branch or sent by postal mail, and processed at a later time, generally outside normal business hours. In those cases where paper based orders are sent to the bank by postal mail it is not clear why the customer, given the time the order needs to reach the proper back-office, would require an instant processing of the order. It should also be noted that in all these situations it would be technically impossible to comply with the requirements set forth in Article 5c and to inform the PSU about possible discrepancies between the name and payment account identifier of the payee.
- Almost the same reasoning applies to (e)Mail Orders and Telephone Orders (MOTO), which are systems that allow merchants and businesses



to take and manage payment orders remotely. The remote aspect will restrict the customer ability to assess the result of an eventual CoP response.

- As for ATMs, it should be noted that in several countries these machines are not owned by banks. The entities owning the network may not be PSPs, therefore it would be unclear how the rules in Article 5a would apply to them. Moreover, it should be considered that the time required to complete an instant payment order (including the IBAN-name check – as long as this would be technically feasible, which is not yet clear – and the final authorisation) would lead to a significant increase in the time the customer has to spend at the self-service infrastructure while blocking it from customers who want to access cash. Besides, it should be noted that the card transactions that dominate ATM withdrawals at the moment are processed on different networks than those that are used for processing credit transfers and direct debits. Additionally, the ownership of these rails is usually different.

Therefore, we believe Account Servicing Payment Service Providers (ASPSPs) should have the freedom to choose which customer interfaces would enable their clients to initiate instant payments, as long as customers have the ability to do so through at least one frequently used on-line channel. In this respect, the online channel (both via a mobile app and online banking) seems to be in the best position to offer all the benefits of instant payments. Requiring banks to do otherwise would be disproportionate, especially considering that it would affect a very low amount of total volumes and would not bring clear value to the customer initiating the payment.

Moreover, we believe bulk payments should also be excluded from the regulation. Indeed, we fail to understand why these types of payments – for which the order is generally scheduled for a future date (typically, salaries orders are placed 2-3 days before the execution date) – should be performed instantly. From a technical point of view, the execution of bulk payments requires a processing time that depends on the bank's internal checks, which alone would lead to exceeding the 10 (or better, 20) seconds allowed per payment. Therefore, even if a processing time of a few seconds can be ensured for the individual transaction, the entire collective delivery would certainly exceed said threshold. Considering that EU banks clear credit transfers multiple times per day, we believe that processing bulk payments via SCT Inst would not add any clear benefit to neither payers nor payees. Indeed, salaries paid via regular credit transfer routes are already processed and paid in the early clearing and settlement cycles of the pay day – meaning they are usually credited to consumers in the early hours of that day. Further, considering that there is a requirement that salaries are paid on a specific date in some Member States, we fear that the current settlement system may not be able to handle hundreds of thousands of those transactions instantly. Finally,



we would like to highlight that corporate customers do not seem interested in having all batch payments transferred via SCT Inst.

On another note, it seems that the definitions laid down in the proposal are not in line with the current SCT Inst Rulebook. For instance, the proposed requirement in Article 1(1a)(c) relating to the amount of time in seconds (10) that the payee's payment account must be credited with the amount transferred, does not correspond to the requirements of the SCT Inst Rulebook (which provides for 20 seconds – twice as long as the legislative proposal). Moreover, the 'time of receipt' (Article 1(1a)(a)) has no equivalent definition in the SCT Inst Rulebook, which instead refers to a 'timestamp' that is 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. Therefore, we believe any inconsistency between the definitions in the proposal and the SCT Inst Rulebook should be removed from the proposal. The proposal should also clarify that these timelines shall only apply to individual transactions instructed by the consumer through an online channel. If not, the proposal triggers major changes for the SCT Inst scheme, with consequential delays for the expansion of instant payments in SEPA.

Finally, although the prescribed fraud monitoring processes (in real-time) can in principle be carried out with all other checks within a few seconds, issues arise in case of suspicion of fraud or money laundering. Here, the 10 seconds currently provided for in the proposal are by no means sufficient, as the fraud suspicion must still be verified with the customer while the money laundering suspicion needs to be checked against other data sources and possibly be reported to the law enforcement authorities without revealing the interruption reason to the customer. If this is not possible, the payment would have to be rejected to comply with the short timelines. This could lead to numerous queries on the part of the customer, and the matter of liability would also require further clarification.

2.2. Adherence

On a general note, we fear that mandating the adherence to instant payments may give consumers the wrong message. Indeed, they may gain the impression that the SEPA standard credit transfer system is becoming obsolete and will shortly be useless. While it is undisputable that consumers can benefit from the flexibility that instant payments offer, such as the ability to complete last-minute or emergency payments, it should be highlighted that instant payments and regular credit transfers are two different – although complementary – instruments, each with their own characteristics and use cases. An instant payment is not just a faster credit transaction. Due to the instant nature of payments, and given that these payments are final and irrevocable, additional rules should be discussed to ensure a proper and balanced customer protection, including a clear split of liabilities between PSUs and their PSPs.



Overall, we believe that adherence levels would be better considered in light of reachable payment accounts, rather than in terms of the number of adhering PSPs. Despite all ESBG members already offering instant payments, both on the sending and receiving side, we consider that forcing banks with a specific client orientation to offer and receive instant payments in euro may result in a very small amount of additional payment accounts being reached. According to available data, the vast majority of payment accounts in the EU (in some Members States, as much as 95% of all payment accounts, i.e., in the Netherlands) are currently covered by an offer of instant payments in euro. Moreover, the requirement of offering instant payments must also reflect that PSPs have a number of legal obligations to comply with that may hinder such an offering (in general or in respect to individual transactions), typically related to AML rules, causing additional complexity. Therefore, we would welcome the exclusion of certain players, like smaller or highly specialised institutions, as well as banks that do not offer electronic payment accounts for retail customers, from the requirements laid down in Article 5a of the proposal.

2.3. Charges

Article 5b introduces an arbitrary price regulation by mandating banks to offer instant payments in euro at a price not higher than that of regular credit transfers. This type of provision constitutes a strong intervention in the free market that is not justified by any concrete failure. SCT Inst and the development of payment solutions based on its 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 being reflected into economic effects.

ESBG believes that pricing for payment transactions should be free of any price regulation, as is the case for pricing for most items consumers or corporates buy and sell to each other. Any regulation with the goal of pricing risks distorting the market and/or the service level and quality offered. The payments market is provided for by commercial entities and the PSD2 opened up this market for new non-bank entrants. One side of the market will now face a restriction on their freedom to price instant payments (banks), while another side of the market (payment initiation service providers), notably the non-banking sector, has all the freedom to price their services for the end customer leveraging instant payments freely from the banks whilst the underlying instant payment services are offered by actors (banks) whose pricing abilities are restricted both for the instant payments but also according to the PSD2 for asking a price from the said payment initiators.

More specifically, the proposal fails to acknowledge that processing payments within a few seconds, on a 24/7/365 basis, involves more complex processing



structures and higher operating costs. Unlike regular SEPA credit transfers, instant payments are checked and executed immediately, with the funds being transferred to the payee in a matter of seconds. The PSP must connect to a special settlement system (i.e., TIPS – TARGET Instant Payment Settlement, whose costs per transaction are different compared to that of other, batch-oriented systems). In addition, PSPs will need 24/7/365 financial operations, support and customer services operational to manage any instant payment issues that may occur (even on Christmas Day and other public holidays). 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 compared to that for SEPA credit transfers, which is time-consuming and costly. This additional work and these expenses justify product-related price differences. It is clear that there is no reason why the price of an instant payment should be aligned to that of an SCT. Moreover, this would create an uneven level playing field between SCT Inst and other competing payment methods (especially cards, as they can benefit from a business model that is attractive to all market participants in the form of interchange fees) and place banks at a disadvantage in relation to other players in the payments market that are not covered by cost increases and price restrictions from this proposal.

As also emphasised by the EU Commission in the Retail Payment Strategy, the development of instant payments should be market-driven and without undue interferences on the price formation mechanisms. Restricting the price will impact on price competition and eventually hamper the innovative potential of the EU. Indeed, if banks are expected to offer innovative services and solutions at a fixed price, there is little incentive for them to innovate in the future. Furthermore, depriving banks from reaping the benefits of their investments in SCT Inst infrastructure would weaken banks' competitive position in the market and ultimately reduce the competition in the payments area. Furthermore, with regard to the different production costs for SCT and SCT Inst, it must be noted that the present regulatory proposals of the EU Commission, particularly with regard to consumer protection and sanction screening, will lead to a further significant increase in production costs for SCT Inst and thus to an even greater divergence of costs.

2.4. Consumer protection

ESBG and its members are fully supportive of robust consumer protection measures. Banks continuously seek to educate and inform their customers on how to prevent fraud, therefore we fully support the focus of the proposal on consumer protection. We especially welcome the decision to leave the concrete implementation of services known as Confirmation of Payee to the market, which demonstrates full trust in the ability of the industry, notably payer PSPs and payee



PSPs, to find the best solutions between them based on the specific needs of each Member State.

However, we believe that the introduction of an IBAN-name check (also known as Confirmation of Payee (CoP)) service at EU level would mainly be useful for invoice fraud where payments are authorized by the payer, but would only have a limited impact in the overall prevention of fraud, as the CoP would not be able to prevent social engineering fraud (which amount to a large part of all cases). Indeed, social engineering frauds involve the manipulation of a payer, who is tricked into either making payments to the fraudster instead of the intended payee (beneficiary) or to hand over their authentication details and the fraudster has access to the victims online banking. In such cases which involve complex false pretences leading to conscious decisions of the consumer, CoP services may not prevent the execution of the fraudulent payments since the fraudster typically also deceives the payer into ignoring any signal of mismatch generated by the CoP service (authorized payments) or the customer is not even aware that the fraudster is accessing the online banking and making payments (unauthorized payments).

We believe the best way to ensure the provision of a CoP service that also works for cross-border transactions would be to build a European scheme setting common messaging standards and harmonised sets of rules for both payer and payee payment service providers. To minimise the costs, that are likely to be substantial, any obligation should relate to a single widely used channel designed for initiating electronic payments to be designated by the bank. In this respect, instead of creating one (or more) database(s) listing all National/European IBANs, we believe the best solution would be to leverage the potential offered by APIs. However, there are several operational, technical, and legal challenges that require time to be fully assessed and resolved. Especially the interplay and compliance with the General Data Protection Regulation (GDPR) and with national rules (e.g., on bank secrecy) should be carefully investigated in advance in order to come up with the best solution¹. Moreover, there is the risk that the CoP service opens the door to large-scale abuse, as 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).

¹ We see the risk that CoP services would open the door to large-scale abuse, as 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 IBAN-name check 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 expected advantages.



In addition, we strongly believe the timelines set forth in the proposal are too short to ensure the development of a successful European solution. Enough time must also be ensured to allow already existing CoP services to adapt to the proposal and to explore how they could be made interoperable with other solutions. Considering that the CoP service is expected to work not only at EU level, but also at EEA level, we believe the timeline should be aligned with that given to non-euro area PSPs – that is (at least) 36 months. In any case, we consider the legal obligation should be limited to offering the CoP service to consumers only. In general, the different deadlines between EEA- and non-EEA-countries lead to a time-consuming and complex implementation.

Moreover, we do not see the need to offer mandatory IBAN-name checks for transactions at the Point of Interaction (POI): the costs for the implementation and update of terminals would not be matched by the benefits, which would actually be non-existent in such a controlled scenario. The CoP would lead to longer total payment time at POI causing customers to re-try the payment or to abandon it and select other available payment means in addition to expanding check-out lines in shops. The CoP should also not apply to trusted beneficiaries, as in this case the payer clearly trusts the payee and any additional screen would be disregarded by the customer. In these cases, a single IBAN-check could be performed when the beneficiary is first added to the list of trusted beneficiaries. Finally, as any CoP service can only be implemented on interfaces with real-time interaction with the PSU, this obligation should also not apply to transactions at ATMs and in branches, as well as to batch payments, paper orders, and MOTO transactions.

Moreover, for any CoP service to work, the regulation should introduce the obligation for the payee's PSP to respond to the payer's PSP request on whether the IBAN and name match. The regulation should also specify a reasonable timeframe to provide this answer. Indeed, considering that the PSU must be notified about any discrepancies *'immediately after'* the PSU has entered the payment details and, in any case, *'before the payer is offered the possibility to authorise the instant credit transfer'*, delayed responses would cause frictions that may result in high abandonment rates. The regulation should also define when the criterion for a 100 percent match is met and what levels of discrepancies exist and how are they defined. In this respect, it should be highlighted that any partial match (e.g., 70% resemblance) could open up for fraudsters who could register corporate IBAN holder names looking like somebody the paying consumer could trust (e.g., "Taxx Office", "Polize", "Seedbank", etc).

Finally, we believe it is crucial to have a clear liability framework in place and we consider this too important to be only briefly mentioned in a recital. Article 5c should clearly state that PSPs are not liable for the execution of the payment to an unintended payee, both in case the PSU disregarded the alert of the PSPs on



the discrepancy detected and in case the PSU opted out of the service. Further, the payee PSP that confirms a match between IBAN and PSU name, takes on liability on payment to the wrong payee. In this context, we would also welcome further clarity on the meaning of 'opt out', as we understand that it means not using the service at all (i.e., the customer informs its PSP that no CoP checks should be performed). However, in other settings the Commission seemed to imply that the opt out would refer to receiving notifications, which is different from opting out of the service. In the former case, the regulation would imply that the check is to be performed every time, but the customer would not get the result of the check. If this were the case, it is not clear what would be the added value, as the PSP would have to perform an activity without any concrete purpose and it could also be a violation of the GDPR.

2.5. Sanctions screening

Article 5d provides for a shift in the current sanctions screening processes. Instead of performing transaction screening, PSPs will rely on regular screenings of their customer database to check whether any of their customers are listed persons or entities. Although the current proposal refers to EU restrictive measures only, other measures, for example those imposed by member states or states outside the EU, could exist. For allowing best efficiency of the Commission's proposal, such other restrictive measures should be subject to the same treatment. The screening shall be made at least once per day and anyway immediately after the entry into force of new or amended restrictive measures. In welcoming this provision, that is in line with what was recommended by the banking sector, with the Report delivered by the Task Force on sanctions screening, we would like to point out that it is not always possible to carry out the necessary checks against EU lists "*immediately after the entry into force*" of the new or amended measures. This is due to the fact that their implementation in the banking systems cannot be immediate after their publication and in concrete can take up to 2 working days (in rare cases up to 3 working days).

Moreover, we believe this new way of processing sanctions screening should apply not only to SCT Inst, but to all credit transfers. Indeed, keeping in place two different systems (one for transaction screening and another for database screening) is costly and burdensome, with no added value for PSPs nor for customers. Moreover, we would welcome further clarification on the outcome of the screening, for instance if automatic rejections of instant payments based on national lists or internal lists would still be allowed. Finally, the proposal is at odds with proposals currently being tabled under proposed AML legislation which provide for sanctions screening obligations to be included in AML (due diligence) obligations. European lawmakers must therefore ensure that contradictory rules are not enacted at the same time. Obligations to carry out sanctions screening should not be included in AML legislation.



3. Conclusion

ESBG and its members believe in the potential of instant payments and roots for the development of pan-European solutions. ESBG stands ready to further engage with the co-legislators and to join forces to make instant payments the new normal.



About ESBG (European Savings and Retail Banking Group)

ESBG represents the locally focused European banking sector, helping savings and retail banks in 17 European countries strengthen their unique approach that focuses on providing service to local communities and boosting SMEs. An advocate for a proportionate approach to banking rules, ESBG unites at EU level some 885 banks, which together employ 659,797 people driven to innovate at 47,198 outlets. ESBG members have total assets of €5.7 trillion, provide €1 trillion in corporate loans, including to SMEs, and serve 162 million Europeans seeking retail banking services. ESBG members commit to further unleash the promise of sustainable, responsible 21st century banking.



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