



EUROPEAN
COMMISSION

Brussels, 9.1.2014
COM(2013) 937 final

2013/0449 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
amending Regulation (EU) N° 260/2012 as regards the migration to Union-wide credit
transfers and direct debits

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Grounds and objectives of the proposal

Regulation (EU) No 260/2012 establishes common technical and business requirements for credit transfers and direct debits in euro and as such is an important building block in the realisation of a single euro payments area (SEPA). That Regulation sets 1 February 2014 as the end-date in the Eurozone for the migration of domestic as well as intra-European credit transfers and direct debits in euros towards SEPA credit transfers (SCT) and SEPA direct debits (SDD).

According to the latest statistics of the European Central Bank (ECB), the overall migration rate in the euro area for SEPA Credit Transfers (SCT) has increased from 59.87% in October 2013 to 64.1% in November, whereas the overall migration rate for SEPA Direct Debits (SDD) has increased from 11.52% in October to 26% in November. Notwithstanding the Commission's repeated efforts to raise awareness among Member States' competent authorities, and the significant campaigning efforts as regards SEPA migration undertaken by the European Central Bank and in many Member States, SMEs, small public administrations and local authorities continue to be the least prepared for actual migration. The communication efforts by the banking industry vis-à-vis SMEs and national information campaigns do not seem to have produced the expected effects or at least not to the expected extent.

Considering the low migration pace in some Member States for SCT and in most Member States for SDD, it appears very unlikely that the SEPA migration will be fully completed on 1 February 2014. However, in view of this legal end-date, banks and other payment service providers are likely to refuse from that date onwards to process legacy payments which are not SEPA compliant. In the absence of full migration to SCT/SDD, payment incidents leading to delays in payment or market disruptions cannot be excluded. These might affect all payment services users, and particularly SMEs and consumers.

Given this major legal problem and the potentially severe consequences for citizens and companies, the Commission proposes to amend Regulation (EU) No 260/2012 by introducing a grandfathering clause allowing banks and other payment service providers to continue also after 1 February 2014, for a limited period of time of 6 months, the processing of non-compliant payments through their legacy payments schemes alongside SCT and SDD. A clear communication of such amendment will provide certainty to the payment service users that their payments will continue to be processed after 1 February 2014, and it will allow those that have not yet migrated to do so as rapidly as possible. The end-date itself is not amended, and the grandfathering is an exceptional one-off measure. Under all circumstances, on-going information campaigns on the SEPA migration should continue. At the end of the grandfathering period, the Commission will not hesitate to take the necessary steps to ensure the full application of EU law by the Member States.

Participants of the SEPA High Level meeting which brings together high level representatives from the European Central Bank and board members of the central banks of the Eurosystem have been consulted on this initiative on 19 December 2013.

In view of the above and given the very short period of time left before 1 February 2014, this Regulation should be adopted by the European Parliament and the Council as a matter of urgency and enter into force without delay. The Regulation is necessary in order to avoid legal uncertainty for banks and other payment service providers, as well as undertakings and

consumers, as Regulation (EU) No. 260/2012 would oblige payment service providers to refuse to process after this end-date payments in euro that are not compliant with the SEPA requirements. Not adopting the proposed Regulation as a matter of urgency could result in serious legal and technical risks in payments transactions from 1 February 2014 onwards.

General context

Regulation (EU) No 260/2012 entered into force on 31 March 2012, giving market participants two years to adapt their payment processes to the SEPA requirements for SCT and SDD. During those two years, the Commission and the ECB, together with the national public authorities have closely monitored the progress of SEPA migration. The ECB has regularly issued progress reports on the progress of the SEPA migration. Several SEPA Council meetings have taken place, in which the Commission discussed the migration progress with representatives from both the supply and demand side of the payments market, insisting on the need to intensify communication towards payment service providers as well as towards all categories of payment services users (corporates including SMEs, public administrations, consumers, etc.). On 30 March 2012, the Commission organised a dedicated workshop on the interpretation of Regulation (EU) No 260/2012 with SEPA Council technical experts, and again on 12 July 2013 with Member States representatives. On 17 April 2013, the Commission also organised a technical expert group on SEPA. The Commission has furthermore discussed the progress both in the EU SEPA Forum that takes place twice a year, and the Payments Committee with Member States representatives. SEPA migration has regularly featured on the agenda of many technical meetings of the ECB with representatives of national central banks, as well as in some fora with representatives from the banking industry.

In view of the low migration rates published by the ECB in its March 2013 report on SEPA migration, the ECOFIN Council of 14 May 2013 adopted comprehensive Council conclusions stressing the importance of SEPA migration and calling on Member States and market participants to actively support and speed up the SEPA migration process by taking relevant measures. Following the ECOFIN conclusions, a joint letter of the Commission and the ECB was sent to Ministers of Finance and Governors of national central banks on 15 May 2013, also stressing the importance of SEPA migration and the urgent need for action at national level.

2. RESULTS OF CONSULTATIONS WITH INTERESTED PARTIES AND IMPACT ASSESSMENTS

2.1. Transmission of this proposal to the national parliaments

Draft legislative acts, including proposals from the Commission, sent to the European Parliament and to the Council must be forwarded to national parliaments in accordance with the Protocol (No. 1) on the role of national Parliaments in the European Union, annexed to the Treaties.

According to Article 4 of the Protocol, an eight-week period must elapse between a draft legislative act being made available to national Parliaments and the date when it is placed on a provisional agenda for the Council for its adoption or for adoption of a position under a legislative procedure.

However, exceptions are possible under Article 4 in cases of urgency, the reasons for which must be stated in the act or position of the Council. The Commission invites the European Parliament and the Council to consider this proposal as a case of absolute urgency for the reasons explained above.

2.2. Consultation of other interested parties and impact assessment

In view of the low migration rates, published by the ECB in December 2013, the Commission and the ECB have analysed the likelihood that the SEPA migration would be fully completed on 1 February 2014. It was acknowledged that this would be highly unlikely despite the fact that several big payment services users, such as utility companies with bulk payments, have indicated that they are planning to migrate close to the end date.

Although it is difficult to provide an estimation of the number of market participants that will not be SEPA compliant by the legal end-date, it is clear that in particular in the area of SDD the migration rates will not anywhere be close to 100%.

Banks and other payment service providers are likely to refuse to process non-compliant SEPA payments as of 1 February 2014. The largest non-migration risk is related to SMEs many of which have not yet migrated. In light of this risk, the ECB has analysed possible scenarios and their impact with possible solutions to remedy the situation. Technically, payment service providers would be able to continue with the processing of non-compliant payments through the use of legacy schemes. In addition, market participants that are not yet SEPA compliant would need to be identified and be informed adequately on how to migrate to SEPA in an efficient manner.

Even though it may be technically feasible for market participants with the support of the overseers to implement intermediate solutions to overcome potential migration issues after 1 February 2014, there is a genuine risk that this unsatisfactory situation may lead to confusion for both consumers and other payment service users, and legal uncertainty for payment service providers confronted with market participants that have not (yet) implemented these intermediate solutions. Among the non-compliant market participants there are many SMEs. The fact that their legacy payments may not be processed by the banks after 1 February 2014 could also cause reputational damage to the Euro system as a whole. It is unlikely that intermediate solutions, even if technically feasible, will be implemented in time.

In order to avoid unnecessary payment disruptions resulting from non-compliance with SEPA and to ensure legal certainty for all market participants, the Commission considers it justified to propose to allow, after 1 February 2014, the co-existence of national legacy systems next to SCT and SDD schemes for a limited period of time of 6 months. The length of such transitional period should be proportionate. The aim would be to uphold the pressure on market participants to migrate as soon as possible, while at the same time ensuring legal certainty and that the costs for payment service providers of a continued parallel run of two payment systems is limited. Those payment service providers that have already migrated to SCT and SDD may consider providing conversion services to market participants that have not yet migrated. During the transitional period, Member States should refrain from applying penalties to payment service providers that process non-compliant payments and to payment service users that have not yet (fully) migrated.

The introduction of an exceptional and one-off additional period during which processing of legacy payments will be tolerated will also allow for a gradual migration. In view of the approaching deadline, several of the larger utility providers have indicated that they will migrate close to the current end-date of 1 February 2014. This may create certain bottlenecks, particularly at the level of the payment service providers and the software vendors, who may be faced with certain capacity constraints.

Considering the current migration figures and the expected pace of migration, a grandfathering period of 6 months, until 1 August 2014, is considered appropriate. During this period, the Commission and the ECB, together with national authorities will continue to

monitor the migration process closely and will be ready to take any additional measures, as appropriate.

This proposal is not accompanied by a separate Impact Assessment, as an impact assessment for Regulation (EU) No. 260/2012 has already been undertaken. This proposal does not alter the Regulation on substance and does not impose new obligations on businesses. It only aims at introducing a transitional period after the end-date defined in Article 6(1) and (2) of the Regulation to avoid legal uncertainty for supervisory authorities, payment service providers, undertakings and consumers.

3. LEGAL ELEMENTS OF THE PROPOSAL

The Commission proposes to amend Regulation (EU) No 260/2012 by introducing a "grandfathering" clause which will allow banks and other payment service providers to continue until 1 August 2014 the processing of non-compliant payments through their currently existing legacy payments schemes, alongside SCT and SDD. This amendment ensures that market participants that are not ready for SEPA by 1 February 2014 can continue to make their payments and avoids any inconvenience for consumers.

The proposal provides that the amendment applies as of 31 January 2014. This provision also allows for a retro-active application in case the proposal is not adopted by the European Parliament and the Council before 1 February but just after this date. This will avoid a legislative gap as of 1 February 2014 which would create legal uncertainty.

The introduction of this transitional period for the phasing-out of the old systems shall be considered as an exceptional measure which will not be extended any further. Without prejudice to the different exemptions set out in Article 16 of Regulation (EU) No. 260/2012, all market participants shall therefore comply with the SEPA requirements by 1 August 2014.

4. BUDGETARY IMPLICATIONS

The regulation does not have a budgetary impact for the Commission.

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(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,
Having regard to the proposal from the European Commission,
After transmission of the draft legislative act to the national Parliaments,
Having regard to the opinion of the European Economic and Social Committee¹,
Having regard to the opinion of the European Central Bank²
Acting in accordance with the ordinary legislative procedure³,
Whereas:

- (1) Together with Regulation (EC) No 924/2009 of the European Parliament and of the Council⁴ Regulation (EU) No 260/2012 of the European Parliament and of the Council⁵ constitutes an important building block in the completion of a single euro payments area (SEPA), where no distinction between cross-border and national payments in euro is made. The main objective of Regulation (EU) No 260/2012 is the migration from national credit transfer and direct debit schemes to harmonized SEPA credit transfer (SCT) and SEPA direct debit (SDD) schemes, *inter alia* by providing Union citizens with a unique international bank account number (IBAN) that can be used for all SEPA credit transfers and direct debit transactions denominated in euro.
- (2) Regulation (EU) No 260/2012 has provided for the SEPA migration to take place by 1 February 2014 in order to allow payment service providers and payment service users sufficient time to adapt their processes to the technical requirements that the migration to SCT and SDD entail.

¹ OJ C , , p. .

² OJ C, , p. .

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⁴ Regulation (EC) No 924/2009 of the European Parliament and of the Council of 16 September 2009 on cross-border payments in the Community and repealing Regulation (EC) No 2560/2001 (OJ L 266, 9.10.2009, p. 11).

⁵ 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 (OJ L 94, 30.3.2012, p. 22).

- (3) Since the adoption of Regulation (EU) No 260/2012 the Commission and the European Central Bank have closely monitored the progress of SEPA migration. Several meetings with Member States, national public authorities and market participants were held. The European Central Bank has regularly published progress reports on SEPA migration on the basis of payment data collected by national central banks. Those reports indicate that a number of Member States in the euro area are well on track with migration rates for SCT currently close to 100%. The large majority of payment service providers reported that they are already SEPA-compliant. However, in several other Member States the migration rates are lagging behind expectations. This is particularly the case for SDD.
- (4) On May 2013, the ECOFIN Council in its conclusions⁶ again stressed the importance of SEPA migration. It was noted that the SEPA migration was far from complete and that immediate efforts would be required by all market participants to complete the SEPA migration in time. An action plan was adopted in which merchants, corporates, SMEs and public administrations were invited to immediately take the necessary concrete internal steps to adapt their processes and inform their clients of their IBAN details.
- (5) Despite the considerable efforts made by the European Central Bank, Member States, their national public authorities and the different market participants during the past months, the latest migration statistics show that the overall migration rate in the euro area to SEPA Credit Transfers (SCT) has only increased from 40% in June to around 64% in November, while the overall migration rate towards SEPA Direct Debits (SDD) has only reached 26%. While the national figures show important progress in several Member States, there is still an important group of Member States lagging considerably behind the expected migration rates. In view of the current low migration pace in those Member States it is therefore very unlikely that all market participants will be SEPA compliant by 1 February 2014.
- (6) As of 1 February 2014 banks and other payment service providers will have to refuse to accept processing credit transfers or direct debits that are not SEPA-compliant because of their legal obligations, although, as is currently already the case, they technically could process those payments by continuing to use existing legacy payments schemes alongside SCT and SDD. Failing a full migration to SCT and SDD, incidents involving payments leading to delays in those payments cannot be excluded. All payment services users and particularly SMEs and consumers could be affected.
- (7) It is essential to avoid unnecessary disruption of payments resulting from the fact that SEPA migration is not fully completed by 1 February 2014. Payment service providers should therefore be allowed, for a limited period of time, to continue the processing of payments transactions through their legacy schemes alongside their SCT and SDD schemes, as they are doing now. A transition period should therefore be introduced that allows for the continuation of such parallel processing of payments in different formats. Considering the current migration figures and the expected pace of migration, a one-off additional transition period of 6 months is appropriate. This grandfathering of the non-SEPA compliant legacy systems should be considered as an exceptional measure and therefore be kept as short as possible, as a rapid and comprehensive migration is necessary in order to achieve the full benefits from an integrated payments market. It is also important to limit in time the costs for the payment service

⁶ http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ecofin/137122.pdf

providers of a continued use of the legacy payment schemes in parallel with the SEPA system. Payment service providers that have already fully migrated to SEPA might consider providing payment service users that not yet have migrated with conversion services during this transition period. During the transitional period, Member States should refrain from applying penalties to payment service providers that process non-compliant payments and to payment service users that have not yet migrated.

- (8) Several large users of direct debit instruments have already indicated that they plan to migrate close to the end-date. Any postponing of those migration projects could lead to temporary stress on incoming payments and cash flows, and hence on treasury levels of the companies concerned. Such late migration on a large scale could also create certain bottlenecks, in particular at the level of banks and software vendors who may be faced with certain capacity constraints. That additional period for phasing in the new system would allow for a more gradual approach. Market participants that have not yet started to implement the necessary adaptations for SEPA compliance are called upon to do so as soon as possible. Market participants that have already started to adapt their payment processes should nevertheless complete the migration as rapidly as possible.
- (9) In view of the overall objective to realise a coordinated and integrated migration, it is appropriate that the transitional period applies to both SCT and SDD. Different transitional periods for SCT and SDD would cause confusion for consumers, payment service providers, SMEs as well as other payment service users.
- (10) For reasons of legal certainty and in order to avoid any discontinuity to the application of Regulation (EU) No 260/2012 it is necessary that this Regulation enters into force as a matter of urgency and that it applies from 31 January 2014.
- (11) Regulation (EU) No 260/2012 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

In Article 16 of Regulation (EU) No 260/2012, paragraph 1 is replaced by the following:

"1. Notwithstanding Article 6(1) and (2), PSPs may continue, until 1 August 2014, to process payment transactions in euro in formats that are different from those required for SEPA credit transfers and SEPA direct debits.

Member States shall apply the rules on the penalties applicable to infringements of Article 6(1) and (2), laid down in accordance with Article 11, only as of 2 August 2014.

By way of derogation from Article 6(1) and (2), Member States may allow PSPs to provide PSUs, until 1 February 2016, with conversion services for national payment enabling PSUs that are consumers to continue using BBAN instead of the payment account identifier specified in point (1)(a) of the Annex on condition that interoperability is ensured by converting the payer's and the payee's BBAN technically and securely into the respective payment account identifier specified in point (1)(a) of the Annex. That payment account identifier shall be delivered to the initiating PSU, where appropriate before the payment is executed. In such a case PSPs shall not levy any charges or other fees on the PSU directly or indirectly linked to those conversion services."

Article 2

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

It shall apply from 31 January 2014.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President