

Endorsed by:



SEPA GUIDANCE

PRACTICAL GUIDANCE FOR THE IMPLEMENTATION OF
REGULATION (EU) N° 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) N° 924/2009



WELCOME NOTE

The 31st of March 2012, the day on which Regulation 260/2012, commonly referred to as the SEPA Migration Regulation, came into force marks a critical milestone in the 10 years of industry and regulatory activity which have gone into developing and realising the compelling vision of supporting the Single Market with a single payments area for retail euro payments.

One of the critical success factors for the Regulation's ultimate success in stimulating the achievement of an efficient and harmonised SEPA at the end of this journey will be the consistency with which Payment Service Providers and their clients understand the key requirements of the Regulation in a common way when undertaking their compliance activities and preparing for the first key migration date of 1st of February 2014.

Another important success factor will be the ability to share information rapidly across the market on the decisions made on a country-by-country basis in relation to the various transition options that are built into the text of this Regulation.

Against this background, the EBF's Payments Regulatory Expert Group (PREG) has been working closely on the text of the Regulation across its membership and in conjunction also with the EPC, the EACB, MasterCard and Visa. Following the successful approach established by its predecessor group, the PSD Expert Group - when the PSD came into force in 2009 - the PREG itself has the a goal to record and formulate practical SEPA Regulation implementation guidance for the market, based on an extensive consultation with the industry and also informed by the dialogue with other key stakeholders and institutions.

This document constitutes that guidance and is intended to provide high level assistance to banks and their clients in relation to both the interpretation and practical application of the SEPA Regulation. The document does not aim to be exhaustive in the list of topics it addresses, but rather focuses on specific issues that have been the subject of discussion during the course of the PREG's work and/or relate to frequently asked questions from the market.

In addition to this core document, the PREG intends to maintain a supplemental list of FAQs based on the ongoing dialogue with the market, plus information on individual Member States' implementation approaches as these become clear - which will be made available separately and updated from time to time as necessary.

As Chairman of the PREG, I hope on behalf of the Group that you find the document to be of value, and that it is able to play a contributory role in encouraging a consistent and efficient implementation of the Regulation across the EU/EEA and in helping ensure that the significant benefits on offer if SEPA is implemented in a harmonised way can indeed be realised.



Ruth Wandhöfer
Chair PREG
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1 ABOUT THE EUROPEAN BANKING FEDERATION AND THE PAYMENTS REGULATORY EXPERT GROUP

1.1 Introduction to the European Banking Federation (EBF)

Set up in 1960, the European Banking Federation (EBF) is the voice of the European banking sector (European Union & European Free Trade Association countries). The EBF represents the interests of some 5000 European banks: large and small, wholesale and retail, local and cross-border financial institutions. The EBF is committed to supporting EU policies to promote the single market in financial services in general and in banking activities in particular. It advocates free and fair competition in the EU and world markets and supports the banks' efforts to increase their efficiency and competitiveness.

1.2 Introduction to the Payments Regulatory Expert Group (PREG)

The Payments Regulatory Expert Group (PREG) was established in 2010 as a successor to the EBF Payment Services Directive (PSD) Expert Group.

The PREG supports the EBF Community in relation to EU-wide regulatory initiatives that impact the transaction banking space in the field of payments. With the approval of the Payments Systems Committee of the EBF, the PREG develops common positions on topics falling within its scope, ensuring that a consistent industry position is put forward to the authorities at EU and national level; and that a best practice implementation approach is promulgated where appropriate at a banking industry level.

The PREG also ensures that the interpretation of upcoming EU legislation is consistent and clear to the benefit of EBF members (and more broadly). For this purpose, the PREG focuses its work on the development of industry guidance and market practice proposals at EU level on selected topics where there is an identified need to do so. One of its objectives is to prepare practical guidance notes on key topics, based on the outcome of the PREG's interactions with the EU authorities and/or the results of the syndication and discussion of information on developments at a national level within the PREG and the wider EBF community. The PREG may also prepare proposals for industry 'best practice' implementation guidelines on selected topics to support a harmonised approach where there is a market need for this.

The PREG coordinates its work with the activities of the European Payments Council (EPC).

2 ABOUT THIS DOCUMENT

2.1 Overview of the purpose/nature of the document

The information provided in this document is based on the PREG's best understanding of Regulation (EU) N°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) N° 924/2009 (hereinafter the SEPA End-Date Regulation) . This document, intended for Payment Service Providers (PSPs), but also for Payment Service Users (PSUs), especially corporates, is meant to provide clarity and explain in practical terms the impact of the Regulation on various operational aspects.

The objective of this guidance is to clarify those provisions that, without further explanation and when put in parallel with existing legislation, could lead to inconsistency of interpretation and implementation.

The document includes the following chapters:

- Introduction to the background of SEPA and the SEPA Regulation;
- Table showing all key milestones and dates within the SEPA Regulation;
- Commentary on key provisions in the text

Not included in this version of the document, but to be added as the relevant information becomes available:

- o A table of 'niche' schemes where Member States decide to use the derogation transitional provision according to Article 16.3 to waive some or all of the requirements in Articles 6.1 and 6.2;
- o A table with details of those Member States that decide to use the derogation in Article 16.1 to permit their PSPs to offer conversion services for national transactions;
- o Any additional Member State legislation issued to align national laws with the 'payment accessibility' requirements in Article 9.
- o A list of Frequently Asked Questions (FAQs)

2.2 Legal disclaimer

The authors of this guidance do not accept any responsibility for any damage caused or suffered by any person relying upon this document and the guidance it contains.

This guidance does not constitute legal advice and has no legal status. It is offered based on the knowledge and experience of the members of the PREG, gained during their work as payment regulatory experts. The guidance is intended to assist practitioners in their daily work of implementation of the SEPA End-Date Regulation. Ultimately, the implementation and final interpretation of the SEPA End-Date Regulation will however be a matter for the European Court of Justice.

Payment Services Providers will have to determine for themselves how this guidance applies to their individual circumstances and their particular products and services.

¹Official Journal of the European Union L 94/22 of 30 March 2012

3 STRUCTURE AND OVERVIEW OF THE REGULATION

3.1 Introduction to SEPA

The Single Euro Payments Area (SEPA) is a European Union (EU) payments integration initiative. According to the geographic definition of the European Payments Council (EPC), SEPA currently consists of the 27 EU Member States, the additional 3 countries of the European Economic Area (EEA), plus Switzerland, Monaco, Mayotte, St Pierre and Miquelon. The objective of SEPA is to harmonize the payments market across Europe by using common procedures and standards for payments in euro. Within SEPA, bank customers can make euro payments across different countries under the same basic rights and obligations.

Following the introduction of euro notes and coins in 2002, EU governments, the European Commission and the European Central Bank (ECB) focused on the integration of the euro payments market and have consequently called upon the payments industry to sustain the common currency by developing harmonised payment schemes and frameworks for euro payments.

One aspect of SEPA consists of migrating from the existing national euro credit transfer and euro direct debit schemes into harmonised pan European payment schemes for credit transfers and direct debits that allow making cross-border payments in euro as efficiently as domestic transactions. However, SEPA not only affects cross-border transactions but is designed to result in the full integration of domestic payment markets.

3.2 Introduction to the background of the Regulation

On 16th December 2010, the European Commission published the proposal for a *“Regulation of the European Parliament and of the Council establishing Technical Requirements for Credit Transfers and Direct Debits in Euros and Amending Regulation (EC) No 924 / 2009”*. This initiative was a result of a perception that the self-regulatory industry efforts that initially envisaged a market-led-migration would not be enough on their own to adequately change the market.

The Regulation was formally adopted by the European Parliament and the Council of the European Union respectively on 14th and 28th February 2012. It was published in the Official Journal of the European Union on 30th March 2012 and entered into force on the day after, i.e. on 31st March 2012.

One of the core objectives of the SEPA Regulation is to ensure that PSPs and PSUs migrate to pan European credit transfers and direct debits subject to the same conditions and requirements.

² Iceland, Liechtenstein and Norway

The Regulation introduces the following key changes, which we will elaborate in more detail within this guidance:

- **One end-date:** the Regulation defines 1 February 2014 as the deadline by which existing national euro credit transfer and direct debit schemes will have to be replaced by SEPA Credit Transfers (SCT) and the SEPA Direct Debits (SDD);
- The **ISO 20022 XML** standard is to be used for message formats in the interbank space and for/by certain PSUs when sending or receiving payments in files;
- **Business Identifier Code (BIC):** The requirement for the PSU to provide the BIC for the initiation of a payment transaction will be removed;
- Technical **interoperability** between payment systems with the use of standards developed by international or European standardisation bodies;
- Europe-wide **reachability** for PSPs reachable for credit transfer and direct debit services at national level;
- **Multilateral interchange fees (MIFs)** are to be phased out for direct debits, except for MIFs on R-transactions, which will be allowed under certain strict conditions;
- **Protection measures** for consumers with regard to direct debits;
- **Payment accessibility** provisions which give PSUs freedom on where to locate their payment accounts within the EU/EEA area.

3.3 Key milestones and dates within the Regulation

As a Regulation, the provisions of the SEPA Regulation came directly into effect in all EU Member States on 31st March 2012 and do not require further transposition at national level. Moreover, the Regulation is also of relevance for EEA countries. However, in those countries the Regulation does not apply directly, rather an intermediary step is necessary for its application [see commentary to Article 1(1)]. It has to be noted that the geographical scope of application for this legislation is different to the EPC's geographical definition of SEPA – the EU Regulation applies to the 27 EU Member States and has relevance for the remaining three EEA countries. It does however not apply to the remaining countries of the SEPA region as defined by the EPC.

The Regulation contains many dates by which compliance is required. The following key ones have been identified in the following table.

Date	Action	Article #
31 st March 2012	• Reachability obligations in Eurozone MS • Payment accessibility • Amendments to Regulation 924/2009	• 3 • 9 • 17 (§1,2 and 3)
1 November 2012	No Multilateral Interchange Fees per for cross-border direct debit transactions	6.3
1 February 2013	Notification of the competent authorities responsible for the compliance of the Regulation	10.2
1 February 2013	Member States shall lay down rules on the penalties applicable to infringements on the Regulation	11.1
1 February 2013	Notification of bodies responsible for out-of-court complaint and redress procedures	12.2
1 February 2013	Member States to notify the European Commission should they intend to make use of derogations listed in Articles 16.1, 3, 4, 5 and 6.	16.7
1 February 2014	End-Date for “legacy” national credit transfers and direct debits. Requirement to apply the technical requirements of the pan-European schemes.	6.1 and 6.2
1 February 2014	Provision of the BIC no longer mandatorily required for national payment transactions (Unless individual Member States decide to utilise the extended transition option under Article 16(6))	5.7
1 February 2014	Interoperability requirements in Eurozone MS	4
1 February 2014	End-Date for the issuance of new direct debit mandates based on national formats	7.1
1 February 2016	Provision of the BIC no longer mandatorily required for cross-border payment transactions	5.7
1 February 2016	End of transition period for offering BBAN/IBAN conversion services by PSPs for national payments. (MS option)	16.1
1 February 2016	End of transition period for “legacy” niche products with a cumulative market share of less than 10% of the total national credit transfers and direct debits. (MS option)	16.3
1 February 2016	End of transition period for payment transactions generated using a payment card at the POS (e.g. the German “Elektronisches Lastschriftverfahren” (ELV)) (MS option)	16.4
1 February 2016	End of transition period for the exception to the mandatory use of ISO 20022 XML standard for bundled together payments (MS option)	16.5
1 February 2016	End of transition period under which MS can defer the requirement for “IBAN only” for national payment transactions (MS option)	16.6.
1 February 2016	Removal of (national) settlement-based reporting obligations for PSPs by 1 st February 2016 at the latest.	17.4 (Article 5.1 of Regulation (EC) n°924/2009)
31 October 2016	Reachability obligations for PSPs in non-Eurozone MS offering payment services denominated in euro. If euro becomes a national currency before 31 October 2015, PSPs to be reachable within one year.	16.2
31 October 2016	End-date for migration to pan-European payments schemes for euro payments for non-Eurozone MS. If euro becomes a national currency before 31 October 2015, compliance one year after joining the euro.	16.8
31 October 2016	Interoperability requirements for PSPs in non-Eurozone MS. If euro becomes a national currency before 31 October 2015, compliance one year after joining the euro.	16.8
1 February 2017	No multilateral interchange fees per national direct debit transaction	6.3
1 February 2017	Review: Report to be issued by the European Commission to the European Parliament and Council on the application of the Regulation, if appropriate with proposal.	15

Article 1(1) – Subject Matter and Scope

1. This Regulation lays down rules for credit transfer and direct debit transactions denominated in euro within the Union where both the payer's payment service provider and the payee's payment service provider are located in the Union or where the sole payment service provider (PSP) involved in the payment transaction is located in the Union.

Comment: It is important to note that the entire text of the Regulation is limited to transactions denominated in euro.

The Regulation is limited in its scope to transactions where both PSPs are “located in the Union” “or where the sole PSP involved in the payment transaction is located in the Union”. “PSPs “located in the Union” should be read as interpreted by the European Commission in its note of 10th March 2010 on the application of Article 8 of Regulation (EC) No 924/2009 . Therefore the relevant point here is where the PSP is providing the services rather than where e.g. it has its head office.

From a geographical point of view the SEPA Regulation is an EU piece of legislation with relevance for the European Economic Area. It will, in addition to the EU, apply in Iceland, Liechtenstein and Norway once its text is listed in the Annexes to the EEA Agreement. It should be noted that Monaco and Switzerland are also part of the SEPA area according to the EPC's current geographical definition of SEPA. However, given that Monaco, Switzerland, Mayotte, St Pierre and Miquelon are not part of the EU/EEA they are not required to adopt the SEPA Regulation, meaning that (for example) it will not be mandatory for PSPs located in these countries and offering euro credit transfers or direct debits to be reachable for Regulation-compliant payments. However, PSPs from those countries who are participants in the EPC's SEPA schemes will be required to comply with changes currently being made to the scheme rulebooks to ensure consistency with the SEPA Regulation.

More generally, it is important to note that the Regulation absolutely does not preclude customers located outside of the EU/EEA from benefiting from SEPA by obtaining services from a PSP located within the SEPA area. This would logically extend also to PSPs acting as clients of a SEPA compliant PSP located within the EU but subject of course to AML and other regulatory compliance considerations – and the need to respect the conventions of the SEPA data set.

Finally, “on-us transactions” (i.e. payments made within a single PSP) are clearly in the scope of the Regulation, if these are customer-related transactions. However, it should be noted, in line with the requirement in Article 5(1)(b) which states that PSPs are to use the XML ISO 20022 formats “when transmitting payment transactions to another PSP or via a retail payment system”, that these technical formats do not have to be used by PSPs on a mandatory basis in the specific case of “on-us transactions” (i.e. where the Payer's and Payee's PSP are the same institution and the processing may take place entirely within internal systems from that single PSP's perspective).

³http://ec.europa.eu/internal_market/payments/docs/reg-924_2009/application_art8_en.pdf

⁴This requires a Decision of the EEA Joint Committee that will amend Annex XII to EEA Agreement (Free Movement of Capital).

Article 1(2) – Negative Scope

(a) payment transactions carried out between and within PSPs, including their agents or branches, for their own account;

Comment: This negative scope provision is seeking to make clear that the Regulation does not govern payment transactions where there is no PSU involved at either end of the payment transaction, whether payer or payee (i.e. inter-bank/inter-PSP transactions). This is not the same as saying that these transactions are not allowed to be processed via the SEPA schemes, only that doing so is not mandatory.

(b) payment transactions processed and settled through large-value payment systems, excluding direct debit payment transactions which the payer has not explicitly requested be routed via a large-value payment system;

Comment: Generally, all payments routed via euro LVPS (TARGET2, Euro1 and STEP1) are excluded from the scope of the Regulation. The sole exception is that in the case of Direct Debits, the payer must have explicitly requested that these are routed via LVPS before the negative scope applies. However, in terms of practical impact it should be noted that DDs are not today generally processed via LVPS.

(c) payment transactions through a payment card or similar device, including cash withdrawals, unless the payment card or similar device is used only to generate the information required to directly make a credit transfer or direct debit to and from a payment account identified by BBAN or IBAN;

Comment: In practical terms, this means that traditional debit/credit card transactions are outside scope, but the German ELV system (where a card is only used as the source of the payer's account number details prior to a Direct Debit being initiated) is within the scope of the Regulation.

It is not clear what is meant by 'similar device'. A wide range of examples could be envisaged here, including for example the use of biometrics (retina scans, fingerprints etc). However, the key message is that wherever the use of these 'similar devices' leads to the initiation of a credit transfer or direct debit, the CT/DD falls within the scope of the Regulation.

(d) payment transactions by means of any telecommunication, digital or IT device, if such payment transactions do not result in a credit transfer or direct debit to and from a payment account identified by BBAN or IBAN;

Comment: In line with the comments on Article 1(2)(c) above, the key message is that wherever the use of such 'devices' leads to the initiation of a credit transfer or direct debit, the CT/DD falls within the scope of the Regulation.

Article 2 – Definitions

A detailed analysis of the source of the key definitions in the Regulation is included within the Annex of this document. In brief:

- A number of definitions are totally new (compared with the PSD and Regulation EC n° 924/2009): (e.g.) **large-value payment system, retail payment system.**
- Some definitions present some minor modifications (compared with the PSD and/or Regulation (EC) n° 924/2009), such as **direct debit cross-border payment transaction, national payment transaction, payer, payee, payment transaction.**

(1) ‘credit transfer’ means a national or cross-border payment service for crediting a payee’s payment account with a payment transaction or a series of payment transactions from a payer’s payment account by the PSP which holds the payer’s payment account, based on an instruction given by the payer;

(2) ‘direct debit’ means a national or cross-border payment service for debiting a payer’s payment account, where a payment transaction is initiated by the payee on the basis of the payer’s consent;

(3) ‘payer’ means a natural or legal person who holds a payment account and allows a payment order from that payment account or, where there is no payer’s payment account, a natural or legal person who makes a payment order to a payee’s payment account;

(4) ‘payee’ means a natural or legal person who holds a payment account and who is the intended recipient of funds which have been the subject of a payment transaction;

(10) ‘payment transaction’ means an act, initiated by the payer or by the payee of transferring funds between payment accounts in the Union, irrespective of any underlying obligations between the payer and the payee;

Comment: The definition of ‘payer’ seems to hold open the possibility that there may not always be a payer’s payment account and that, for example, a credit transfer ordered with cash paid in over a branch counter could be processed as a SEPA CT. By contrast, however, the definitions of ‘credit transfer’, ‘direct debit’ and ‘payment transaction’ all refer very clearly to the need for there to be a ‘payment account’ in relation to the transactions which fall under the scope of the Regulation. We understand that this contradiction is the result of a change within the text of Regulation 260/2012 at the final stage of the negotiations between the European institutions. Given the existence of this clear contradiction within the text, the most logical conclusion would be that a payment account is indeed required at both ends of the transaction. In any event, money remittances are clearly ruled out of scope as provided for in Article 1.2. (e).

(21) ‘mandate’ means the expression of consent and authorisation given by the payer to the payee and (directly or indirectly via the payee) to the payer’s PSP to allow the payee to initiate a collection for debiting the payer’s specified payment account and to allow the payer’s PSP to comply with such instructions;

Comment: It is important to note that the SEPA Regulation does not specify the form/nature that this consent should take. In line with the PSD, this is therefore a matter for contractual agreement. For example, the Regulation would not prohibit the use of mandates initiated via e & m channels or mandates initiated via telephone so long as this has been agreed contractually and “the mandates, together with later modifications or cancellation, are stored by the payee or by a third party on behalf of the payee” (Article 5(3) (a)(ii)). However, in certain Member States oral agreements do not seem to be sufficient to form the basis for a valid Direct Debit mandate and additionally the EPC’s SEPA Direct Debit Schemes do not currently support this possibility. To the extent that there are differences between existing national laws and practices on the form that consent may take, it would be positive in encouraging a harmonised and pro-innovation outcome if these were reviewed and aligned at the next appropriate opportunity.

Article 3 – Reachability

1. A payee's PSP which is reachable for a national credit transfer under a payment scheme shall be reachable, in accordance with the rules of a Union-wide payment scheme, for credit transfers initiated by a payer through a PSP located in any Member State.

2. A payer's PSP which is reachable for a national direct debit under a payment scheme shall be reachable, in accordance with the rules of a Union-wide payment scheme, for direct debits initiated by a payee through a PSP located in any Member State.

3. Paragraph 2 shall apply only to direct debits which are available to consumers as payers under the payment scheme.

Comment: This Article takes the approach which was adopted in Regulation 924/2009 for Direct Debits and expands this to cover Credit Transfers also. Given that today the only pan-European Euro Credit Transfer scheme is the EPC SEPA one, any bank/PSP providing euro Credit Transfers via legacy national euro credit transfer schemes will need to ensure that they either adhere to the EPC scheme by entering into an adherence agreement with the EPC (the scheme owner) or comply via the creation of a new compliant scheme in line with Article 4.4. It is important to note that Article 3 came into effect on 31st March 2012, the day after the Regulation was published in the Official Journal, other than for PSPs located in non-Eurozone Member States, for which this requirement becomes mandatory by 31st October 2016 at the latest. It is also important to notice that this requirement does not apply to the SEPA B2B DD scheme, which is not available to consumers as payers.

Article 4 - Interoperability

1. Payment schemes to be used by PSPs for the purposes of carrying out credit transfers and direct debits shall comply with the following conditions:

(a) their rules are the same for national and cross-border credit transfer transactions within the Union and similarly for national and cross-border direct debit transactions within the Union; and

(b) the participants in the payment scheme represent a majority of PSPs within a majority of Member States, and constitute a majority of PSPs within the Union, taking into account only PSPs that provide credit transfers or direct debits respectively.

For the purposes of point (b) of the first subparagraph, where neither the payer nor the payee is a consumer, only Member States where such services are made available by PSPs and only PSPs providing such services shall be taken into account.

Comment: Only the EPC SEPA CT/DD schemes today satisfy the criteria set out in Article 4(1) (a) and (b). It should be noted that requirement 1(b) applies differently in the case of the SEPA B2B DD scheme – i.e. when applying the test of whether this payment scheme meets the 'majority of PSPs' criteria, only PSPs providing B2B services will be used in the calculation. It would seem likely that it will be seen as a responsibility for national Competent Authorities to collect the relevant data and hence be able to provide information on this specific point.

2. The operator or, in the absence of a formal operator, the participants of a retail payment system within the Union shall ensure that their payment system is technically interoperable with other retail payment systems within the Union through the use of standards developed by international or European standardisation bodies. In addition, they shall not adopt business rules that restrict interoperability with other retail payment systems within the Union. Payment systems designated under Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (1) shall only be obliged to ensure technical interoperability with other payment systems designated under the same Directive.

Comment: The responsibility for compliance with this provision lies with the “operator” (or where there is no formal “operator”) the participants of the relevant payment system. There are two categories of retail payment systems – those that are designated by the Settlement Finality Directive (SFD), and those that are not. SFD designated systems are only required by this article to ensure technical interoperability with each other, not with non-SFD designated payment systems. The application of this principle will require monitoring by the authorities to ensure that it does not become an unintended barrier to efficient payment processing and full reachability. A list of the current euro SFD designated systems can be found using the following link:

http://ec.europa.eu/internal_market/financial-markets/settlement/dir-98-26-art10-national_en.htm

3. The processing of credit transfers and direct debits shall not be hindered by technical obstacles.

Comment: This is clearly a very positive statement that no artificial barriers should be created to payment system interoperability. On a related point, as and when communities develop Additional Optional Services (AOS) they should publish the details of such AOS; moreover, it would be in the interests of transparency and efficiency if payment system operators (i.e. the ACH/CSM community) were to make clear the details of the AOS they are supporting. Whilst AOS should not affect interoperability – the agreed design principle is that they should not compromise the end-to-end payment flow - the service level offered to customers in terms of the information that can be carried end-to-end may potentially be different in a cross-community flow compared to a flow within the same community. Hence transparency of which payment systems are supporting which AOS would help provide clarity to customers as to which information is going to be carried through. This would be a key factor for business PSUs to ensure efficient reconciliation.

Article 5 – Requirements for credit transfer and direct debit transactions

1(b) they must use the message formats specified in point (1)(b) of the Annex, when transmitting payment transactions to another PSP or via a retail payment system;

Comment: This clearly means that all PSPs initiating payment transactions falling under the scope of this Regulation need to be doing so in the ISO XML 20022 SEPA format, whether they are sending transactions directly to another PSP (e.g. in the case of a bilateral exchange) or via a retail payment system. There is no exemption in cases where the sending PSP is an indirect participant, routing their payments via another PSP for processing purposes. It should be noted though that this is not a mandatory requirement on PSPs in the specific case of “on-us” transactions, i.e. where the payer and payee both maintain their payment account with the same PSP, as also noted in the commentary on Article 1(1) on page 7 of this document. (Note: this flexibility for the PSP only applies to the format(s) used for the internal processing within the PSP in case of “on-us” transactions). Finally, it should also be noted that, in line with Article 1(2)(b), the requirement in Article 5(1)(b) does not apply to payment transactions processed and settled through Large Value Payment Systems.

1(d) they must ensure that where a PSU that is not a consumer or a microenterprise, initiates or receives individual credit transfers or individual direct debits which are not transmitted individually, but are bundled together for transmission, the message formats specified in point (1)(b) of the Annex are used.

Without prejudice to point (b) of the first subparagraph, PSPs shall, upon the specific request of a PSU, use the message formats specified in point (1)(b) of the Annex in relation to that PSU.

Comment: The last sentence of 5(1)(d) grants PSUs an important right under which they will be able to require their PSPs to accept their payment instructions (for CTs and DDs falling under the scope of this Regulation) in XML ISO 20022 format with effect from 1st February 2014. This right can be expected to be attractive to those PSUs who are keen to themselves invest in systems/technical platforms, which directly accommodate XML ISO 20022. It should be noted that no distinction is made in this provision between individual or “bundled” payment instructions. Additionally, the right to XML also applies in the other direction (information on payments received) given the reference to “initiates or receives” in the first sentence of 5(1)(d). In other words, PSUs can also require their PSPs to receive information relating to their inward payments in this format from 1 February 2014. Finally, it should be noted that a distinction is made between PSPs located within the Eurozone versus non Eurozone Member States. Due to the later reachability and migration requirement for non-Eurozone PSPs as set out in Article 16(1) and (8), their customers would only have the right to require XML treatment in relation to their SEPA payment instructions from 31 October 2016 onwards if they so wish.

In a separate but related provision, the first paragraph of 5(1)(d) requires PSPs to work with their PSUs to “ensure” that in the specific case of bundled payment transactions (i.e. files of payments), the ISO 20022 XML standard is used when the PSU “initiates” the payment. It is clear that there are two different requirements contained within this provision – an underlying requirement on the PSU to take steps to acquire the capability to comply with this provision, and an additional legal requirement on their PSP to “ensure” that this is the case.

At the same time the general idea behind this provision, namely an “end-to end” processing, should be duly taken into consideration: the ISO 20022 XML standard is also to be used in the PSU – PSP and PSP – PSU space and not only be limited to PSP – PSP space.

The Regulation does not specify how a PSU is expected to meet their obligations under this provision. It is also silent on what action a PSP is expected to take in order to ensure “their” PSU’s compliance. The obligation of the PSU is to provide the PSP with payment data in the ISO 20022 XML format. In case a PSU does not provide its PSP with the payment order in the ISO 20022 XML standard, the payment order has to be rejected.

To avoid this potential outcome, PSUs will clearly need to take action to ensure their compliance with this requirement. Many PSUs can be expected to do so by making their own internal systems XML ISO 20022 compliant in support of their SEPA traffic. For example, this is likely to be the case in national markets where legacy national payment processes and message formats are simply not compatible with the mandatory data elements which must be provided by the PSU to the PSP going forward, as set out in the Annex to the Regulation. Equally, this may also be the case when this would be the most effective way for a PSU to populate and take advantage of the optional data fields within the SEPA data-set.

However, in certain other cases, PSUs may prefer to utilise conversion services, at least for a temporary period. Such services are likely to be offered by a range of 3rd-party providers, such as ERP providers and software houses. Additionally, some PSPs may offer conversion services - at the request of their PSUs – in order to meet their clients’ needs in a competitive marketplace. In any event, if conversion services are offered by PSPs the current interpretation (in the absence of explicit legal wording in the Regulation) is that this service should be operationally fully independent from all the subsequent payment services offered by the PSP. Consequently, the conversion would practically take prior place to the “receipt” of the payment instruction by the PSP, and hence the commencement of the payment execution cycle as governed in the PSD. Moreover, from a contractual point of view, conversion services would also always need to be subject to bilateral agreement between the PSU and the 3rd party or between the PSU and the PSP as appropriate. It should also be noted that in cases where format conversion services are utilised by PSUs, the PSUs will nevertheless still need to provide the required data set in line with this Regulation.

In order to implement the end-to-end flow of information relating to SEPA transactions it is mandatory for PSPs to use ISO XML message formats for reporting the “receipt” of SEPA transactions “that are bundled together for transmission” to their PSUs. However, similarly to the scenario where a PSU “initiates” payment transactions that are bundled together for transmission, some PSUs may nevertheless choose to rely on conversion services for the reporting of the receipt of SEPA transactions in alternative formats. With regard to the conversion services for reporting the “receipt” of a transaction the same rules would apply as for the “initiation” of a payment as described above.

3(a) the payee’s PSP must ensure that:

(i) the payee provides the data elements specified in point (3)(a) of the Annex with the first direct debit and one- off direct debit and with each subsequent payment transaction,

(ii) the payer gives consent both to the payee and to the payer’s PSP (directly or indirectly via the payee), the mandates, together with later modifications or cancellation, are stored by the payee or by a third party on behalf of the payee and the payee is informed of this obligation by the PSP in accordance with Articles 41 and 42 of Directive 2007/64/EC;

Comment: In order to be able to discharge these requirements, it would be important that a payee's PSP ensures that it has clear contractual terms in place with its DD originator clients (i.e. DD creditors), including reference to all the elements and requirements mentioned in these provisions.

3(c) the payer's PSP must provide or make available to the payer the data elements specified in point (3)(c) of the Annex;

Comment: The payer's PSP is obliged to provide or make available to the payer the data elements specified in the Annex. The interpretation of this provision has to be based on the parallel application of Article 47 PSD, which deals with information to be provided or made available to the payer, even if there is no explicit reference to this Article in the Regulation. The payer's PSP is generally obliged to provide the information, but may make it available if agreed in the framework contract (Article 47 (2) PSD). If the PSU is not a consumer, the parties may agree that the information is neither to be provided, nor to be made available (Article 30 (1) PSD).

3(d) the payer must have the right to instruct its PSP:

(ii) where a mandate under a payment scheme does not provide for the right to a refund, to verify each direct debit transaction, and to check whether the amount and periodicity of the submitted direct debit transaction is equal to the amount and periodicity agreed in the mandate, before debiting their payment account, based on the mandate-related information,

Comment: In a SEPA scheme context, this requirement is clearly referring to the potential future Fixed Amount SDD scheme, rather than the Core SDD scheme (which does entitle the payer to a 'no-questions asked' refund within 8 weeks from the date of debit).

Additionally, this provision – and also provisions 5(3)(d)(i) and (ii) – are not relevant for the SEPA B2B scheme, or indeed any DDs where the payer or the payee is not a consumer, given the final provision in Article 5(3)(d) which states that “Where neither the payer nor the payee is a consumer, PSPs shall not be required to comply with point (d)(i), (ii) or (iii).”

4. In addition to the requirements referred to in paragraph 1, the payee accepting credit transfers shall communicate its payment account identifier specified in point (1)(a) of the Annex and, until 1 February 2014 for national payment transactions and until 1 February 2016 for cross-border payment transactions, but only where necessary, its PSP's BIC to its payers, when a credit transfer is requested.

5. Before the first direct debit transaction, a payer shall communicate its payment account identifier specified in point (1)(a) of the Annex. The BIC of a payer's PSP shall be communicated until 1 February 2014 for national payment transactions and until 1 February 2016 for cross-border payment transactions by the payer but only where necessary.

7. After 1 February 2014 for national payment transactions and after 1 February 2016 for cross-border payment transactions PSPs shall not require PSUs to indicate the BIC of the PSP of a payer or of the PSP of a payee.

Comment: This set of changes, was incorporated within the text of Regulation 260/2012 at a late stage in the final negotiations between the European Institutions, in the interests of making the transition to SEPA more straightforward for consumers.

Its effect is that after these dates (subject to Member States' usage of the optional transitional provision in Article 16(6)), PSPs are no longer allowed to make the provision of the BIC of the PSP of the payer or of the PSP of the payee a mandatory requirement on their PSUs. That does not mean that PSUs are not free to continue providing the BIC if they wish to do so, only that this cannot be insisted on by the PSP.

In the case of consumers, the key target market for this provision, it needs to be remembered that under Article 75 of the PSD, a PSP is held liable for any "non-executed or defectively executed" payments. Accordingly, where it has derived the BIC to go with the IBAN presented by the consumer, if the BIC turns out to be the wrong one, a PSP will be held liable in the event the payment does not successfully reach the payee's PSP. As such, whilst industry discussions to explore options to generate the right BIC in relation to an IBAN presented by the PSU continue, it is likely that solutions based on national BIC/IBAN databases may need to be used - or developed where they do not already exist - supplemented by an alternative approach for the very small proportion of consumer payments that are cross-border.

The case for corporates as PSUs is slightly different, not least given the much higher volume and average value of corporate payment transactions, their higher level of sophistication in the context of their financial services requirements, their existing familiarity with the use of BIC+IBAN in the context of their payments processed via LVPS in the EU and the rest of their global payment traffic and the fact that a different liability regime applies - as Article 75 in the PSD is one of the provisions where a corporate "opt-out" may be applied.

In that context, whilst in line with the requirements of Regulation 260/2012 a PSP cannot insist that a corporate PSU continues to provide the BIC beyond the dates set out in the text, in practice it seems likely that most corporates may choose to continue to do so for the reasons set out above, and in the interests of minimising the risks of their payments being delayed in their execution or even incorrectly executed.

8. The payer's PSP and the payee's PSP shall not levy additional charges or other fees on the read-out process to automatically generate a mandate for those payment transactions initiated through or by means of a payment card at the point of sale, which result in direct debit..

Comment: This provision is clearly referring to the particular circumstances relating to the German ELV scheme (or any similar schemes, if any, which may be operating today in other Member States).

Article 7 – Validity of mandates and right to a refund

1. A valid payee authorisation to collect recurring direct debits in a legacy scheme prior to 1 February 2014 shall continue to remain valid after that date and shall be considered as representing the consent to the payer's PSP to execute the recurring direct debits collected by that payee in compliance with this Regulation in the absence of national law or customer agreements continuing the validity of direct debit mandates.

2. Mandates as referred to in paragraph 1 shall allow for unconditional refunds and refunds backdated to the date of the refunded payment where such refunds have been provided for within the framework of the existing mandate.

Comment: This is a very positive provision, designed to reduce the costs of migration to SEPA DD by allowing existing mandates within a legacy DD scheme to continue to be used within one of the SEPA DD schemes.

The provisions in this article are not limited in their application to specific types of payers, so they would logically apply to consumer and corporate mandates alike. However, it needs to be noted that a very specific limitation and protection has been included within Article 7(2) which makes clear that there can be no reduction in refund rights when legacy mandates are migrated for use in the SEPA schemes using the provision in Article 7(1). As an example, if the legacy DD scheme under which the original mandate was signed offered a payer-protective “no-questions asked refund right” protection, then the mandate can only be migrated to the SEPA SDD Core scheme, where similar protections apply, rather than to the (potential future) SDD Fixed Amount scheme (for consumers) or the SDD B2B scheme (for corporates), which do not have this feature.

In countries where the issue was solved in national law or in customer agreements before the entry into force of Regulation 260/2012, this provision has no material effect. By contrast, this provision was particularly sought after by Germany, which had not legally ensured mandate validity as part of their PSD implementation.

Article 8 – Interchange fees for direct debit transactions

1. Without prejudice to paragraph 2, no MIF per direct debit transaction or other agreed remuneration with an equivalent object or effect shall apply to direct debit transactions.

2. For R-transactions a MIF may be applied provided that the following conditions are complied with:

(a) the arrangement aims at efficiently allocating costs to the PSP which, or the PSU of which, has caused the R-transaction, as appropriate, while taking into account the existence of transaction costs and ensures that the payer is not automatically charged and the PSP is prohibited from charging PSUs in respect of a given type of R-transaction fees that exceed the cost borne by the PSP for such transactions;

(b) the fees are strictly cost based;

(c) the level of the fees does not exceed the actual costs of handling an R-transaction by the most cost-efficient comparable PSP that is a representative party to the arrangement in terms of volume of transactions and nature of services;

(d) the application of the fees in accordance with points (a), (b) and (c) prevent the PSP from charging additional fees relating to the costs covered by those interchange fees to their respective PSUs;

(e) there is no practical and economically viable alternative to the arrangement which would lead to an equally or more efficient handling of R-transactions at equal or lower cost to consumers.

For the purposes of the first subparagraph, only cost categories directly and unequivocally relevant to the handling of the R- transaction shall be considered in the calculation of the R-transaction fees. Those costs shall be precisely determined. The breakdown of the amount of the costs, including separate identification of each of its components, shall be part of the arrangement to allow for easy verification and monitoring.

3. Paragraphs 1 and 2 shall apply mutatis mutandis to unilateral arrangements by a PSP and to bilateral arrangements between PSPs that have an object or effect equivalent to that of a multilateral arrangement.

Comment: Whilst the first paragraph of Article 8 of the Regulation prohibits per direct debit transaction interchange fees or other remunerations that are resulting from “multilateral” arrangements, the second paragraph of the same article, nevertheless, authorizes “multilateral” arrangement fees for R-transactions, provided that certain conditions are met. The last paragraph of Article 8 states that “unilateral” and “bilateral” arrangements that have an object or effect equivalent to a “multilateral” arrangement are also prohibited.

In our understanding, the consequence of this last paragraph is that “unilateral” and “bilateral” arrangements that are not resulting in a de facto “multilateral” arrangement are possible.

Regarding Article 8(2) (d), in our understanding the goal behind this requirement is to make clear that a PSP cannot additionally charge a PSU for costs it has already been compensated for through the application of a R-transaction MIF. The requirement of Article 8 (2) (d) obviously also applies under the scope of Article 8(3), where a general cross-reference is made to paragraphs 1 and 2 of Article 8.

Article 9 – Payment accessibility

1. A payer making a credit transfer to a payee holding a payment account located within the Union shall not specify the Member State in which that payment account is to be located, provided that the payment account is reachable in accordance with Article 3.

2. A payee accepting a credit transfer or using a direct debit to collect funds from a payer holding a payment account located within the Union shall not specify the Member State in which that payment account is to be located, provided that the payment account is reachable in accordance with Article 3.

Comment: This Article is one of those which came into force on 31st March 2012, one day after the SEPA Regulation was published in the Official Journal. It applies to all payers and payees for payments falling under the scope of the Regulation. The objective of this article is, amongst other things, to enable any customer to make all payments and receive all payments within the Single payments market from one account in one location. However, some countries have specific national processes around tax and/or salary payments, which often require users to hold in-country accounts and/or make payments via local financial institutions. Additionally, from a technical and information related perspective, local tax payment processes (as well as other types of transactions such as salary payments) often differ in terms of the content and structure of the payment messages. A logical consequence of this provision is that Member States will now need to take steps to modify any existing local regulation that would otherwise prevent the full enforcement of this provision and therefore ensure that all types of credit transfers and direct debits in Euro (except those processed via LVPSSs) can be transacted using the SEPA schemes.

Article 10 – Competent Authorities

Article 11 – Penalties

10(2). Member States shall notify the Commission of the competent authorities designated under paragraph 1 by 1 February 2013. They shall notify the Commission and the European Supervisory Authority (European Banking Authority) (EBA) without delay of any subsequent change concerning those authorities.

1(1) Member States shall, by 1 February 2013, lay down rules on the penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. Such penalties shall be effective, proportionate and dissuasive. Member States shall notify the Commission of those rules and measures by 1 August 2013 and shall notify it without delay of any subsequent amendment affecting them.

Comment: As usual for EU Regulations, penalties will be set at a national level. It should be noted that Member States have until 1 February 2013 to notify the Commission of their choice of national competent authorities and to have set out their penalty regime.

Article 16 – Transitional Provisions

3. Member States may allow their competent authorities to waive all or some of the requirements referred to in Article 6(1) and (2) for those credit transfer or direct debit transactions with a cumulative market share, based on the official payment statistics published annually by the ECB, of less than 10 % of the total number of credit transfers or direct debit transactions respectively, in that Member State until 1 February 2016.

7. Where a Member State intends to make use of a derogation as provided for in paragraph 1, 3, 4, 5 or 6, that Member State shall notify the Commission accordingly by 1 February 2013, and shall subsequently allow its competent authority to waive, as relevant, some or all of the requirements set out in Article 5, Article 6(1) or (2) and the Annex, for the relevant payment transactions as referred to in the respective paragraphs or subparagraphs and for a period not exceeding that of the derogation. Member States shall notify the Commission of the payment transactions subject to the derogation and of any subsequent change.

Comment: It should be noted that Member States have until 1 February 2013 to notify the Commission of any cases where they have decided to invoke the transitional provisions contained in Article 16(3). However, given the great importance of providing the market with early transparency on this issue, it is to be hoped that any Member States concerned will notify the Commission much sooner than this. More generally, it would be important generally for Member States' intentions on all of the transitional provisions contained in Article 16 to be made apparent rapidly, in the interests of an orderly and efficient transition to SEPA, to the benefit of all stakeholders.

8. PSPs located in, and PSUs making use of a payment service in a Member State which does not have the euro as its currency shall comply with the requirements of Articles 4 and 5 by 31 October 2016. Operators of retail payment systems for a Member State which does not have the euro as its currency shall comply with the requirements of Article 4(2) by 31 October 2016.

If, however, the euro is introduced as the currency of any such Member State before 31 October 2015, the PSPs or where relevant operators of retail payment systems located and PSUs making use of a payment service, in that Member State shall comply with the respective provisions within 1 year of the date on which the Member State concerned joined the euro area, but not earlier than the respective dates specified for the Member States having the euro as their own currency on 31 March 2012.

Comment: Member States which do not have the euro as their currency shall – as well as retail payment systems in these states – comply with the requirements of Articles 4 and 5 by 31 October 2016. This might create problems for PSPs in euro-Member States during the period from 1 February 2014 to 1 November 2016 concerning the processing of transactions into such a non-euro-member-state. PSPs in euro-Member States must fulfil the requirements for transactions to non-euro-Member States by 1 February 2014 but PSPs in non-euro EU Member States are not required to be reachable for SEPA-transactions by this date; and the euro retail payment systems in non-euro EU Member States do not have to meet the interoperability requirement in Article 4(2) until 31 October 2016. Asymmetry and potential risks to the end-to-end payment processing could potentially be the unintended consequence of these provisions.

Article 17 - Amendments to Regulation (EC) No 924/2009

(2) in Article 3, paragraph 1 is replaced by the following:

'1. Charges levied by a payment service provider on a payment service user in respect of cross-border payments shall be the same as the charges levied by that payment service provider on payment service users for corresponding national payments of the same value and in the same currency.'

Comment: This Article has the effect of removing the previous €50,000 limit that until now applied to this provision within Regulation 924/2009. The effect of this change is to extend the equality of charges principle for "corresponding" cross-border and national credit transfers and direct debits of the same value to payment transactions in euro independently of their size.

This requirement has been in force since 31st March 2012, as it is one of those provisions, which took effect immediately when Regulation 260/2012 entered into force.

It is important to note that the scope for this requirement remains the same as the original scope within Regulation 924/2009 - in other words there is no exclusion for payments processed via LVPS.

(4) in Article 5, paragraph 1 is replaced by the following:

'1. With effect from 1 February 2016, Member States shall remove settlement-based national reporting obligations on payment service providers for balance of payments statistics relating to payment transactions of their customers.'

Comment: This change, a very positive one in the interests of enhancing efficient payment processing within the SEPA area, requires that those Member States still maintaining settlement-based national reporting obligations on PSPs for balance of payments statistics purposes relating to payment transactions of their customers must remove them completely by 1 February 2016.

Annex 3(a)(iv)

Article 5(3) - PSPs shall carry out direct debits in accordance with the following requirements, subject to any obligation laid down in national law implementing Directive 95/46/EC:

(a) the payee's PSP must ensure that:

(i) the payee provides the data elements specified in point (3)(a) of the Annex with the first direct debit and one-off direct debit and with each subsequent payment transaction,

Annex (3) - In addition to the requirements referred to in point (1), the following requirements shall apply to direct debit transactions:

(a) The data elements referred to in Article 5(3)(a)(i) are the following:

(iv) where available, the payer's name.

Comment: The wording of this provision in the Annex requires (in relation to Direct Debits) that the payee should provide the payee's PSP with the name of the payer as one of the mandatory data elements when initiating a DD transaction, where this name is available.

Logically, therefore, the Regulation does not require that the name of the payer has to be provided in those existing (and potential future) cases where this information is not available. A current example of this would be the ELV scheme, where the payer's details taken from the payer's debit card to initiate the ELV transaction do not include the payer's name.

However, this would not seem to impact the current position for traditional Direct Debits, where the payer today provides his/her name as part of the mandate given to the creditor (payee), not least in the context of the potential benefits this brings in the areas of AML and fraud prevention. For information, the EPC's SEPA Direct Debit Scheme currently has the name of the payer as a mandatory element.

5 TABLE OF ACRONYMS

MS - Member States

PSD - Payment Services Directive: Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC

PSPs - Payment Service Providers

PSUs - Payment Service Users

SEPA - Single Euro Payments Area

SFD - Directive 2009/44/EC of the European Parliament and of the Council of 6 May 2009 amending Directive 98/26/EC on settlement finality in payment and securities settlement systems and Directive 2002/47/EC on financial collateral arrangements as regards linked systems and credit claims

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