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OPINION OF THE EUROPEAN CENTRAL BANK

of 1 February 2023

**on a proposal for a regulation amending Regulations (EU) No 260/2012 and (EU) 2021/1230
as regards instant credit transfers in euro**

(CON/2023/4)

(2023/C 106/02)

Introduction and legal basis

On 16 and 24 November 2022 the European Central Bank (ECB) received requests from the Council of the European Union and the European Parliament, respectively, for an opinion on a proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 260/2012 and Regulation (EU) 2021/1230 as regards instant credit transfers in euro ⁽¹⁾ (hereinafter the ‘proposed regulation’).

The ECB’s competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union since the proposed regulation contains provisions falling within the ECB’s fields of competence pursuant to Article 127(2) TFEU and Article 3.1 of the Statute of the European System of Central Banks and of the European Central Bank, in particular in connection with the basic task of the European System of Central Banks to promote the smooth operation of payment systems. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

1. General observations

- 1.1. The ECB strongly welcomes the initiative of the European Commission to promote the provision and uptake of instant payments (IPs), defined as credit transfers that transfer funds to the payee’s payment account within ten seconds after the time of receipt of the payment order from the payer, in euro in the EU. This initiative ties in well with the Eurosystem’s retail payments strategy, ⁽²⁾ the main elements of which are: (a) the development of a pan-European solution for retail payments at the point of interaction; (b) the full deployment of IPs; (c) the improvement of cross-border payments beyond the EU; and (d) the support for innovation, digitalisation and a European payments ecosystem.
- 1.2. In order to promote the smooth operation of payment systems, it is essential to address fragmentation issues across the Single Euro Payments Area (SEPA). Currently,

the provision of IPs is not available in all SEPA jurisdictions on an equal footing. In this context, measures that further harmonise the provision of IPs across SEPA jurisdictions would increase consumer choice and foster innovation, safety and open strategic autonomy in European payments. In the same vein, measures that can promote efficiency across SEPA should also be supported, to the extent that compliance with the applicable data protection legislation is ensured. The possibility of setting up standardised, and/or possibly centralised, pan-European solutions for discrepancy checks, to be made available by payment service providers (PSPs) before the authorisation of IPs or before the funds are credited on the beneficiary account, should be usefully explored, for example by the Eurosystem leveraging its central position in the instant payment landscape, allowing it to reach all relevant counterparties.

1.3. The provision and uptake of IPs have grown in the Union since the launch of the SEPA Instant Credit Transfer (SCT Inst) scheme in 2017, but they have not yet become the new normal, as could have been expected. The ECB continues to encourage market participants to implement IPs on a pan-European basis and to support end user take-up as soon as possible. In November 2018, the ECB launched the TARGET instant payment settlement (TIPS) service, making it easier for PSPs to offer IPs and enabling them to settle IPs immediately, safely and at any

time. As of 2022, all PSPs that adhere to the SCT Inst scheme and are reachable in TARGET2 must be reachable via TIPS as well, contributing to the pan-European reachability (or interoperability) of PSPs offering IPs at the technical, market infrastructure level.

- 1.4. The ECB notes the exclusion of electronic money institutions (EMIs) and payments institutions (PIs), which would otherwise be required to offer all of their payment services users (PSUs) a payment service for sending and receiving IPs, as they cannot participate in the settlement systems designated under Directive 98/26/EC of the European Parliament and of the Council ⁽³⁾ (hereinafter the ‘Settlement Finality Directive’) ⁽⁴⁾. The ECB understands that if the scope of the Settlement Finality Directive is extended so as to include EMIs and PIs, these PSPs should then also comply with the requirement to offer all of their PSUs a payment service for sending and receiving IPs, as they would participate directly in the settlement systems designated under that Directive.

The ECB supports the requirement for the affected PSPs to offer IPs at the same cost as non-IPs. The ECB also welcomes the introduction of a simplified sanction screening process to overcome the current transaction-based model, without lowering the effectiveness of sanctions screening. Additionally, the ECB supports the proposed introduction of a service for detecting discrepancies between the payee’s international bank account number (IBAN) and name. Such a service has the potential to reduce errors and fraud in IPs. However, an associated fee for this service may be dissuasive and in conjunction with the opt-out provision may result in a low uptake of this additional protection for payers, whilst still mandating an investment cost for PSPs to develop the service. The requirements on how the discrepancy checking service should be implemented are not too prescriptive, which allows the needed flexibility for the market to develop solutions. However, a harmonised approach would prevent potential fragmentation

issues arising. It is also important to allow sufficient time for the market to develop and implement appropriate measures which do not undermine the speed of IPs as this could challenge their deployment at the point of sale.

2. Specific observations

2.1. *Defined terms*

Certain terms defined in the proposed regulation may (a) require alignment with those used in Directive (EU) 2015/2366 of the European Parliament and of the Council ⁽⁵⁾ (hereinafter the ‘Payment Services Directive’ (PSD2)) and (b) call for amendments to Directive 2014/92/EU of the European Parliament and of the Council ⁽⁶⁾ (hereinafter the ‘Payment Account Directive’ (PAD)) and Directive (EU) 2019/882 of the European Parliament and of the Council ⁽⁷⁾ (hereinafter the ‘European Accessibility Act’ (EAA)). Specifically, the definition of ‘payment account identifier’, as introduced in the proposed regulation, would be the same as ‘unique identifier’ defined in the PSD2 ⁽⁸⁾. The ECB suggests that, in the light of this, the Union legislator considers using the same terminology in the proposed regulation. Moreover, ‘credit transfer’ is a term already defined in the PAD ⁽⁹⁾. The ECB proposes that, for consistency reasons, that definition is aligned with the ‘instant credit transfer’ definition introduced by the proposed regulation. In this respect, the PAD ⁽¹⁰⁾ emphasises the need to ensure alignment of the definitions contained therein with those contained in the PSD2 and Regulation (EU) No 260/2012 of the European Parliament and of the Council ⁽¹¹⁾. In addition, the EAA contains a definition of ‘payment terminal’ with a meaning similar to that of ‘PSU interface’ as introduced by the proposed regulation. The ECB suggests that the Union legislator considers amending the EAA to align the definition of ‘payment terminal’ with the one of ‘PSU interface’. Finally, to ensure systematic coherence, it is important to consider the defined terms introduced by the proposed regulation in the context of the upcoming amendments to the PSD2.

2.2. *Discrepancies between the name and payment account identifier of a payee*

According to the explanatory memorandum accompanying the proposed regulation, PSPs may charge an additional fee for the service of detecting discrepancies between the name and payment account identifier of a payee ⁽¹²⁾. An additional fee for detecting discrepancies could, on the one hand, have a dissuasive effect on the PSUs, which may not be conducive to the provision and uptake of IPs. On the other hand, in the context of IPs, this discrepancy checking service is crucial. For this reason, the proposed regulation should be amended to avoid that PSUs either do not use IPs or opt out of the discrepancy checking service due to the fees associated with it. Irrespective of the uptake of the service by PSUs, the proposed regulation obliges PSPs to offer the service, necessitating investment costs. In some Member States (e.g. the Netherlands), a mandatory IBAN check against the name of the payee is already in place, provided by all PSPs in respect of IBANs for domestic accounts at no additional charge. A harmonised approach to such IBAN checks across SEPA may be beneficial and more cost-efficient, potentially leading to, for example, the introduction of a common scheme and/or the provision of the service in a centralised way.

2.3. *Screening IPs for Union sanctions*

The affected PSPs must carry out screening checks with regard to Union sanctions immediately after the entry into force of any restrictive measures adopted in accordance with Article 215 TFEU ⁽¹³⁾. In this respect, the ECB would like to make three points.

First, the proposed regulation does not absolve the relevant PSP from complying with relevant national sanctions applied against a relevant person, body or entity.

Second, restrictive measures adopted in accordance with Article 215 TFEU may enter into force on the day of their publication in the *Official Journal of the European Union* or on the day following their publication. In order to ensure that these restrictive measures are applied promptly by the affected PSPs, the ECB suggests that affected PSPs are obliged to carry out such verifications immediately after publication of the restrictive measures in the Official Journal (instead of immediately after entry into force), facilitating compliance in all cases where the date of entry into force is later than that of publication.

Third, and to ensure legal certainty, the ECB is conscious of the potentially beneficial role that legal entity identifiers (LEIs) could play in the context of screening checks with regard to Union sanctions and/or as a global identification standard for counterparts in respect of the discrepancy checking service. The latest EPC guidance relating to the planned migration of the EPC payment scheme rulebooks to the 2019 version of the ISO 20022 messaging standard by November 2023, envisages LEIs as alternative identifiers for a ‘non-private’ party ⁽¹⁴⁾. This would address technical obstacles at EPC payment scheme level. While the reliance on LEIs is dependent on their broader implementation, including a reference to the potential use of LEIs in the proposed sanctions screening provision would show that the European Union supports the use and promotion of this global standard.

2.4. *Infringement procedures*

To prevent a scenario whereby planned downtime of the SCT Inst scheme would inadvertently result in PSPs breaching Union law, the ECB suggests that a caveat is included in the proposed regulation. Accordingly, the ECB proposes to exempt PSPs from infringement proceedings in the highly exceptional scenario that the SCT Inst scheme is unavailable for a short period of time, as approved by its respective governance body, thus preventing the processing of IPs.

Where the ECB recommends that the proposed regulation is amended, specific drafting proposals are set out in a separate technical working document accompanied by an explanatory text to this effect. The technical working document is available in English on EUR-Lex.

Done at Frankfurt am Main, 1 February 2023.

The President of the ECB

Christine LAGARDE

⁽¹⁾ COM(2022) 546 final.

⁽²⁾ See the Eurosystem’s retail payments strategy, available on the ECB website at www.ecb.europa.eu.

⁽³⁾ 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 (OJ L 166, 11.6.1998, p. 45).

⁽⁴⁾ Article 1, point (2) of the proposed regulation.

⁽⁵⁾ Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC ([OJ L 337, 23.12.2015, p. 35](#)).

⁽⁶⁾ Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features ([OJ L 257, 28.8.2014, p. 214](#)).

⁽⁷⁾ Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services ([OJ L 151, 7.6.2019, p. 70](#)).

⁽⁸⁾ See Article 4, point (33) of the PSD2.

⁽⁹⁾ See Article 2, point (20) of the PAD.

⁽¹⁰⁾ See recital 14 of the PAD.

⁽¹¹⁾ 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](#)).

⁽¹²⁾ See p. 10 of the Explanatory Memorandum to the proposed regulation.

⁽¹³⁾ See Article 1, point (2) of the proposed regulation.

⁽¹⁴⁾ See the guidance available on the EPC website at www.europeanpaymentscouncil.eu.

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