



Joint EuroCommerce, BEUC, EACT, UEAPME comments on SEPA migration end-date working paper

June 2010

1. Introduction

EuroCommerce, BEUC, UEAPME and the EACT welcome this more detailed examination of the possible elements of a Regulation to set mandatory end-dates for SEPA direct debit (SDD) and SEPA credit transfer (SCT).

At the risk of being repetitive, we restate our longstanding view that, while we are not against the principle of end-dates as such, it is not appropriate to set binding end dates for SEPA credit transfer (SCT) and SEPA direct debit (SDD) while outstanding issues of great importance to stakeholders are still unresolved.

However, since it is clear to us that the Commission wishes to regulate for mandatory end-dates, we stress our view that, as major stakeholders we must all be fully involved in ensuring this Regulation sets fair and proper requirements. We look to the Regulation therefore to establish mechanisms by which outstanding issues can be resolved by whatever date may be set.

We will comment in turn on the main principles for the proposed Regulation set out in paragraph (5) of the working document and elaborated upon in the annexes:

2. Scope

We entirely agree that any EU measure should have a broad scope, covering SDD and SCT. It should not, however, in any way effect card payments. The complexities remaining regarding the card market, in particular the issue of interchange fees, render this sector wholly inappropriate for discussions on end-dates. We are broadly in agreement with the definitions

of payments which would not be covered by the proposed Regulation, as set out in the Annex at p3.

Definitions: We agree that definitions used in any Regulation on SDD and SCT migration should, as far as possible, use the same terminology as that used in the Payment Services Directive.

Reachability: We are in agreement with the provisions on reachability and interoperability proposed in the Commission working paper.

Standard formats: We concur that ISO 20022 standards should be used for message formats. IBAN and BIC should not be defined and used as legal terms (they are not used in the PSD which refers to unique identifier). IBAN and BIC should be used only as a starting identifiers, but it may be that a better system of identifier than the IBAN can and should be developed. In order to facilitate their use, automatic conversion tools/enrichment services should be offered to all banks to their costumers.

No obstacles to the opening of a payment account: We are in agreement with the provisions proposed in the Commission working paper.

3. Separate end-dates

We are very pleased that in this paper the Commission accepts that separate end-dates for SCT and SDD are necessary. While we note that the EP Resolution of March 2010 suggested an 'end-date' as one single date for the two products, the ECOFIN Council conclusions of December 2009, refer to plural 'end dates'.

We would support the Council's approach as the correct one in that there must be distinct end-dates for the two products. SCT is far more advanced as a product, few problems with it remain and we agree that setting an end-date for SCT within a fairly short period would provide the impetus needed to ensure swift take-up. We would not object to a suggested date of end 2012 or one year after the coming into force of a Regulation. However, we would note that for many companies, the fiscal year ends on 31 December: this would therefore not be a good date to choose. It would be better, if an exact date is stipulated, to set it either in October of the proposed year, or February of the following year.

However, SDD as a product is not yet ready for general use and it is obvious to us that SDD migration must be later than SCT migration. There are still a number of important stakeholder requirements to be accommodated and we have yet seen little will from the banking sector to provide new and attractive products. In our view, an essential prerequisite for SDD is the introduction by the banking sector of attractive, efficient, safe and cheap SDD products. We were also concerned to learn that a number of national banks are unclear as to exactly what the SDD schemes entail: if the banks are not clear, how can retailers and consumers be expected to understand or to see any advantage in the new payment instruments?

It is also for SDD that the question of niche products is yet to be resolved and disagreements remain at national level over the migration of existing mandates to SDD mandates. In relation to mandates, even a long migration period will not help and a solution, such as the continued acceptance of existing mandates, must be found before the end-date question can be settled.

3.1. SDD and interchange

One very important point on SDD, which is not covered in the Commission's paper, is the 'business model' i.e. fees. The interim arrangements for interchange fees on SDD set by Regulation 924/2009 will come to an end on 1 November 2012. We are aware of the joint ECB/Commission statement of 24 March 2009 providing clarification on SDD fees, which we welcomed at the time. We fully agree with the statement that it is 'neither necessary nor

efficient that banks apply a collective, indirect mechanism in the form of a general per transaction multilateral interchange fee'. We further welcome the statement that multilateral interchange fee agreements will 'generally be presumed not to be compatible with the EU competition rules, either for national or cross-border transactions.'

We wholly support this view. However, as we understand it, such a statement is not binding on the banking sector and would therefore not guarantee that MIF for SDD will in no circumstances continue after 2012.

Regulation 924/2009 allows for a cross-border multilateral interchange fee of a maximum of 8.88 cents for a transitional period ending on 1 November 2012.

Preamble 11 states:

"At the end of the transitional period, a long-term solution for the SEPA direct debit business model should be in place in line with EC competition law'

The preamble goes on to speak of further Commission guidance which was also mentioned in the joint ECB/Commission statement as scheduled for November 2009. No further guidance has been forthcoming. We further note that alternative proposals for some kind of charge for error transactions have not, as far as we know, been followed up.

We therefore call on the Commission to provide certainty on this point either as a part of the Regulation or in some other form which will have binding effect at the same time as any end-date Regulation¹.

For the above reasons, we are not convinced that SDD is ready for an end-date. However, we agree that a push is required to get the schemes up and running; we therefore would not oppose an SDD end-date. However, we cannot agree that the suggested date of two years after the entry into force of a Regulation (i.e. one year after the end-date for SDD) is appropriate.

3.2. National derogations

We disagree with the proposal that earlier end-dates could be set at national level in euro countries: this is a European migration and should be conducted at the same time across euro countries. Allowing for later migration in non-euro countries is, however, appropriate.

3.3. Niche products

We do not agree that it is necessary to completely phase out all national niche products. We would see this as unnecessarily suppressing products which are popular, useful and efficient.

While we accept that the goal of maximising economies of scale is a good one, this should not be the only aim. Harmonisation should not mean reduction to the lowest common denominator. We advocate the preservation of options which give end-users the choice both of service and, if appropriate, of price.

As we pointed out in the EUC reply to the Commission discussion paper on end-dates, in April this year, some payment products which may currently be 'niche' may well have the potential to grow and to be adopted on a wider basis across the community. We are thinking in particular of the ELV 'one-off' direct debit system currently only available in Germany. This product is widely used and appreciated by both consumers and retailers for its low cost and its security.

¹ The EACT adds the following comment: Some communities, where MIF on direct debits exists today, believe this type of fee should be allowed to stay on grounds of efficiency and better consumer protection, provided it is calculated in a transparent and collaborative way and the process by which it is set is supervised by a central bank.

It could well be that retailers in other member states, if offered the option of accepting such a payment product, would be enthusiastic. Indeed, there already exist cross-border ELV schemes which allow merchants in Austria and Italy to accept Austrian, German and Dutch debit cards using this system. We must ensure that we do not phase out any currently niche products which have the potential to become main-stream. In the same way, we must not let products die out which could provide the seeds for innovative products of the future.

We therefore advocate careful consideration of niche products on a case-by case basis, rather than a blanket phasing out rule. Such an approach could allow the permanent exemption of some niche products and the gradual phasing out of others. It may also allow for the development of new optional products which are restricted in geographical area or are otherwise 'niche'.

4. Essential Requirements

On the specific requirements listed in the Annex we make the following comments:

4.1. For both SDD and SCT

We point out here that the proposed maximum payment transaction of EUR 999 999 999.99 is not appropriate as a number of large firms do deal in payments which are higher than EUR 1 billion.

4.2. For SCT only

We agree with the proposed essential requirements. BEUC is not in agreement with the obligation to provide all data elements to the payee, notably the IBAN of the payer which is not always necessary (see rules on protection of personal data²)

4.3. For SDD only:

We agree the list of essential requirements set out in the annex. We would add the following comments:

While we accept that the issue of MIF should generally be addressed by competition law principles, we suggest a Regulation on end dates should deal with this matter to provide a definitive ruling after the expiry of interim arrangements set down in Regulation 924/2009. We suggest that any form of multilateral interchange fee be ruled out. The introduction of any other, alternative basis for payment should be in accordance with the principles of competition law and should, if required be made subject to further study by the Commission, followed by stakeholder consultation.

BEUC would also stipulate that the provision on 'non refund right' must be supplemented in order to allow a payer to ask for refund in cases of non-delivery.

The regulation should stipulate provision for the migration of existing direct debit mandates to SEPA DD. Our own view is that this should be done automatically. In countries where existing national DD differs from SDD (e.g. where there must be a shift from DMF to CMF), we suggest banks inform their customers by letter of this automatic switchover, informing the consumer of their right to cancel the mandate.

To accommodate the specific German situation, another option would be to end the acceptance of new mandates at a given date, rather to alter existing mandates.

² Providing such data is not allowed in some EU countries on the basis of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (cf Sweden).

