

Scope of the new consumer protection requirements during the SEPA migration transition period (1st February – 1st August 2014)

A note by the SEPA Migration Action Round Table

Background

On 9th January 2014, the European Commission issued a 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. This proposal is geared at allowing payment service providers to continue – during a six-month-long transition period from 1st February to 1st August 2014 – the processing of payment transactions in their legacy schemes and formats alongside the processing of SCT and SDD payments.

To this effect, the final compromise text of this Regulation proposal introduces the following amendment: “By way of derogation from 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 credit transfers and direct debits pursuant to this Regulation. 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, from 2 August 2014.” This new text is expected to replace Article 16(1) of the SEPA Regulation together with the text on BBAN-IBAN conversion services that is currently included in this paragraph and which remains unchanged.

The introduction of this transition period is geared at avoiding unnecessary disruption of payments that could result from the fact that SEPA migration may not be fully completed by 1st February 2014.

Need for guidance on the question whether consumer protection measures introduced by the SEPA Regulation need to be applied to legacy direct debits during the transition period

As part of their analysis of the expected impact of the new EC Regulation proposal and the transition period it introduces for the completion of SEPA migration in the Eurozone, participants in the SEPA Migration Round Table (SMART) have come across the question whether the consumer protection measures the SEPA Regulation introduces for direct debits from 1st February 2014 also need to be applied to legacy direct debits during the period of parallel processing of payments in different formats.

The consumer protection measures are defined in detail under Article 5(3)(d) of the SEPA Regulation (see Annex for the full text of this article). This article gives consumers the right to request that a set of protective measures be applied to incoming direct debits and requires that the payment service provider applies these restrictions and carries out checks on incoming direct debits against these restrictions before debiting the payer’s account.

Art. 6(2) of the SEPA Regulation stipulates that these consumer protection measures, among other requirements, shall apply to direct debits from 1st February 2014 on: “By 1 February 2014, direct debits shall be carried out in accordance with Article 8(2) and (3) and with the requirements set out in Article 5(1), (3), (5), (6) and (8) and points 1 and 3 of the Annex.”

The present document is based on the input and feedback of the participants in the SEPA Migration Action Round Table (SMART). SMART is a forum for banks and by banks, which is logistically supported by the Euro Banking Association. A list of the institutions that have endorsed the present note can be found on the last page of the document.

Since the derogation introduced by the new EC Regulation proposal refers to payment transactions in different formats and does not mention any of the non-format-related requirements applying from 1st February on, the provisions of the newly proposed first sentence of paragraph 1 of Article 16 of Regulation (EU) No 260/2012 do not provide an answer to the question whether these requirements need to be applied to legacy direct debits during the transition period.

This uncertainty has raised concerns among the SMART participants, since such consumer protection measures are not generally applied to legacy direct debits in the Eurozone communities today and it would not be technically feasible for PSPs to offer them to their customers for transactions under the national schemes during the transition period.

Understanding shared by the SEPA Migration Action Roundtable participants

It is the understanding of the SMART participants that the consumer protection requirements introduced as of 1st February 2014 do not need to be applied to legacy direct debits, because these requirements have been conceived for payments falling under Union-wide direct debit schemes only.

This understanding is backed up by Recital 13 of the SEPA Regulation, which states the following: “It is important to take measures to strengthen the confidence of PSUs in the use of such services, especially for direct debits. Such measures should allow payers to instruct their PSPs to limit direct debit collection to a certain amount or a certain periodicity and to establish specific positive or negative lists of payees. **Within the framework of the establishment of Union-wide direct debit schemes, it is appropriate that consumers are able to benefit from such checks.**” (emphasis added).

The aim of the SEPA Regulation to introduce common payment standards and requirements for Union-wide payment services, i.e. for SEPA services only, is also spelt out in Recital 1 of the SEPA Regulation: “...**the single euro payments area (SEPA) project aims to develop common Union-wide payment services to replace current national payment services.** As a result of the **introduction of open, common payment standards, rules and practices**, and through integrated payment processing, SEPA should provide Union citizens and businesses with secure, competitively priced, user-friendly, and reliable payment services in euro.” (emphases added).

Consequently, the reference in the newly proposed first sentence of paragraph 1 of Article 16 of Regulation (EU) No 260/2012 to ‘credit transfers and direct debits pursuant to [this] Regulation’ should be read to define the scope of the derogation such that legacy payment transactions are not credit transfers or direct debits that fall under the Regulation.

In addition, Recital (7) to the proposed Regulation states that “payment service providers should be allowed, for a limited period of time, to continue the processing of payment transactions through their legacy schemes alongside their SCT and SDD schemes, as they are doing now”. Although the sentence following in Recital (7) states that “a transitional period should therefore be introduced to allow for the continuation of such parallel processing of payments in different formats”, the latter sentence should not be interpreted to mean that the only derogation allowed relates to the formats used for the processing of payments, in the light of the grounds and objectives of the proposed Regulation as set forth under item 1 of the explanatory memorandum accompanying the proposal. The explanatory memorandum

refers to the introduction of a grandfathering clause allowing banks and other payment service providers to continue the processing of non-compliant payments through their legacy payment schemes alongside SCT and SDD. The explanatory memorandum further states that the proposed Regulation is necessary 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 the end-date payments in euro that are not compliant with the SEPA requirements. The latter interpretation of the purpose of the proposed Regulation is also shared in the description of the purpose and content of the proposed regulation in the 'Opinion of the European Central Bank of 22 January 2014 on a proposal for a regulation on the postponement of SEPA migration date' (CON/2014/3), where it is further added that this is to ensure that market participants that do not comply with Regulation (EU) No 260/2012 by February 2014 can continue to make payments and to avoid any inconvenience for consumers.

Conclusion

Based on these statements and in line with the outlook they provide on the underlying aims and objectives of the SEPA Regulation, it is the SMART participants' common understanding that the consumer protection measures applicable as of 1st February 2014 to direct debits in the Eurozone must be applied to SEPA Core Direct Debits only, while legacy direct debits are out of scope.

Annex

Article 5(3)(d) of the Regulation (EU) No 260/2012 of 14th March 2012 of the European Parliament and of the Council establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009 (“SEPA Regulation”):

“the payer must have the right to instruct its PSP:

- (i) to limit a direct debit collection to a certain amount or periodicity or both,
- (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,
- (iii) to block any direct debits to the payer’s payment account or to block any direct debits initiated by one or more specified payees or to authorise direct debits only initiated by one or more specified payees;”

List of endorsing banks

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ABN AMRO Bank
Bank of Ireland
Barclays
Belfius Bank
BCEE
Deutsche Bank
Erste Group Bank
Hellenic Bank
Lloyds Banking Group
Raiffeisen Bank International
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