

## **EBF Response to the Commission's Inception Impact Assessment on Instant Payments**

7 April 2021

### **1. Introduction**

The EBF supports efforts to increase the uptake of SCT Inst and the view that SCT Inst could facilitate stronger and more integrated homegrown pan-European payment solutions. As the European Commission is strongly supporting the further development of instant payments and instant payments-based solutions, we understand that it is necessary for the Commission to evaluate the need for potential non-legislative and legislative actions. It is in our view necessary to carefully assess which actions by the public authorities could enable the further development of instant payments and which aspects would be best left to market developments, with the potential monitoring by the public authorities. Market-led developments and uptake by market participants should be favoured and any eventual legislative action should be limited to the building blocks needed for widespread adoption of SCT Inst and the resolution of any hindering factors. The Commission should investigate necessary basic parameters to support further instant payment solutions in a market-driven environment. With regard to the specific topics that the IIA considers could be part of a possible legislative initiative, we make specific comments on some of them in section 2.

As general remark, SCT Inst should be considered the basis of new payment instruments in their own right, with different use cases, advantages and disadvantages and any legislative action should duly consider this. SCT Inst is not to be compared to any other payment instrument in a straightforward manner. Depending on the use case and method of initiation, SCT Inst transactions can have some characteristics of a traditional SCT and a card payment, or its usage could be envisaged in situations currently served by SEPA Direct Debits, cash or even cheques. It is therefore not useful to draw any parallel between SCT Inst and any of the other existing payment instruments. Some of the characteristics and existing legal requirements relating to more traditional payment instruments may not

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be adequate in all use cases. Hence, the regulatory framework should consider instant credit transfer as a new, separate payment instrument. At the same time, the legislator, together with market participants, should gain a better understanding of the differentiation of SCT Inst as a use case agnostic SEPA payment scheme, and as a building block of more complex offerings (e.g. payment solutions at the POI). Market needs, as well as potential legislative responses, may be different for either aspect (e.g. in the context of sanctions screenings, see below).

## **2. Specific remarks**

### **2.1 Adherence**

Market adoption of SCT Inst has progressed well in terms of technical and process development. We call upon EU banks to adhere on a voluntary basis to the SCT Inst scheme, which forms one of the major building blocks of a future pan-European solution. If adherence were to be mandated through legislation, PSPs must be given a sufficiently lengthy rollout period due to technical build and consumer considerations. The Commission should also carefully consider the needs and costs of SCT Inst for non-eurozone markets and PSPs. Moreover, it is important to take into consideration that some PSPs have very specific or 'niche' customers who do not need instant payments and therefore it would not be proportionate to mandate these PSPs to adhere to SCT Inst.

Regarding the legislative option on *'Effective incentives for PSPs to offer instant credit transfers in euro, which could be constructed in a manner similar to that adopted in the past in the SEPA Regulation for SEPA Credit Transfers and Direct Debits'* we agree that if legislative action is taken to ensure adherence to SCT Inst, it should be constructed in a manner similar to that adopted in the past in the SEPA Regulation for SEPA Credit Transfers and Direct Debits rather than being included in a legislation (such as PAD, PSD2) not suited for such purposes.

### **2.2 Business model**

The Commission should focus on building an environment that supports the industry efforts to develop value-added products and solutions based on SCT Inst. This way PSPs will want to adhere, develop and promote the use of SCT Inst in order to compete in the new payments landscape. A strong business model and a clear, stable regulatory environment workable from both an economic and competition perspectives are key. EU-based PSPs need them to commit to invest in new and more efficient payment solutions based on SCT Inst and to remain competitive in a globalised economy. In order to offer use-cases other than account-to-account instant credit transfer between payment service users, banks themselves and/or together with service providers need to build interoperable front-end solutions for payers and payees adapted to the concrete use cases.

The statement in the Inception Impact Assessment according to which *'In the short term, the deployment of instant payments could represent costs for at least some PSPs, due to putting in place systems necessary to be operational round the clock and to developing new products'* is strongly understating the investments and costs for banks in putting in place the whole instant payment infrastructure, developing end-user solutions based on

instant payments and considering also the effect of replacing some of the existing payment methods and instruments by instant payment solutions.

Regarding the legislative option on *'Exploring issues regarding fee structures for SEPA Instant Credit Transfer-based payment solutions at point of interaction, without prejudice to competition law enforcement, also considering licensing and other scheme fees as possible sources of revenue and the possible need to incentivise merchants/the acquiring side'* we welcome Commission reflection on this and are open to a debate on how to best ensure a sustainable business model for instant payments. It should be noted that not only merchants and the acquiring side need to have the proper incentives, but also the consumer's bank that incurs a lot of the investment in offering instant payment solutions, should equally be incentivised.

### **2.3 Transparency and Pricing**

We would like to stress that we do not consider that there is a justification to regulate the prices for SCT Inst as it is not done for any other service.

Firstly, as explained above, SCT Inst is a different payment instrument than a regular SCT; it has a different range of use cases, is settled in a different manner and comes with a different risk exposure. We do not consider the regular SCT to be a suitable comparator for SCT Inst. In the RPS, the Commission itself presents SCT Inst as an alternative to card payments. Yet, cards are not a suitable comparator for SCT Inst either. The costs of implementing the infrastructure for and processing SCT Inst have shown to be different than for any other payment instruments, including regular SCTs and payment cards. However, if the pricing were to be assessed, the comparison should be made by use case, so that in some cases (B2C, B2B payments, invoicing) the closest comparison could be SCT, and in other use cases (C2B/POS payments, P2P, C2smallB) would be card payments or existing mobile payment schemes.

Secondly, like any other service, charges for individual SCTInst transactions may not reflect the actual charges for such transactions. Consumers may pay for SCT and/or SCTInst transactions in bulk in the annual/monthly fees for their payment accounts. Deriving the consumer fees for SCT Inst from the fees for regular SCTs would be incorrect and possibly imply the need to cover the higher costs of instant CTs in some other way.

Thirdly, charges for SCT Inst are co-dependent on the SCT Inst payment instrument business model and the level of consumer protection and merchant guarantees given. The level of consumer protection in the EU is already high. Increasing it via for example a potential chargeback system would create additional rules, processes and costs for the processing of SCT Inst. Any additional protection cannot be deemed as a "for-free unconditional right to refund", but more like a contractual arrangement between merchant and acquirer. Instead of legally mandating, we believe it should be left to the market to find its own solutions to meet user requirements. The Commission should not create an unrealistic expectation that any additional consumer protection measures such as chargeback can come without costs and related fees to the end user.

And finally, the prices of other payment instruments are not regulated other than for equalising the fees between domestic and cross-border payments. Regulating the prices of SCT Inst, and especially if such regulation would not be related to costs, would create an unlevel playing field between SCT Inst and other payment methods and place banks at a disadvantage in relation to other players in the payments market.

Therefore, regarding the legislative option of '*Addressing the issue of charges levied on consumers for instant credit transfers*', we are not in favour of any legislative action on charges as this is not justified and would risk stalling the development of instant payments. '*Targeted consumer protection measures*' should also be rather market-lead.

In addition, the following statement made in the IIA regarding transparency is in our view incorrect: *Moreover, merchants and consumers may lack transparency about the type of payment (e.g., card scheme, credit transfer, direct debit) triggered at the Point of Interaction (physical point of sale or online checkout). This results in lack of transparency for merchants about the fees associated with a given payment transaction and may limit the merchant's ability to steer consumers towards using the cheaper instant payments-based solution.* The transparency requirements included both in the Payment Services Directive and the Interchange Fee Regulation ensure that Payment Service Providers provide the required level of transparency to their customers on their transactions.

## **2.4 Fraud**

When encouraging initiatives on a further deployment of instant payments, cybersecurity, fraud prevention and AML risk management should be an inherent part of the discussion. The Commission could address this in the consultation by asking for instance whether the market sees any legal barriers in the existing fraud prevention/AML measures related to instant payments.

As regards the legislative option of '*Tailored fraud prevention measures*' we believe that in a first instance the Commission should look into eliminating any eventual barrier to fraud protection measures for instant payments instead of mandating by law specific fraud prevention mechanisms.

## **2.5 Sanctions screening**

The current sanctions screening rules and processes both at EU and Member State level do not support the wide adoption of instant payments, especially in a cross-border context. The current rules create inefficiencies and lead to unnecessary rejections. A level playing field with other payment instruments (especially with card payments at Point of Interaction) should be established.

As regards the legislative option '*reconciling instant payments with regulatory compliance obligations, for example related to sanctions screening*' the objective should be to review some aspects of the EU sanction screening framework. A central overview of EU sanction lists and any Member State specific list of names would be needed and changes to the roles and responsibilities of each EU-based PSP involved in SCT Inst transactions should be contemplated as suggested in the letter sent by the European Payments Council to the Commission and the ECB on 15 March.

## **2.6 Level playing field with other players in the payments industry**

Regulating SCT Inst could decrease the competitive position of banks vis-à-vis other providers of payment services, in particular BigTech, other non-European players and non-bank providers when they enter the payments market. Many of these parties offer payment solutions as an overlay on bank payment products. Hence, they can offer front-end payment solutions to clients without the need to develop the costly infrastructure

behind it. Banks risk bearing the huge costs of building the “tracks” for modern, efficient payments in Europe. It would be equitable for other market participants, including TPPs and BigTechs, to contribute towards these costs. Therefore, if SCT Inst is to be regulated, the Commission should explore options allowing for a fair allocation of costs between third parties and banks. Furthermore, depriving banks from reaping the benefits of their investments in SCT Inst infrastructure by, for instance, regulating the price for instant SCTs, would weaken banks’ competitive position in the market.

## About EBF

The European Banking Federation is the voice of the European banking sector, uniting 32 national banking associations in Europe that together represent some 4,500 banks - large and small, wholesale and retail, local and international - employing about 2.1 million people. EBF members represent banks that make available loans to the European economy in excess of €20 trillion and that securely handle more than 300 million payment transactions per day. Launched in 1960, the EBF is committed to creating a single market for financial services in the European Union and to supporting policies that foster economic growth.

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