

EBF position on Proposal for Instant Payment Regulation

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1. General remarks

The European Banking Federation welcomes the Commission's proposal for legislating instant euro-denominated credit transfers¹ (in this paper referred to as 'instant payments'). Instant payments are an important building block of the future EU payments market, and are already widely adopted and offered by euro-area Payment Service Providers (PSPs). Instant payments can enhance customer experiences, contribute to further digitalisation of the payments landscape, provide innovative solutions and offer the rails for a pan-European payments solutions, enhancing competition on the market.

At the same time, building the rails for instant payments requires significant investments and adaptations by PSPs, banks in particular. Sending and receiving instant payments requires changes to payment processing, liquidity management, reporting, fraud detection and other aspects that all need to be performed in real time. The wider adoption of instant payments also poses challenges for the capacity of the infrastructures to handle high volumes of real-time transactions and may require additional investment at an infrastructure level.

For all these reasons, the efforts required by banks and infrastructures should not be under-estimated and should be taken into account in the legislation.

The proposal focuses on the perceived main obstacles and building blocks for instant payments, on top of which payment solutions could be built by market participants, especially for payments at Point of Sale (PoS), e-commerce and person-to-person. The development of pan-European payment solutions based on instant payments is a high-priority policy objective of the authorities. For the industry, a clear prioritisation by the authorities on the development and interaction of different and converging policy objectives, especially when it comes to the interaction of the proposed regulation and a digital euro – which could ultimately cover many of the same use cases – is urgently needed. The market cannot support multiple overlapping high-priority initiatives and needs coherence and consistency.

In the sections below we express our detailed comments on the Commission proposal.

2. Instant credit transfer transactions – Article 5a

Although we are supportive of EU-wide euro instant payments, the proposed obligations are too broad and go against the freedom for PSPs to determine their product offering. The article, as currently drafted, would oblige all credit institutions to offer instant payments to all their customers through all channels, which is disproportionate to the objective pursued. We understand the Commission's objective of ensuring pan-European availability and reachability of euro instant payments, however this does not require such wide-reaching obligations. Legal requirements should be limited to mandating PSP

¹ Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) No 260/2012 and (EU) 2021/1230 as regards instant credit transfers in euro

reachability (i.e., the obligation to adopt instant payments in the role of receiving PSP) and to mandating the sending of single payment transactions through one online channel. This would meet the intended objectives of stimulating instant payments and innovation while it still offers the opportunity to compete when offering instant payments. Conversely, mandating PSPs to offer instant payment to all customers (regardless of risk assessments) and on all their interfaces is disproportionate compared to the intended objectives. In any case, PSPs – in line with AML/CFT rules and requirements and on a risk based approach – should be able to limit the access to instant payments for individual customers.

We believe that the proposal goes against the principle of proportionality also as regards the non-euro area. The proportion of euro payments to and from non-euro Member States is very small compared to the volume of transactions in local currency and the cost of implementing all the requirements would be disproportionately high. Non-euro countries in the Nordics, for example, already have good growth in instant payment volumes in domestic currencies. Therefore, the regulation should not apply to the non-euro area.

The following amendments should be introduced:

- **Types of PSPs** (Article 5a(1)):
 - it is not meaningful to impose the obligations of Article 5a to all credit institutions that already offer sending and receiving regular credit transfers. There are niche credit institutions, for instance not active in the retail market, that have no demand for offering instant payments, hence they should be excluded from the scope. Such an exclusion could for instance apply to a credit institution that only carries out payment transactions that are excluded from the scope of the Payment Services Directive through PSD2 article 3(i). The precise definition of such niche players could also be delegated to National Competent Authorities.
 - Non-euro EU countries: we believe the regulation goes against the principle of proportionality as regards the non-euro zone. In those countries credit transfers in euro are only used for cross-border payments, hence the demand for instant credit transfers is very low. Furthermore, the resources needed to manage risks in relation to liquidity and exchange will be disproportionately high. Therefore, PSPs in non-euro EU countries should be excluded from the scope.
- **Offering of instant payments:** it is important to note that the expectation should not be that in all countries all current credit transfers would be replaced by instant payments. They are different services with their own characteristics, infrastructures and context of usages. This choice should be left to the market, according to the principle of free market competition. Hence, the reference to 'by default' should be deleted in Recital 8. PSPs should not be obliged to offer instant payments to all PSUs, and they should remain able to limit the availability of sending instant payments for PSUs in some cases, based on their risk assessment (e.g. AML), fraud or in the case of important liquidity outflows. PSPs should be allowed to put in place risk mitigation measures to propose only regular credit transfer in certain situations, including fraud suspicion and situations that could eventually cause bank runs and thus contribute to bank failures. Even if instant payments are not unsafe per se, the risk of fraud may increase, simply because of the ability they offer to move money quickly. This is especially the case if instant payments must be offered through all channels, included those not suitable for offering instant payments. PSPs are able to manage all these risks but the appropriate combination of tools and measures (which go well beyond the IBAN-name check) should be left to PSPs themselves. Furthermore, PSPs should have the freedom not to credit an instant credit transfer in some cases, for reasons related to checks carried out to protect

their customer (e.g. fraud) or for public safety reason (i.e. due the sanction screening against non-EU lists at transaction level).

At the same time, even if PSPs will be obliged to offer instant payments, they should be given the freedom to enable PSUs to evaluate and choose whether to use instant payments (also de-activating the capability if needed) or to opt for regular credit transfers.

- **Interfaces / channels** (Article 5a(2)(a)): the requirement to offer the same interfaces/channels as for other credit transfers (including at branch, ATM, phone banking and paper-based) is disproportionate as regard to the usage of instant payments through such channels. Such an obligation would imply huge investments and processing costs for use cases and PSU interfaces without added value and will imply higher costs for offering payment services in general, especially when coupled with the pricing restrictions in Article 5b. Some interfaces/channels are not considered suitable for offering instant payments and could increase the risk of fraud (e.g., ATM where fraudsters could oblige PSUs to initiate instant payments). Therefore, the legal obligation should be limited to offering at least one digital interface to enable the electronic initiation of for instant payments and should also envisage that instant payment offering and processing can be suspended for exceptional circumstances (e.g. operational needs, suspicious fraud, etc). There is a very limited added value of using instant payments to execute paper-based payments since (i) they will never be instantaneous (the delay for order reading and data input will always remain) and (ii) immediate feedback on whether the payment has been executed or rejected is not possible.
- **Bulk payments** (Article 5a(3)): the obligation to offer the possibility to submit multiple payment orders as a package should be deleted. The processing of instant payments via bulk files is impossible. The commercial offering that banks can set up is that of 'non time critical' transactions via the instant payment processing, meaning that a bulk file would be submitted by a corporate but not immediately processed. Once the payments are processed, they are processed as instant payments. The decision of such service offering should be left to each PSP, as offering bulk payments is not necessary to the objective of instant payment availability and reachability. Offering bulk payments would create difficulties with the 10-second deadline for payment processing. It does not make sense to oblige PSPs to offer this possibility 24/7/365 while corporates only typically send bulk payments during working hours. There is no added value whatsoever for the client or the beneficiary since the companies that use file processing forward the files during office hours and there are now many banks that apply 'same day' processing so that the beneficiary can be credited the same day.
- **Timelines** (Article 5a(4)): due to the adjustments required and in expectation that the measures envisaged can be reviewed in the light of our suggestions, the timelines proposed should be extended to at least an 18-month timeline for receiving and 24-month timeline for sending instant payments for the euro zone and to a 36-month timeline for receiving and 42-month timeline for sending instant payments for the non-euro zone (in case the obligations would apply to non-euro area PSPs).
- **Definition of payment account** (Article 5 a (2)(c): it should be made explicit that the term payment account used in this context has the same meaning as in PSD2 (Article 4(12)).

3. Charges in respect of instant credit transfers – Article 5b

The EU payments market has thousands of competing PSPs and prices should always be left to be determined by market competition. Allowing such market competition is a fundamental aspect of the EU internal market.

Instant payments are a relatively new development, and we observe that pricing is becoming more competitive, and in any case the proposal has not demonstrated that there is a market failure that justifies price regulation. The costs for offering instant payments are higher than those of regular credit transfers due to the real-time management of the transaction and the investments to build the infrastructure for instant payments are high, especially in case of an obligation to offer instant payments through all interfaces/channels and to all PSUs; PSPs also have ongoing operational costs and bear higher risks. Indeed, running a 24/7 no-break system has completely different costs than the batch processing of credit transfers during central bank opening hours. As previously noted, instant payments and regular credit transfer are different services with their own characteristics, infrastructures and use cases. As a consequence, there is no reason why the price of an instant payment transaction should be aligned to the one of a regular credit transfer. Due to the incremental costs, operational (development) and risk mitigation (e.g., fraud prevention) costs, the two services must have the possibility to be priced separately. Competition should be allowed to play its role and will anyway drive-out any pricing that does not correspond to the cost. A service with added value should be able to be priced accordingly.

The proposal of equal pricing will contribute to further creating imbalances as it prohibits banks as market participants that are building the instant payment rails to recover the cost of their investment, while other market participants such as Third Party Providers (TPPs) will be able to enhance their service offering based on the instant payment infrastructure put in place and funded by banks and charge their customers (usually merchants) for their services.

4. Discrepancies between the name and payment account identifier of a payee in case of instant credit transfer – Article 5c

Consumer protection and fraud prevention measures are key elements in payments, including for instant payments. PSPs have already put in place robust and advanced fraud prevention mechanisms that they are continuously adapting and improving. They also educate their customers and alert them to emerging risks to help prevent fraud.

Given the fast-evolving nature of fraud, we are concerned that a rather static IBAN-name check will have a limited contribution to fraud prevention, covering only fraud scenarios such as scam and whaling, while leaving out other fraud types such as phishing, malware and swap IBAN.

In any event, IBAN-name check configures a separate and stand-alone service against instant payments that PSUs, may choose not to use (i.e. they can opt out).

At present no pan-European IBAN-name check solution exists. Building such a service at EU level would be an extensive project, both at industry level and at the level of individual PSPs. At industry level, standards for the exchange of messages and harmonised rules between PSPs will need to be developed under a scheme-like approach. This will then need to be developed and implemented at the level of individual PSPs (potentially in conjunction with infrastructure or other providers) into a service to be offered to PSUs. Hence, the development of an IBAN-name check will take time and resources, which

should not be underestimated. There are numerous operational, technical and legal challenges that will need to be considered and resolved. Given the complexity and cost involved in such a project, the following amendments to the proposal should be introduced:

- **Obligations of payee PSP** (Article 5c(1)): the obligations should be extended to the payee PSP to respond to the payer PSP request on whether the name and IBAN match. The payer PSP relies on the payee PSP to fulfil its legal obligation of IBAN-name check, therefore an obligation on the payee PSP side is needed.
- **Liability** (Article 5c(4)): PSPs should only be required to check that the IBAN and the beneficiary's name correspond. The obligation to provide the degree of discrepancy (in recital 12) should be deleted, as it would entail complex liability considerations on PSPs. It is also important to have a clear liability framework for the IBAN-name check service in the cases where a PSU authorises a payment transaction despite a detected discrepancy. The text of Recital 13 should be included in this article to clarify that in such case the PSP shall not be liable for the execution of the payment transaction to an unintended payee, in accordance with Article 88 of the Payment Services Directive.

In fact, the name-IBAN check could lead to outcomes that are not certain either in terms of match/no match i.e., it could lead to different degrees of discrepancy that could create confusion and uncertainty on the PSUs or, to avoid this, shift to the PSPs the responsibility of translating these percentages of discrepancy into a simpler message of match/no match/close match to the PSUs, with the consequence that the PSPs would bear the responsibility in the event of errors and related complaints. Moreover, such transcoding, in the absence of a standard, would result in uneven handling by PSPs (e.g., for one PSP matching 65% might be a close match, and for another PSP it would not be a match), increasing confusion in PSUs. A European standard, elaborated by the industry, should clarify how to manage the outcome of the IBAN-name check and its notification to the PSU.

- **Interfaces / channels** (Article 5c(5)): it would be unfeasible and disproportionate to have an obligation to offer this service for all PSU interfaces, including ATM and branches and batch payments, paper-based and phone banking. The IBAN-name check can only be implemented on electronic/digital interfaces with real-time interaction with the PSU.
- **Timelines** (Article 5c(6)): it will be impossible to develop the service within the proposed 12 months. The timeline should be linked to the availability of a European standard/solution for the IBAN-name check and it should provide for at least 24 months to be implemented. No cross-border solution exists today and it has to be built from scratch.
- **Types of clients:** the legal obligation to offer this service should be limited to consumer (as defined in PSD2 Article 4(20)) PSUs and for single payment transactions.
- **Use cases:** in its current form the obligation to provide an IBAN-name check would apply in all use cases for instant payments, including for PoS and e-commerce payments. It does not make sense to include an IBAN-name check in these use cases, as the risk of misdirected or fraudulent payments is considerably lower and an IBAN-name check would risk introducing considerable friction, especially for

payments at physical PoS. An exemption for these use cases should be included in Article 5b. It should also be considered that the IBAN-name check could be useful in other scenarios (such as the customer onboarding) and therefore should not be embedded in the instant payment transaction.

- **Trusted beneficiaries:** there is no added value to do an IBAN-name check for payment transactions with trusted beneficiaries (which would not exclude that a check is carried out when the beneficiary is first introduced to a trusted beneficiary list by the payer). An exemption should be included for this.
- **Charges:** the development and offering of an IBAN-name check service at EU level will require significant investments and ongoing costs. We appreciate the Commission's acknowledgement that PSPs may charge a fee for providing this service, but this should be included clearly in Article 5b.
- **Misuse:** We believe that the proposal should contain initiatives to prevent misuse of the solution for verifying names and account numbers. This could, for example, be the case where several requests are sent to the service in a short time with the aim of trying to discover whether a specific person is the owner of an account (e.g. a person who appears on the PEP list). Such an information service is associated with significant risks of abuse: even beyond the purpose of fraud prevention intended by the European Commission, anyone can use such a service to investigate whether a natural or legal person is the holder of a particular payment account. Since the service does not require the actual execution of an instant payment, there would be hardly any effective hurdles for such an abusive investigation of customer data on the basis of the proposed regulation. This can open up new risks, especially for consumers in the context of social engineering or against the background of another abusive motivation of third parties.
- **More flexibility:** the Regulation should allow a Confirmation of Payee service that could be offered by checking the degree of correspondence between the payee name and IBAN, or in some cases the checking of other elements (tax number etc). The Regulation should allow for this flexible approach and focus on the outcome of confirming to the extent possible that the payee is the intended one.
- **Involvement of PISP:** the Regulation should explicitly detail the obligations of a Payment Initiation Service Provider (PISP) in case an instant payment is initiated through a PISP. PISPs should have the obligation to carry out the IBAN-name check themselves, and not through the Account Servicing PSP.

5. Screening of PSUs with regard to Union sanctions in case of instant credit transfers – Article 5d

We welcome the Commission's intention to make the screening process for instant payments more efficient. However, this goal needs to be aligned with PSPs' compliance obligations under other pieces of legislation, including sanctions. The main issue related to intra-EU cross-border instant payments (or domestic instant payment in some countries) is the fact that they create a high level of false positive alerts generated in transaction screening, causing rejects. A move from transaction-based screening to full reliance on client database screening is therefore in principle a welcome proposal, provided appropriate safeguards are in place and there is sufficient alignment with applicable legal transaction-based screening requirements from other regulations (and regulators' expectations in that respect).

The EBF believes that overall the present legislative proposal may achieve the aim of reconciling instant payments with ensuring that no funds and economic resources shall be made available to or for the benefit of solely and directly listed parties on an EU sanctions list. However, this is only one of the many potentially relevant triggers under sanctions that, if applicable, PSPs need to comply with.

Regarding Article 5d, we would like to address these specific points:

Timing of verifications

- Paragraph 1 of Article 5d requires PSPs to immediately verify whether a person is listed ("PSPs shall carry out such verifications immediately [...]"). PSPs implement the adopted sanctions diligently and expeditiously as soon as they are published in the EU Official Journal but it is not possible to verify immediately after the publication of a new listed person if a customer is one of them. Indeed, sanctions lists are usually only available in the system with a delay of one day. New listings must also be processed manually. This includes defining screening criteria, processing alerts and, if necessary, consulting internally. Certain jurisdictions allow for up to two working days for this. We therefore suggest changing the wording from "immediately" to "as soon as possible" or "without undue delay", as well as from "carry out" to "initiate". In practical terms, this would mean that the task of determining whether a person is listed shall commence as soon as the list is published in the EU Official Journal.

Liability

- Section 3 requires that PSPs compensate each other for incurred damages in case the freezing requirement or the provision prohibition have been violated. "Damages" in this context are to be understood as penalty payments if an unauthorized transaction was carried out. EU Sanctions Law does not recognise strict liability, meaning that companies are only held liable for a sanctions violation if they intentionally or negligently violate sanctions regulations. Since the verification obligations lie solely with each institution on its customer, the PSP of the recipient of a real-time transfer cannot be held liable for failures of the institution of the originator and the PSP of the originator of a real-time transfer cannot be held liable for failures of the PSP of the recipient. It is therefore hardly possible to imagine constellations in which this regulation would apply. Responsibility must lie with the holder of the screening obligation. Otherwise, PSPs will have no other choice than continuing the filtering of instant payment transactions. For these reasons, only an exemption of responsibility could provide with sufficient comfort to credit institutions.

- The right of recourse against another (responsible party) could be difficult to exercise. For example, the party which is allegedly responsible may reject the claim against it by arguing that the penalty was unfounded in the first place or that the other PSP should have challenged it.
- The compensation mechanism envisaged with the proposal would still not address the potential reputational damages for the party being fined.
- The view adopted in the proposed text could also result in an unreasonable increase in liability for PSP's for failing to freeze funds. For example, due to a technical problem with its screening tool, a payee's PSP temporarily failed to verify whether its customers were listed persons or entities and as a result failed to freeze incoming transfer to one or more listed customers. As an example, there could be a hypothetical situation where those transfer originated from 10 different PSPs. If it would be true that those 10 payer's PSP's could still be penalised by their competent authorities and subsequently exercise a right of recourse against the payee's PSP, the payee's PSP could be held liable for 11 penalties (i.e. a penalty from its own competent authority and all the penalties imposed on the 10 other PSPs). We believe this is disproportionate.

Scope of sanctions regimes covered

- Third country regulation and/or current market practice/policies requires (international) banks to check against all relevant international sanctions lists issued and maintained, not only by the EU and its individual Member States, depending on the nexus of the involved bank, matter and/or transaction at hand. Having a common and uniform EU framework would make the screening process more efficient from an EU perspective only, it is however not a guarantee that a payment can be successfully executed, due to potentially applicable non-EU-compliance purposes. It should also be considered that while SEPA may seem a domestic channel, many SEPA payments are the final leg of an international transaction.
- Furthermore, payment prohibitions are found not only in freezing sanctions, but also in other restrictive measures under Article 215 TFUE (sectoral/trade sanctions). These other measures are not covered by the Proposal and could hamper the objective of the Instant Payment process. Meanwhile, EU sanctions are becoming more targeted and therefore these types of sanctions are used more often.

Penalties

- The new Article 5d also sets minimum penalties for infringements. EU sanctions regulations regularly contain a passage stating that Member States must set penalties that are "effective, proportionate and dissuasive" (cf. e.g. Regulation 269/2014, Article 5). No further requirements are made in this regard, because sanction enforcement falls under the jurisdiction of Member States. Deviating from this practice, Article 5d thus sets minimum penalties which, on the one hand, seem unreasonably high and, on the other hand, only apply to real-time transfers but not to other transactions. This is a very far-reaching departure from standard practice. The question that arises for us, therefore, is whether a change in the penalty provisions of sanctions regulations is to be expected. It seems greatly disproportionate to impose personal liability of this magnitude on compliance officers in credit institutions, especially since they can be held personally liable in the event of a sanctions violation. As mentioned, an implementation period is

needed for the implementation of the lists, during which either there is no penalty or no real-time transfers have to be executed.

6. Amendments to SEPA Regulation

We suggest to add the following in Article 1:

- **Definition of instant credit transfer**

We suggest amending the definition of instant payments in Article 1 in order to clarify that:

- the timestamp calculation is in line with the current EPC SCT Inst Rulebook that states that: *"... The execution time for an SCT Inst Transaction shall commence when the Originator PSP has determined that the SCT Inst Instruction meets all mandatory attributes for inter-PSP processing and the processing conditions of the Originator PSP. This means that the Originator PSP has received the SCT Inst Instruction and has applied Instantly all necessary checks to execute the SCT Inst Instruction (e.g., Originator authentication and authorisation, and availability of Funds)..."*
- the calculation does not start before the IBAN-name check has been performed.
- Article 1a(a) is aligned with PSD2 when it comes to the time of receipt of the payment order:

'instant credit transfer' means a credit transfer which meets all of the following conditions:

- (a) the time of receipt of the payment order for such credit transfer is the moment when the PSP receives the payment order given by the PSU payer instructs his or her PSP to execute that credit transfer, regardless of the day or hour;

- **Definition of 'PSU interface'**

In line with our comments in the previous sections, the definition of PSU interface should be limited to those interfaces where the offering of instant payments makes sense, i.e. one online interface (online banking or bank app).

- **Credit value date (paragraph 1a(d))**

This paragraph is redundant as this is a basic rule coming from PSD2.

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About EBF

The European Banking Federation is the voice of the European banking sector, bringing together national banking associations from across Europe. The federation is committed to a thriving European economy that is underpinned by a stable, secure, and inclusive financial ecosystem, and to a flourishing society where financing is available to