III

(Preparatory acts)

EUROPEAN CENTRAL BANK

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)

(2014/C 80/01)

Introduction and legal basis

On 14 January 2014, the European Central Bank (ECB) received a request from the Council of the European Union for an opinion on a proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 260/2012 as regards the migration to Union-wide credit transfers and direct debits ([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 and Article 3.1 of the Statute of the European System of Central Banks and of the European Central Bank, since the proposed regulation contains provisions falling within the ECB's fields of competence, in particular in connection with the basic Eurosystem task under Article 127(2) of the Treaty of promoting 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.

Purpose and content of the proposed regulation

On 9 January 2014, the European Commission published the proposed regulation, which would amend Regulation (EU) No 260/2012 of the European Parliament and of the Council ([2]) by introducing an additional transitional period of six months. Under the proposed regulation, a 'grandfathering clause' would allow banks and other payment service providers to process payments that are non-compliant with Regulation (EU) No 260/2012 until 1 August 2014, 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.

1. *General observations*

1.1. Immediately after the publication of the proposed regulation, the Eurosystem recognised in a statement ([3]) the strong and successful migration efforts that have been carried out by stakeholders in the euro area. The statement mentioned that the most recent information from national single euro payments area (SEPA) communities suggests that the pace of migration is high and accelerating, indicating that the vast majority of stakeholders will complete their migration on time.

1.2. The proposed regulation has given rise to confusion in the markets on the deadline for migration and thus there is an urgent need for clear guidance. A further concern is the lack of legal certainty in the event that the proposed regulation is only adopted after the current deadline, i.e. 1 February 2014. This

([1]) COM(2013) 937 final.

([2]) 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).

([3]) Press release of 9 January 2014. Available on the ECB's website at http://www.ecb.europa.eu

concern would partially be addressed by the proposed retroactive application of the proposed regulation, i.e. as of 31 January 2014. A situation where the current migration deadline applies until the proposed regulation is adopted, during which time the markets are uncertain as regards the adoption of the proposed regulation, should as far as possible be avoided.

1.3. It is therefore of the utmost importance to reinstate legal certainty, reduce the confusion in the markets and provide them with clear guidance about the deadline. These objectives can best be ensured by a fast adoption of the proposed regulation by the Council and the Parliament, without any further alterations to its core elements.

2. ***Specific observations***

Keeping the above objectives in mind, and to the extent that the fast track legislative procedure allows, the ECB proposes changes that aim at: (a) clarifying the scope of the proposed regulation (the introduction of an *additional* transitional period, by way of derogation) and its justification (SEPA migration is unlikely to be fully completed by 1 February 2014); (b) aligning the terminology of the proposed regulation with that of Regulation (EU) No 260/2012; and (c) ensuring that the effect of the transitional period on the imposition of penalties is made clear.

Where the ECB recommends that the proposed regulation is amended, specific drafting proposals are set out in the Annex accompanied by explanatory text to this effect.

Done at Frankfurt am Main, 22 January 2014.

The President of the ECB

Mario DRAGHI

ANNEX

Drafting proposals

Text proposed by the Commission	Amendments proposed by the ECB [1]
Amendment 1	
Recital 6	
'(6) As of 1 February 2014 banks and other payment service providers will have to refuse to accept processing credit transfers or direct debits that are not SEPA-compliant because of their legal obligations, although, as is currently already the case, they technically could process those payments by continuing to use existing legacy payments schemes alongside SCT and SDD. Failing a full migration to SCT and SDD, incidents involving payments leading to delays in those payments cannot be excluded. All payment services users and particularly SMEs and consumers could be affected.'	'(6) As of 1 February 2014 banks and other payment service providers will have to refuse to accept processing credit transfers or direct debits that are not SEPA-compliant because of their ~~legal~~ obligations **under Regulation (EU) No 260/2012**, although, as is currently already the case, they technically could process those payments by continuing to use existing legacy payments schemes alongside SCT and SDD. Failing a full migration to SCT and SDD, incidents involving payments leading to delays in those payments cannot be excluded. All payment services users and particularly SMEs and consumers could be affected.'
Explanation	
The term 'legal obligations' is vague and a reference could be made to Regulation (EU) No 260/2012.	
Amendment 2	
Recital 7	
'(7) It is essential to avoid unnecessary disruption of payments resulting from the fact that SEPA migration is not fully completed by 1 February 2014. (…) A transition period should therefore be introduced that allows for the continuation of such parallel processing of payments in different formats. (…) During the transitional period, Member States should refrain from applying penalties to payment service providers that process non-compliant payments and to payment service users that have not yet migrated.'	'(7) It is essential to avoid unnecessary disruption of payments resulting from ~~the fact that~~ SEPA migration ~~is not~~ **being unlikely to be** fully completed by 1 February 2014. (…) A**n additional** transition**al** period should therefore be introduced that allows for the continuation of such parallel processing of payments in different formats. (…) **It should be made clear that** ~~D~~**d**uring the **additional** transitional period, Member States ~~should~~ **must** refrain from applying penalties to payment service providers that process non-compliant payments and to payment service users that have not yet migrated.'
Explanation	
The phrase 'the fact that SEPA migration is not fully completed by 1 February 2014' is contradicted by recital 5 which reads 'it is therefore very unlikely that all market participants will be SEPA-compliant by 1 February 2014'. The two recitals should be streamlined. Moreover, the terminology 'additional transitional period' should be consistently applied. Finally, for the sake of legal certainty, the non-applicability of penalties as a result of and during the additional transitional period must be stated as a fact.	
Amendment 3	
Article 1(1)	
'1. Notwithstanding 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 SEPA credit transfers and SEPA direct debits.'	'1. ~~Notwithstanding~~ **By way of derogation from** Article 6(1) and (2), PSPs may continue, until 1 August 2014, to process payment transactions in euro in **legacy** formats that are different from those required for ~~SEPA~~ credit transfers and ~~SEPA~~ direct debits **under this Regulation**.'

Text proposed by the Commission	Amendments proposed by the ECB [1]

Explanation

The term 'by way of derogation' is taken from the current text of Regulation (EU) No 260/2012 and is legally precise. The terms 'SEPA credit transfers' and 'SEPA direct debits' are not defined in Regulation (EU) No 260/2012. For the sake of legal certainty, the scope of the derogation must be clear.

Amendment 4

Article 1(1), second paragraph

'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, only as of 2 August 2014.'	'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, only as of 2 August 2014 **and only with regard to payment transactions initiated on or after 2 August 2014**.'

Explanation

In order to ensure legal certainty, it must be made clear that penalties for transactions processed during the additional transitional period are excluded.

Amendment 5

Article 1(1), third paragraph

'By way of derogation from Article 6(1) and (2), Member States may allow PSPs to provide PSUs, until 1 February 2016, with conversion services for national payment enabling PSUs that are consumers to continue using BBAN instead of the payment account identifier specified in point (1)(a) of the Annex on condition that interoperability is ensured by converting the payer's and the payee's BBAN technically and securely into the respective payment account identifier specified in point (1)(a) of the Annex. (…)'	'By way of derogation from Article 6(1) and (2), Member States may allow PSPs to provide PSUs, until 1 February 2016, with conversion services for national payment **transactions** enabling PSUs that are consumers to continue using BBAN instead of the payment account identifier specified in point (1)(a) of the Annex on condition that interoperability is ensured by converting the payer's and the payee's BBAN technically and securely into the respective payment account identifier specified in point (1)(a) of the Annex. (…)'

Explanation

Alignment with the terminology of Regulation (EU) No 260/2012.

[1] Bold in the body of the text indicates where the ECB proposes inserting new text. Strikethrough in the body of the text indicates where the ECB proposes deleting text.