



EUROPEAN CENTRAL BANK  
EUROSYSTEM

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## OPINION OF THE EUROPEAN CENTRAL BANK

of 1 February 2023

on a proposal for a regulation amending Regulations (EU) No 260/2012 and (EU) 2021/1230 as regards instant credit transfers in euro

(CON/2023/4)

### Introduction and legal basis

On 16 and 24 November 2022 the European Central Bank (ECB) received requests from the Council of the European Union and the European Parliament, respectively, for an opinion on a proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 260/2012 and Regulation (EU) 2021/1230 as regards instant credit transfers in euro<sup>1</sup> (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 since the proposed regulation contains provisions falling within the ECB’s fields of competence pursuant to Article 127(2) TFEU and Article 3.1 of the Statute of the European System of Central Banks and of the European Central Bank, in particular in connection with the basic task of the European System of Central Banks to promote 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.

### 1. General observations

1.1 The ECB strongly welcomes the initiative of the European Commission to promote the provision and uptake of instant payments (IPs), defined as credit transfers that transfer funds to the payee’s payment account within ten seconds after the time of receipt of the payment order from the payer, in euro in the EU. This initiative ties in well with the Eurosystem’s retail payments strategy,<sup>2</sup> the main elements of which are: (a) the development of a pan-European solution for retail payments at the point of interaction; (b) the full deployment of IPs; (c) the improvement of cross-border payments beyond the EU; and (d) the support for innovation, digitalisation and a European payments ecosystem.

1.2 In order to promote the smooth operation of payment systems, it is essential to address fragmentation issues across the Single Euro Payments Area (SEPA). Currently, the provision of IPs is not available in all SEPA jurisdictions on an equal footing. In this context, measures that further harmonise the provision of IPs across SEPA jurisdictions would increase consumer choice and foster innovation, safety and open strategic autonomy in European payments. In the same vein, measures that can promote efficiency across SEPA should also be supported, to the extent that compliance with the applicable data

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<sup>1</sup> COM(2022) 546 final.

<sup>2</sup> See the Eurosystem’s retail payments strategy, available on the ECB website at [www.ecb.europa.eu](http://www.ecb.europa.eu).

protection legislation is ensured. The possibility of setting up standardised, and/or possibly centralised, pan-European solutions for discrepancy checks, to be made available by payment service providers (PSPs) before the authorisation of IPs or before the funds are credited on the beneficiary account, should be usefully explored, for example by the Eurosystem leveraging its central position in the instant payment landscape, allowing it to reach all relevant counterparties.

1.3 The provision and uptake of IPs have grown in the Union since the launch of the SEPA Instant Credit Transfer (SCT Inst) scheme in 2017, but they have not yet become the new normal, as could have been expected. The ECB continues to encourage market participants to implement IPs on a pan-European basis and to support end user take-up as soon as possible. In November 2018, the ECB launched the TARGET instant payment settlement (TIPS) service, making it easier for PSPs to offer IPs and enabling them to settle IPs immediately, safely and at any time. As of 2022, all PSPs that adhere to the SCT Inst scheme and are reachable in TARGET2 must be reachable via TIPS as well, contributing to the pan-European reachability (or interoperability) of PSPs offering IPs at the technical, market infrastructure level.

1.4 The ECB notes the exclusion of electronic money institutions (EMIs) and payments institutions (PIs), which would otherwise be required to offer all of their payment services users (PSUs) a payment service for sending and receiving IPs, as they cannot participate in the settlement systems designated under Directive 98/26/EC of the European Parliament and of the Council<sup>3</sup> (hereinafter the 'Settlement Finality Directive')<sup>4</sup>. The ECB understands that if the scope of the Settlement Finality Directive is extended so as to include EMIs and PIs, these PSPs should then also comply with the requirement to offer all of their PSUs a payment service for sending and receiving IPs, as they would participate directly in the settlement systems designated under that Directive.

The ECB supports the requirement for the affected PSPs to offer IPs at the same cost as non-IPs. The ECB also welcomes the introduction of a simplified sanction screening process to overcome the current transaction-based model, without lowering the effectiveness of sanctions screening. Additionally, the ECB supports the proposed introduction of a service for detecting discrepancies between the payee's international bank account number (IBAN) and name. Such a service has the potential to reduce errors and fraud in IPs. However, an associated fee for this service may be dissuasive and in conjunction with the opt-out provision may result in a low uptake of this additional protection for payers, whilst still mandating an investment cost for PSPs to develop the service. The requirements on how the discrepancy checking service should be implemented are not too prescriptive, which allows the needed flexibility for the market to develop solutions. However, a harmonised approach would prevent potential fragmentation issues arising. It is also important to allow sufficient time for the market to develop and implement appropriate measures which do not undermine the speed of IPs as this could challenge their deployment at the point of sale.

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<sup>3</sup> Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (OJ L 166, 11.6.1998, p. 45).

<sup>4</sup> Article 1, point (2) of the proposed regulation.

## 2. Specific observations

### 2.1 Defined terms

Certain terms defined in the proposed regulation may (a) require alignment with those used in Directive (EU) 2015/2366 of the European Parliament and of the Council<sup>5</sup> (hereinafter the 'Payment Services Directive' (PSD2)) and (b) call for amendments to Directive 2014/92/EU of the European Parliament and of the Council<sup>6</sup> (hereinafter the 'Payment Account Directive' (PAD)) and Directive (EU) 2019/882 of the European Parliament and of the Council<sup>7</sup> (hereinafter the 'European Accessibility Act' (EAA)). Specifically, the definition of 'payment account identifier', as introduced in the proposed regulation, would be the same as 'unique identifier' defined in the PSD2<sup>8</sup>. The ECB suggests that, in the light of this, the Union legislator considers using the same terminology in the proposed regulation. Moreover, 'credit transfer' is a term already defined in the PAD<sup>9</sup>. The ECB proposes that, for consistency reasons, that definition is aligned with the 'instant credit transfer' definition introduced by the proposed regulation. In this respect, the PAD<sup>10</sup> emphasises the need to ensure alignment of the definitions contained therein with those contained in the PSD2 and Regulation (EU) No 260/2012 of the European Parliament and of the Council<sup>11</sup>. In addition, the EAA contains a definition of 'payment terminal' with a meaning similar to that of 'PSU interface' as introduced by the proposed regulation. The ECB suggests that the Union legislator considers amending the EAA to align the definition of 'payment terminal' with the one of 'PSU interface'. Finally, to ensure systematic coherence, it is important to consider the defined terms introduced by the proposed regulation in the context of the upcoming amendments to the PSD2.

### 2.2 Discrepancies between the name and payment account identifier of a payee

According to the explanatory memorandum accompanying the proposed regulation, PSPs may charge an additional fee for the service of detecting discrepancies between the name and payment account identifier of a payee<sup>12</sup>. An additional fee for detecting discrepancies could, on the one hand, have a dissuasive effect on the PSUs, which may not be conducive to the provision and uptake of IPs. On the other hand, in the context of IPs, this discrepancy checking service is crucial. For this reason, the proposed regulation should be amended to avoid that PSUs either do not use IPs or opt out of the discrepancy checking service due to the fees associated with it. Irrespective of the uptake of the service by PSUs, the proposed regulation obliges PSPs to offer the service, necessitating investment costs. In some Member States (e.g. the Netherlands), a mandatory IBAN check against the name of the payee is already in place, provided by all PSPs in respect of IBANs for domestic accounts at no additional charge. A harmonised approach to such

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<sup>5</sup> Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35).

<sup>6</sup> Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features (OJ L 257, 28.8.2014, p. 214).

<sup>7</sup> Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services (OJ L 151, 7.6.2019, p. 70).

<sup>8</sup> See Article 4, point (33) of the PSD2.

<sup>9</sup> See Article 2, point (20) of the PAD.

<sup>10</sup> See recital 14 of the PAD.

<sup>11</sup> 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).

<sup>12</sup> See p. 10 of the Explanatory Memorandum to the proposed regulation.

IBAN checks across SEPA may be beneficial and more cost-efficient, potentially leading to, for example, the introduction of a common scheme and/or the provision of the service in a centralised way.

### 2.3 *Screening IPs for Union sanctions*

The affected PSPs must carry out screening checks with regard to Union sanctions immediately after the entry into force of any restrictive measures adopted in accordance with Article 215 TFEU<sup>13</sup>. In this respect, the ECB would like to make three points.

*First*, the proposed regulation does not absolve the relevant PSP from complying with relevant national sanctions applied against a relevant person, body or entity.

*Second*, restrictive measures adopted in accordance with Article 215 TFEU may enter into force on the day of their publication in the Official Journal of the European Union or on the day following their publication. In order to ensure that these restrictive measures are applied promptly by the affected PSPs, the ECB suggests that affected PSPs are obliged to carry out such verifications immediately after publication of the restrictive measures in the Official Journal (instead of immediately after entry into force), facilitating compliance in all cases where the date of entry into force is later than that of publication.

*Third*, and to ensure legal certainty, the ECB is conscious of the potentially beneficial role that legal entity identifiers (LEIs) could play in the context of screening checks with regard to Union sanctions and/or as a global identification standard for counterparts in respect of the discrepancy checking service. The latest EPC guidance relating to the planned migration of the EPC payment scheme rulebooks to the 2019 version of the ISO 20022 messaging standard by November 2023, envisages LEIs as alternative identifiers for a 'non-private' party<sup>14</sup>. This would address technical obstacles at EPC payment scheme level. While the reliance on LEIs is dependent on their broader implementation, including a reference to the potential use of LEIs in the proposed sanctions screening provision would show that the European Union supports the use and promotion of this global standard.

### 2.4 *Infringement procedures*

To prevent a scenario whereby planned downtime of the SCT Inst scheme would inadvertently result in PSPs breaching Union law, the ECB suggests that a caveat is included in the proposed regulation. Accordingly, the ECB proposes to exempt PSPs from infringement proceedings in the highly exceptional scenario that the SCT Inst scheme is unavailable for a short period of time, as approved by its respective governance body, thus preventing the processing of IPs.

Where the ECB recommends that the proposed regulation is amended, specific drafting proposals are set out in a separate technical working document accompanied by an explanatory text to this effect. The technical working document is available in English on EUR-Lex.

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13 See Article 1, point (2) of the proposed regulation.

14 See the guidance available on the EPC website at [www.europeanpaymentscouncil.eu](http://www.europeanpaymentscouncil.eu).

Done at Frankfurt am Main, 1 February 2023.

[signed]

*The President of the ECB*

Christine LAGARDE





Technical working document

produced in connection with ECB Opinion CON/2023/4 on a proposal for a regulation amending Regulations (EU) No 260/2012 and (EU) 2021/1230 as regards instant credit transfers in euro

Drafting proposals in relation to a 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

Text proposed by the European Commission	Amendments proposed by the ECB <sup>1</sup>
<p>Amendment 1</p> <p>Recital 13 of the proposed regulation</p>	
<p>'(13) Authorising a payment transaction where the PSP has detected a discrepancy and has notified that discrepancy to the PSU can result in the funds being transferred to an unintended payee. In such cases, PSPs should not be held liable for the execution of the transaction to an unintended payee, as laid down in Article 88 of Directive (EU) 2015/2366. PSPs should inform PSUs about the implications for PSP liability and PSU refunds rights of their choice to ignore the notified discrepancy. PSUs should be able to opt out from using that service at any time during their contractual relationship with the PSP. After opting out, PSUs should be able to opt in to again avail of the service.'</p>	<p>'(13) Authorising a payment transaction where the PSP has detected a discrepancy and has notified that discrepancy to the PSU can result in the funds being transferred to an unintended payee. In such cases, PSPs should not be held liable for the execution of the transaction to an unintended payee, as laid down in Article 88 of Directive (EU) 2015/2366. <b>PSUs should be able to opt out from using that service at any time during their contractual relationship with the PSP. After opting out, PSUs should be able to opt in again to avail of the service.</b> PSPs should inform PSUs about <b>the possibility to opt out from the service</b> and the implications for PSP liability and PSU refunds rights of their choice to ignore the notified discrepancy. <del>PSUs should be able to opt out from using that service at any time during their contractual relationship with the PSP. After opting out, PSUs should be able to opt in to again avail of the service.'</del></p>

<sup>1</sup> 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.

Text proposed by the European Commission	Amendments proposed by the ECB <sup>1</sup>
<p style="text-align: center;"><u>Explanation</u></p> <p><i>The ECB suggests that the proposed regulation is amended to include an explicit provision on the duty of payment service providers (PSPs) to inform payment service users (PSUs) about the possibility to opt out from the service.</i></p> <p><i>See paragraph 2.2 of the ECB Opinion.</i></p>	
<p style="text-align: center;">Amendment 2</p> <p style="text-align: center;">Recital 14 of the proposed regulation</p>	
<p>‘(14)</p> <p>[...]</p> <p>To provide for greater legal certainty, increase the efficiency of PSPs’ efforts to comply with their obligations stemming from Union sanctions in the context of instant credit transfers in euro, and to prevent unnecessary hindering of such transactions, PSPs should thus verify, at least daily, whether their PSUs are listed persons or entities, and should no longer apply transaction-based screening.’</p>	<p>‘(14)</p> <p>[...]</p> <p>To provide for greater legal certainty, increase the efficiency of PSPs’ efforts to comply with their obligations stemming from Union sanctions in the context of instant credit transfers in euro, and to prevent unnecessary hindering of such transactions, PSPs should thus verify, at least daily, whether their PSUs are listed persons or entities, and should no longer apply transaction-based screening. <b>The use of legal entity identifiers (LEIs) could play a potential beneficial role in this context and also in respect of the discrepancy checking service.’</b></p>
<p style="text-align: center;"><u>Explanation</u></p> <p><i>To ensure legal certainty regarding the performance of screening checks with regard to Union sanctions, the ECB is conscious of the potentially beneficial role that legal entity identifiers (LEIs) could play. This global identification standard for counterparts could also be useful in respect of the discrepancy checking service. Referencing the use of LEIs would show that the European Union supports the use and promotion of this global standard.</i></p> <p><i>See paragraph 2.3 of the ECB Opinion.</i></p>	
<p style="text-align: center;">Amendment 3</p> <p style="text-align: center;">Recital 15 of the proposed regulation</p>	



Text proposed by the European Commission	Amendments proposed by the ECB <sup>1</sup>
<p>‘(15) To prevent the initiation of instant credit transfers from payment accounts belonging to listed persons or entities and to immediately freeze funds sent to such accounts, PSPs should carry out verifications of their PSUs as soon as possible following the entry into force of a new restrictive measure adopted in accordance with Article 215 TFEU providing for asset freeze or prohibition of making funds or economic resources available, thus ensuring that PSPs comply with their obligations stemming from Union sanctions in an effective manner.’</p>	<p>‘(15) To prevent the initiation of instant credit transfers from payment accounts belonging to listed persons or entities and to immediately freeze funds sent to such accounts, PSPs should carry out verifications of their PSUs as soon as possible following the <del>entry into force</del> <b>publication in the Official Journal of the European Union</b> of a new restrictive measure adopted in accordance with Article 215 TFEU providing for asset freeze or prohibition of making funds or economic resources available, thus ensuring that PSPs comply with their obligations stemming from Union sanctions in an effective manner.’</p>
<p style="text-align: center;"><u>Explanation</u></p> <p><i>In view of the need to ensure timely application of sanctions, the ECB suggests that the proposed regulation is amended by providing that PSPs should carry out verifications as soon as possible following publication of the restrictive measures in the Official Journal of the European Union and in any event before their entry into force.</i></p> <p><i>See paragraph 2.3 of the ECB Opinion.</i></p>	

Text proposed by the European Commission	Amendments proposed by the ECB <sup>1</sup>
Amendment 4 Point (1)(a) of Article 1 of the proposed regulation (Article 2, point (1c) of Regulation (EU) No 260/2012)	
<p>[...]</p> <p>(1c) “payment account identifier” means a unique identifier as defined in Article 4, point (33), of Directive (EU) 2015/2366 of the European Parliament and of the Council<sup>*1</sup>;</p> <p>[...]</p> <p><sup>*1</sup> Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35).’</p>	<p>[...]</p> <p>(1c) “<del>payment account</del> <b>unique</b> identifier” means a ‘unique identifier’ as defined in Article 4, point (33), of Directive (EU) 2015/2366 of the European Parliament and of the Council<sup>*1</sup>;</p> <p>[...]</p> <p><sup>*1</sup> Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35).’</p>
<p><u>Explanation</u></p> <p><i>In view of the need to ensure consistency with existing defined terms, the ECB suggests that the proposed regulation uses the same terminology as provided for by Directive (EU) 2015/2366 of the European Parliament and of the Council<sup>2</sup>. See paragraph 2.1 of the ECB Opinion.</i></p>	
Amendment 5 Point (2) of Article 1 of the proposed regulation (Article 5d(1) of Regulation (EU) No 260/2012)	
<p>‘1. PSPs executing instant credit transfers shall verify whether any of their PSUs are listed persons or entities. PSPs shall carry out such verifications immediately after the entry into force of any new or amended restrictive measures adopted in accordance with Article 215 TFEU providing for asset freeze or prohibition of making funds or economic resources available, and at least once every calendar day.’</p>	<p>‘1. PSPs executing instant credit transfers shall verify whether any of their PSUs are listed persons or entities. PSPs shall carry out such verifications <del>immediately</del> <b>as soon as possible after the publication in the Official Journal of the European Union, before</b> the entry into force, of any new or amended restrictive measures adopted in accordance with Article 215 TFEU providing for asset freeze or prohibition of making funds or</p>

<sup>2</sup> Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35).

Text proposed by the European Commission	Amendments proposed by the ECB <sup>1</sup>
	economic resources available, and at least once every calendar day.'
<u>Explanation</u> <i>See explanation for Amendment 3 above.</i>	
Amendment 6 Point (3) of Article 1 of the proposed regulation (Article 11(1a) of Regulation (EU) No 260/2012)	
<p>'1a. By way of derogation from paragraph 1, Member States shall by ... [PO please insert the date = 4 months after the date of entry into force of this Regulation] lay down rules on the penalties applicable to infringements of Articles 5a to 5d and shall take all measures necessary to ensure that they are implemented. Such penalties shall be effective, proportionate and dissuasive.</p> <p>[...]</p>	<p>'1a. By way of derogation from paragraph 1, Member States shall by ... [PO please insert the date = 4 months after the date of entry into force of this Regulation] lay down rules on the penalties applicable to infringements of Articles 5a to 5d and shall take all measures necessary to ensure that they are implemented. Such penalties shall be effective, proportionate and dissuasive. <b>No penalty shall be applied in respect of point (c) of Article 5a(2) where the payment accounts maintained by PSPs are not reachable for instant credit transfers due to a planned downtime of all SEPA Instant Credit Transfer (SCT Inst) scheme-based payment services.</b></p> <p>[...]</p>
<u>Explanation</u> <i>To prevent a scenario whereby a planned downtime of the SEPA Instant Credit Transfer (SCT Inst) scheme would result in PSPs breaching their obligations under Union law, the ECB proposes to amend the proposed Article 11(1a). The ECB suggests exempting PSPs from infringement proceedings for a specified period in the highly exceptional scenario that the SEPA SCT Inst scheme-based services is unavailable for a short period of time, as approved by its respective governance body, thus preventing the processing of IPs.</i>  <i>See paragraph 2.4 of the ECB Opinion.</i>	

**Drafting proposals in relation to Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features**

Amendment 1	
Article 2, point (20) of Directive 2014/92/EU	
No text	‘(20) “credit transfer” means a national or cross-border payment service for crediting a payee’s payment account with a payment transaction or a series of payment transactions from a payer’s payment account by the payment service provider which holds the payer’s payment account, based on an instruction given by the payer, <b>including an instant credit transfer as defined in point (1a) of Article 2 of Regulation (EU) No 260/2012;</b> ’
<u>Explanation</u>	
<p><i>For consistency reasons, and to ensure alignment with the proposed regulation, the ECB suggests that the existing definition of ‘credit transfer’ should be broadened to include a reference to ‘instant credit transfer’.</i></p> <p><i>See paragraph 2.1 of the ECB opinion.</i></p>	

**Drafting proposals in relation to Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services**

Amendment 1	
Article 3, point (29) of Directive (EU) 2019/882	
No text	<p>‘(29) “payment <del>terminal</del> <b>interface</b>” means <b>any method, a device or procedure</b> the main purpose of which is to allow payments to be made by using payment instruments as defined in point (14) of Article 4 of Directive (EU) 2015/2366 <b>via online banking, mobile banking applications, automated teller machines, or in any other way</b> at a physical point of sale <del>but not in a virtual environment;</del>’</p>
<p><u>Explanation</u></p> <p><i>For consistency reasons, and to ensure alignment with the proposed regulation, the ECB suggests that the existing definition of ‘payment terminal’ should be aligned with the definition of ‘PSU interface (payment service user interface)’.</i></p> <p><i>See paragraph 2.1 of the ECB Opinion.</i></p>	