



FEDERATION BANCAIRE DE L'UNION EUROPEENNE

4/7-22
PP/MT
N° C0635

MemberNet

Brussels, 5 May 2006

Circulation: Associates
Executive Committee

22nd MEETING OF THE ASSOCIATES
- Istanbul, 19 May 2006 -

ITEM 8 OF THE AGENDA: PAYMENTS SYSTEMS

Two parallel projects are underway in Europe:

- The building of the Single Euro Payments Area (**SEPA**), driven by the European Payments Council (EPC) of which the EBF is a leading member.
- The passing of new legislation by the European Union on payments: **the Payments Services Directive**
The full text of the draft directive can be found on the European Commission's website:
http://europa.eu.int/comm/internal_market/payments/index_en.htm

A presentation on both these projects will be made by Patrick Poncelet, Head of the Payments Department during the meeting.

We attach as background documents:

- Copy of the Presentation (enclosure 1)
- EPC's position on the Payments Services Directive proposal (enclosure 2)

* * *

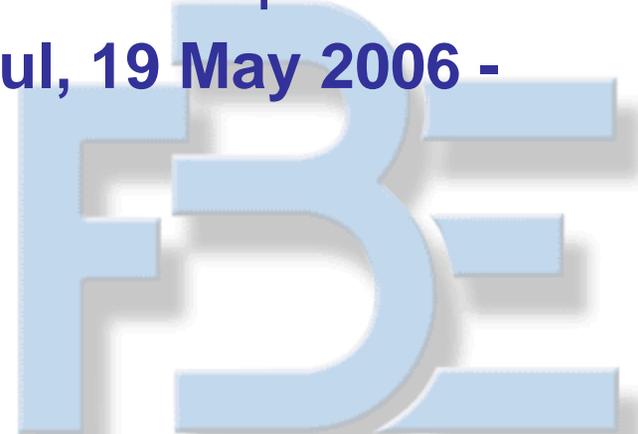
Enclosures: 2

VIII. PAYMENT SYSTEMS

Patrick Poncelet

Head of Payments & Securities Dept.

- Meeting of the Associates, Istanbul, 19 May 2006 -



Agenda

1. Realisation of the Single Euro Payments Area: SEPA

- The EPC Declaration of 17 March 2005
- The EPC deliverables and timeline
- The EPC cooperation model
- The SEPA programme risks

2. The Payments Services Directive

3. Conclusions



Roadmap: primary deliverables EPC Declaration 17th March 2005

We will deliver the **two new Pan-Euro Payment Schemes** for electronic **credit transfer** and for **direct debits**. We will also design a **Cards Framework** to define a single market for cards. The scheme rulebooks and the cards framework definition will be delivered by end 2005, and the services will be operational by January 2008.

We know from feedback from our community in the eurozone that by the **beginning of 2008** the vast majority of **banks will offer these new Pan-Euro services to their customers**.

We are also convinced that **a critical mass of transactions will naturally migrate** to these payment instruments **by 2010** such that SEPA will be irreversible through the operation of **market forces** and **network effects**.

SEPA will be delivered by the banking industry in close conjunction with all stakeholder communities (consumers, SMEs, merchants, corporates and government bodies) **and supportive public authorities**. The community of European banks is strongly committed to this ambitious programme of action, based on self-regulation and a full recognition of the role of market forces and competition.



What does SEPA mean for users

Consumers

- Reachability of **all** bank accounts in Eurozone with the **same payment instruction** based on common standards
- Possibility of **card acceptance in all ATM's** and **POS terminals** (provided the merchant accepts the card brand and standards)

Merchants

- **More acquiring options** by SEPA compliant acquirers (and more common standards for acquiring)
- Common approach to reduce the costs and risks of cash

Corporates, public administrations and SME's

- Reachability of **all** bank accounts in the Eurozone with the **same payment instruction** (direct debit and credit transfer)
- Guaranteed remittance data for Euro payments
- Use of ISO standards

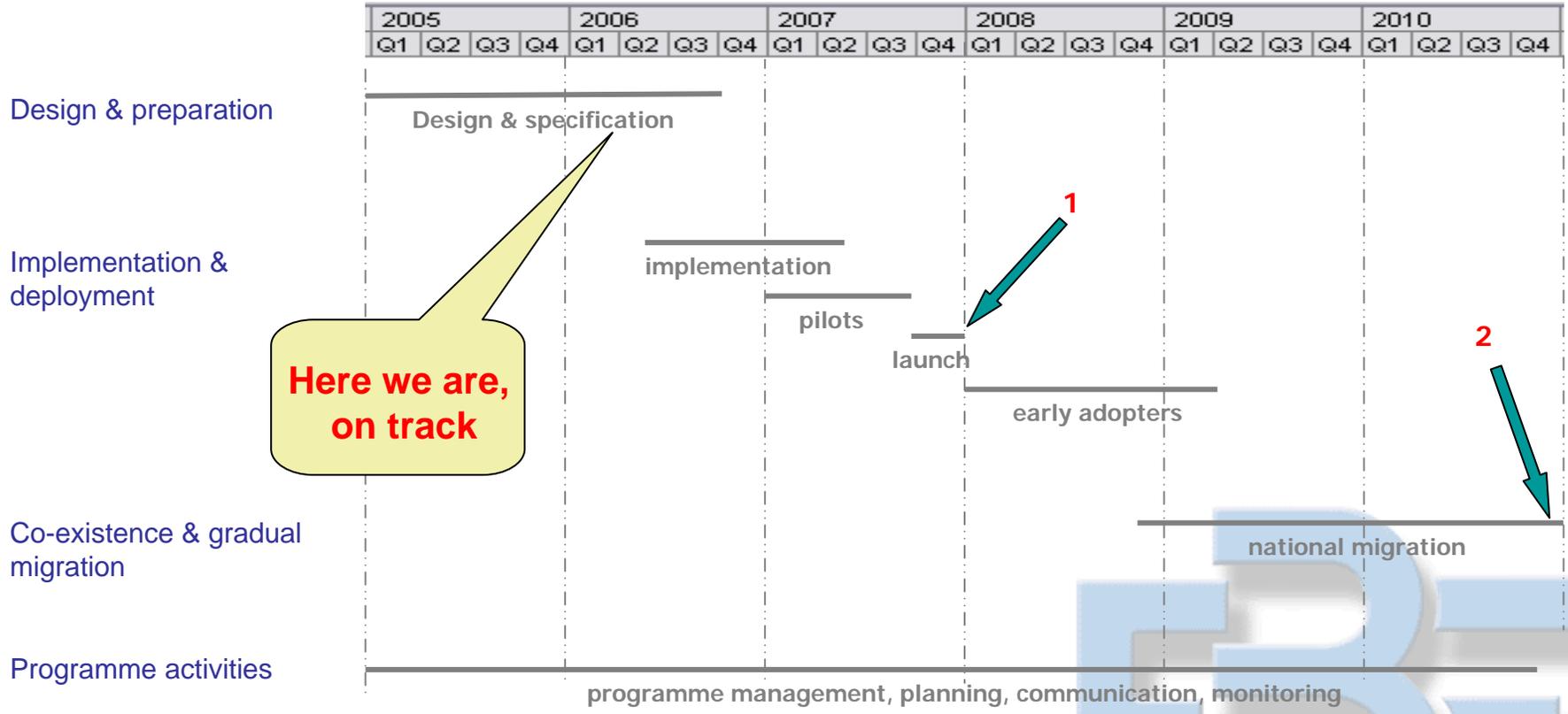


The EPC Deliverables

- SEPA Credit Transfer System Rulebook (approved)
- SEPA Direct Debit System Rulebook (approved)
- SEPA Card Framework (approved)
- SECA (Cash) Framework (approved)



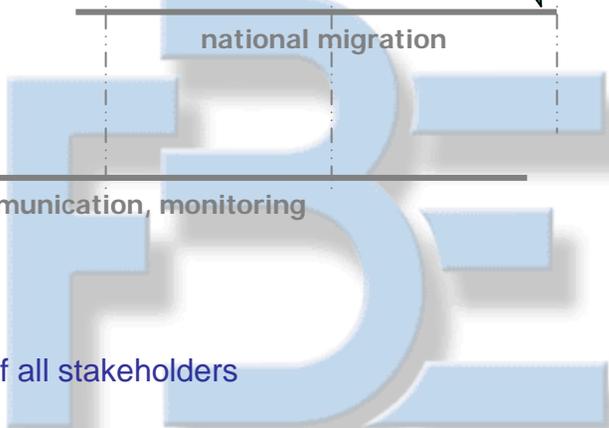
SEPA programme timeline



Here we are, on track

Milestones

- 1** - SEPA instruments available in market
- 2** - Critical mass migrated/SEPA irreversible subject to the commitment of all stakeholders



Cooperation model with SEPA stakeholders

- SEPA can only be realised if all European and national stakeholders are committed for the same agenda and deliverables
- Design Model: European

Public Authorities	Banks and their customers	Customer associations
<ul style="list-style-type: none"> • ECB (Eurosystem) • European Commission 	<p>EPC: Major banks with a fair representation of the smaller banks (represented by banks or associations) together with customers</p>	<ul style="list-style-type: none"> • Corporates (treasurers): EACT • Public administrations: EC • Merchants: Eurocommerce • SME's : UEAPME • Consumers: BEUC

• Implementation Model: National

<ul style="list-style-type: none"> • NCB • MoF 	<ul style="list-style-type: none"> • All Banks • NBA 	<ul style="list-style-type: none"> • Corporates • Public administrations • Merchants • SME's • Consumers
--	--	---



SEPA risk management for primary deliverables (1/2)

#	Risk and issue owner(s)	Mitigation	Impact	Probability
1	Delivery of EPC design deliverables [EPC]	Continue to plan and manage activities of Working & Support Groups/ROC in developing and finalising deliverables consistent with track record to date	HI	LO
2	Full adherence to Schemes to achieve full reachability of all banks [EPC & Banks]	Need for reachability resolution and full promotional activities within national communities towards member banks	HI	LO
3	Inability to agree Interchange Arrangement for direct debits [EPC & EU]	EPC project to come to successful conclusion, including approval of DG Comp	HI	MED
4	Implementation of new UNIFI (ISO20022) XML message standards [Banks]	Mobilisation of bank IT community, including vendors and SWIFT	HI	LO
5	The proper legal Framework for SEPA schemes not in place in all member states by 1/1/2008 [EU & Member States]	In the hands of the political process	HI	HI

SEPA risk management for primary deliverables (2/2)

#	Risk and issue owner(s)	Mitigation	Impact	Probability
6	Customers do not take up new SEPA instruments [Banks]	Banks develop product propositions for customer segments. EPC to support national communities with communication materials. Public administrations as early adopters	HI	MED
7	Implementation projects at national level [National Communities]	National communities to create robust organisations and plans, with support of national public authorities. EPC monitoring process to be developed	HI	LO
8	Cards market non-compliance with SCF [Banks & Schemes]	Banks to influence card schemes and merchant acceptance.	HI	LO
9	Clearing & Settlement Mechanisms (CSM) failure to engage [Banks & CSMs]	Banks to manage their CSMs to create a critical mass of scheme-compliant CSMs	HI	LO
10	Destabilisation impact of Incentives Project & regulatory threats [EU]	Lobby European and national governments to support SEPA in a realistic and constructive manner	HI	MED

Payments Services Directive

- **Main objective?: Creation of Single Euro Payments Area from January 2008**
- **The EPC welcomes legal harmonisation for SEPA**
- **However, the EPC has several comments:**
 - **Suggestions for drafting changes** to support SEPA Rulebooks (refund rule, IBAN primacy, protection rules for consumers and for corporates, working day, etc.)
 - **Execution times**
 - **Payment Institutions**
 - **One transaction leg outside EU 25**
 - **Strict liability**
 - **Information requirements**
 - **Gold plating**



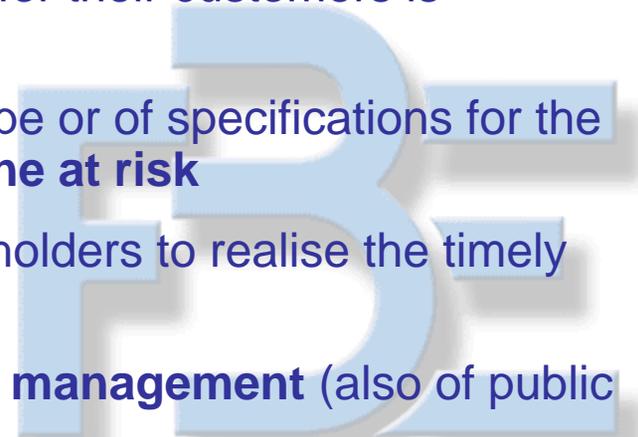
EPC Incentives Proposals

- **Don't** introduce any destabilising incentives
-
- **Do** support the SEPA programme of the EPC Declaration of 17 March 2005
 - **Do** accept the January 2008 SEPA payment services of banks based on the two SEPA Rulebooks
 - **Do** support with a clear and consistent communication programme to realise SEPA
 - **Do** realise the necessary parts for SEPA of the legal framework in time
 - **Do** take care that public administrations are the first users from January 2008
 - **Do** become a partner in the implementation and migration process
 - **Do** introduce effective incentives for early adopters
 - **Do** support the (re)positioning of cash in society



Conclusions

- The EPC was able to create a **commitment of banks**, after consultation of customers and customer groups, for the first **SEPA deliverables** so that banks are able to deliver **SEPA payment services** to their customers **from January 2008**, as agreed in the EPC Declaration of 17 March 2005
- SEPA can only be realised if **all stakeholders** (in particular **national public authorities**, but also corporates, public administrations, merchants, SME's, consumers and banks) **are committed** to support the implementation process and/or to implement the SEPA deliverables
- A clear and consistent **common communication programme** of **national public authorities** for citizens and corporates and of **banks** for their customers is necessary to realise SEPA in time
- **Destabilising interventions** such as changes of scope or of specifications for the January 2008 deliverables **will put the 2008 milestone at risk**
- **Positive incentives** of public authorities for **all stakeholders** to realise the timely implementation of SEPA are welcome
- At national level a **reinforcement of the programme management** (also of public authorities) is needed to deliver in time





Doc EPCNLF_SG008_06
(final)

20 April 2006
RW

EPC Position on the Payments Directive Proposal

Introduction

The European Payments Council (EPC) is the decision-making and coordination body of the European banking industry in relation to payments. Its declared purpose is to support and promote the creation of the Single Euro Payments Area (SEPA), covering the EU 25, the EEA countries and Switzerland for Euro payments. SEPA will work as a single domestic payments market in which citizens and economic actors will be able to make payments as easily and inexpensively as in their hometown. According to the EPC-Roadmap 2004 – 2010, SEPA will be delivered by the European banking industry in 2008. In line with those primary deliverables, the European banking industry finalised in March of 2006 a set of fully fit-for-purpose European payments schemes for core and basic services covering direct debits and credit transfers and a framework for card transactions.

In order to build SEPA on a stable harmonized legal foundation, the EPC welcomes the Commission's aim of providing a single, uniform legal framework for payments within the EU single market, which it seeks to achieve by means of its Proposal for a Payment Service Directive. For the SEPA project it is crucial that the necessary European legislation, allowing the withdrawal of legal obstacles at a national and European level, will be completed in time with the planned launch of SEPA in 2008.

EPC has a number of practical and detailed amendments, as the current proposal does not yet properly reflect reality. Legislative intervention in payments is very difficult due to the complexity of this area. Payments cannot be considered in isolation and the attempt of providing legislation covering all elements and instruments of the payment business is a very challenging exercise.

In summary the EPC's key concerns/comments regarding the proposed Payment Service directive are as follows:

1. Necessary drafting changes in order to support SEPA
2. Harmonization
3. Execution times: a competition issue
4. Level-Playing field with non-bank Payment Service Providers
5. Strict Liability
6. Scope issue: leg-out transactions
7. Information requirements

The EPC position is set out in two sections, General Remarks and the Annex.

The General remarks set out the broader issues that are of concern to the European payments industry. Section I relates to drafting issues and the SEPA schemes and Sections II – VII review the major issues inherent in the proposed text, which EPC regards as of serious consequence for SEPA and beyond.

The Annex provides concrete amendments to the legislative proposal.



1) General Remarks

I. Drafting changes to support the SEPA Scheme Rulebooks

The commitment to create SEPA lies at the centre of the development of the Internal Market for Payments in Europe. After successful approval of the SEPA Electronic Credit Transfer and Direct Debit Rulebooks as well as the SEPA Cards Framework on the 8th of March EPC Plenary we are now in a position to provide drafting proposals that are essential for our SEPA project. EPC would like to see a number of improvements in the directive's text.

Refund Rule: The Refund Rule is only suitable for 'pull transactions' (direct debit and cards). In order to allow the SEPA Electronic Direct Debit Scheme and the SEPA Cards Framework to operate, the refund of a payment transaction needs to be linked to the debit date, rather than to the moment when the customer becomes 'aware'. For authorized transactions a request for refund by a customer should be possible during a maximum of four weeks after having been informed of the direct debit transaction being debited to his account, but overall no later than six weeks after the debit date. In order to provide legal certainty for creditors (corporates) and banks there is also a clear need for a harmonized period for refund rights in respect of unauthorized transactions, which is recommended to be limited to a maximum of 1 year after debit date.

IBAN primacy: To allow the schemes to operate industry needs a Pan-European rule on the primacy of the IBAN (account number) over the name that will allow efficient STP processing. The latest draft is ambiguous. Currently national rules on this issue are fragmented and would not permit automated payments (STP – straight-through-processing).

Protection and Liability: The current approach to liability is identical for corporate and individual customers, which is inappropriate to the needs of many business users. All articles except for Articles 49, 50 and 53.3 currently apply to retail consumers and corporate clients in exactly the same way. The payment directive proposal should rather reflect the existing distinction at the level of community legislation between consumer protection and corporate/business protection.

Working Day (payment business day): In the absence of a definition of 'working day', a term used in the payment directive proposal, the EPC proposes to rather define a "payment service business day" as follows: "payment service business day shall mean a day on which either the payment service provider of the payer or the payment service provider of the payee involved in the execution of a payment transaction is open for business as required for completion of the transaction."

Value Dating: The EPC understands the aim of the Commission to remove any possibilities of applying value dating in a way that would penalize customers. However, there are a number of occasions where value dating is applied to the benefit of the customer, such as time lags within processes or holidays. To remove the concept of value dating altogether would constitute not only a huge change to current practice but also act against customer interest in many instances. Recalling Recital 29 ("Specifically, the use of value dating to the disadvantage of the user should not be permitted") EPC would like to fully support this principle. In line with this Recital, the issue of value dating and the corresponding Article 65 need to be discussed further and with much more precision.

Acceptance and point in time of acceptance: These concepts are not very clear and constitute a problem for a number of Articles that are based on this principle including Articles 54, 55 and 56. Banks feel that this area needs to be explored and the underlying intent of the proposal needs to be better understood by all those concerned, in order to reflect the reality of the various payment instruments in use.

II. Harmonisation

Summary: The harmonisation approach could lead to “Gold-Plating” and requires careful thought.

The payments industry is concerned about the degree to which targeted streamlined implementation of rules is ensured by the proposal. The current directive leaves us with a number of articles that allow Member States freedom for ‘gold-plating’.

It is feared that the draft directive will not successfully achieve the necessary modernization and simplification of the regulatory framework applying to retail payment services because of the considerable room it leaves for Member State interpretation.

Consumer protection laws as well as banking laws also require further harmonisation. Attempting to make a neat separation between the payments business and general banking business constitutes a very artificial split.

III. Areas to be left to competition: Execution times

Summary: The EPC has defined the SEPA Credit Transfer Rulebook on the basis of a maximum execution time of three days. Industry advocates shorter execution times to be subject to competition.

The payment industry is concerned about the requirement to comply with a one day maximum execution time (D+1) from 2010 for transactions in any possible global currency within the EU (solely in case of a currency conversion execution times can be agreed otherwise).

Moving to a one day execution time for all payments from 2010 requires a major and expensive restructuring of the banking system in order to capture a relatively small number of payments which would not meet the standards.

Execution times are customer segment specific and should be an element of competition. Not every customer/consumer requires a one day execution time and it is not equitable to increase risk and cost only to achieve a disproportionately low benefit. There is no compelling case to force down execution times in the presence of a same day priority payment service (EBA) as well as a real-time TARGET service. The SEPA scheme as a non-urgent-bulk payment service will guarantee a maximum execution time of 3 days. Predictability and security of competitively offered services is more important than just speed for bulk payments.

With view to the immediate priority of the SEPA roll-out, the size of change required is massive and immediate. This is bound to clash with the roll-out of SEPA. It is also questionable whether this approach will be an appropriate use of scarce resources. Instead of forcing considerable investment into the acceleration of clearing cycles, it might be more beneficial for the end users if industry would support the development of other more relevant services.

IV. Level playing field for fair competition – the role of Payment Institutions

Summary: It is essential that the proposed payment institutions are regulated on the basis of the level playing field principle. The ongoing discussions on this issue are prone to delay the SEPA process, for which a harmonised legal basis is needed by 2007.

The Commission wishes to increase competition in payments and therefore proposes to introduce a new category of non-bank payment service providers ‘payment institutions’ (Title II). The EPC welcomes the establishment of a harmonized legislative framework for the regulation of non-bank providers of payment services. Among other benefits, this will trigger the conditions for the creation of a market place truly based on a level-playing field which would ensure correct protection of general interests such as those underlying anti-money laundering and anti-terrorist financing obligations. However, as currently worded the directive proposal does not meet these objectives.

The directive does not properly acknowledge the actual risks involved in payment activities. The payment activities included in Article 10 as well as the Annex significantly overlap and/or are equivalent to regulated banking activities (e.g. the granting of guarantees or credit and the holding of accounts). Should the Commission intend that those activities be performed by payment institutions as well as credit institutions, the former should not be entitled to do so in the absence of identical or at least proportionate regulatory requirements for the handling of the operational and financial risks involved in payments. The indeterminate lodgment of funds with a payment institution pending their disbursement subjects the payment service user to additional risks which reflect on the overall security of the system and consequently endangers users’ trust in the payment industry. In its recent paper on “General principles for international remittance services” the BIS supports this argument, outlining that there is a clear liquidity risk of funds being lost in transit, as well as an operational and reputational risk.¹

As stated in Recital 9 “The conditions for granting and maintenance of authorization as payment institutions should include prudential requirements proportionate to the operational and financial risks faced by such bodies in the course of their business.” It is therefore our contention that the regulatory regime in particular for the handling of operational and financial risk should be similar, adequate, as well as proportionate, between payment and credit institutions.

It is of the essence that a coherent regulatory regime for payment institutions be laid at community level which clearly defines their powers and permitted sphere of activity: such prudential framework should be developed in conjunction with the Eurosystem, the latter having clear responsibilities for the stability, viability and smooth functioning of payment systems (Treaty Article 105 (2)).

¹ BIS/Worldbank, *General Principles for international remittance services*, March 2006, p.14.

While the draft directive has to expressly clarify that the collection and administration of deposits and other repayable funds is reserved to credit institutions, the EPC proposes in addition that the rules for the segregation of funds – the inclusion of which in the draft directive is particularly appreciated by banks - are improved such that funds must be placed in approved asset classes and fully segregated during the period of transit, calling for adequate capital requirements, in an analogous way to commonly used provisions for balances held with lawyers or brokers (escrows). In this respect, it is a high priority to remove the current lack of clarity regarding the status of ‘payment accounts’.

For legal consistency it is essential that all existing EU legislation regarding payments (e.g. Regulation 2560/2001 and Directive 2005/60/EC beyond pure information requirements) is also applied to all payment institutions.

V. Strict Liability

Summary: Strict Liability will create an unjustified burden on banking institutions.

The directive stipulates strict liability for the execution of a payment within the EU. The payment industry opposes this approach as it will place disproportionate third party liability on payment service providers for matters which are clearly outside their control.

From a purely legal point of view the strict liability regime imposed on payment service providers (cfr. Article 67, in particular) is inconsistent with “third party” liability rules applied in civil law countries and creates significant concerns for common law countries as well. While the concept of liability linked to one’s own fault is fully accepted, it is questionable how the imposition of ‘strict’ liability will reconcile with other Community legislation and with consolidated jurisprudence of EU Member States regarding the assessment of responsibilities of a third party. In this respect, the introduction of this new regime appears disproportionate vis-à-vis the objectives that the proposed directive intends to pursue.

The combination of liability for own fault with best effort for others’ practice can allow for efficient consumer protection, and by default for all other users, without impacting in an unnecessary manner national liability rules while establishing a balanced liability system which still protects the general interests pursued by the Commission.

VI. Scope concerns regarding transactions involving one-leg outside the EU

Summary: The inclusion of one-leg out transactions will have unintended consequences for the European payments industry.

The payment industry is concerned about the fact that the current scope of the directive extends to payment services where one transaction-leg is outside the EU. This means that banks are liable for the execution of a payment to a non-EU country up to the receiving institution, a process that includes elements that are clearly outside the control of the sending Payment Service Provider.

The whole thrust of SEPA and of creating a Single Internal Market for payments in the European Union is to increase obligations on providers of payment services within SEPA, which go beyond the normal practices prevalent in the wider international market place. The latter are fully accepted by the global community and their customers.

Extending the scope of the directive to effectively force for all payment instruments a redefinition of accepted international practice appears unrealistic and contrary to the principal role of the directive towards the Internal Market logic. Besides, European market players may find themselves at a disadvantage vis-à-vis non-EU operators, contrary to the objectives set out by the Lisbon strategy in terms of competitiveness.

The EPC has stated that the draft directive should focus only on payment services where the payer and receiver are both within the EU. In relation to one-leg-outside the EU transactions it is proposed that adequate information transparency requirements are established such that payment service users are on full notice as to the service they are entitled to receive and that market forces and self-regulation are encouraged to continue to foster competition in the market.

VII. Provisions that will divert investment from SEPA to other areas: Information requirements

Summary: the directive's requirements for information remain burdensome and impractical.

The information requirements defined in Title III of the current proposal are clearly beyond any proportionate user need. More importantly, the investment burden resulting from those requirements will inhibit the roll-out of SEPA.

In accordance with Recital 18 “information required should be proportionate to the needs of users”. In particular, such information requirements which are not limited to the pre-contractual stages but also include post-contractual obligations do not find any equivalent in information requirements set out for other banking or even financial services (see, for instance, the Markets in Financial Instruments Directive, no. 39/2004 or the Directive on the Distant Marketing of Financial Services to Consumers, which includes proportionately less requirements and does not apply to corporates).

The implementation of an information regime tailored to the current provisions of the draft directive will result in such additional burden and relevant cost increase, that instead of allowing resources to be dedicated to investments for upgrading payment instruments and offering customers better services, the directive will require operators to shift investments to the active supply of additional information that can today be obtained on demand by each customer.

Furthermore, from a supervisory angle, we recommend that information requirements for payment institutions be consistent with requirements for credit institutions, even if the derogation provision of Article 21 is applied. If no such consistency is achieved, an asymmetry of protection will be effectively implemented to the detriment of users and the market as a whole.

In order to ensure a timely and efficient roll-out of SEPA, the information requirements should be limited to a practical level.