Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council establishing technical requirements for credit transfers and direct debits in euros and amending Regulation (EC) No 924/2009'

COM(2010) 775 final — 2010/0373 (COD)

(2011/C 218/13)

Rapporteur: **Mr WUERMELING**

On 18 January 2011, the European Parliament and, on 28 January 2011, the Council decided to consult the European Economic and Social Committee, under Article 114 of the Treaty on the Functioning of the European Union (TFEU), on the

Proposal for a Regulation of the European Parliament and of the Council establishing technical requirements for credit transfers and direct debits in euros and amending Regulation (EC) No 924/2009

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The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 5 April 2011.

At its 471st plenary session, held on 4-5 May 2011 (meeting of 5 May), the European Economic and Social Committee adopted the following opinion by 137 votes to eight, with 19 abstentions:

1. EESC conclusions and recommendations

1.1 The European Economic and Social Committee (EESC) supports the European Commission in the establishment of the single euro payment area (SEPA). The fact that cashless transactions can be performed from one account to anywhere in Europe using uniform payment procedures is an important step towards completion of the single market.

1.2 However, the EESC considers that individual points of the proposal for a regulation put forward by the Commission need to be modified to ensure a smooth transition in the interests of consumers and businesses, as users, and banks as providers.

1.3 The EESC considers the deadlines stipulated in the proposed regulation for the mandatory transition to SEPA payment transactions to be too short. Fitness for purpose, security and user-friendliness can only be ensured if all financial institutions have sufficient time to prepare. For credit transfers, the implementation deadline should not be just one year, but three years following entry into force of the regulation. For direct debits, the deadline should not be two years after the regulation enters into force, but four years.

1.4 The empowerment to adopt delegated acts provided for in the proposed regulation should be significantly curtailed or removed, as adjusting the requirements for payment transactions laid down in the regulation to technical progress and market developments will have significant practical consequences. Such decisions must be made by the legislator in accordance with the legislative procedure – including consultation of the EESC.

1.5 The EESC expressly welcomes the fact that the proposed regulation will in future prohibit multilateral interchange fees for direct debits. This creates clarity and transparency in the complex contractual relationships underlying payment transactions. This will be of particular benefit to small and medium-sized enterprises.

2. Background to the opinion

2.1 Completion of the single euro payment area is one of the European Commission's priorities for completing the single market. Users of payment instruments can, thanks to the new European procedures for SEPA transfers and SEPA direct debits, make cashless domestic and cross-border payments using one and the same procedure. This makes payments easier, cuts administration costs and saves money for all operators in intra-community trade, be they consumers or businesses. In future, the more than 500 million people and more than 20 million businesses in the single market will benefit from the new procedures.

2.2 The first substantive legislative framework for the SEPA was already established in previous years. Directive 2007/64/EC on payment services in the internal market introduced harmonised conditions and rights for customers of payment services in the EU. Whilst this opened the single market to payment services, the variety of national systems and differences in procedures for domestic and cross-border payments remained. Nonetheless, a legal basis was established for creating a uniform procedure for all cross-border payments.

2.3 Regulation (EC) No 924/2009 on cross-border payments in the Community stipulated that charges for cross-border and national direct debit payments must be essentially the same. At the same time, the basis for the SEPA payment infrastructure was established.

2.4 The EESC issued opinions on both legislative procedures [1]. It welcomed the fact that the single euro payment area was to be created, now that the euro had been introduced.

2.5 Banks have been offering SEPA transfers when processing payments since 28 January 2008. Since November 2009, the maximum permitted processing time for a transfer has been three bank working days. From 2012, the processing time is to be reduced to one bank working day.

2.6 SEPA direct debits have been possible since 2 November 2009. Provision is made for two different types of transaction: the SEPA Core Direct Debit as the standard procedure, and the SEPA Business to Business Direct Debit. Since November 2010, all banks have been required to be reachable for SEPA Core Direct Debits.

2.7 The use of SEPA payment transactions is currently still limited. At the beginning of 2011, i.e. three years after their introduction, the number of SEPA transfers was around four percent. If this trend continues, it will take over 25 more years until the full benefits of SEPA are realised.

2.8 The European Commission thus considers that inadequate progress has been made under the purely market-based approach to the SEPA. It is therefore proposing legislative measures to make the introduction of SEPA payment instruments mandatory. National payment instruments are to be replaced by the SEPA procedures by a specified deadline.

2.9 The European Commission has had calculations done that indicate that the banks, as providers, will have to write off EUR 52 billion for the transition to SEPA payment procedures. Conversely, the calculations show that users on the demand side will enjoy lower prices and practical benefits.

2.10 The European Commission's proposal of 16 December 2010 thus sets the deadlines for phasing out national transfers and direct debits, after which only SEPA payment instruments are to be used. Once the regulation enters into force in the euro area countries, national transfers are to continue to be possible for 12 months and national direct debits for 24 months.

2.11 For consumers and businesses, a significant difference between SEPA transfers and direct debits on the one hand, and, on the other, current national transactions is that the International Bank Account Number (IBAN) and Bank Identifier Code (BIC) must be used even for purely national payments instead of the national sort code and account number to which they are accustomed. An IBAN is a standardised international bank account number with a maximum of 34 characters. A BIC is the international sort code of a financial institution and has a maximum of 11 characters.

3. **General comments**

3.1 The EESC welcomes the European Commission's proposal. The proposed regulation is a decisive step towards making a properly functioning single euro payment area a reality.

3.2 The single market is one of the main drivers of economic growth in the EU. The introduction of the euro was an important step that allowed Member States to continue to grow together. Thus, the EESC considers that it is merely being consistent to now ensure that the project of a Europe-wide single payment system is successful.

3.3 However, the EESC considers that the proposed regulation is too ambitious in the deadlines it is setting for phasing out national payment procedures. It is the success of the project that counts, not the speed of implementation. Payments are a very sensitive issue for consumers, but also for other economic operators. As with the introduction of the euro, every imaginable precaution such as tests, trial periods, information campaigns and so on must be taken to preclude service disruptions, breakdowns, misdirected payments, loss of transferred sums or such like. It is essential that sufficient time be allowed for this. The EESC therefore warns against unseemly haste, which could jeopardise the success of the project with the public. However, consideration should also be given to the fact that excessively long transition periods could give rise to additional costs.

3.4 Nor have all the questions been resolved adequately so as to ensure a smooth transition to SEPA payments. In this context, it is important to be mindful of the fact that many of the remaining questions can only be resolved at national level between the parties involved in the SEPA project. In particular, a balance needs to be struck between the interests of the banks on the supply side and of users on the demand side.

3.5 Both consumers and businesses often wonder why tried and tested national payment systems are to be given up to make way for the SEPA. Those concerned are familiar with the old account numbers and bank sort codes that they have been using for years. To be sure, the new SEPA payment procedures make cross-border transfers and direct debits simpler. However, the SEPA is to become mandatory even for national transactions, which account for the majority of payments. The European Commission and the banks have a duty to do more to publicise the advantages of SEPA payments as regards speed and cost.

3.6 The success of the SEPA project depends in large part on it being accepted by users (consumers and businesses). For this to happen, the first - urgent - step is to raise public awareness about SEPA payment instruments and their components, the IBAN and BIC. The financial services sector needs to wage a higher-profile information campaign in this area. This has not yet happened enough in all Member States. Consequently, broad swathes of the population are not properly aware of the new SEPA product requirements, nor are many small and medium-sized enterprises.

[1] OJ C 318, 23.12.2006, p. 51 and OJ C 228, 22.9.2009, p. 66.

3.7 The IBAN, which can have up to 34 characters, could at least be made more user-friendly by inserting a separator (space, hyphen, new field) between each group of four characters. Consideration should be given to the fact that older consumers in particular may have difficulties with the new data and rows of figures. The banks should therefore provide assistance to consumers, for example through conversion programmes.

3.8 In addition, the new payment instruments need to be adequately tested. This has not yet been possible for all SEPA products, since, for example, the SEPA direct debit has only been widely available since the mandatory reachability of all banks in November 2010. Only practical tests give the interested parties (banks and users) the opportunity to identify and eliminate teething problems and obstacles to workability. Above all, lead times must be long enough to ensure that the new SEPA payments can be processed automatically and are suitable for widespread use.

3.9 The EESC considers that mandatory introduction of the SEPA must be accompanied by sufficient security measures, while maintaining the user-friendliness of the procedures, particularly for retail banking. The payer, payee and payment provider must all have a guarantee that payments will be processed correctly, punctually and reliably.

3.10 In particular, there may be implementation problems at national level when moving to SEPA payment procedures. For example, in Germany, the country with by far the highest level of direct debit use in the whole EU, it is not yet clear whether existing direct debit mandates can also be used for SEPA direct debits. An efficient and legally water-tight solution to this needs to be found, and must put neither consumers nor businesses at undue disadvantage. It would be indefensible if all customers had to be contacted and asked to issue new mandates. This would give rise to disproportionate administrative and financial costs. It would not do consumers any good either, as they would be subjected to an avalanche of correspondence from their contract partners.

3.11 In addition, users should be consulted more at European and national level when payment procedures are being devised. This is not only true for the current phase of implementing the SEPA payment instruments, but also with a view to further development of the procedures. The European Commission and the European Central Bank have, by setting up the SEPA Council, taken a first step towards involving users more in the development process. Unfortunately, however, the users represented on the SEPA Council do not adequately reflect the stakeholders in the SEPA project. It would also be important to set up an expert group within the SEPA council, made up of equal numbers of supplier and user representatives, to look into the further technical development of SEPA payment procedures.

4. **Specific comments**

4.1 *Article 5(1) and (2) – Sufficient time for transition to the SEPA*

4.1.1 The EESC considers the deadlines proposed by the European Commission for the mandatory transition to SEPA payment transactions to be too short. Steps must be taken to ensure that the new SEPA products are just as efficient and secure as the current national payment procedures.

4.1.2 For credit transfers, the implementation deadline should not be just one year, but three years following entry into force of the regulation.

4.1.3 For direct debits, the deadline should not be two years after the regulation enters into force, but four years.

4.1.4 These longer deadlines are needed not least to gain the trust of consumers in the new SEPA payment procedures. Public awareness about the SEPA must be raised: this applies particularly to the IBAN and BIC. In addition, more needs to be done to explain the advantages of SEPA payments. The new products must be shown to be efficient and secure when used in practice. Moreover, national problems such as mandate migration still have to be resolved.

4.1.5 From the perspective of businesses, longer deadlines are needed because changes to processing procedures are time-consuming and costly. Businesses need to make additional investments and adjust working practices and business systems. This includes, for example, migrating entire customer databases to the IBAN and BIC. The European Commission itself stated in the impact assessment that the usual investment cycle for IT systems in businesses lasts from three to five years.

4.2 *Article 5(4) in connection with Article 12 – No excessive transfer of competences*

4.2.1 The EESC considers it necessary that key decisions on developing the SEPA continue to be taken by the European legislator in future, with the involvement of the consultative bodies, including the EESC. The Committee considers that general empowerment of the European Commission, in the form of delegated acts, to carry out any adjustments to technical progress and market developments, goes too far. Even small changes to procedures for European payment transactions can have a significant impact on consumers, businesses and payment providers, which should be thoroughly discussed and decided upon in accordance with proper legislative procedure.

4.2.2 Article 290 of the Treaty on the Functioning of the European Union (TFEU) stipulates that the transfer of power to adopt delegated acts is only permitted for the purpose of supplementing or amending certain non-essential elements of the relevant legislative act.

4.2.3 The requirements for SEPA transfers and direct debits listed in the annex to the proposed regulation are decisive criteria for future SEPA products. Even minor changes to these requirements are likely to have a major impact on the technical procedures followed by providers and users. Ultimately the list of requirements also includes the requirement to abolish national procedures, as these no longer meet SEPA specifications. A change in specifications without sufficient involvement of the European Parliament and the Council should therefore be rejected.

4.3 *Article 6 – clarity as to the future cost structure*

4.3.1 The EESC welcomes the fact that multilateral interchange fees for direct debits will in future be prohibited. It must be ensured that future transaction fees are transparent and can be attributed to specific services provided by the banks.

4.3.2 The European Commission has stressed from the outset of the project that the new SEPA payments must not be more expensive than the old national ones. The EESC strongly supports this requirement and urges the Commission to take up all necessary measures to ensure that the new SEPA payments do not become more expensive than the old national ones by raising national charges, as was done during the implementation of the euro. Otherwise, acceptance of the new payment procedures, not least by consumers, cannot be ensured. Multilateral interchange fees are not customary in all euro area countries. It would therefore send out a completely wrong signal if these were to be introduced in individual euro area countries along with the SEPA payment procedures.

4.3.3 The EESC furthermore stresses that, for direct debit transactions which cannot be properly executed by a payment service provider, because the payment order is rejected, refused, returned or reversed (R-transactions), consumers shall be charged a multilateral interchange fee only in case of insufficient funds on their accounts at the time the direct debit payment is due. In all other cases such a fee shall be paid by the payee. The payee, the payee's bank or the payer's bank shall not be allowed to pass on to the payer fees for R-transactions not caused by the payer.

Brussels, 5 May 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

APPENDIX

to the Opinion of the European Economic and Social Committee

The following amendments, which received at least a quarter of the votes cast, were rejected during the discussions (Rule 54(3) of the Rules of Procedure:

Point 3.11 (new)

Add new point:

'*The EESC considers that the mandate should stay with the debtor's bank, because if it is stored with the creditor it carries more risks in terms of safety, as the consumer's bank (debtor's bank) does not have control over the mandate. The EESC also believes that the IBAN of the payer should never be communicated to the payee automatically and without the payer's consent.*'

Reason

The safety of a Europe-wide payment system is crucial for strengthening consumers' confidence in payment services.

Outcome of the vote on the amendment:

64 in favour,
74 against and
13 abstentions.

Point 3.12 (new)

Add new point:

'*The EESC fully supports the measures which allow the consumer to instruct his bank to limit a direct debit collection to a certain amount or periodicity or both and to block any direct debits to the payer's account. However, as far as the right to a refund is concerned, the EESC stresses that since it is not granted by the payee, it cannot be excluded by the payee.*'

Reason

To be in accordance with article 62 of the Payment Services Directive.

Outcome of the vote on the amendment:

64 in favour,
83 against and
10 abstentions.