

# SINGLE EURO PAYMENTS

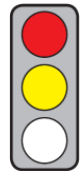
## AREA (SEPA): A ROADMAP FOR 2009-2012

Status: 2.11.2009

### MAIN ISSUES

**Objective of the Communication:** The Commission presents the steps it deems necessary for the creation of a single payments area for the next three years. By setting an end-date, it particularly seeks to abolish established national payment schemes in their entirety.

**Groups Affected:** Banks, payment service providers, all commercial and private bank customers, public sector.



**Pros:** Open standards for SEPA payments enable product innovations and promote competition.

**Cons:** (1) The EU has no authority to set an end-date for SEPA migration by means of a statutory instrument. The abolition of national payment schemes reduces individual freedom of choice.

(2) Market interventions to control prices are an inappropriate form of regulatory policy.

### CONTENT

#### Title

**Communication COM(2009) 471** dated 10th September 2009: **Completing SEPA: a Roadmap for 2009-2012**

#### Abstract

##### ► Subject of the Communication

- When euro notes and coins were introduced on 1<sup>st</sup> January 2002, this created a single payments area for cash transactions. A Single Euro Payments Area (SEPA) is currently being developed for cashless payments such as credit transfers, direct debits and card payments.
- In the Communication, the Commission concretizes its aim of removing the differences between national and cross-border payments through the implementation of SEPA, and of fully replacing national payment schemes and standards with the corresponding SEPA schemes (“SEPA migration”).
- The Commission believes that SEPA will result in efficiency gains and cost savings. It will also promote competition.
- The European Payments Council (EPC), composed of European banks and banking associations, has developed credit transfer and direct debit schemes for SEPA. SEPA credit transfers have been available since 28<sup>th</sup> January 2008 and SEPA direct debits have been available since 1<sup>st</sup> November 2009. The EPC is currently working on standards for card payments.
- The Commission describes progress in SEPA migration as “slow”. It states that in May 2009 only 3.9% of credit transfers were performed in accordance with SEPA standards. The economic climate and the “uncertainty surrounding key aspects” of SEPA could continue to curb “enthusiasm”. The Commission believes that this uncertainty could “only” be resolved “with the aid” of public authorities. (page 3)
- The Communication includes a “Roadmap” specifying the next steps and identifies the measures which the Commission considers necessary for full SEPA migration (cf. [CEP Summary Table](#)). This Roadmap is intended to complement the measures called for by the European Central Bank (ECB) in its 6<sup>th</sup> SEPA Progress Report.

##### ► Fixing an end-date for SEPA migration

- The Commission seeks to set an end-date for migration to SEPA credit transfers and direct debits from which point on national payment schemes would no longer be available. However, a final decision on whether and when an end-date will be set is not expected before February 2010 at the earliest.
- In the view of the Commission, a binding end-date would increase the incentives for both banks and their customers to speed up migration. In addition, the “substantial” benefits of SEPA would only materialise with rapid migration.
- Migration should be “as short as possible [...] but [last] as long as necessary” (page 6). This is to prevent the “costly” procedure of running existing payment schemes and SEPA schemes in parallel, whilst at the same time enabling smooth migration for banks and their customers.
- The Commission points out that the European Parliament has called on it to fix an end-date for migration which falls before 1<sup>st</sup> January 2013 (Resolution dated 9<sup>th</sup> March 2009).
- However, the Commission regards introducing an end-date for card payment migration as “premature” because in this case many standards still need to be finalised.

► **Legal framework for SEPA**

- The Payment Services Directive (2007/64/EC) provides the legal foundation for SEPA. Should Member States fail to implement this by the due date of 1<sup>st</sup> November 2009, the Commission will “not hesitate” to launch infringement proceedings (page 7).
- The banking industry should ensure that existing mandates remain valid during migration to the SEPA direct debit system. If this proves unsuccessful on a voluntary basis, Member States should ensure continued validity.
- The Regulation on Cross-Border Payments [Regulation (EC) N<sup>o</sup> 924/2009; cf. [CEP Policy Brief](#)] will regulate inter-bank remuneration for cross-border direct debits until 31<sup>st</sup> October 2012. The EPC is tasked with drafting and implementing long-term business models for the period after that.
- “Efficient” monitoring, enforcement and dispute settlement “mechanisms” should be put in place to ensure compliance with the rules and criteria defined by the EPC. As well as SEPA credit transfers and direct debits, this also affects the card, clearing and settlement systems.
- The Commission deems “close” competition scrutiny to be necessary since SEPA migration requires the cooperation of payment service providers who are also competitors.

► **Fostering SEPA migration**

- In the EU, the public sector accounts for around 20% of cashless payments. For this reason, the Commission wants the public sector to play a leading role.
- In the view of the Commission, the public sector could, with the utilities, telecoms and insurers, create the critical mass necessary to speed up migration. It should therefore draw up synchronised migration plans by October 2009.
- National authorities are to have completed SEPA migration by the end of 2010. The ECB already completed migration in January 2008. Other EU bodies should follow by June 2010.
- The Commission intends to continue producing an annual report on the status of migration, at least until 2010. It further intends to produce a biannual “Scoreboard” on progress in the public sector until migration is complete.
- At national level, banks should conduct information campaigns aimed at specific target groups. These should be “supported” by Member States. The EPC should also become active at EU level.

► **Price monitoring**

The Commission intends to conduct a comparative study lasting until mid-2011 investigating the effects of SEPA migration on customers. Should this reveal that it has resulted in price increases not directly attributable to implementation of the Payment Services Directive it will introduce countermeasures.

► **Standardisation and security**

SEPA standards should be implemented at the “highest” levels of security and be free from property rights (“non-proprietary standards”) so that product innovation is not inhibited. The aim is to make all SEPA payments capable of fully automatic processing. Any risk of market re-fragmentation should be avoided.

► **Promotion of innovation**

- The EPC should lay down rules and standards for payments by mobile telephone (“m-payments”) by the end of 2010. These will provide a secure SEPA environment for the further processing of cashless payments via mobile phone between different service providers (“interoperability”).
- The EPC should develop non-binding standards by the end of 2009 for payments made in the course of online transactions (“e-payments”) which involve immediate debiting from the purchaser’s account.
- A legal framework for electronic invoicing should be developed by the end of 2009. Amendments to the VAT Directive (2006/112/EC) are intended to place electronic invoices on an equal footing with paper invoices. For this reason, electronic invoices will no longer need to be sent with an electronic signature or via electronic data interchange (EDI process) [Directive Proposal COM(2009) 21].

► **Improvement to governance of SEPA**

- Together with the European Central Bank (ECB), the Commission intends to take over the governance of SEPA migration and create an “EU SEPA Council”.
- The EU SEPA Council should define strategic objectives, and monitor and support SEPA migration. It should not deal with individual SEPA compliance cases or take on tasks “better” tackled at national level or by market players.

## Changes Compared to the Status Quo

- In future, it should also be possible to carry out card payments in a SEPA process.
- There is currently no end-date for full SEPA migration.
- There is so far no guarantee that existing mandates will remain valid after migration to the SEPA direct debit system.
- Authorities are not yet obliged to make payments solely in accordance with the SEPA standard.
- To date, there is no single set of rules for “m-payments” and “e-payments”.
- Electronic invoices do not yet have the same status as paper invoices.

### Statement on Subsidiarity

The Commission does not address the issue of subsidiarity. It merely emphasises that the new governance at EU level should not take over any tasks that might better be performed at national level.

### Political Background

The ECB, the Commission and sections of the banking industry are pressing for a single settlement mechanism applicable to all SEPA payments. Even the ECOFIN Council invited the Commission, the ECB and central banks in the euro area "to continue their role in identifying the necessary actions for [the] successful realisation [of SEPA]" in its conclusions dated 10<sup>th</sup> February 2009.

The Commission has conducted a public consultation to gauge the effects of fixing an end-date for SEPA migration. It reported the results at the end of September. The majority opinion is in favour of an end-date – though generally subject to further conditions. However, a significant number of responses made were against fixing an end-date.

### Options for Influencing the Political Process

Leading Directorate General: DG Internal Market and Services

## ASSESSMENT

### Economic Impact

#### Ordoliberal Assessment

The date of publication of the SEPA Roadmap is surprising. This is because the ECB's 6<sup>th</sup> SEPA Progress Report (whose political counterpart is the Roadmap) already appeared in November 2008. The Roadmap also creates the impression that the work undertaken in creating it had been completed much earlier. At the time of publication, a number of the deadlines quoted in it had already passed, and no mention was made of (non-) compliance with them. In other cases, the deadlines are not (or are no longer) achievable - for example, the requirement for Member States to secure the continued validity of existing mandates for SEPA direct debits by 1<sup>st</sup> November 2009.

Considering it was already so late, the Commission could have delayed publication. After all, implementation of the Payment Services Directive and introduction of the associated SEPA direct debit scheme are imminent. In addition, it was only in August 2009 that it conducted a public consultation on the issue of an end-date for SEPA migration. The results from this were reported shortly after publication of the Roadmap. If the Commission had indicated how the results of the consultation had affected its attitude to an end-date, this would significantly have enhanced the value of the Roadmap for all those involved in the SEPA process.

Instead of this, the Commission hides behind a legally non-binding request from the European Parliament **to set an end-date for SEPA migration, after which time the further use of national payment schemes will no longer be possible**. It is obvious that ultimately the Commission is also pursuing the goal of full migration. However, the interventionist setting of an end-date **is an inappropriate form of regulatory policy**. It is quite understandable that, in particular, sections of the banking industry and a number of major companies are in favour of fixing an end-date set on grounds of cost. This would give them security to plan for a possible redesign of their payment systems. And yet it is unclear why national payment schemes which work well, such as German credit transfers and direct debits, should be completely discarded.

If SEPA products really have benefits for consumers and companies over and above established payment schemes, even in purely national transactions, then market forces will make this apparent. However, this is debatable. The reason is that SEPA schemes use account numbers (IBAN) of up to 34 digits and bank identification codes (BIC) of up to 11 digits. The use of these is mandatory under SEPA and may well lead to confusion and handling errors, particularly amongst consumers.

But as long as the Commission insists on its questionable aim of completely abolishing established national payment schemes, it should at least wait and see how the market reacts to SEPA direct debits and keep the door open to setting different end-dates for credit transfers and direct debits. This would be all the more relevant as all existing problems need to be solved before the former system can be retired, particularly for direct debit processes. One such problem is the continued validity of existing mandates.

SEPA is primarily a political objective. It is therefore entirely apposite at this point that both EU and national authorities at the highest levels should migrate their payment processes completely by the end of 2010. However, this should not apply to local authorities and federal-state governments, which played no part in formulating SEPA objectives.

**The Commission's plan for market interventions should price developments not match their preconceptions is extremely questionable.** Price developments are not items on a political wish list. The interplay of supply and demand on the market determines prices. In other words, they are influenced by the costs actually incurred and the reception given by consumers to the products.

**It is a positive approach on the part of the Commission that it seeks non-proprietary standards for SEPA processes.** Firstly, this enables product innovation within the individual payment schemes and secondly creates the right environment for competition amongst the companies providing cashless payment processing and settlement services (clearing and settlement houses).

### Impact on Efficiency and Individual Freedom of Choice

The processing and settlement of cashless payments feature major economies of scale. A cashless payment system comes with high fixed costs but only minor costs per transaction. In any event, cashless payments in Europe are expected to increase significantly so that by 2012 economies of scale would result in the average total costs per transaction falling by up to 40% - even without SEPA [Capgemini Report (2007), page 8]. SEPA migration works through competition to induce the clearing and settlement houses to consolidate and thereby to install more efficient practices, which in turn further reduces the per-transaction costs.

In addition, SEPA gives non-banking sector companies operating in several Member States which all have different systems the opportunity of harmonising their payment management systems.

Even so, SEPA migration engenders high costs, both for the banks and other payment service providers, and for actors in the non-banking sector such as power utilities and telecommunications companies.

**Individual freedom of choice decreases when the abolition of established national payment schemes, such as the German credit transfer and direct debit schemes, becomes mandatory.**

### Impact on Growth and Employment

The consequences of SEPA on growth and employment cannot be reliably predicted.

### Impact on Europe as a business location

Open standards enable payment service providers to enter the European market.

## Legal Assessment

### Legislative Competence

**Article 95 of the EC Treaty does not establish the authority to fix an end-date for SEPA migration.** Setting an end-date improves the pre-conditions neither for the establishment nor for the operation of the Internal Market. This is because SEPA schemes already enable trouble-free cross-border payments, which may not be more expensive than domestic processes [Regulation (EC) N° 924/2009; cf. [CEP Policy Brief](#)].

### Subsidiarity

Where regulations govern cross-border payment transactions these are compatible with the principle of subsidiarity. At best, however, this applies with strict conditions to purely domestic payment processes.

### Proportionality

At present, it is not yet clear which measures should be enacted as statutory instruments. For this reason, it is not possible to make a conclusive statement on proportionality.

### Compatibility with EU Law

Unproblematic.

### Compatibility with German Law

The German direct debit scheme authorises the beneficiary of the payment to collect the sum owed from the account of the payer. In the SEPA direct debit scheme, the payer's bank is additionally instructed to honour the direct debit. It is therefore impossible for German direct debit mandates to retain their validity in the SEPA scheme without a statutory regulation. The draft implementation act for the Payment Services Directive (Official Records of Parliament 16/11643 dated 21<sup>st</sup> January 2009, N° 23) made provision for the payment beneficiary to inform the payer of the differences. If, as a result, the payer did not object, then his mandate would also be valid within the SEPA scheme. However, this regulation is no longer contained in the act passed by Parliament (cf. Official Records of Federal Council 639/09).

To put electronic invoices on a par with paper invoices in commercial transactions, section 14(3) of the German VAT Act (UstG) would need to be amended. This stipulates that electronic invoices must be sent with an electronic signature or via electronic data interchange (EDI process). In commercial transactions with private individuals, there are no differences as regards the provisions governing formats. However, the Federal High Court of Justice deems clauses in general terms and conditions of business providing exclusively "online invoicing" to be inadmissible. The Court's grounds are that "electronic legal transactions are not yet generally common practice" (Federal High Court of Justice, decision dated 16<sup>th</sup> July 2009, file ref. III ZR 299/08).

## Alternative Policy Options

The Commission ought to have waited for the introduction of the SEPA direct debit and the implementation of the Payment Services Directive. This would have enabled a more realistic Roadmap.

## Possible Future EU Action

The Commission shall submit a statutory instrument with an end-date for SEPA migration.

## Conclusion

The EU has no authority to set an end-date for SEPA migration by means of a statutory instrument. Further, the abolition of national payment schemes reduces individual freedom of choice. Market interventions to control prices are in principle an inappropriate form of regulatory policy. However, the setting of open standards is to be favourably viewed, as it enables product innovations and promotes competition.