Proposal COM(2022) 546 of 26 October 2022 for a **Regulation** amending Regulations (EU) No 260/2012 and (EU) 2021/1230 **as regards instant credit transfers in euro (Instant Payments)**

INSTANT PAYMENTS

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LONG VERSION

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A. Key elements of the EU proposal

Unless otherwise stated, the article references refer to the SEPA Regulation (EU) No 260/2012.

1 Context and Objectives

- ► Instant payments (IPs) represent a payment solution for immediate credit transfers around the clock. Thus, the procedure of interbank clearing and settlement takes just a few seconds.
- ► Notwithstanding the potential benefits of IPs for retailers and private households, we have seen a low uptake of IPs in the EU. According to the Commission's calculations, IPs made up a meagre 11% of all credit transfers in the EU as of the fourth quarter of 2021. Based on the overall transferred value, the percentage of euro IPs was barely 2% in 2020. [Impact Assessment, p. 5] At least one-third of PSPs in the EU still do not offer any instant services at all [Recital 6].
- ► Several technical infrastructures exist that enable real-time payments in the EU. These are [Commission Staff Working Document SWD(2022) 546, hereinafter Impact Assessment, p. 1]:
  - – Single Euro Payments Area (SEPA) Instant Credit Transfer (SCT Inst.),
  - – TARGET Instant Payment Settlement (TIPS) and
  - – SWIFT Instant Payments Messaging Service for Europe.

  The proposed Regulation analysed in this cep**PolicyBrief** applies exclusively to credit transfers within SEPA. Within SEPA, European citizens, companies and public administrations are able to send and receive payments in euro within Europe, both across and within national boundaries, under the same basic conditions.
- ► The first IPs using SEPA were launched on 21 November 2017 [Explanatory Memorandum, p. 1]. However, IPs can be executed only when both the payer's payment service provider (PSP) – usually a credit institution – and the recipient's PSP have signed up to the SCT Inst scheme [Impact Assessment, p. 36].
- ► SCT Inst. allows IPs for national and for cross-border credit transfers. Payment orders for IPs are usually made via online banking or mobile apps. [Impact assessment, p. 6]
- ► The Commission believes that an increased uptake of IPs is necessary to increase economic efficiency, avoid high market concentration and to benefit from the full-scale network effects of real-time credit transfers [Recital 2].
- ► According to the Commission, IPs are not only more convenient but also beneficial for the economy as money can be reinvested instantaneously and the liquidity management of businesses can be improved. [Impact Assessment, p. 80]. Furthermore, the Commission believes that IPs may contribute greatly to making cross-border payments easier and more efficient. [Impact Assessment, p. 3]. Finally, the Commission also believes that IPs could be used to a greater extent at the point of interaction when purchasing goods and services and therefore contribute to the development of new payment solutions [Impact Assessment, p. 7].
- ► Advocating for a higher availability of IPs in the EU was already part of the 2020 EU retail payments strategy [COM(2020) 592, see cep**Input**]. On 26 October 2022, the Commission adopted a legislative proposal on instant payments aiming to [Recital 1]:
  - – create conditions for increased competition in payments,
  - – keep the SEPA project up to date,
  - – promote innovation in payment solutions and
  - – encourage new market participants to enter the payments market.
- ► The proposed Regulation contains a list of amendments to Regulation (EU) No 260/2012 (SEPA Regulation) which already provides a regulatory framework for all credit transfers in euro. However, instant payments are a relatively new payment solution that emerged in the European market after the adoption of the SEPA Regulation [Recital 3]. Until now, the SEPA Regulation did not include any specific rules for instant credit transfers in euro. Therefore, the Commission seeks to provide legal clarity for this new type of credit transfer [Explanatory Memorandum, p. 8]. On top of that, the proposed Regulation introduces a single amendment to Regulation (EU) 2021/1230 on cross-border payments in the Union that clarifies fee policy for IPs in Member States whose currency is not the euro.
- ► The new Regulation proposes an amended definition of "retail payment system". Under the new Regulation, the retail payment system refers to the small-value payment system that processes, clears or settles payments in small amounts [new Article 1 (b) point (22)]. Initially, retail payment transactions were bundled

by PSPs for clearing and settlement. Nowadays payment transactions are executed separately, so the new definition reflects the current processing of payments through retail payment systems [Recital 5].

2 Scope

- The proposed Regulation applies to all PSPs offering credit transfers in euro to their customers, except for [new Article 5a (1)]
  - payment institutions, these are institutions granted authorization to provide and execute payment services under the Payment Services Directive 2 (Directive (EU) 2015/236, PSD2); and
  - electronic money institutions, these are institutions issuing e-money which is an electronic store of monetary value represented by a claim on the issuer that is issued on receipt of funds for the purpose of making payment transactions and accepted by natural and legal persons.

  Payment and electronic money institutions are exempted since they are not considered as participants in payment systems (see also Directive 98/26/EC) and may thus be confronted with difficulties in setting in place the necessary infrastructure for IPs [Recital 12]. However, these two categories of institutions may offer IPs voluntarily [Explanatory Memorandum, p. 4].

- The proposed Regulation also excludes payment transactions [Explanatory Memorandum, p. 4]:
  - between and within PSPs for their own accounts, and
  - between agents and branches of PSPs.

- The Directive on payment services in the internal market (Payment Services Directive, PSD 2, see cep**PolicyBrief**) lays down obligations for PSPs and establishes consumer rights for a broad range of payment types, including credit transfers. Under the proposed Regulation the consumer rights granted by the PSD 2 also apply to IPs. [Explanatory Memorandum p. 2]

3 Obligations for PSPs with respect to IPs

- All PSPs that offer “traditional” SEPA credit transfers must also provide SEPA instant credit transfer services to all their customers. This applies to both sending and receiving IPs. [new Article 5a (1)]

- An “instant credit transfer” is defined as a type of credit transfer that meets the following four criteria [new Article 2 (1a)]:
  - the time of receipt of such payment order corresponds to the moment when the payer instructs their PSP to execute the IP,
  - the payer’s PSP processes the payment order immediately,
  - the amount transferred is credited to the payee's payment account within 10 seconds,
  - the payee can use funds immediately after they are credited to the payee’s payment account.

- PSPs must enable the placement of IP orders on the same payment service user (PSU) interfaces as other credit transfers [new Article 5a (2)]. “PSU interface” refers to the methods or procedures for placing payment orders. PSU interfaces cover [new Article 2 (1b)]:
  - paper-based payment orders,
  - online banking,
  - mobile apps,
  - automated teller machines (ATMs), and
  - any other device or means provided by the PSP.

- PSPs must, after receiving a payment order, immediately [new Article 5a (2)]
  - verify, whether a payment order for an IP meets the conditions for processing the payment,
  - check if the required funds are available,
  - reserve the funds on the payer’s payment account, and
  - send the required amount of funds to the payee’s PSP.

- All payment accounts that PSPs maintain must be reachable for IPs 24 hours a day on any calendar day [new Article 5a (2) (c)].

- PSPs must enable their customers to submit multiple payment orders for IPs as a package if they also offer such packages for standard credit transfers [new Article 5a (3)].

- IPs in euro must not be more expensive than standard credit transfers in euro [new Article 5b (1)]. This implies that, if a standard credit transfer is, for example, offered by a PSP free of charge, IPs must also be offered free of charge.
- For EU Member States whose national currency is not euro the proposed Regulation envisages that cross-border IPs in euro are not allowed to be more expensive than standard cross-border credit transfers in euro. However, PSPs in the respective Member States are allowed to charge higher fees for national IPs in their national currencies than for standard national transfers in their domestic currencies. [Recital 19; the new Art. 3 (5) of Regulation (EU) 2021/1230]

4 Security requirements

4.1 Fraud prevention

- When receiving a payment order for an IP, the PSP of the payer must check the name of the recipient of the IP. If the payment account identifier (International Bank Account Number, IBAN) does not correspond to the name the payer has indicated as a payee, the PSP must inform the payer, "within no more than a few seconds" and before the payer authorizes the IP, about [new Article 5c (1), Recitals 11 and 13]
  - the identified discrepancy,
  - possible consequences of sending the funds to the unintended payee, and
  - the payer's rights.
- Even where there are discrepancies, the payer is allowed to authorize an IP [new Article 5c (2)]. In such cases, the PSP should not be held liable for executing the IP to such unintended payee [Recital 13].
- The service of verifying the payee's name and payment account identifier must be provided on all PSU interfaces used by the payer [new Article 5c (5)].
- PSPs must enable their customers to opt out of the service and inform them how to do it. Customers have a right to restore the service at any time. [new Article 5c (3)]
- PSPs must inform their customers about the risks of [new Article 5c (4)]
  - authorizing IPs where discrepancies are identified and
  - opting out of the discrepancy checking service.
- Processing of personal data for fraud prevention must comply with the General Data Protection Regulation [(EU) 2016/679, see cep**PolicyBrief**] [Recital 21].

4.2 Sanctions screening

- PSPs must check if any of their customers are on a sanctions list immediately after the adoption of restrictive measures or any amendment of sanctions lists and at least once a day [new Article 5d (1)]. PSPs are not obliged to conduct such checks during the execution of IPs [new Article 5d (2)].
- In order to avoid sending funds from the payment accounts of legal or natural persons that are on a sanctions list, those accounts must be immediately frozen. Moreover, PSPs must regularly check updates to the sanctions lists and conduct verifications of the accounts [Recital 15].
- If a PSP does not conduct sanctions screening or fails to freeze the accounts of sanctioned persons, the other PSP involved in that transaction may make funds available to such persons. In that case, the first PSP must compensate for any financial damage caused to the other PSP. Such financial damage results from penalties imposed on the PSP for receiving a credit transfer from sanctioned persons. [new Article 5d (3)]
- Member States must lay down rules on penalties for infringement of the sanctions screening requirements. Administrative fines must be for [new Article 11 (1b)]:
  - natural persons at least five million euro;
  - legal persons at least 10% of their total annual turnover;
  - legal persons that are a subsidiary of a parent undertaking at least 10% of the total annual turnover of the ultimate parent.

5 Timeframe for entry into force and implementation

- After the entry into force of the proposed Regulation,
  - receiving IPs in euro must be made possible by [new Article 5a (4)]:
    - PSPs located in Member States, whose currency is the euro ("euro area") within 6 months;

  – PSPs located in Member States, whose currency is not the euro (non-euro area") within 30 months.
- sending IPs in euro must be made possible by [new Article 5a (4)]:
  – PSPs in the euro area within 12 months;
  – PSPs in the non-euro area within 36 months.
- the provisions regarding fees for IPs apply [new Article 5b (2)]:
  – to PSPs in the euro area after 6 months;
  – to PSPs in the non-euro area after 30 months.
- PSPs must comply with the fraud prevention requirements [new Article 5c (6)]:
  – in the euro area after 12 months;
  – in the non-euro area after 36 months.
- PSPs must comply with the sanctions screening requirements after 6 months [new Article 5d (4)].
- Member States must adopt rules on penalties for the infringement of the sanctions screening requirements within 4 months; each Member State must inform the Commission about the adopted rules within 8 months [new Article 11 (1a)].

B. Legal and political context

1 Status of legislative procedure

26.10.2022	Adoption by the Commission
22.02.2023	Opinion of the European Economic and Social Affairs Committee
Open	Adoption by the European Parliament and the Council, publication in the Official Journal of the European Union, entry into force

2 Options for exerting political influence

Directorates General:	DG Financial Stability, Financial Services and Capital Markets Union (FISMA)
Committees of the European Parliament:	Committee for Economic and Monetary Affairs (ECON), Rapporteur: Michiel Hoogeveen (ECR, NL)
Federal Ministries:	Finance (leading)
Committees of the German Bundestag:	Finance (leading)
Decision-making mode in the Council:	Qualified majority (acceptance by 55% of Member States which make up 65% of the EU population)

3 Formalities

Basis for legislative competence:	Art. 114 TFEU (Internal Market)
Form of legislative competence:	Shared competence (Art. 4 (2) TFEU)
Procedure:	Art. 294 TFEU (ordinary legislative procedure)

C. Assessment

1 Economic Impact Assessment

1.1 Rationale for regulatory intervention

With this proposed Regulation, the Commission aims to achieve a behavioural change on the payments market by making IPs a new standard. Pivotally, it is necessary to prove the need for a new Regulation that would intervene in the market order. Clearly, such interventions may be justified if a market failure is observed and it leads to inefficient or unfair outcomes.[1] Market failure refers to the situation where a free market demonstrates inefficient allocation of services or goods so that the resulting outcomes are not optimal from a social welfare perspective.[2] In such cases, government intervention can improve the allocation of goods and services and therefore ensure a better functioning of the market.[3] Consistent regulation is the main tool to fix the market economy: this is an obvious lesson learned after the financial crisis of 2008.[4] However, forcing certain market actors to offer a certain product or service that they would not provide without regulatory intervention and price regulations may be an over-invasive form of action if there is no sufficient justification for those measures. Thus, the intensity of intervention must be appropriate. To decide if the current state of the market represents a market failure, specific circumstances and causes of the low uptake of IPs must be assessed.

In this section, we analyse whether a market failure in the EU payments market can be identified and, if yes, whether the proposed Regulation will help to overcome this failure. As of 2022, at least 1/3 of all European PSPs did not offer IP services.[5] The Commission believes that the main stumbling block hampering the European payments market is the fact that PSPs are making insufficient efforts to offer IPs.[6] Is this a significant shortcoming in the functioning of the payment system in the EU? What risks does the proposed Regulation underestimate?

Broadly speaking, the EU payments system functions smoothly in its current state.[7] The SEPA project has created a well-functioning infrastructure, harmonised processes for cashless payments and removed technical and legal obstacles for the participating countries.[8] However, there is still a potential for the further development of innovative solutions on the payments market in Europe and for overcoming fragmentation on the European market to enhance cross-border payments.[9]

Within this legislative initiative, the Commission is striving to achieve some public policy objectives.[10] The following sections will explain how the mandatory offer of IPs aligns with those objectives.

1.1.1 Promoting the independence of European payment solutions

Making the EU more independent from global payment systems is a highly ambitious objective that would require significant changes to the European financial infrastructure. To reach this objective, numerous political and economic actions would have to be taken. For instance, the adoption of digital currencies may be helpful in making the EU more independent since it could reduce the need for traditional payment systems.[11] Simply expanding IPs in Europe will not make Europe independent from the global systems. It is important to keep in mind that Europe is part of the global economy and will still need to perform transactions with its partners around the globe. Even if the SEPA Inst. standard becomes a new standard in Europe, it will not have a significant impact on the international role of European payment solutions since IPs in euros are only relevant to countries within the SEPA area.[12] Instead, encouraging international financial institutions to use the euro as a reserve currency, and increasing the rate of transactions denominated in euro as well as the share of the euro in international

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1 S. Pigou, A.C. (1932), The Economics of Welfare, fourth ed. Macmillan Press, London; Harris, M., Townsend, R.M.(1981), Resource allocation under asymmetric information. Econometrica 49, 33–64, Dasgupta, P.S., Hammond, P.J., Maskin, E. (1979), The implementation of social choice rules: some general results on incentive compatibility. Review of Economic Studies 46, pp.185–216.

2 Cheung, S.N.S. (1969). The theory of share tenancy. Chicago: University of Chicago Press.

3 Acemoglu, D., M. Golosov, and A. Tsyvinski (2008), "Markets Versus Governments," Journal of Monetary Economics, 55, 159–189; Hurwicz, L., 1960. Optimality and informational efficiency in resource allocation processes. In: Arrow, K.J., Karlin, S., Suppes, P. (Eds.), Mathematical Methods in the Social Sciences. Stanford University Press, Stanford, CA, pp. 7–46.

4 Hira, A., Gaillard, N., and Cohn, T. H. (2019), The Failure of Financial Regulation: Why a Major Crisis Could Happen Again, Palgrave Macmillan; Mitchell, C. (2016), Saving the Market from Itself: The Politics of Financial Intervention. Cambridge: Cambridge University Press.

5 Recital 4 of the Proposal COM (2022) 546 final of 26 October 2022 for a Regulation amending Regulations (EU) No 260/2012 and (EU) 2021/1230 as regards instant credit transfers in euro, hereinafter Proposal on instant payments.

6 Commission Staff Working Document SWD (2022) 546, hereinafter Impact Assessment, p. 5.

7 SEPA contributed to the economic growth in the EU as well es enhanced cross-border trade relations between its members, s. Humphrey, D., Willesson, M., Bergendahl, G. and Lindblom, T. (2006), Benefits from a changing payment technology in European banking, Journal of Banking & Finance, Vol. 30, No 6, pp. 1631-1652; Levine, R. (2005), Finance and Growth: Theory and Evidence, Handbook of Economic Growth, Vol. 1, pp. 865-934. Moreover, costs for payment services are lower in the EU than in the USA, s. McKinsey & Company (2021), The 2020 McKinsey Global Payments Report. Global Banking Practice, available here.

8 See ECB (2021), The Eurosystem's retail payments strategy: report, accessible here.

9 ECB (2022), Bringing European payments to the next stage: a public-private endeavour. Keynote speech by Fabio Panetta, Member of the Executive Board of the ECB, at the European Payments Council's 20th anniversary conference. Frankfurt am Main, 16 June 2022, available here.

10 Commission Staff Working Document SWD (2022) 546, hereinafter Impact Assessment, p. 2 ff.

11 On the potential implications of digital euro see ECB (2020), Report on a digital euro, October 2020. available here.

12 At the same time, there is no fast and cheap solution for credit transfers globally. SWIFT transfers that is the most popular transfer method and is offered by the banks take normally up to 5 business days. Other popular transfer methods like Western Union require cash pickup of the transferred money which is more suitable for people without bank accounts and does not solve the problem of the interbank transactions.

deposits, could help to strengthen Europe's position in the global financial system.[13] Moreover, the attempt to confront global standards in the modern connected world seems questionable. On the other hand, it would be beneficial for all payment systems to enhance the interoperability of the different systems in order to make cross-border payments more effective and accessible globally.[14]

The European payment landscape is in fact influenced by non-European global payment systems and solutions. Indeed, around 90% of Europeans use PayPal for online transactions.[15] In general, PayPal and Visa dominate e-commerce payments across Europe.[16] However, in some countries, IPs are also popular. For instance, IP is a third-best choice in Germany.[17] It is, however, doubtful whether a new legislative framework will help the European banking industry win back their market share of Internet payment transactions by using SEPA Inst. It is likely that if European users are satisfied with globally active large payment providers like PayPal, they would not see IPs as a substitute. At the same time, the proposed Regulation may result in more intensive competition for the newcomers and an increasing gap between large and small market participants. It may further expedite the competitive advantages of banks in obtaining a license in accordance with the PSD 2 Directive and limit the competitiveness of FinTechs of offering payments without the IBAN.[18]

1.1.2 Enhancing cross-border payments within the EU

There is a comprehensive approach needed to promote sufficient and effective cross-border payment transactions within the EU. A harmonized payment standard can indeed enhance cross-border payments within the EU. Switching from fragmented domestic payment solutions to the single pan-European payment standard could help to reduce the complexity and cost of cross-border payments. Although excessive costs for IPs may be a barrier to their broad usage in cross-border payments, a reduction in transaction costs may be achieved not only by direct price regulation but also by encouraging competition among payment providers and promoting the use of low-cost payment methods. The most challenging obstacle to enhancing cross-border payments remains the international coordination of efforts.[19] As an option, new multilateral platforms and arrangements for cross-border payments may be developed to overcome the burdens stemming from differences in the legal, regulatory, and oversight frameworks.[20] In general, using the SEPA standard is an appropriate mechanism for effective cross-border payments, and both standard credit transfers and IPs are suitable for this purpose.

1.1.3 Promoting innovation in the payment sector

The future of the European payments market depends on innovation, which is key to maintaining an effective and modern payment system.[21] Encouraging innovative payment solutions in the payments industry would help Europe to become a global hub for new payment technologies. Nevertheless, the role of other actors, such as emerging innovative payments facilitators (PayTech or PayFacs), in the transformation of payment sectors cannot be overlooked.[22] BigTechs also have the potential to offer new payment solutions.[23] Active use of instant transfers paves the way for further product innovations that can be built on the infrastructure created for IPs. Broad acceptance of IPs could favour the development of new innovative products on the basis of the SEPA standard. New payment procedures are possible, such as sending payment requests to payers that can be pre-authorized and executed in real time just after confirmation, with one click, or requests for payment via QR code. However, the EU must stay technologically neutral[24] and not force any one specific technology on the

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13 For the use of the euro on the global market see ECB (2021), The international role of the euro. Report. June 2021, p. 10 ff.

14 For the benefits of interoperability in cross-border payments and models for interlinking cross-border payment systems see Boar, C., Claessens, S., Kosse, A., Leckow, R. and Rice, T. (2021), Interoperability Between Payment Systems Across Borders, BIS Bulletin No. 49. December 11, 2021, available here.

15 Statista (2023), PayPal usage either for online payments or at POS in various countries worldwide as of December 2022, available here.

16 Ecommerce News (2023), Top 3 of payment methods per European country, available here.

17 Ibid. About 23% of payments in e-commers are instant (Sofortüberweisung).

18 Although generation of the IBAN is common for European banks, payments based on SWIFT codes also exist.

19 Bech, M. and Hancock, J. (2020), Innovations in payments, BIS Quarterly Review, March 2020, p. 26 ff, available here.

20 FSB (2022), G20 Roadmap for Enhancing Cross-border Payments Consolidated progress report for 2022, 10 October 2022, p. 20, available here.

21 Petralia, K., Philippon, T., Rice, T. and Véron, N. (2019): Banking disrupted? Financial intermediation in an era of transformational technology, Geneva Report on the World Economy, no 22.

22 For the types of PayTech and their correlation to the traditional PSPs see E&Y (2022), How the rise of PayTech is reshaping the payments landscape: available here.

23 Kotovskaia, A. and Meier, N. (2022), BigTech Cryptocurrencies – European regulatory solutions in sight, SAFE Policy Letter No. 97, July 2022, available here.

24 The principle of technological neutrality is defined by Recital 18 of the Directive 2002/21 on a common regulatory framework for electronic communications networks and services (Framework Directive) [2002] OJ L108/33 as follows: ''The requirement for Member

market which it considers to be better than others. Technologically neutral regulation avoids any discrimination between the available technological alternatives and refrains from pushing the usage of a desired technology. Technological openness promotes innovation and economic growth and is only possible where different technologies compete on the free market under undistorted conditions. The free market is crucial for the unbiased development of new technologies since it allows new technologies to be tested without government interference.

1.1.4 Accelerating cash flows

According to the Commission, IPs could improve cash flow management for merchants.[25] Most companies have to maintain sufficient cash flow to be able to run their business and conduct necessary transactions. In turn, the Commission believes that better cash flow management may contribute to the reduction of late payments.[26] Late payments can, in fact, severely disrupt the functioning of some businesses, especially small and medium-sized enterprises (SMEs). However, the term "late payments" applies to payments that arrive at least 30/60 days after the due date.[27] In that sense, payments sent by standard credit transfers and arriving after one or two business days cannot be considered late. IPs will not therefore help to overcome late payments. Most firms do build negative cash flow into their business plans.[28] Temporary negative cash flow is not necessarily linked to the company's lack of net profit. Moreover, many different factors affect cash flow, such as seasonality or overall economic situation. It is unlikely that those short delays caused by standard money transfers disrupt cash flow.

1.1.5 Creating convenient payment decisions for customers

IP based on SEPA Inst. is not a new payment solution. This technology has been used since 2013. At the same time, mandatory offering of IPs may have an impact on the availability of other payment solutions. It should not be discounted that forcing banks to prioritize a concrete payment solution might result in inefficient market outcomes. Not the legislator but the PSPs themselves should decide what services to offer. Those decisions should predominantly take into account customer needs and preferences. Not only the evolution of the established payment system but also the creation of new payment solutions and instruments will unfold the potential of the payments market. Truly convenient solutions emerge only in a diversified market that reveals the strengths and weaknesses of each model. To pave the way for the diversity of payment solutions, EU legislation should not give preference to a specific technology.

1.1.6 Finding a uniform solution for a non-heterogeneous market

By setting public policy objectives, the Commission should also examine the trade-offs involved as well as the peculiarities of the domestic markets in the SEPA area. A closer look at the market indicates that countries participating in SEPA are at different stages in the use of IPs. The average figure of 11% for all the SEPA members masks different national statistics. The range of IP usage differs drastically across EU countries. With a rate of 67%, IPs in Estonia are already more common than the alternatives, whereas in France and Germany the rates barely reach 1-4%.[29] In Greece and Slovakia, IPs are not available at all yet.[30] Thus, differences in the domestic SEPA markets indicate significantly varying stages of transformation. The challenges facing countries that do not yet offer IPs at all require particular consideration but the implementation deadlines foreseen in the legislative proposal are too ambitious.[31] The timeframe for implementation should take these differences into account and be feasible for all countries in the SEPA area.

States to ensure that national regulatory authorities take the utmost account of the desirability of making regulation technologically neutral, that is to say that it neither imposes nor discriminates in favour of the use of a particular type of technology, does not preclude the taking of proportionate steps to promote certain specific services where this is justified".

[25] Impact Assessment, p. 8.

[26] Ibid, p. 78.

[27] According to the Directive 2011/7/EU of the European Parliament and the Council of February 16, 2011, the general payment term in the B2B area can be up to 60 days from the receipt of the invoice if the parties have not expressly agreed a longer term. For the public authorities paying for the goods and services the term is shortened to 30 days.

[28] For the basics of cash flow forecasting see Fight, A. (2005). Cash Flow Forecasting. Butterworth-Heinemann., p. 134 ff. and Jury, T. Cash Flow Analysis and Forecasting: The Definitive Guide to Understanding and Using Published Cash Flow Data, John Wiley & Sons, Incorporated, 2012. ProQuest Ebook Central, p. 51 ff.

[29] Impact Assessment, p. 17.

[30] Impact Assessment, p. 5.

[31] See Section 1.3. below.

1.2 Low uptake of IPs as market failure?

The European Commission blames the market for the failure in the spread of IPs and believes that a problem driver of the low uptake of IPs in the EU is on the supply side.[32] According to the latest calculations of the European Central bank, at the end of 2022, over 13% of all SEPA transactions were instant.[33] At the end of 2019, this rate was just over 5%.[34] However, over 60% of PSPs in Europe already offer IPs as a service. Moreover, some banks already offer IPs free of charge for their customers and send every transfer in real time, if possible.[35] The largest EU banks have been offering IPs since the introduction of the SEPA Inst. in 2017, including Banco Santander (Spain), ING Group (the Netherlands), Unicredit (Italy) and Hypovereinsbank (Germany). This section will explain why IPs have not conquered the market and where they are mainly used in the SEPA area.

1.2.1 Reasons for the low uptake

According to the Commission's assessment[36], insufficient uptake of IPs in the EU is the central reason for the lack of efficiency gains both at macro level and for many types of institutions, users and public authorities. The Commission claims that PSPs have not made enough effort to offer IPs, which is the main supply-side problem driver of the low uptake.[37] Apart from that, the demand-driven factors should not be overlooked. On the demand side, security concerns and higher fees for IPs have impeded the spread of euro IPs.[38] Indeed, users may be hesitant to use instant payments due to security concerns if they are not familiar with the technology and do not trust it. Even if PSPs comply with all anti-fraud provisions and offer secure real-time payment solutions, some users may feel more comfortable with traditional payment methods which they perceive as being more secure. Regarding fees, it is obvious that if IPs are more expensive than traditional payment methods, many users may prefer to avoid the extra fees if there is no urgency for the money transfer. Nonetheless, in the Netherlands and Finland, where all PSPs are charging the same fees for IPs as for the standard transfers, the uptake of IPs still remains comparatively low.[39]

Moreover, there may be other important reasons for the low demand for instant payments in the EU. For instance, a lack of awareness may influence the uptake of IPs. If users do not understand how to use them or are not aware of the benefits of IPs, this lack of knowledge[40] and understanding can be a barrier to increasing the demand for IPs. Notably, if customers are satisfied with the services they have used for a long time, they may have no incentive to switch to IPs. Familiarity with a payment method may significantly influence customer behaviour, especially in the case of elderly people since they generally tend towards more conservative solutions. Many users are accustomed to traditional payment methods and may prefer to stick with what they know. Likewise, habits and cultural differences may be a reason for the low popularity of IPs in some countries. If the population in such countries is still heavily reliant on traditional payment methods, such as cash[41] and standard bank transfers, it may take more time to convince users to try new payment technologies, even though they are convenient and fast. Against this background, significant regional differences are apparent regarding the preferences for payment methods in the euro area.[42]

Making the IP service available may be costly, especially for PSPs that have not yet offered IPs. Since the demand is low, the revenues rarely even cover operating costs. Without the potential to generate revenue, some PSPs, especially small banks, decide against offering this service, at least at this stage. Thus, a slowly growing rate of IPs reflects the actual dynamics of market transformation and customer needs and it is therefore inaccurate to blame PSPs for making insufficient efforts to spread real-time payments.

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32 Commission Staff Working Document SWD (2022) 546, hereinafter Impact Assessment, p. 13.
33 See European Central Bank (2023), Instant payments, accessible here.
34 Ibid.
35 See e.g. Interview with Stefan Schnock from Santander Consumer Bank, accessible here.
36 Commission Staff Working Document SWD(2022) 546, p. 24.
37 Ibid.
38 Ibid.
39 19% in Finland and 24% in the Netherlands, see Impact Assessment, p. 17.
40 In 2021, around 36% of customers showed a lack of knowledge regarding IPs, see PYMNTS (2021), Igniting Real Time Payments Means Closing Trust, Education Gap, available here.
41 In 2022, 59% of all transactions in the euro were made in cash. S. ECB (2022), Study on the payment attitudes of consumers in the euro area (SPACE).
42 Research and Markets (2022), Western Europe Online Payment Methods Market Report 2022: Featuring Key Players Amazon Pay, Klarna, Revolut, Paypal & Others.

1.2.2 Use cases of IPs in the EU

The low actual use of real-time transactions is influenced by the low demand for IPs. If PSUs still prefer standard transfers, are the actual benefits of IPs meaningful for users? Currently, an IP is supposed to act as a premium segment product that does not compete with a standard transfer. Users opt for this quicker but often more expensive service mostly only when there is a reason for such urgency. Consequently, not all PSPs offer this service since they follow different business models and decide autonomously on their service range.

However, IPs can be used in various ways and for different purposes. Currently, amounts of up to € 100,000 can be transferred as IPs[43] which makes them suitable for a broad range of transaction types. In a nutshell, the central use cases are for transactions between individuals (person-to-person, P2P), between consumers and businesses (B2C or C2B), between businesses (B2B) and for cross-border payments. Hence, the benefits of IPs mainly depend on the market where they are used, and the context of the transaction needed.

Person-to-Person (P2P) payments: IPs may certainly be defined as a point of interaction in the P2P area. They are highly convenient for transactions that are traditionally executed with cash,[44] e.g. for splitting the bill in a restaurant or for a joint taxi ride. IPs may be especially helpful in situations where a personal meeting for the cash transfer is not possible or is inconvenient, such as sending money to friends or family members in urgent situations or private sales. However, if there is no reason for urgency, it will make no significant difference to end users whether the transfer is executed immediately or a day later. The real benefit of IPs in this market can be seen in the case of pay-on-delivery transactions, e.g. private sales, where an individual is selling to an unknown buyer and therefore has no basis for trusting that the counterparty will transfer the money. Using IPs allows these trust issues to be easily eliminated. In this case, IPs enable safe and reliable transactions alongside immediate delivery of the goods. Such transactions obviously play a minor role in the whole economy. Although they are convenient for P2P transactions between strangers, average individuals do not normally need such transactions on a daily basis. Moreover, if an individual sells goods on a regular basis, this activity will qualify as a commercial business.

Payments between consumers and businesses (B2C or C2B): IPs may be especially beneficial in e-commerce, although they are still not common for retail payments. It is no coincidence that real-time payments are part of the Commission's retail payments strategy for the EU.[45,46] Online businesses can use instant payments to ensure instant payment by customers. This may speed up the delivery of goods as it means they can be shipped immediately after placing an order. In today's fast-paced world, some customers may indeed expect quick and easy availability of goods and services. However, merchants normally only start to process the order after receipt of the money. Thus, IPs may help merchants to increase customer satisfaction and reduce costs because using IPs is usually cheaper for the merchants than using cash, cheques or cards.[47] This may be especially important for purchases where delivery or access to the product or service is time sensitive. When receiving standard transfers, retailers often pay a fee to PSPs which guarantees them a payment. However, the usage of IPs in e-commerce depends on the specific needs and preferences of the business and its customers. Whereas some businesses may find IPs fit to their products or services, other merchants may still prefer to use other payment methods.

Payments between businesses (B2B): IPs can be used by businesses to pay suppliers, contractors, and other vendors instantly. This may slightly help businesses to improve their cash flow management and increase short-term spending since the funds are immediately available for further investment or consumption. Nonetheless, IPs have a very limited impact on the overall economic activity in the B2B sector.

IPs as a driver for cross-border payments: IPs may be used as a mechanism for enhancing cross-border payments within the EU. Currently, cross-border payments in the SEPA are still slow and unnecessarily complex due to the different national standards. The single standard for real-time transfers may be a convenient solution allowing speedy cross-border transactions that are cheaper than traditional remittance services.

One of the major challenges for the functioning of cross-border payments in Europe is the lack of standardization and harmonization between payment systems in different countries. National differences between domestic

[43] Before July 2020, the amount was limited to 15,000 euros.

[44] Cash is still the most popular means of payment for P2P transactions. However, the overall share of cash payments in the euro has declined from 86% in 2019 to 59% in 2022. see ECB (2022), Study on the payment attitudes of consumers in the euro area (SPACE).

[45] European Commission (2020), Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions of 24 September 2020 on a Retail Payments Strategy for the EU, COM (2020) 592 final.

[46] See cep**Input** 1/2021 illustrating the challenges faced by European retail payments markets.

[47] Impact Assessment, p. 78.

payment solutions represent an obstacle to overcoming the fragmentation of the EU single payment system.[48] The interoperability of payment systems between different countries may help to reduce friction and increase efficiency in cross-border payments. This could be achieved by common standards and protocols as well as by facilitating banks and other payment service providers to exchange information and process payments. But is a mandatory offer of IPs for all PSPs in the EU a reasonable way of enhancing cross-border payments? Unfortunately, such intervention in entrepreneurial freedom[49] is not an optimal solution. Effective cross-border payments can only be achieved by encouraging competition and innovation in the payment sector. This could drive down costs and improve the overall user experience of cross-border payments. For that purpose, a market environment that is conducive to innovation and enables new players to enter the market is what is needed.

1.2.3 Interim conclusion

Market failure commonly refers to a situation where the market is affected by limited competition, high costs for consumers and significant barriers to entry for new market participants. In such cases, the market does not operate efficiently despite the availability of resources and willingness to promote innovation. However, in the case of IPs the low uptake simply reflects demand and supply mechanisms in the payments market. The factors that influence the availability of IPs are not related to market failure. Low demand for IPs is mainly due to consumer behaviour, familiarity with existing payment solutions, availability of competing payment means as well as of national differences between countries in the SEPA area. Against this background, the slow uptake of instant transfers is not sufficient to prove a market failure. Moreover, obliging all PSPs to offer this service would provide no guarantee of reaching the Commission's goal to establish IPs as a new standard. In the current market situation, not only is there a lack of participating providers but also of users that want to use this service. Instead, they have a choice among several options but still mostly rely on standard bank transfers. Obviously, the demand side also influences the pace of the uptake of IPs. Private users may have other concerns about using instant services, such as regarding the safety of such services. Taking these considerations into account, the mandatory offering of IPs is not an appropriate solution for the development of the European payments market.

One may argue that in the modern environment with the immediate availability and accessibility of services, customer expectations have been changing also in regard to financial services.[50] However, this may primarily relate to cases of private sales or individuals splitting the bill in restaurants. In the retail sector, customers do not have a strong preference for paying instantly, whether shopping online nor on-site. Customers are only interested in when they will receive the goods or services that they have purchased. The moment at which the retailer receives the transfer is irrelevant to the customer. Retailers, on the other hand, may legitimately have a completely different perception. Nonetheless, a temporarily negative cash flow is not dangerous for the business and will already be considered in the business plans. From among the various use cases of IPs, their usage is incontestably beneficial over other types of payments only in emergency situations in the P2P area, and for e-commerce from the perspective of retailers.

1.3 Implementation deadlines and costs

As explained above, market participants should decide freely whether or not to offer IPs. However, if the legislative proposal is to be adopted, despite justified criticism, the provisions regarding implementation deadlines must be reviewed. Currently, there is no consistent market development of IPs across the EU. Whereas in some Member States IPs are more popular than other types of payments, several other countries do not even provide this service at all.[51] The proposed Regulation does not truly consider these differences and envisages quite a short implementation period for Member States. In countries where only a small number of PSPs have the necessary infrastructure for IPs, the implementation deadlines are too ambitious. A fair deadline should more accurately reflect the efforts needed in different national markets as well as take into account the challenges for the institutions depending on type and size. When setting implementation deadlines, an assessment of the experience of institutions that already provide IPs is needed. PSPs that have not offered IPs so far need to adjust their IT systems and develop the necessary technologies[52] in this regard. They also need to implement further

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[48] Joint Statement on the European Payments Initiative (EPI) by Belgium, Finland, France, Germany, the Netherlands, Spain and Poland (2021), accessible here.

[49] See Section 2.1. below.

[50] European Commission (2021), Directorate-General for Financial Stability, Financial Services and Capital Markets Union, Brien, P., Instant payments: current and foreseeable benefits, Publications Office, 2021, p. 6, available here.

[51] Impact Assessment, p. 17 ff.

[52] For the overview of technical mechanics of the Sepa Inst. Scheme see European Payments Council (2022), 2023 SEPA Instant Credit Transfer rulebook version 1.1, available here.

technical features, e.g. for the compliance check and liquidity management. In addition, the transition to IPs as a new standard involves significant costs. For small PSPs, it may be challenging to find the funds needed in such a short term. For many PSPs, these processes may take significantly longer than the 6-12 months envisaged by the proposed Regulation. Against this background, the implementation timeline must be realistic for all types of PSPs across Europe and, therefore, considerably longer than the current legislative proposal requires.

Since the proposed legislation requires that payment orders for IPs must be possible from all PSU interfaces provided by the PSP, PSPs must update all their methods and procedures for placing payment orders. It is not enough simply to install the technical IP infrastructure , for instance, into online banking. According to the new legislation, IPs should be accessible both digitally and in paper format, via ATMs, bank offices, online and mobile banking, because PSPs offer standard transfers in all of these interfaces. Less ambitious and more realistic would be a transitional period involving different phases, whereby, in the first phase, PSPs would need to provide IPs through at least one PSU interface. Moreover, the Commission admits that one of the central aims of the wide-spread availability of IPs is to promote digital transformation of the EU financial market and the digital single market.[53] In reality, the availability of IPs is not interrelated with a variety of interface types. Hence, the obligation to provide IPs in non-digital form is less efficient and does not correspond to the initial aim of the proposed Regulation. The obligation to offer IPs via the same interfaces as standard transfers in such a short time impedes PSPs due to the unreasonably high costs and investments connected with the development of the required infrastructures. PSPs should be able to decide freely what channels to use for offering their services. If ATMs, telephone or paper format are less popular among users, there is no need to force PSPs to build a technical infrastructure for those interfaces. PSPs are in a better position to assess which interfaces their users prefer. Since the Commission is striving to stimulate the uptake of IPs in the EU, it would be more sensible to focus on the development of convenient, user-friendly and easily assessable solutions for IPs. Put differently, it would be more effective to focus on the quality of the service than on the number of interfaces.

1.4 Fraud risks and sanctions screening

It is crucial to establish sufficient measures to ensure the security of IPs. Considering the speed of the real-time transactions, IPs may require stronger fraud, anti-money laundering and counter terrorist financing (AML/CFT) tools. In general, the provisions of the proposed Regulation on antifraud measures and sanctions screening are very welcome. Notwithstanding their necessity, the current wording is vague and leaves some questions open about their implementation.

First, the proposal provides that only the payer's PSP has to check the IBAN and the name of the payee. The payer must be notified of any discrepancies unless he/she has rejected the notification service. This measure is helpful to minimize errors but is not effective enough to combat fraud. For better protection, it would be reasonable for the payer's PSP to inform not only the payer but also the payee's PSP. If the payee often receives payments under another name than that which belongs to that account, it could indicate a fraudulent activity or risk of data and identity theft. Those accounts should be additionally checked to minimize fraud. Assuring a high level of security for IPs would ultimately be one of the most effective methods of strengthening trust in IPs and therefore of promoting their usage. At the same time, security mechanisms should not hamper the convenience and user-friendliness of a payment method. Procedures that are too complicated and long may also put off users.

Second, to comply with this provision, the payer's PSP requires access to the names of the IBAN holders of the payee's PSP. If the payee's PSP withholds the information about its customers, the payer's PSP will not be able to conduct the checks. In this case, either the payer's PSP has to conduct the transaction without a discrepancies check thereby violating the law for failing to communicate with other PSPs, or the payer's PSP is forced to deny a transaction because it cannot carry out a discrepancies check. In both cases, there would be doubts about the safety and effectiveness of IPs for users. It is not clear if all the PSPs falling into the scope of this Regulation could effectively communicate with each other and exchange the necessary information on a voluntary basis. To avoid the refusal by a payee's PSP to share information, an obligation for PSPs to grant access to the required data at the request of other PSPs would have to be introduced, as well as a reasonable deadline for providing such information.

Third, provisions on sanctions screening must clearly apply not only to IPs but also to standard credit transfers. It should be ensured that no funds are made available to persons on the sanctions lists through any type of credit transfer. Furthermore, the proposed Regulation fails to specify what kind of control must be carried out and with what frequency. The requirement to check customer data as soon as possible after the updating of sanctions lists raises doubts regarding the practical implementation of this requirement. As a result, the interpretations of

[53] Impact Assessment, p. 4.

compliance with the sanctions screening requirement are expected to vary greatly. It is also unclear if the assessment must be based on the EU sanctions lists or additionally cover national sanctions lists.

Fourth, AML/CFT checks to identify illegally obtained funds and their true origin are mostly performed after the execution of the payment.[54] That means that compliance with the AML/CFT framework would not create an additional challenge for PSPs, since they must perform the same checks as for standard transfers. However, real-time transactions may increase attempts to process illegal transactions before any AML/CFT checks are conducted. Furthermore, it is more complicated to undo suspicious transactions if they are only identified after having been settled . This Regulation does not foresee stronger or prompter AML/CFT mechanisms.

In general, to establish a safe and sound system for ensuring the security of payments and to avoid situations where some PSPs overlook suspicious transactions due to lack of information or its incompatibility, it would be reasonable to introduce more detailed provisions on fraud prevention and sanctions screening mechanisms. Additional harmonized minimum standards for PSP security systems could help PSPs to improve identification of any suspicious transaction.

2 Legal Assessment

2.1 Competence

The legal basis for this proposal – as well as for the initial SEPA Regulation - is Article 114 of the Treaty on the Functioning of the European Union (TFEU), which grants EU institutions the right to adopt measures for the establishment and functioning of the internal market. Undoubtedly, payments constitute one of the key areas of the EU single market. Common rules on IPs would improve efficiency and minimize barriers to cross-border exchange of this service. In this respect, the EU legislator does have the competence to adopt a Regulation laying down rules on IPs.

2.2 Subsidiarity

Since the main objective of this proposed Regulation is to make cross-border payments quicker, easier, and more convenient, legislative action at EU level is necessary. National legislation would not be as efficient as action at EU level for achieving this aim. Moreover, different national approaches may lead to unnecessary administrative and regulatory burdens and therefore make cross-border IPs too complex. Complicated compliance procedures due to different national provisions do not allow for convenient and speedy payments. Indeed, harmonized rules on SEPA transactions brought advantages for the payments market in the EU, therefore the regulation of IPs should follow the same regulatory approach and avoid fragmentation.[55]

Moreover, differentiated national provisions could lead to market fragmentation since IPs in euro are also made cross-border. Different rules on the execution of IPs in Member States would in practice create technical and bureaucratic burdens. Thus, this proposed Regulation complies with the EU principle of subsidiarity.

2.3 Proportionality vis-à-vis Member States

The Commission justifies this stringent law-making measure by reference to the inability of the market to shift to the widespread usage of IPs. According to the principle of proportionality, the measure must not exceed the limits of what is appropriate and necessary to achieve the desired objective. It is indeed unlikely that the Commission's desired aim can be achieved by milder means in the near future. No other measure can ensure as wide availability of IPs on the European payments market in such short time as a Regulation containing a general obligation for PSPs to offer IPs. Against this backdrop, this Regulation generally corresponds to the principle of proportionality. However, the proposed Regulation is not certain to bring about a rapid market transformation. Even a mandatory offer of IPs does not necessarily guarantee a radical uptake of such payments if users e.g. have concerns regarding the safety of real-time transactions.

[54] For the standards of assessment for money laundering and terrorist financing risk see European Banking Authority (2021), Guidelines on customer due diligence and the factors credit and financial institutions should consider when assessing the money laundering and terrorist financing risk associated with individual business relationships and occasional transactions ('The ML/TF Risk Factors Guidelines') under Articles 17 and 18(4) of Directive (EU) 2015/849.

[55] Herresthal, C. (2019), Das Giroverhältnis in: Schmidt, K. (Eds.), Münchener Kommentar zum Handelsgesetzbuch: HGB, München, 4th edition., para. 131.

2.4 Compatibility with EU law in other respects

The intensity of EU intervention in the payments market should be also assessed from the point of view of compatibility with the principles of entrepreneurial freedom, open market economy and free competition.

In trying to foster the integration of the EU internal payments market, the Commission intervenes in the entrepreneurial freedom of market participants. Economic policy in the EU is based on "the principle of an open market economy with free competition" (Art. 119 (3) TFEU). At the same time, regulation may favour "an efficient allocation of resources" (Art. 120 TFEU). Therefore, EU legislation should promote a competitive and open market. Entrepreneurial freedom is one of the central characteristics of the open market. Although the EU may regulate certain aspects of entrepreneurship and business activities, it cannot limit entrepreneurial freedom entirely. The EU may put in place regulations to create a level playing field on the market, ensure fair competition, or protect consumers. Such regulations can, however, have an impact on the freedom of entrepreneurs in certain ways. Importantly, limiting entrepreneurial freedom must be justified and endorsed only when other, less intrusive measures are insufficient.

The Commission emphasizes that the uptake of IPs by PSPs has been slow in recent years. The question is why so many institutions have not taken the opportunity to introduce those services. Since the actual use of IPs is currently still low and the establishment of technical infrastructure gives rise to excessive costs for some payment service providers, especially small institutions, compliance with the obligation to offer IPs may constitute a significant financial burden, or – in the worst case – even lead to business closures. This means that those PSPs must be obliged to upgrade their core banking solution to be able to offer IPs and therefore the proposed legislative framework presents a real challenge for a significant number of institutions. Furthermore, the Commission's intention to make IPs a "new normal"[56] is quite precipitate. The current proposed Regulation obliges all PSPs to offer to send and receive real-time transfers regardless of the markets, niches and business models of PSPs. Indeed, for some business models, IPs are not relevant or at least are not significantly advantageous. The added value of IPs varies when comparing universal, automotive, development, promotional and agricultural banks. The market participants should be able to decide freely whether IPs are suitable for their businesses or not. Instead of prescribing what services the market participants must offer, diversity of products and services should be promoted.

Provisions on the pricing policy for IPs are no less controversial. Pricing regulation unequivocally hinders the principle of free competition. Price control may be considered as "one of the most intrusive forms of intervention in the market".[57] Setting prices freely is indeed the main instrument[58] and characteristic[59] of competition. Nevertheless, it does not mean that price regulation is not compatible with EU law per se. Indeed, the EU has the power to regulate prices in the interest of protecting consumers and promoting competition. However, price regulation in the EU is subject to the principles of the single market and freedom of competition. For example, the EU may regulate the prices of certain essential goods and services, such as energy and telecommunications, in order to ensure that they remain affordable for consumers. The EU may also act against anti-competitive practices in the form of price fixing if an action constitutes a misuse of a dominant market position. Is regulating prices for IPs in compliance with the aforementioned principles of the single market and freedom of competition? Whereas the desire of the legislator to make IPs free of charge is clear, the fee policy for payment services cannot be based on a political wish list.

PSPs adapt their products and fee policies to meet the needs of customers and therefore ensure a diversified market with visible competitive tension. Currently, PSUs can choose between a broad range of bank services. PSPs compete with each other by offering different types of fees. Moreover, payment services do cost less in the EU than for instance in the USA.[60] At the same time, by charging fees, they cover their costs. Offering more attractive conditions than rivals may help to win more users. Under the proposed legislation, the freedom of fee policy will be severely impeded. In practice, there will be no real fee competition, since all types of payments will probably be free of charge. Setting price regulations is not an instrument of the free market economic system. The European market is self-regulating which means that market trends are determined by supply and demand. If the demand for instant transactions were higher, PSPs would have more incentive to build up the infrastructure for participation in the SEPA Inst. scheme and provide IPs. Furthermore, price control may lead to false incentives that are harmful to the market and impede innovation.

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[56] Impact Assessment, p. 7, 103.

[57] Opinion of Advocate General Poiares Maduro in C-58/08 Vodafone EU:C: 2009:596, para.38.

[58] Commission Decision of 9 November 2010 in Case AT.39258—Airfreight, para.900.

[59] Opinion of Advocate General Szpunar in C-148/15 Deutsche Parkinson EU:C:2016:394, para.18.

[60] Whereas payment revenues amount to 1.4% of GDP in the EU in 2019, in the USA they go up to 2.4%. S. McKinsey & Company (2020), McKinsey & Company (2021), The 2020 McKinsey Global Payments Report. Global Banking Practice available here.

In any event, the obligation for all PSPs to offer IPs, and the price regulation of IPs, constitute major intervention in the dynamics of the market that would lead to high costs for PSPs. Moreover, these costs may be disproportionate for some types of PSPs. In light of the polycrisis as well as tight competitive pressure on the payments markets, these additional costs may disrupt the continuity of some business models. Providing IP solutions may be unreasonable for certain types of company due to their size or the specifications of their business models.

D. Conclusion

The legislative package examined herein contains a number of radical measures aiming to significantly increase the availability of instant credit transfers in the SEPA area. This policy brief shows that the scope of this proposed Regulation is too wide-reaching and spells out that there are no sufficient reasons for such tough intervention in the payments market. At the same time, some of these provisions are redundant and would not create any additional value. Even assuming that this legislative act will be adopted, the proposed implementation deadline is unrealistic and unreasonably challenging for some EU Member States.

The European payments market should develop on the basis of free competition in accordance with the principles of the open market economy. The freedom of PSPs to define their own products and services as well as fee policy should remain inviolable. Artificially creating the predominance of one particular technology is therefore an inappropriate method to regulate the European payments market. In contrast, promoting new entrants and innovation is necessary for a successful and cost-efficient transformation of the payments market. Whereas wide usage and broad acceptance of IPs may be beneficial for the establishment of harmonized cross-border payments infrastructure and retail payments, the proposed Regulation is not suitable for that purpose. A mandatory shift to IPs could have a severe impact on PSPs, lead to unnecessary costs for market participants, be anticompetitive for new market entrants and limit the technological efforts of market players offering independent payment solutions not bundled to the SEPA Inst. standard. The negative impact on the industry is not comparable with the potential benefits of this legislative action. Furthermore, the obligation to offer IPs through all channels that exist for standard transfers is disproportionate.

Although the provisions addressing fraud risks and sanctions screening are to be intrinsically welcomed, they are not sufficient to effectively prevent fraudulent transactions and they allow for discrepancies in the interpretation of those provisions.

The Commission should primarily assess the demand-driven factors that influence the pace of development and digital transformation of the European payments market and devise other options for its further development. Instead of the mandatory offering of IPs, a possible solution could be to make those services more attractive for payment service providers and users, to inform the payees about those services, and to strengthen anti-fraud measures. Measures strengthening user knowledge and trust should be taken to enable a broad usage of IPs. Users should be able to take informed decisions on what kind of payment is the most suitable in a particular situation. The diversity of alternative payment methods on the market should be respected and not restricted. Specific mechanisms for increasing customer protection and addressing cyber risks could therefore be useful for that purpose.