

Special rules for the cross-border payment services in euro

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Abstract. Traditionally, cross-border payment flows are processed through payment institutions which are mainly commercial banks or through bank correspondent, either through national or international payment systems, these payment systems representing the networks through which the bank institutions are interconnected.

Once the transition to the single currency euro, the European Union is facing a new challenge, namely that of creating an integrated market for payment services, in conditions of effective competition and where there is no distinction between cross-border and national payments in euro, challenge which will be overcome by adopting the SEPA project.

Keywords: cross-border payment, banks, euro

1 Introduction

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In modern times, international trade has overcome the traditional frame of this concept, it encompasses a variety of extreme wealth and operations that relate only indirectly to the goods and which are covered, usually in the concept of economic cooperation.

One of the basic requirements of each country progress in the conditions of modern society is the increased participation in the international exchange of values, the international division of labor. Socio-economic development in sustained rhythm of the states imposes strong broadening of economic exchanges, making a broad cooperation with other states.

Among the greatest importance factors in all this mechanism, a distinct place occupies the banking system. The system is designed in such a way that hardly would be developed trade in general and foreign trade in particular without the participation of the banks. Under normal circumstances, virtually the foreign trade act would not be possible without the decisive contribution of the banking system. Any links in the chain of participants in foreign trade act appeal in one form or another to the banking system and that because none of these links do not have sufficient financial resources to resume production process, or is not willing to immobilize its financial resources for an extended period of time.

No matter how impressive the trade jumps may be, followed by production, they cannot compare with the evolution of financial systems, the volume of trade in this sector are now hundreds of times higher than that of trade in goods (Vartolomei, R., 2008).

Increased competition on international financial markets forced the major financial institutions to engage in large-scale operations worldwide and to provide the most varied financial services (Ch. Gavalda, J. Stoufflet, 1999).

Traditionally, cross-border payment flows are processed through payment institutions which are mainly commercial banks or through bank correspondent, either through national or international payment systems, these payment systems representing the networks through which the bank institutions are interconnected.

The issue of regulating the provision of services in international payments domain was approached by several international institutions such as the Organization for European Economic Cooperation (currently OCDE), which in 1951 drafted the Code on current invisible operations freedom, which in 1959 became the free movement of capital Code, by FMI (D.Carreau, 1970, D.Carreau, P.Juillard, 2003) in its Statute, by BIRD in Guidelines principles on treatment of foreign investments, or by UNCTAD which, even from its foundation, has proposed also to deal with financing related to trade and, implicitly, with the movement of capital involved in such financing (A.Bolinteanu, 1970).

Most detailed regulation is achieved in this matter by the community right, free movement of capital and implicitly cross-border payments being one of the pillars of the European Community (Ch. Gavalda, G.Parleani, 2002).

2 European Union regulations on cross-border payment services in euro and SEPA

Initially, the adoption of Directive 97/5/EC of the European Parliament and the Council on 27th of January 1997 on cross-border transfers of funds, which sought to improve cross-border funds transfer services and notably their efficiency. The aim was to enable in particular the consumers and small and medium enterprises to make transfers rapidly, reliably and cheaply from one part of the Community to another.

After its adoption, it was observed that cross-border transfers and payments generally remained still very expensive compared to payments at national level. The ascertainment of a study undertaken by the Commission and broadcast on 20th of September 2001 it was noticed that there was insufficient information of the consumers or even their lack of information on the cost of transfers and the average cost of cross-border transfers of funds has changed slightly since 1993, when a similar study was undertaken.

In light of these findings and to finalize the economical and monetary union through implementation of single currency was adopted EC Regulation no. 2560/2001 of the European Parliament and the Council from 19th of December 2001 on cross-border payments in euro.

The Regulation applies to cross-border payments in euro up to EUR 50 000 within the Community, excluding cross-border payments between institutions, in their own account.

It addressed to the entities mentioned in article 2 point e, respective to any natural or legal persons carrying out cross-border payments as part of their activities, to the sixth categories of payment service providers mentioned in article 1, paragraph 1 from Directive 2007/64/EC.

The following transactions were considered cross-border payments:

- Cross-border transfers, namely transactions made on the initiative of an issuer via an institution or its branch in a member state, to put an amount of money available to a beneficiary, to an institution or its branch from another member state, mentioning that the issuer and the beneficiary may be the same person;
- Cross-border electronic payment transactions, namely: cross-border transfers of funds effected through an electronic payment instrument, other than those ordered and executed by institutions, cross-border cash withdrawals by means of an electronic payment instrument and the loading (and

unloading) a tool for electronic money and cash dispensing ATMs, located in the premises of the issuer or an institution under contract to accept the payment instrument;

- Cross-border checks, namely paper checks, defined in the Geneva Convention on 19th of March 1931 establishing uniform laws on checks, drawn on an institution located within the Community and used for cross-border transactions within the Community.

The regulation provided for three types of compulsory measures, namely:

1. Applying the general principle of nondiscrimination in commissioning / tariff between a national payment transaction and a cross-border transaction. In this respect, article 3 of the Regulation provides that the fees charged by an institution for cross-border transfers or for electronic payments transaction in euro are the same fees charged by the same institution for the corresponding payments in euro made within a member state in which is located the institution unit carrying out the cross-border electronic payment.

It emphasizes in the doctrine that in this way is removed the so called "border effect" and the alignment of the commissions for the cross-border payments with the one of national payments which should not lead to an increase of the national payments (Vartolomei,R., 2008).

2. Applying the principle of fee transparency, identified in the doctrine as being the obligation of the payment service providers to provide consumers with information about expenses involved in cross-border payments.

3. Measures to encourage the use of common standards for automated processing of payment (straight through processing), capable of ensuring greater efficiency of payment systems, by lowering processing costs per transaction.

The measures consist of the obligation to use international bank account number (IBAN) and bank identifier code (BIC) for cross-border payments in euro.

Following the implementation of EC Regulation no. 2560/2001, were observed, on the one hand, significant progress towards the reduction of commissions in an effective way of cross-border payment transactions in euro to the level of national commissions and encourage European industry payments to endeavor to build a Community-wide payments infrastructure, but on the other hand, issues of internal market distortions caused by payments statistical reporting obligations divergent, enforcement of Regulation (EC) no. 2560/2001 due to lack of identified national competent authorities, the absence of extra-judicial bodies to resolve disputes claim regarding the regulation and that regulation does not cover direct debits.

A new approach to problems had considered after the release, in 2002, the European single currency in a large number of member states. This was the moment of drawing ideas for achieving a deeper integration of European monetary more profound by creating at the European Union level a single area of payments in euro (SEPA).

SEPA project creation is based on an European banking sector initiative, supported by competent European authorities, to create a harmonized framework within the European Union, for payments in euro, a framework characterized by standards, rules and uniform requirements to allow border payments in euros with equal ease, safety and efficiency with which are done the internal payments today.

The SEPA project represents the next important step towards a stronger European integration. SEPA will allow customers to make cashless euro payments to any beneficiary located anywhere in the euro area using a single bank account and a single set of payment instruments. Thus, all retail payments in euro will thereby become "local" and there will be no distinction between national and cross-border payments within the euro area.

In 2002, the banking sector has initiated this ambitious project by creating the European Payments Council (European Payments Council - EPC). EPC defines the new rules and procedures for euro payments. This was not only engaged key stakeholders in the euro area but also those from other countries of the European Union (EU), Iceland, Liechtenstein, Norway and Switzerland. Thus, communities outside the euro zone will have the opportunity to participate in euro payment systems and will be able to adopt SEPA standards and practices, thereby contributing in creating a single market for payment services.

The declared purpose of the EPC, according to its Charter, is to define common positions of the credit institutions on main payment services in a competitive market, to establish strategic guidelines on standardization, to develop rules, good practices and standards to support and monitor the implementation of the decisions taken, so that credit institutions can continue to self-regulate and meet regulatory authorities.

The creation of SEPA aims to develop within the European Union, an integrated industry, competitive and innovative payment services, which will help achieve the objectives proposed in the strategy set by the European Council at the meeting in March 2000 in Lisbon, namely the increase of European Union economic strength and competitiveness.

The development of an integrated payment service industries in the context established in Lisbon is expected to bring about a higher quality of payment services, disbursement of alternative products more efficient and cheaper, with the development of tools, standards, procedures and common payment infrastructure, enabling large-scale savings.

In fact, SEPA represent an area in which consumers, commercial operators and other stakeholders in economic activity will be able to make and receive payments in euro, both within a member state and between different member states, under the same conditions and with the same rights and obligations, regardless of where they are. According to the central banks from eurosystem and the European Commission, SEPA will represent „an integrated market for payment services in euro zone, which will be the subject of effective competition and in which there will be no difference between cross-border and internal payments” (Joint Declaration of the European Commission and European Central Bank on Single Area of Payments in Euro from 4th of May 2006 - www.ecb.eu.)

To achieve it, SEPA requires adoption of a single set of payment instruments for payments in euro (credit transfers, direct debits and card payments), implementation of efficient processing infrastructures for payments in euro (generic named mechanisms of compensation and settlement of accounts) adoption of common technical standards, adoption of common business practices, creating a harmonized legal framework for payment services (including national implementation of the new directive on payment services in the internal market) and the continuous development of new services oriented towards the client.

To implement these items, the EPC has developed a detailed plan, with specific deadlines for implementation of SEPA components, compliance with specific requirements of SEPA, the basic structures of the schemes for credit transfers and direct debits, specific to SEPA, involving a set of rules, business practices and standards (among these: IBAN, BIC or ISO 20022 standards, meaning Universal Financial Industry message scheme or UNIFI) agreed by payment service providers, the main policy, framework, to which the credit institutions, operators involved in Card payment schemes and any other entities involved in activities related to card use must adapt.

Due to delays in the adoption of the first specific legislation measures, namely Directive 2007/64/EC, the start of making payments by direct debit scheme feature SEPA, was only done after national implementation of the Community act mentioned above. With the launch of SEPA payment instruments for credit transfers on 28th of January 2008 it could be noticed a significant step in the process of migration toward SEPA. Due to technical reasons and legal delay, the launch of SEPA payment instruments for direct debits occurred sequentially, not later than the 1st of November 2009.

For SEPA payments via cards, on the 1st of January 2008 was already established SEPA payments Framework via cards.

To solve the problems found after the adoption of EC Regulation no. 2560/2001, for the smooth functioning of the internal market and facilitate cross-border trade within the Community, EC Regulation no. 924/2009 from 16th of September 2009 was adopted on cross-border payments within the Community and repealing the Regulation (EC) no. 2560/2001.

Among the stated aims of this community act include removing obstacles in developing an integrated market for payments, particularly in Single Euro Payments Area framework (SEPA), due to divergent statistical reporting obligations for balance of payments, which apply exclusively to cross-border payment operations by eliminating these reporting obligations based on bank settlements, continuing the collection of payment data readily available, as well as IBAN, BIC and transaction amount or the basic data, aggregated payments for different payment instruments, if the collection process does not stop the automatic payment processing.

Also, to facilitate the launch of the SEPA direct debit scheme it was emphasized the need for a common business model and ensure a more legal transparency in multilateral interchange commissions.

The provisions of this regulation applies to cross-border payments as defined in Directive 2007/64/EC, made in euro and national currencies of the member states which have notified their decision to extend regulation to their national currency, excluding cross-border payments between institutions, in their own account.

New Community legislation act retains the general principle of nondiscrimination in commissioning / tariff between a national and a cross-border payment transaction, stating that all commissions levied by a payment service provider from a payment service user for cross-border payments up to 50 000 EUR to be identical with the commissions charged by that payment services provider from the payment service users for appropriate national payments, of the same amount and in the same currency. Currency conversion commissions are excluded from this rule.

The measures are also liquidated for an enhanced facility automation of payments, being still liquidated the obligation of the payment service provider of communication without paying the commissions to the payment service user of the payment service user's code IBAN and payment service provider's code BIC.

To encourage the use of these codes by the service user the dispositions from article 4 paragraph 3 of the Regulations allow the payment service provider to apply additional commissions for the payment service user if the payment service user instructs the payment service provider to execute the payment transaction without providing IBAN and BIC. To use these commissions, they must be appropriate and in line with costs, to be agreed between the payment service provider and payment service user and the payment service provider is required to inform the payment service user about the amount of the additional commissions in time, before the payment service user is subject to the obligations arising from such an agreement.

Extending the scope also for the direct debits, the Regulation limits the interchange commission for cross-border transactions of direct debit at 0.088 euro, commission applicable in the absence of any bilateral agreement between the payment service provider of the payment beneficiary and the payer. It also imposes the requirement that a payment service provider of a payer, available for a national transaction of direct debit made in euro, through the payment account of that payer, to also be accessible, according to the direct debit scheme direct debits transactions made in euro initiated by a payment beneficiary through a payment service provider with the office in any of the member states.

Community legislature considered that to ensure the possibility of redress in cases of poor implementation of the Regulation, member states must establish adequate and effective complaint and redress procedures for settling any disputes between payment service user and his payment service provider. Also, without impeding the right of access to justice, it was considered important for member states to designate competent authorities and court bodies for complaint and redress, from the existing, or by establishing new bodies.

To solve easily and in a reasonable period of time cross-border disputes, the Regulation imposed the obligation of cross-border cooperation of the competent authorities, being possible that such cooperation may take the form of an exchange of information on legislation or legal practice in their jurisdictions, a transfer or takeover of complaint and redress procedures, as appropriate.

We remark, therefore, the interest of the community legislature to improve cross-border payment services to facilitate cross-border trade within the Community, its concern that European individuals and legal persons to have access to cheap payment services, easy to use and reliable, creating also favourable conditions to more active competition and providing payment innovations.

After the adoption of EC Regulation no. 924/2009 from 16th of September 2009, a careful analysis of the European Parliament has shown that SEPA should not only be self-regulatory initiative of the European Payments Council (EPC), but also a major public policy initiative to strengthen the Economic and Monetary Union and the future EU strategy in 2020, making decisions regarding SEPA is currently at the discretion of the European Payments Council (EPC), in which decisions regarding SEPA products are taken by banks, end-user requests are ignored and although SEPA has officially started on the 28th of January 2008 with the launch of SEPA payment instrument for credit transfer (TCS), and SEPA framework for card payments came into force on the 1st of January 2008, and SEPA direct debit scheme (DDS) started on the 2nd of November 2009, for migration toward SEPA instruments there was not set a legally binding deadline.

Faced with these deficiencies found, the European Parliament adopted the Resolution no. 2010 / C 349 E/09 from 10th of March 2010, on the implementation of the Single Euro Payments Area, which has expressed its continued support for the creation of SEPA and asked the Commission to set a clear, appropriate and compulsory deadline to migrate toward SEPA instruments, which should not be later than 31st of December 2012, date from which all euro payments should be made using SEPA standards, to make a definitive decision, at the latest 30th of September 2010, based on the results of those consultations including all stakeholders, the issue of a harmonized economic model for long-term for SEPA direct debits which can be applied across the EU and be cost-effective and convenient for end-users; insisting that development of this model is necessary to achieve through close cooperation between the payment sector and the Commission, as well as compliance with EU legislation in the competition domain and EU regulatory framework, to monitor the migration toward SEPA instruments and ensure that it does not result in a more costly payment system for EU citizens.

Also, by this resolution, the Parliament asked the European Payments Council to consider the requests of end-users and to amend regulatory framework therefore, inviting also the member states to guarantee, under the SEPA direct debit scheme, continuing legal validity of the mandates of existing direct debit to ensure that the transition from the existing direct debit scheme toward the SEPA direct debit scheme should not present difficulties for consumers.

3 Conclusion

The Eurosystem promotes efficient operation of payment systems. SEPA will contribute to this by harmonization of this non-cash payment. For this reason, the Eurosystem has a high interest of SEPA. To reduce the interference with the free and private payment systems market, the Eurosystem acts as a

key player. It offers its support, but prefers to leave to the market to totally organize and harmonize itself, as much as possible.

The Eurosystem does not see SEPA as a single operation. SEPA is the new retail payment market in euro area. It will continue to constantly evolve with new innovations and technological developments. The first step, the achievement of SEPA itself aims toward the "bank - bank" domain. Once the SEPA components are adopted, the next step is to focus on the "consumer - bank" domain, as well as the development of some SEPA services on extended area. These services will make life easier for individuals and banks, since the paper is removed from the process of payments and since it is accomplished the automated processing ("end-to-end straight-through processing" - e2e STP). This represents the next step called "eSEPA".

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