The envisaged **regulation** will **fail** to achieve the Sepa objectives

Von Gerard Hartsink

Bei der geplanten Sepa-Regulierung zeichnet sich bei der EU-Kommission ein Sinneswandel ab. Anstatt eindeutig ein festes Enddatum für die Abschaltung nationaler Zahlungssysteme festzuschreiben, plädiert sie nunmehr für multiple, interoperable Systeme, die die vorgegebenen Sepa-Anforderungen vorschreiben müssen. Nach Einschätzung von Gerard Hartsink läuft dies den ursprünglichen Zielen von Sepa zuwider und hätte eine lediglich auf grenzüberschreitende Zahlungen beschränkte „Mini-Sepa" zur Folge. Die angestrebten Synergieeffekte wären so nicht zu erzielen. Um zumindest Planungssicherheit zu schaffen, fordert Hartsink die Kommission auf, das weitere Vorgehen so bald wie möglich zu konkretisieren. Red.

The majority of market participants recognise that successful completion of the Single Euro Payments Area (Sepa)[1] is contingent upon setting an end date for migration to the Sepa Credit Transfer (SCT) Scheme and Sepa Direct Debit (SDD) Scheme developed – at the request of regulators – by the European Payments Council (EPC).

The EPC proposes to set a binding end date for migration to the set of harmonised Sepa Schemes developed by the EPC in close dialogue with the customer community through EU regulation. In line with expectations expressed by, amongst others, the Economic and Financial Affairs Council (ECOFIN – comprising the EU Finance Ministers), the European Parliament and the regulation should therefore ensure that the high costs of running both legacy schemes and Sepa Schemes in parallel can be eliminated; in other words this regulation must stipulate end dates for the phasing out of existing national euro credit transfer and euro direct debit schemes.

The Sepa objectives as defined by the political authorities

The European Commission (EC) indicated that it will introduce a formal proposal for a related EU regulation in the fall of 2010. The EPC welcomes the Commission's willingness to legislate on end dates for migration to Sepa. However, the EPC has significant concerns that the envisaged regulation will fail to achieve the Sepa objectives. The Sepa vision defined by the political drivers of the Sepa harmonisation exercise holds that within Sepa all euro payments will be domestic. Once Sepa is achieved, there should be no differentiation between national and cross-border euro payments. The understanding throughout the past decade shared with the European Commission therefore is that the Sepa process aims at replacing national euro payment schemes by the SCT and SDD Schemes developed by the EPC which promote further market integration and strengthen the common currency.

Bank customers would benefit from scale and scope advantages as standardisation at scheme level empowers economic actors such as businesses and public administrations to consolidate cash management functions and generate efficiency gains. In addition, bank customers would enjoy the advantages of increased competition in the payments market.

Regulators consistently requested a single set of Sepa Schemes

The European regulators have consistently referred to a single set of Sepa payment schemes when reflecting legislative intervention to achieve the Sepa objectives: The EC Consultative Paper on Sepa Incentives in 2006 considered to "make adherence to EPC DD and CT rulebooks mandatory for all payment service providers" by the same date[2]. In a joint statement of the European Commission and

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the European Central Bank in May 2006, both institutions[3] stressed their "support for the objectives set by the EPC (...): That EU citizens, enterprises and public administrations should have the possibility to use the Sepa credit transfer and the Sepa direct debit payment instruments defined by the EPC".

On the occasion of the "Sepa Summit" in 2006, Jean-Claude Trichet, President of the ECB, declared: "For Sepa, the development of a common set of rules and business practices is a necessity. This is referred to as the 'rulebooks' that ensure a common treatment for transferring funds. The EPC has agreed on the common rulebooks for credit transfers and direct debits and a framework for card payments. This single set of rules will allow different entities to provide core services throughout the euro area. The ECB fully supports the EPCs work in this field"[4].

In December 2009, the ECOFIN considered it "crucial to accelerate the take up of SCT, especially for national euro payments traffic". In addition, the ECOFIN stated "that establishing definitive end-dates for SDD and SCT migration would provide the clarity and the incentive needed by the market, ensuring that the substantial benefits of Sepa are rapidly achieved and that the high costs of running both legacy and Sepa products in parallel can be eliminated"[5].

The European Parliament resolutions of March 2009 and March 2010 on the implementation of the Single Euro Payments Area called "on the Commission to set a clear, appropriate and binding end-date, which should be no later than 31 December 2012, for migrating to Sepa instruments, after which all payments in euro must be made using the Sepa standards".

The European Central Bank repeatedly stated that setting a realistic but ambitious end date for migration to a single set of Sepa payment instruments is "a necessary step in order to reap the benefits of Sepa"[6].

European Commission now champions a radically different Sepa vision

In June 2010, the Commission services tabled a Working Paper outlining a binding Community instrument which would set end dates for compliance of euro credit transfer and euro direct debit schemes with so-called "essential requirements". The EPC welcomes the Commission's willingness to legislate in the context of setting an end date for Sepa migration. However, in the view of the EPC, the regulation as conceptualised in this Working Paper – if endorsed by the EU legislator – will fail to achieve the Sepa objectives and eliminate the benefits for bank customers inherent to the Sepa harmonisation exercise.

The European Commission now champions a radically different Sepa vision: Oblivious to its earlier communications on the need to establish a single set of harmonised Sepa Schemes, the Commission at this point requests multiple, interoperable and "competing credit transfer and direct debit schemes to emerge under the condition that they are compliant with the essential requirements"[7]. This novel approach results from the equally novel outlook of the Commission on the Sepa payment schemes developed by the EPC: the Commission now brands these schemes to represent a "private monopoly"[8]. The EPC does not share this perspective given the fact that the regulators – including the European Commission – de facto mandated the European banking industry to develop and implement a single set of Sepa Schemes.

The meaning of the term "payment scheme"

To highlight the need of establishing end dates through EU Regulation for migration to a single set of Sepa payment schemes, conceptual clarity on the meaning and purpose of the term "payment scheme" is critical for the debate. A payment scheme is as set of interbank rules, practices and standards necessary for the functioning of payment services[9]. Payment schemes are developed by payment service providers (PSPs) operating in a cooperative environment.

Delivery of euro credit transfer and euro direct debit payment services in each of the euro area countries operates today on the basis of a single set of national payment schemes (rules and standards) for direct debit and credit transfer developed by national communities of banks. This market reality has not been challenged on the grounds of general public policy or by competition authorities in EU Member States. The SCT and SDD payment schemes are developed by the European banking community cooperating in the EPC. The SCT and SDD Schemes – like any other credit transfer or direct debit scheme – as set out in the SCT and SDD Scheme Rulebooks inclusive the related Implementation Guidelines contain sets of rules and standards for the execution of Sepa credit transfer and direct debit transactions that have to be followed by payment service providers. These Rulebooks and the Implementation Guidelines can be regarded as instruction manuals which provide a common understanding on how to move funds (money) from account A to account B within Sepa.

In essence, a Sepa payment scheme can be compared to other frameworks which prescribe standardised processes to be observed by actors operating in network industries: such standardisation – or integration – initiatives enable the provision of services by service providers in a two-sided market also across traditional boundaries (for example, national borders). An example of such integration initiatives are standardised railway tracks allowing a multitude of commercial railway operators to move their trains across borders.

The purpose of migrating to a single set of harmonised Sepa schemes for euro credit transfers and euro direct debits can therefore be compared to implementing standardised "railroad tracks" for the exchange of payments across the European Union: Migration to a single set of Sepa payment schemes allows multiple payment service providers to offer a broad range of diversified payment services and products for euro credit transfers and euro direct debits Sepa-wide. It should be recognised that the debate on migration to Sepa refers exclusively to the replacement of existing national euro credit transfer and euro direct debit schemes equivalent or corresponding to the Sepa Credit Transfer and Sepa Direct Debit Scheme. Several other payment schemes exist in the market today enabling payment services different from credit transfers and direct debits. These payment schemes, such as card schemes, will not be addressed in this context.

It should also be noted that the EPC is a not-for-profit organisation which makes all its deliverables available free of charge: the Sepa Credit Transfer and Sepa Direct Debit Scheme Rulebooks and adjacent documentation are available for download on the EPC web site by any interested party. The EPC is not a supplier of technology or any goods or services. The SCT and SDD Schemes developed by the EPC have open access criteria in line with Article 28 of the Payment Services Directive (PSD). Last but not least it should be kept in mind that the SCT Scheme and the SDD Schemes are not commercial brands such as, for example, debit card or credit card schemes.

The concept of multiple payment schemes defeats the purpose of Sepa

To grasp the level of detail that needs to be agreed upon to ensure the proper, Sepa-wide functioning of a payment scheme, we refer, for illustrative purposes, to the Sepa Credit Transfer Scheme Rulebook and the Sepa Direct Debit Scheme Rulebooks and related Implementation Guidelines posted on the EPC web site. For any given payment to be correctly executed under a specific payment scheme, the scheme rules must be observed – at a minimum – by the following parties: the payer's bank, the payment system (CSM) facilitating the clearing and settlement of funds between two banks, and the payee's bank. In the absence of such scheme rules observed by these parties, it is impossible to execute a payment.

The Sepa-wide Straight-through-Processing (no manual intervention) of 71.5 billion non-cash payment transactions annually requires agreement on the business rules and standards governing the execution of euro payment transactions. Payment services can only be delivered Sepa-wide if the banks of all customers adhere to the exact same basic scheme rules and standards: if banks are "reachable" based on their adherence to the same payment scheme. Hence, integration of the currently fragmented euro payments market for euro credit transfer and euro direct debits requires that all PSPs adhere to the same SCT and SDD Scheme.

Creating "interoperability" of "multiple" Sepa Schemes for euro credit transfers and euro direct debits now envisaged by the Commission would require onerous agreement at an extremely high level of detail to allow fully automated processing of payments across multiple payment schemes. This concept also puts at risk the fundamental requirement of full reachability of all PSPs across Sepa. In consequence, implementing this concept would do little to overcome the fragmentation of the euro payments market and disregards the principles governing an optimally efficient payment environment.

Attempt to accommodate different parties

Last but not least, establishing multiple Sepa Schemes would rule out cost savings to the benefit of bank customers resulting from the consolidation of cash management operations. Migration to a single set of Sepa Schemes for euro credit transfers and euro direct debits is the precondition for consolidation to take place.The concept of "multiple, competing, interoperable" Sepa payment schemes makes about as much sense as arguing that "competing" standards for railroad tracks would boost competition in the transport and cargo sectors. If the latter were to be introduced, the exact opposite would happen: Train traffic would come to a grinding halt.

Has the Commission suddenly lost its grasp of the principles governing market integration? So, does the radically new Sepa vision of the Commission mean it suddenly lost its grasp of the most basic principles governing market integration? Not likely. Rather, the legislative act now envisaged to establish end dates for compliance of euro payment schemes with "essential requirements" may very well reflect the Commissions' desperate attempt to accommodate different parties pursuing opposite goals.

- On the one hand, the ECOFIN, the European Parliament, the ECB and the newly established Sepa Council[10] asked the Commission to initiate a process aimed at setting binding end dates for migration to Sepa. At its inaugural meeting in June 2010, the Sepa Council – bringing together representatives of both the demand and supply sides including the EPC – endorsed a formal declaration stressing their strong support for the establishment of end-date(s) for migration to Sepa Credit Transfers and Sepa Direct Debits by means of legislation at EU level.

- However, it is well known that some individual EU Member States in fact oppose the idea of replacing legacy euro payment systems by a single set of Sepa Schemes. The Directorate-General (DG) Internal Market and Services of the European Commission in charge of a related legislative initiative is thus aware that a proposal for a regulation setting end dates for migration to a single set of Sepa Schemes might face some substantial opposition in the Council.

One must also assume that DG Internal Market and Services only very recently bothered finding out whether the Directorate-General Competition would sign off on EU legislation stipulating mandatory migration to the single set of Sepa Schemes developed by the EPC. Apparently, Directorage-General Internal Market and Services failed to make the case for market integration with their colleagues next door.

DG Competition, at the same time, seems unaware that standardisation in network industries generates scale and scope advantages for users. This is the only possible explanation as to why DG Internal Market and Services now suddenly issues statements effectively – if mistakenly – equating the EPC with Microsoft.

The end of Sepa as we know it

Should the European Commission pursue a regulatory intervention based on its considerations communicated in the summer of 2010, the EPC has significant concerns that a related Regulation or Directive, if endorsed by the legislator, would also have the following objectionable consequences:

- The regulation might fail to establish definite end dates for the phasing out of existing national euro payment schemes, thereby preventing achievement of the potential financial benefits estimated to reach a total of 123 billion Euro which could be reaped from migration to a set of harmonised Sepa Schemes.

- Existing national euro payment schemes could become compliant with the essential requirements. In consequence, domestic transactions would still be handled by national schemes whilst the Sepa Schemes would be used exclusively for cross-border transactions. This scenario is called a "Mini-Sepa".

The Regulation would stifle innovation due to payments being subjected to central planning by the Commission which lacks any experience in the market place. The Commission is now seemingly determined to unilaterally decree essential requirements and common standards applicable to euro payment schemes; in other words to take over the development of payment functionalities. Such a procedure would directly prevent bank customers from accessing the most advanced payment services as innovation will be strangled by red tape. The Regulation would render obsolete substantial investments made by early movers both on the demand and supply sides who – in response to previous calls by regulators including the Commission – already renewed their payment architecture to comply with the Sepa Payment Schemes developed by the EPC. Banks and other stakeholders shouldered these investments based on the shared expectation and understanding that national euro payment schemes would be phased out.

However, the change of emphasis to the essential requirements and multi-ple competing schemes fundamentally contradicts this original assumption upon which these investments were made.The EPC expects that the European Commission will clarify its further course of action as soon as possible to restore a minimum of planning security for all market participants. Due to the Commission's recent contributions to the Sepa debate, regrettably, a common understanding of the Sepa objectives no longer exists at this point.

Footnotes

1) Sepa is currently defined as consisting of the EU 27 Member States plus Iceland, Norway, Liechtenstein, Switzerland and Monaco.
2) European Commission, Directorate-General Internal Market and Services: Consultative Paper on Sepa Incentives (February 2006).
3) Press Release of 4 May 2006: Single Euro Payments Area. Joint statement from the European Commission and the European Central Bank.
4) Speech by Jean-Claude Trichet, President of the European Central Bank: Creating an integrated market for the euro area. Conference Sepa Summit at the Euro Finance Week, Frankfurt am Main, 13 November 2006.
5) ECOFIN Conclusions on Sepa (December 2009).
6) Speech by Gertrude Tumpel-Gugerell, Member of the Executive Board of the European Central Bank, at the EPC Sepa Direct Debit launch event on 13 October 2009 in Brussels: Payments are becoming European.
7) European Commission Discussion Paper Sepa Migration End-Date of March 2010 (PSMEG/002/10), section 2.3 (20), page 4. This Discussion Paper is available on the EPC web site at http://www.europeanpaymentscouncil.eu/knowledge_bank_detail.cfm?documents_id=391.
8) European Commission Discussion Paper Sepa Migration End-Date of March 2010 (PSMEG/002/10), section 2.1 (15), page 3.
9) European Central Bank Payments and markets glossary available at http://www.ecb.int/home/glossary/html/act6p.en.html#631.
10) The Sepa Council chaired by the ECB and the EC includes representatives of both the supply and the demand sides. At its first meeting in June 2010, the Sepa Council endorsed a formal declaration stressing its support for the establishment of end-date(s) for migration to Sepa Credit Transfers and Sepa Direct Debits by means of legislation at EU level.

Der Beitrag beruht auf einem Vortrag des Autors beim Bankkartenforum 2010.