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

cep**PolicyBrief** No. 4/2023

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 can observe a low uptake of IPs in the EU. According to the Commission's calculations, IPs turned out a meager 11% rate in all credit transfers in the EU as of the fourth quarter of 2021. Considering the total transferred value, the percentage of euro IPs barely stood at 2% in 2020. [Impact assessment, p. 5] At least one-third of PSPs in the EU still do not offer instant services at all [Recital 6].
- Several technical infrastructures that enable real-time payments in the EU exist. 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 exceptionally to credit transfers within SEPA. Within SEPA, European citizens, companies and and public administrations are able to send and receive payments in euro within Europe, both between or within national boundaries under the same basic conditions.
- The first IPs on the SEPA basis were launched on 21 November 2017 [Explanatory memorandum, p. 1]. However, IPs can be executed only when both the payment service provider (PSP) – usually a credit institution – of the payer and the PSP of the recipient participate in the SCT Inst agreement [Impact assessment, p. 36].
- The SCT Inst. allows for IPs for national and for cross-border credit transfers. Payments 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 more efficient and easier. [Impact assessment, p. 3]. Last but not the least, the Commission assumes 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 EU retail payments strategy from 2020 [COM(2020) 592, see cep**Input**]. On 26 October 2022, the Commission adopted a legislative proposal on instant payments aiming at [Recital 1]:
  - creating conditions for increased competition in payments,
  - making the SEPA project up to date,
  - promoting innovation in payment solutions and
  - encouraging new markets participants to enter the payments market.
- The proposed Regulation contains a list of amendments to the 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 transfers [Explanatory memorandum, p. 8]. On top of that, the proposed Regulation introduces a single amendment to the 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.
- New regulation proposes an amended definition of "retail payment system". Under the new regulation, the retail payment system relates 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 PSP for clearing and settlement. Since nowadays payment transactions are executed separately, 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 that is an electronic store of monetary value represented by a claim on the issuer which 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 declares consumer rights for a bright range of payment types, including credit transfers. With 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 of the 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 order corresponds to the moment the payer instructs his PSP to execute the IP,
  - The PSP of the payer proceeds payment orders immediately,
  - The transferred amount of money is credited to the payee's payment account within 10 seconds,
  - The payee can use funds immediately after the funds were credited to their 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 for any calendar day [new Article 5a (2)].

- PSPs must enable their customers to submit multiple payment orders for IPs as a package if they offer such packages also 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 be offered equally 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 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 rights of the payer.
- Even in case of 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 waive the service and to 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
  - deciding to switch off the discrepancies check service.
- Processing of personal data for fraud prevention must be in accordance 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 sanction list immediately after the adoption of restrictive measures or any amendment of sanction 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 prevent sending funds on the payment accounts of legal or natural persons that are on a sanctions list, those accounts must be immediately freezed. Moreover, the 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 fail in freezing accounts of sanctioned persons, the other PSP involved in that transaction can make funds available to such persons. In that case, the first PSPs must compensate financial damage caused to the other PSP. Such financial damage results from penalties imposed on the PSP receiving credit transfer from sanctioned persons. [new Article 5d (3)]
- Member States must lay down rules on penalties for infringements 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 Entry into force and implementation timeframe

- 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)]:
  – for PSPs in the euro area after 6 months;
  – for 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 behavioral 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 leads to inefficient or unfair outcomes.[1] Market failure refers to the stand of free market that demonstrates inefficient allocation of services or goods so that the resulting outcomes are not optimal from a social welfare perspective.[2] In such cases, a government intervention can improve the allocation of goods and services and therefore ensure a better functioning of the market.[3] Consistent regulation is a 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 too invasive forms of action if there is no sufficient justification for those measured. 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, it is analysed whether a market failure in the payments market in the EU can be determined and, if yes, whether the proposed Regulation would help to overcome this failure. As of 2022, at least 1/3 of all European PSPs do not offer IP services.[5] Withal, the Commission sees the main stumbling block hampering the European payments market in the insufficient efforts of the PSPs 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 underrate?

Broadly speaking, the EU payments system functions smoothly at the current state.[7] The SEPA project has created a well-functioning infrastructure and harmonised process 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 payment market in Europe and the overcoming of the fragmentation on the European market to enhance cross-border payments.[9]

Within this legislative initiative, the Commission strives to archive some public policy objectives.[10] In the sections below it will be explained how the mandatory offer of IPs corresponds to those objectives.

1.1.1 Contributing to the independence of the European payment solutions

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

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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 are the most popular transfer method and is offered by the banks take normally up to 5 business days. Other popular transfers methods like Western Union require cash pickup of the transferred money which is rather suitable for people without bank account and does not solve the problem of the interbank transactions.

in international deposits could help to strengthen the European positions in the global financial system.[13] Moreover, the attempt to confront global standards in the modern connected world seems to be doubtful. In opposite, it would be beneficial for all payment systems to enhance the interoperability between the different systems in order to make the cross-border payments more effective and accessible globally.[14]

The European payment landscape is in fact influenced by the 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 that a new legislative framework may help the European banking industry to win back their market share in the area of Internet payment transactions by using SEPA Inst. It would be plausible to expect that European users would prefer IPs to globally active large payment providers like PayPal only due to higher availability of the IPs in euro if they are satisfied with the first option. 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 obtaining a license in accordance with the PSD 2 Directive and limit competitiveness of FinTechs 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. Migrating from the 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 can be a barrier to their broad usage in cross-border payments, reducing transaction costs may be reached 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 problem in 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 the differences in the legal, regulatory, and oversight frameworks.[20] In general, using the SEPA standard is an appropriate mechanism for effective cross-border payments. Hereby, 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 payment market depends on the innovation that is a key to the effective and modern payment system.[21] Encouraging innovative payment solutions in the payments industry would help Europe to become a global capital 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 neglected.[22] Also BigTechs 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 be in favor of the development of new innovative products on the basis of the SEPA standard. New payment procedures are possible, such as sending payment requests to the payer that would be pre-authorized and executed in real time just after the confirmation in one click or requests for payment via QR

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.

code. However, the EU needs to stay technologically neutral[24] and not to force the prevailing technology on the market if it finds it better than others. Technologically neutral regulation refrains from any discrimination between the available technological alternatives or coercing the usage of a desired technology. On the contrary, technological openness promotes innovation and economic growth. That is possible only when 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 can 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 can contribute to the reduction of late payments.[26] Indeed, late payments may severely disorder the functioning of some businesses, especially small and medium enterprises (SMEs). The term “late payments” applies, however, to payments incoming at least 30/60 days after the due date.[27] In that sense, payments sent by credit standard transfers and incoming in one or couple business days cannot be considered late. IPs would therefore not help to overcome late payments. Most firms do build in negative cash flow in their business plans.[28] Temporary negative cash flow is not necessarily linked with the lack of the company’s 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 on the SEPA Inst. basis 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 preeminently take into account customer needs and preferences. Not only the evolution of the established payment system but also the creation of the new payment solutions and instruments unfold the potential of the payment market. The truly convenient solutions emerge only in the diversified market that reveals the strengths and weaknesses of each model. To pave the way for the diversity of payment solutions, the EU legislation should not give preference to certain 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. Taking a closer look at the market, countries participating in SEPA are in different stages of the using IPs. Behind the average of 11% across of the SEPA members are hiding different national statistics. The range of the IPs usage differs drastically across EU countries. Whereas in Estonia IPs with a 67% rate are already more common than the alternatives, in France and Germany the rates barely reach 1-4%.[29] In Greece and Slovakia, IPs are not available at all yet.[30] Hence, different domestic markets in the SEPA markets identify significantly varying stages of transformations. It should be especially considered what challenges would face the countries that do not offer IPs at all. However, the implementation deadlines foreseen in the legislative proposal are too ambitious.[31] Withal, the implementation timeline should take those differences into account and be feasible for all countries in the SEPA area.

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[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 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 nor expressively 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 condemns a market failure in spreading IPs and assumes 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 slightly went over 5%.[34] However, over 60% of the PSPs in Europe already offer IPs as a service. Moreover, some banks already offer IPs free of charge for their customers and send each transfer in real time, if possible.[35] The largest EU banks offer IPs since the introduction of the SEPA Inst. 2017. Among them are Banco Santander (Spain), ING Group (the Netherlands), Unicredit (Italy), Hypovereinsbank (Germany). This section explains why IPs have not conquered the market and in what cases are they mostly 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 at the macro level as well as for many types of institutions, users and public authorities. The Commission claims the PSPs did not make enough effort to offer IPs, which was the main supply-side problem driver of the low uptake of IPs.[37] Apart from that, the demand-driven factors should not be overlooked. On the demand side, security concerns and higher fees for IPs 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 that 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 charging for IPs the same fees as for the standard transfers, the uptake of IPs still remains comparatively low.[39]

Moreover, there can be further 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 the growing demand for IPs. Especially if the 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 customers behavior, especially regarding elderly people since they mostly tend to conservative solutions. Many users are used 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 in the preferences for payment methods in the euro area can be determined.[42]

Making the IP service available may be costly, especially for PSPs that have not offered IPs so far. 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. It is incorrect to blame PSPs for insufficient efforts in spreading 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 costumers showed the 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 the 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 euro can be transferred as IPs[43] what makes them suitable for a broad range of transaction types. In a nutshell, the central use cases are transactions between individuals (person-to-person, P2P), between consumers and businesses (B2C or C2B), between businesses (B2B) and cross-border payments. Hence, the benefits of IPs depend mostly on the market where they are used, and the context of the transaction needed.

Person-to-Person (P2P) payments: IPs may be certainly defined as a point of interaction in the P2P area. They are highly convenient for transactions that traditionally are 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 inconvenient, for instance for sending money to friends or family members in urgent situations or for private sales. However, if there is no reason for urgency, there is no significant difference for end users whether the transfer is executed immediately or a day later. The real benefit of IPs in this market comes out in the case of pay-on-delivery transactions, e.g. in private sales, when an individual acts as a seller and does not know the buyer and therefore has no trust whether the counterparty transfers money or not. Using IPs, those trust issues may be easily eliminated. In this case, IPs enable safe and reliable transactions with the immediate delivery of the goods. Such transactions play obviously a minor role in the whole economy. Although they are convenient for P2P transactions between strangers, there is normally no need for those transactions for an average individual on a daily basis. Moreover, if an individual sells goods on a regular basis, this activity is to be qualified as commercial.

Payments between consumers and businesses (B2C or C2B): IPs may be especially beneficial in e-commerce, although IPs are still not common for retail payments. It is not by chance 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 receive payments from customers instantly. That may speed up the delivery of goods since they can be shipped immediately after placing an order. In today's fast-paced world, some customers may indeed expect quick and easy reachability of goods and services. However, the merchants normally start to process the orders only after the receipt of money. Thus, IPs can help merchants to increase customer satisfaction and reduce costs since using IPs is normally connected with lower costs for the merchants than using cash, cheques or cards.[47] That can 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 on PSPs that 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 fitting for 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. That 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. Nowadays, 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 for speedy cross-border transactions that are at a lower cost than traditional remittance services.

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

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

[44] Cash is still the most popular means of payments for P2P transactions. However, the overall share of cash payments in the euro has declined from 86% in 2019 to 59% in 2022. S. 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 payment markets.

[47] Impact assessment, p. 78.

payment solution do not allow to overcome the fragmentation of the EU single payment system fully.[48] The interoperability of payment systems between different countries can help to reduce friction and increase efficiency in cross-border payments. This can be achieved by common standards and protocols as well as by enabling banks and other payment service providers to easily exchange information and process payments. But is a mandatory offer of IPs for all PSPs in the EU a reasonable solution to enhance cross-border payments? Unfortunately, such intervention in entrepreneurial freedom[49] is not an optimal solution. Effective cross-border payments may be reached only through encouraging competition and innovation in the payment sector. That can 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 needed.

1.2.3 Interim conclusion

Market failure refers commonly to the state of the market affected by limited competition, high costs for consumers and significant barriers to entry for new market participants. In such cases, the market would 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 mostly affected by consumer behavior, familiarity with existing payment solutions, availability of competing payment means as well as of national differences of the 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 be no panacea to reaching the Commission's goal to establish IPs as a new standard. In the current market situation, not only participating providers are missing but also 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, for instance regarding the safety of such services. Taking into account the considerations above, the mandatory offering of IPs is not an appropriate solution for the development of the European payment market.

One may argue that in the modern environment with the immediate availability and reachability of the services, the customers' expectations have been changing also in regard to financial services.[50] However, that may mostly refer to the situations of private sales or splitting the bills in restaurants between individuals. In the retail sector, customers do not have strong preferences to pay instantly, neither shopping online nor on-site. For a customer it does only matters when he or she receives the goods or services that he or she has purchased of. The moment of receipt of the transfer by the retailer is irrelevant to the customer. However, the retailers may legitimately have a completely different perception. Nonetheless, a temporarily negative cash flow is not dangerous for the business and is already considered in the business plans. Among the various use cases of IPs, their usage is incontestably beneficial over other types of payments only for situations of emergency 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 to offer IPs or not. 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 on IPs across the EU. Whereas in some member states IPs are even more popular than other types of payments, several countries do not provide this service at all.[51] The proposed Regulation does not truly consider these differences and foresees a quite short implementation period for member states. For countries where only an insignificant number of PSPs have the necessary infrastructure for IPs, the implementation deadlines would be too ambitious. The fair deadline should better reflect the efforts needed on different national markets as well as take into account the challenges for the institutions regarding the peculiarities of different types and sizes of institutions. By setting implementation deadlines, the assessment of the experience of the institutes 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] for that. Besides,

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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.

they need to implement further technical features, e.g. for the compliance check and liquidity management. Moreover, the transition to the IPs as a new standard requires significant costs. For small PSPs, it may be challenging to find the funds needed in such a short term. These processes may take significantly longer than 6-12 months for many PSPs than the proposed Regulation envisages. 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.

Considering that the proposed legislation requires that payment orders for IPs must be possible from all PSU interfaces provided by the PSP, the PSPs must update all their methods and procedures for placing payment orders. It would not be enough to build a technical infrastructure for IPs, for instance, in online banking. According to the new legislation, IPs should be accessible both digitally and in paper format, in the ATM, bank offices, online and mobile banking, since the PSP offers standard transfers in any of these interfaces. Less ambitious and more realistic would be a transitional period in more steps, whereas in the first phase, the 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-spreading of the 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 through the same interfaces as standard transfers in such a short term impedes PSPs with 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 the surfaces such as ATM, telephone or paper format are less popular among the users, there is no need to force a PSPs to build a technical infrastructure for those surfaces. The PSPs can better assess what surfaces their users prefer. Since the Commission strives to stimulate the uptake of IPs in the EU, it would be rather reasonable 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 surfaces.

1.4 Fraud risks and sanctions screening

It is crucial to establish sufficient measures to ensure the security of IPs. Taking into account the velocity 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 highly welcomed. Notwithstanding their necessity, the current wording is vague and leaves some questions about their implementation open.

First, the proposal foresees that only the payer's PSP must check the IBAN and the name of the payee. The payer must be notified about any discrepancies as long as the user has not 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 if the payer's PSP informs not only the payer but also the payee's PSP. In case the payee often receives payments under the other name that belongs to that account, it could indicate a fraudulent activity or risks of data and identity theft. Those accounts should be additionally checked to minimize fraud. Assuring a high level of security for IPs would be ultimately one of the most effective methods to strengthen trust in IPs and therefore to promote their usage. At the same time, security mechanisms should not hamper the convenience and user-friendliness of a payment method. Too complicated and long procedures may frighten off the users as well.

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 is not able to conduct the checks. In this case, either the payer's PSP violates the law due to miscommunication with other PSPs if the transaction is conducted without a discrepancies check, or the payer's is forced to deny a transaction if a discrepancies check cannot be made. In both cases, it would raise doubts about the safety and effectiveness of IPs for the 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 of payee's PSP to share information, it would be necessary to introduce the obligation for the PSP to grant access for the required data upon the request of other PSPs and to set 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 for persons on the sanctions lists through all types of credit

[53] Impact assessment, p. 4.

transfers. Furthermore, it is not detailed in the proposed Regulation 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 sanction lists raises doubts regarding the practical implementation of this requirement. As a result, the interpretations of 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 sanction lists.

Forth, 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 the PSPs, since they must perform the same checks as for the standard transfers. However, real-time transactions may increase attempts at proceeding illegal transactions before any AML/CFT checks are conducted. Furthermore, an indication of suspicious transactions after they were settled makes it more complicated to undo such transactions. 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 the situations when some PSPs oversee 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 the PSPs security systems could support PSPs to better indicate 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 the EU institution 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 on the EU level is necessary. National legislation would not be as efficient to achieve this aim as an action on the EU level. Moreover, different national approaches may lead to unnecessary administrative and regulatory burdens and therefore make cross-border IPs 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 should not be fragmented.[55]

Moreover, differentiated national provisions may lead to market fragmentation since the IPs in euro are also made cross-border. Different rules on the execution of IPs in Member States would practically 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 appealing to the inability of the market to shift to the widespread usage of IPs. Under the principle of proportionality, the measure must not exceed the limits of the appropriateness and the necessity to archive the desired objective. It is indeed unlikely that the desired aim of the Commission can be reached by milder means in the near future. No other measure can ensure as wide availability of IPs on the European payment market in such a short term than a Regulation containing a general obligation for PSPs to mandatory offering IPs. Against this backdrop, this Regulation generally corresponds to the principle of proportionality. However, even the proposed Regulation does not guarantee a rapid market

[54] For the standards of the assessment the 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.

transformation. Even a mandatory offer of IPs does not necessarily promise a radical uptake of such payments if users e.g. have concerns regarding the safety of real-time transactions.

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.

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 favor "an efficient allocation of resources" (Art. 120 TFEU). Therefore, the EU legislation shall 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 take in place regulations to create a level playing field on the market, ensure fair competition, or protect consumers. Such regulations may, 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 not sufficient.

The Commission emphasizes that the uptake of the PSPs offering IPs was dawdling in the last years. It is questionable why so many institutions have not taken the opportunity to introduce those services. Since the actual use of IPs is still low nowadays and the establishment of technical infrastructure requires excessive costs, for some payment services providers, especially small institutions, the compliance with the obligation to offer IPs may constitute a significant financial burden, or – in the worst case – even lead to the close of business. That means those PSPs must be obliged to upgrade their core banking solution to be able to offer IPs. Thus, the proposed legislative framework would trigger 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 to 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 is different 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, the diversity of the products and services should be promoted.

Provisions on the pricing policy for IPs are no less controversial. Pricing regulation hinders the principle of free competition unequivocally. Price control can be considered as "one the most intrusive forms of intervention in the market".[57] Setting prices freely is indeed the most evident instrument[58] and characteristic[59] of the competition. Nevertheless, it does not mean that price regulation is not compatible with the 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 the 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 the anti-competitive practice in the form of price fixing if an action constitutes a misuse of a dominant market position. Is regulating prices for IPs in accordance with the mentioned principles of the single market and the 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. At the moment PSU can choose between a bright 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 their fees, they cover their costs. Offering more attractive conditions that the rivals may help to win more users. Under the proposed legislation, the freedom of fee policy will be severely impeded. Practically, there will be no real fee competition, since all types of payments will be probably free of charge. Setting price regulations is not an instrument of the free market economic system. The European market is self-regulated which means that the market trends are determined by supply

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 payments 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.

and demand. If the demand for instant transactions was higher, the PSPs would have more incentives 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.

Nonetheless, the obligation to offer IPs for all PSPs and the price regulation of IPs conceive a deep 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 payment markets, those additional costs may disrupt the continuity of some business models. Providing IP solutions may be for some kinds of companies not reasonable due to their size or specifications of their business models.

D. Conclusion

The examined legislative package 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 a tough intervention in the payment 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 in free competition with respect to the principles of the open market economy and free competition. This PSP's freedom to define their own products and services as well as fee policy should stay unbearable. Creating the predominance of the particular technology in an artificial way is therefore an inappropriate method to regulate the European payment market. In contrast, promoting new entrants and innovation are necessary for a successful and cost-efficient transformation of the payment market. Whereas a 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 the IPs may have a severe impact on the PSPs, lead to unnecessary costs for the market participants, act anticompetitive for new market entrants, and limit the technological efforts of the 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 disproportional.

Although the provisions addressing fraud risks and sanctions screening are to be intrinsically welcomed, they are not sufficient to effectively prevent fraudulent transactions and 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 payment market and elaborate other options for its further development. Instead of the mandatory offering of the IPs, a possible solution could be making those services more attractive for payment services providers and users, informing the payees about those services, and strengthening 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 informative 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 can therefore be useful for that purpose.