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## **EC Paper on SEPA Governance Aspects - EPC Comments**

**Circulation:** EPC

**Restricted:** Yes

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### **Background**

An EC paper on SEPA governance aspects was distributed to the members of the Forum of National SEPA Committees, other stakeholders and the EPC with a request for comments to DG Internal Market by 1 July 2011.

### **EPC Response**

The EPC has not only answered the questions posed, but has taken the opportunity to improve some of the statements made in the document itself.

# EUROPEAN COMMISSION

Directorate General Internal Market and Services

FINANCIAL INSTITUTIONS

Retail issues, consumer policy and payment systems

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EPC Comments 4 July 2011

EU Forum/002/11

## EPC Comments on

### SEPA GOVERNANCE ASPECTS

(1) This note provides a short overview of the current state of play of SEPA governance and seeks views from EU Forum Members on the adequacy of the current governance arrangements.

(2) Until now, SEPA has been predominantly run as a self regulatory project, set up and managed by the European banking industry (European Payments Council or EPC), with the strong support of the European Central Bank (ECB) and the Commission.

#### Comments

We disagree with the statement that SEPA has been predominantly run as a self regulatory project. In our view, SEPA is a policy-maker driven EU integration initiative.

A detailed list of the history of the SEPA initiative is annexed.

(3) The EPC Plenary as the ultimate decision-making body can decide on the management of the schemes and Frameworks, the introduction of new schemes and Frameworks and on changes, to be implemented into these schemes and Frameworks. As regards the EPC Plenary membership, in addition to banks, at the moment one seat is given to payment institutions, while other payment service providers, processors and users are not represented.

#### Comments

We do not understand who is meant by 'other payment service providers'.

#### (I) PAYMENT SERVICES PROVIDERS

According to our understanding only Payment Service Providers are entitled to deliver payment services to customers. As a follow up of the Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 (PSD) the EPC Plenary opened its membership to Payment Institutions. The number of seats in the EPC Plenary given to groups of banks (national or sectoral) and payment institutions is dependent on the number of payments they execute as published in the Blue Book of the ECB.

#### (II) SEPA SCHEMES

According to the principle of separation between schemes and processors, clearing houses and processors are not part of the EPC scheme development function.

The development and maintenance of the three SEPA Schemes (SCT, Core-SDD, B2B-SDD) includes the rules applicable to the scheme participants (through the master agreement by which the scheme participants adhere to the schemes) and the technical standards (of ISO) applicable for the scheme participants and their customers.

The EPC has created two Forums to take the views of other stakeholders into account;

(a) the Customer Stakeholders Forum with representatives of European Associations of Customers;

(b) the Clearing and Settlement Forum with the representatives of the Clearing and Settlement Mechanisms (CSMs). CSMs signed a disclosure letter stating that they will respect the rules and technical standards of the SEPA Schemes.

There is an annual change cycle for the SEPA Schemes with a 3 months open public consultation.

### (III) CARDS

In December 2009 the ECOFIN asked the “industry” to take care of the standardisation for cards. The EPC Plenary encouraged the creation of the Cards Stakeholders Group (CSG) with five representatives of the following five sectors: banks (nominated by the EPC), merchants, card schemes, processors and vendors. The non-bank CSG representatives are designated by the sector involved.

(4) Furthermore, a Scheme Management Committee (SMC) – put at arm’s length of the EPC Plenary – is responsible for the management of the SEPA Credit Transfers (SCT) and SEPA Direct Debits (SDD) schemes (e.g. adherence) and arbitrates between scheme participants (banks, payment institutions, etc) in the event of disputes. Change management is the sole responsibility of the EPC Plenary. Nine of the twelve members of the SMC are from the banking industry and three are independent, including the Chair.

### **Comments**

The Scheme Management Committee is not involved in the development and maintenance of the SEPA Schemes. It has an independent task:

1. to decide if applicants for scheme participation meet the legal criteria defined for becoming a scheme participant;
2. to be available for scheme participants in case of conflicts between scheme participants on the interpretation of the rules of the rulebooks (the master agreement they adhered to) arise.

Arbitrage of the SMC relates only to conflicts between scheme participants on the interpretation of scheme rules and not to other conflicts. Conflicts between payment service providers and their customers are out of scope of the SMC.

(5) In addition, under the auspices of the EPC function the Customer Stakeholders Forum (dealing with the SEPA Credit Transfer and the SEPA Direct Debit) and the Cards Stakeholders Group (dealing with card payments and in particular with the standards dossier) – both of these bodies are co-chaired by the EPC and representatives of the end-users.

## Comments

The ECB and the Commission are observers in these Forums.

For the SEPA Schemes there is not only a Customer Stakeholders Forum, but also a Clearing and Settlement Forum (co-chaired by the EPC and a representative of the CSMs).

The Cards Stakeholders Group is only focussed on standards for card payments and not with card payments as suggested in the question.

The technical standards of the SEPA schemes are ISO standards. For card payments so far only requirements for standards have been approved, but no choices have been made. The only exception is the approval of the EMV standard to combat fraud with cards.

(6) Much has already been achieved through the self regulatory approach, for example the Rulebook for the SEPA Credit Transfers and the two Rulebooks for SEPA Direct Debits. However, the primarily market-driven approach currently used cannot be characterised as being entirely successful. The prevailing market uncertainty caused by the generally difficult economic climate, the disadvantages for first movers in a network business, and the duplicate costs of operating SEPA and legacy payment systems in parallel are reasons that have led many market players, especially on the supply side, to call for the establishment of an end-date for SEPA migration by means of legislation at the level of the Union.

## Comments

The work achieved relates to the development of the SEPA Credit Transfer Scheme Rulebook and the two Scheme Rulebooks for SEPA Direct Debits.

The market driven approach is not considered to have been entirely successful when the aspect of the adoption of the schemes by market players (consumers, SMEs, corporates and public administrations) is considered. This is partially because, for an unknown period of time, there is a cost for maintaining duplicate systems in the absence of clearly defined end dates regulated by the European Authorities.

Many market players therefore are holding their implementation and migration until clarity is created on the establishment of an end-date for SEPA migration by means of legislation.

(7) In December 2010, the Commission adopted a proposal for a Regulation to ensure full migration to credit transfers and direct debits, as well as to clarify the business model.

It is understood that this relates to the migration to the SEPA Schemes. We understand that the business model refers to SEPA Direct Debit.

(8) In order to improve stakeholder involvement in the governance of SEPA, the European Commission and the ECB have jointly established the 'SEPA Council' in March 2010. The objective of the SEPA Council is to promote the realisation of an integrated euro retail payments market by ensuring proper stakeholder involvement at high level and by fostering consensus on the next steps towards the realisation of SEPA. The SEPA Council shall not replace any existing groups or structures at national or European level.

The current mandate clearly does not provide the SEPA Council with legislative power and it cannot impose binding provisions.

## Comments

The EPC supports the objectives of the SEPA Council. The EPC believes that the SEPA Council should give recommendations on request of the members of the Council if the regular process of SEPA-wide consultation does not lead to a clear conclusion on requests by buyers of payment services related to new rules and technical standards for the SEPA payment schemes.

(9) The upcoming Regulation<sup>1</sup> and any further future legislation (if any) puts the SEPA Council in a somewhat different perspective compared to the moment it was established. Both the European Parliament and Council have recognised the importance and stature of the SEPA Council. Within its current mandate the SEPA Council could still provide guidance and/or statements on SEPA issues, and in this context could possibly contribute also to a well informed legislative process.

## Comments

The reality is that the European Parliament has started, as part of the legislative initiative launched by the Commission for the definition of end dates of the use of national legacy payment schemes, to legislate aspects and components of payment services which are considered to be absent or insufficiently developed according to the European associations of certain groups of stakeholders. This activity puts the SEPA Council in a position where the domain in which it should provide guidance is being overruled by such extrapolations of the end date related legislative initiatives.

The foreseen delegation of powers to the Commission to charge the Commission with the maintenance of the content of the Annex to the end date regulation (the technical standards to be used in all SEPA payment schemes), implies that the Commission may de facto take over part of the activities carried out by the EPC as the scheme manager for the SEPA Schemes. This is another way of undermining, even if not intended as such, the mission of the SEPA Council.

(10) Regarding SEPA compliance, some steps have taken place. For Clearing and Settlement, the ECB has issued Terms of Reference for the SEPA compliance of infrastructures. For cards, the EPC has defined compliance with the SEPA Cards Framework and the ECB has issued Terms of reference for the SEPA compliance of cards schemes. However, there is no formal mechanism to interpret, monitor and enforce SEPA compliance in case of card schemes and CSMs (Clearing and Settlement Mechanisms) as well as settle any potential dispute.

## Comments

The EPC Scheme Management Committee can take action if scheme participants of the SEPA Scheme do not respect the rules and standards of the SEPA Schemes.

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<sup>1</sup> Proposal for a Regulation of the European Parliament and of the Council establishing technical requirements for credit transfers and direct debits in euros and amending Regulation (EC) No 924/2009; <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010PC0775:EN:NOT>.

The EPC received disclosure letters from the clearing and settlement organisations stating that they will respect the rules and standards of the SEPA Schemes. The names of these CSMs are published on the EPC website. The EPC has no legal mandate to enforce that CSMs respect the rules and standards of the schemes. It is therefore assumed that the EPC scheme participants using a CSM take action in their relationship with that CSM (if required).

The EPC has also received letters from nearly all of the card schemes stating that they will respect the principles of the SEPA for Cards objective as mentioned in SEPA Cards Framework.

The EPC acknowledges that there is no formal mechanism to enforce SEPA compliance by card schemes and CSMs

(11) Only very little time has elapsed since the establishment of the SEPA Council and therefore is still too early to make an assessment of its operation, efficiency and functioning. However, this does not prevent taking a closer look at the current SEPA governance, in order to exchange views and possibly identify areas of improvement (any exchange of views is however without prejudice to any conclusions made by the European Commission services and the ECB as part of their evaluation exercise of the SEPA Council functioning which is to be done after two years of its operation<sup>2</sup>.

#### Comments

The European Commission and the ECB are accountable for the agenda and the planning of the SEPA Council. The lesson learned so far is that the planning of the meetings is poor with the consequence that not all representatives of the members have been available for meetings.

(12) In this context, it is worthwhile examining whether more can be done out of the current SEPA governance arrangements for the benefit of the SEPA project, whether the current SEPA governance arrangements present any weaknesses in their structure, scope, or way functioning and, if this is the case, how these could possibly be addressed.

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<sup>2</sup> SEPA Council: Description and Functioning (Article 2, para 8):  
[http://ec.europa.eu/internal\\_market/payments/docs/sepa/council/mandate\\_en.pdf](http://ec.europa.eu/internal_market/payments/docs/sepa/council/mandate_en.pdf),  
[http://www.ecb.europa.eu/paym/sepa/pdf/SEPA\\_Council\\_description\\_functioning.pdf?1f4f9fe5aa1a199646a53241ec0b3851](http://www.ecb.europa.eu/paym/sepa/pdf/SEPA_Council_description_functioning.pdf?1f4f9fe5aa1a199646a53241ec0b3851)).

## Questions for discussion:

(1) What is the assessment of EU Forum members concerning the current SEPA governance arrangements at EU level? In case of weaknesses identified, do EU Forum members have any suggestions for the improvement of SEPA governance? For instance, should the SEPA Council have a role in providing guidance on certain technical standards; act as a mediator or arbiter in cases where no agreement can be reached between users and suppliers?

### EPC Response

Technical standards are developed by the international ISO organization in which Europe is represented by P-members (that represent the views of buyers, suppliers, operators and vendors of payment services) from many member states of the EU 27 and by liaison members. The subset of these standards which are to be used for the operations of the SEPA schemes are defined by the EPC as scheme manager of the SEPA schemes. For this reason, we do not see how a high level body like the SEPA Council could provide guidance on technical matters related to ISO standards.

The SEPA Council can act as a valuable forum to share, discuss and recommend high level guidelines for the further development of SEPA and related payment services.

The SEPA Council should also act as a mediator or arbiter in cases where no agreement can be reached between users and payment service providers (banks and payment institutions). The SEPA Council could provide a methodology to the Stakeholders Forum or the Cards Stakeholders Group for the determination of the right balance between cost efficiency and customer benefits in payment schemes.

2) Has the current legislative process for a 'End-date Regulation' triggered any further reflections to the EU Forum members on the current and future role of the SEPA Council? What role the SEPA Council should play in mixed, self-regulatory and regulatory environment?

### EPC Response

The EPC observes that the main discussion points on the End-date Regulation are not on the end-date itself, but on the conditions to create SEPA.

We wonder if in this stage of the legislative process the SEPA Council is still entitled to formulate recommendations.

We believe that the SEPA Council could have an important co-regulation role in formulating recommendations for the SEPA programme.

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## Additional Input – Annex

### Point 2)

During and after the approval process of the Regulation 2560/2001 the European Public Authorities (in particular the European Central Bank and the European Commission) stressed that the banks should undertake the creation of pan-European euro payment services for the benefit of European citizens. In 2002 42 banks, together with the EACB, EBF, ESBG and EBA, decided to join forces and created the European Payments Council.

In December 2004 a first draft of a “SEPA Roadmap” was approved by the banks and the four European Associations, who decided to join forces to create SEPA as requested by the ECB and European Commission.

On 10 March 2005 Mr. Jean-Claude Trichet and Mr. Charlie McCreevy stressed in their speeches in Luxembourg that the banking industry is expected to deliver SEPA.

On 17 March 2005 the banks, together with the four European Associations, decided to approve the final text of the “SEPA Roadmap” document and approved the enclosed “Declaration”.

In addition it was decided to create an EPC Charter to have clear rules for the scope and cooperation model. The (current) scope is focussed on the “cooperative space of payment services (retail and commercial payments) in euro in Europe and their settlement” (article 2).

The role of the EPC is to serve as a decision making organisation for providing “strategic guidance for standardisation, to formulate rules, best practices and standards and to perform the functions of Scheme Manager for the SEPA Schemes”.

A clear distinction needs to be made between the role of the EPC in scheme development and the minor role for the EPC in adoption and implementation of these schemes, which is the role, inside the Payments Industry, of the national SEPA Committees with participants of the public sector (Central Bank, Ministry of Finance) and private sector (supply-side and buy-side payment services).

The EPC has separate functions for the development functions and for the monitoring functions. The EPC Plenary takes decisions on the rules and standards of the SEPA Schemes and Frameworks. The EPC Plenary does not take decisions on the implementation and migration to SEPA. These decisions are taken by the national SEPA Committees in particular in the 17 euro area countries.

The EPC decided not to create its own technical standards, but to promote the technical standards of standardisation organisations such as ISO and EMV. The technical standards for the implementation of the SEPA Credit Transfer and SEPA Direct Debit Schemes are ISO standards and are described in the Implementation Guidelines. ISO standards are approved by the P-members (participating members are called "P" members as opposed to observing members which are called "O" members) of the ISO-organisation from many European countries, but also from other jurisdictions like USA, Japan, Brazil, etc. The P-members reflect the views of the suppliers, buyers, operators and vendors of payment services.



For the 'SEPA for Cards' objective the EPC Plenary has not yet decided (with one exception) which technical standards should become mandatory. In the SEPA Cards Framework principles for banks, card schemes and card processors, to create clarity on the Standards for Cards has been included. The EPC Plenary decided to create the Cards Stakeholders Group (CSG) with representatives of the banks, merchants, schemes, operators and vendors. The CSG created the Book of Requirements with requirements for standards, but not (yet) with the actual standards.

The EPC Plenary has taken a decision to implement the EMV standards to combat fraud with cards.

In 2008 the European Competition Authorities (chaired by DG Competition) reviewed among other things the selection of standards by the EPC Plenary. In their "State of Play" of June 2008 it was confirmed that the selection of ISO standards does not raise any concerns, but the selection of EMV standards does raise a concern on their part.

The EPC believes that the SEPA program is a co-regulation program. The European Public Authorities have taken the initiative for Regulations 2560/2001 and 924/2009 and for the Payment Services Directive.

The EPC has taken care of the SEPA Scheme Rulebooks using the ISO standards and some Frameworks with principles. The implementation and migration to SEPA is taken care of by the national SEPA Committees with representatives of the public sector and private sector (buy-side and supply-side).