

March 2014

Migrating deadlines – pushing back the migration of SEPA credit transfers and direct debits

On 20 March 2014 Regulation (EU) No 248/2014 of the European Parliament and of the Council of 26 February 2014 amending Regulation (EU) No 260/2012 as regards the migration to Union-wide credit transfers and direct debits (the “**Amending Regulation**”) was published in the Official Journal of the EU (OJ). The Amending Regulation postpones to 1 August 2014 the end-date set under Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in Euro and amending Regulation (EC) No 924/2009 (the “**SEPA Regulation**”) in respect of the euro area migration of domestic and European credit transfers and direct debits. The Amending Regulation was the subject of an accelerated legislative timetable in view of the urgency of the matter and applies with retroactive effect from 31 January 2014. It mirrors the European Commission’s (the “**Commission**”) proposal of 9 January 2014, which was aimed at promoting legal certainty and at preventing discontinuity to the application of the SEPA Regulation, and which was endorsed by the EU Parliament on 4 February 2014. The Amending Regulation entered into force on 21 March 2014.

No time to relax

The Commission’s proposal for pushing back the SEPA migration deadline amounted to indicating to the market that something had not gone as planned. Indeed, since the entry into force of the SEPA Regulation, various reports had raised alarm bells that market participants were not on track for meeting the migration deadline. Concerns had been voiced as to whether this meant that payment service providers would be obliged, as of 1 February 2014, to refuse payment instructions that did not meet the technical standards of the SEPA Regulation. Still, the Commission’s move was a bold one and reflects a realisation as to the extent and magnitude of the problem. Giving market participants more time to comply may have been – in the Commission’s view – essential, but it should not be interpreted by market participants as condoning a “take your time” approach; the August deadline is

just around the corner and the Commission this time will not be sympathetic to complacency.

An interesting legacy?

Although the Commission’s rationale and aim behind the Amending Regulation is clear, the same cannot be said about the wording of the Amending Regulation itself, which on certain issues raises as many questions as it purports to answer. Specifically, the regulation:

- uses a permissive approach, “allowing” payment service providers to continue to process transactions under their legacy schemes and to offer conversion services to users who have yet to migrate. On a literal interpretation, a payment service provider is free to choose not to accept payments that are formatted in a manner that is not SEPA Regulation compliant, provided of course that (in line with its regulatory obligations) such payment service

provider has clearly explained to its client its formatting requirements in its terms and conditions;

- enables Member States to allow payment service providers to offer conversion services in respect of BBANs. This may result in diverging approaches being followed in different EU Member States;



■ states that the derogation from the migration deadline relates to Articles 6(1) and 6(2) of the SEPA Regulation and specifically to the processing of transactions in euro in formats that are different to those prescribed for in the SEPA Regulation. This begs the question as to whether the

non-formatting requirements of the SEPA Regulation (for example, the Article 5 checking obligations and/or the consumer protection provisions) also get the benefit of the derogation, or whether these should be complied with in advance of 1 August 2014 in respect of legacy direct debits. On a

purposive interpretation of the Amending Regulation, an argument can be made that the Article 5 obligations were meant to only apply to SEPA Regulation compliant mandates (rather than legacy ones). Whether this is an adequate level of “legal certainty” remains to be seen.

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