



ARE REAL-TIME PAYMENTS OVERREGULATED?

The payments industry has changed significantly in recent years. New players are now offering payment services, including e-money or payment institutions as well as third-party service providers. The number of electronic payments in Europe is increasing continuously, rising by more than 10 per cent a year in some cases. At the same time, the deadlines for processing payments keep getting shorter. SEPA reduced the time available from several days to one day within Europe. Since 2019 it has been possible to reduce this deadline from one day to just a few seconds. To achieve such speeds, it is no longer sufficient to use the existing infrastructure, which was optimised for batch processing. Considerable investment was required in new infrastructure for real-time payment processing. Now the European Commission plans to regulate real-time payments and tabled its proposal at the end of October 2022. This is intended to encourage the use of real-time or instant payments and create broad acceptance for them within the SEPA area, as well as making a wide range of services mandatory.

Customer need is paramount – not the market share of instant payments

According to the European Commission, instant payments currently account for just 13 per cent of all credit transfers within the EU, which it thinks is not enough. It wants to increase this share significantly, which is its justification for regulating real-time payments. In its opinion, instant payments should become the new standard and a driver of innovation for the EU economy. And now it wants to introduce a law to make instant payments the new normal. It also feels that in many EU countries, too few payment services providers are offering instant payments. By contrast, market participants believe the market share is simply a reflection of market demand for instant payments. An instant payment is not suitable for every use case: for example, the draft regulation proposes that it should be possible to execute paper-based credit transfers in real-time. It also seems doubtful that companies and merchants should have to carry out every transaction as an instant payment. Today, big companies submit up to 10 million payments to banks in a single batch file. Executing such a vast number of payments in real time is not market standard, and is often not necessary either. Even though in countries like Germany, instant payments are available almost everywhere, only around one in ten payments is made as an instant payment because the need for a complete market switch simply does not exist. According to a survey carried out by banks and savings banks, this is not because a fee may be charged either. Those

banks that offer instant payments free of charge do not automatically have the highest share of such payments, for example. These are often banks that charge their clients a reasonable fee for instant payments, which are an extra service. It is not a case of an overall market failure at the European level, either, since the majority of current accounts in 15 EU countries are accessible for instant payments. This means there is no legitimate basis for regulatory intervention.

Instant payments have potential even without regulation

There are areas in which instant payments can open up potential. This may be the case for payments in shops, at the point of sale (POS), in e-commerce or for processing retail payments between banks after authorisation by the customer. Having recognised this, the European Payments Initiative (EPI) is currently working on a wallet-based payment solution, which also includes instant payments. These can be combined with smartphone banking apps to create a European alternative to the global payment systems – it is up to the market to choose the appropriate instruments for the payments, however. Yet with the planned regulation, banks and savings banks as payment services providers are being forced to support instant payments across all channels, regardless of whether there is any customer need for it. This obligation is intended to apply to all online channels, paper-based credit transfer slips, and in branches where banks offer standard credit transfers. A statutory obligation to switch to instant payments is not justified economically. An instant payment is less efficient than bulk payments, for example, and uses more resources because the technical requirements are higher. For this reason, real-time payments do not make sense in all areas from an ecological perspective either.

Interference with freedom of pricing would be a significant market intervention by the legislature

The regulation of instant payments in the current draft constitutes a serious intervention in the right to set prices freely, because the fees for instant payments are not allowed to be higher than those for standard credit transfers. This runs contrary to the need for investment in innovative new infrastructure. Ultimately, fees for all payments and account management could go up, effectively resulting in cross-subsidies, which does not do justice to the idea of transparent services or to customer requirements.

Implementation deadlines are not practicable

Not all banks are set up to receive instant payments today, or actively offer instant payments to their clients. According to the draft regulation, to the extent that they are subject to the obligation they must introduce instant payments for relevant projects within a very short timeframe. The European Commission is proposing transitional periods for the introduction of real-time payments of six months (passive) and 12 months (active) after the regulation takes effect. These transitional periods are unreasonably short in relation to the complexity of instant payments and existing system commitments. The technical requirements of instant payments and the necessary checks are high, and cannot typically be integrated into the existing infrastructure for processing standard credit transfers. The modifications required for instant payments call for significant investment in new infrastructure, and are technically demanding. Much longer transitional phases are therefore needed to ensure professional implementation by banks.

Cross-check of name and IBAN – time-consuming, but inefficient

Banks expect higher levels of fraud if instant payments become the new normal, because criminals prefer instant payments. The costs of risk-mitigation and losses also have to be taken into account, and are an element determining the fees required. Payment service providers are also obliged in the draft proposal to offer a cross-check between the IBAN and the name of the payee, in order to prevent fraud. This check is aimed at specific cases of fraud, in which the payee's IBAN has been manipulated and the payment is directed to the scammer's account. This cross-check therefore only serves to reduce a particular kind of scam and has no effect in the majority of fraud cases. An option for the customer to deselect this check is not enough. Furthermore, an EU-wide system has to be built, which does not even exist today. According to the draft, cross-checks of payee name and IBAN must be established no later than 12 months after the effective date. This deadline is unrealistically short, given the context and the work required to design and implement a solution. Regardless of the legitimate doubts about the effectiveness of this measure, much longer transitional periods are required. Whether payers can be charged a fee for the cross-check that would justify the investment has not been finally clarified. Incorrect IBAN entries are already identified by a verification algorithm and so can virtually be ruled out.

Restrictions and exemptions make sense for specialist banks, such as development and promotional banks

Limiting the obligation to banks that already offer their customers the credit transfers for their payment accounts is a sensible restriction. This avoids unnecessary expenses at banks with a different business model, such as development and promotional banks. Development and promotional banks do not generally offer credit transfers as a payment service to their clients via their own payment accounts, and so are exempt from the obligation. The exemption applies as a matter of principle if no payment accounts are offered for clients, because credit transfers can then not be made or received on client accounts within the bank.

Sanctions checks are complex and third-country sanctions may give rise to inconsistencies

In contrast to standard credit transfers, there is no time for a manual sanctions check with instant payments, because they would need to be carried out within a few seconds. Instant payments are therefore currently stopped if there are any doubts, whereas the same payment as a credit transfer could be completed after a positive manual check. In cross-border payments, this results in numerous instant payments being denied as 'false positive' hits compared with standard credit transfers.

In view of the current situation, the European Commission wants to restrict the sanctions check to just the payer. According to the draft, payees may not be checked for sanctions and the payments may not be filtered. Not filtering instant payments would abolish an important check, which has been practice-tested and shown to be necessary. Furthermore, banks may then be in breach of differing rules on reducing financial crime in economic areas outside Europe. This may have adverse consequences for European banks at an international level. Penalties for non-compliance also seem to be unreasonably high.

Our position

We demand that banks are not forced to offer active and passive instant payments. There is no market failure that would justify regulation.

We welcome the proposed exemption from the obligation to support instant payments for banks which do not offer their clients payment accounts or credit transfers. This typically applies to development and promotional banks.

We believe it is necessary for clients to be able to choose their payment methods themselves, because instant payments are not suitable in all cases. The market has in fact already found a solution. In particular, the bulk processing of instant payments only makes sense with special processes and is not generally ecologically or economically sensible.

In our view, applying the same pricing as for standard credit transfers is unreasonable, because it does not reflect the technical demands and expenses. This curtails banks' freedom to define their own products and prices. It also discourages investment and price transparency.

We demand that the transitional periods of six months (passive) and 12 months (active) should be increased to 36 months. This is the only way in which the regulation can be implemented professionally.

We reject a statutory obligation to check the IBAN against the name. A deselection by the client and pricing option are not sufficient: at the most, it will only prevent a small number of fraudulent cases. The related efforts and expenses are unreasonably high compared with the benefits. For most payments, there is no need for this cross-check. If the fundamental obligation is maintained, the transitional periods must be considerably extended.

We insist that banks should also be allowed to apply sanctions lists from other jurisdictions – this applies to payees in particular. In addition, the penalties must be significantly reduced and brought into line with similar legislation.

For further information or if you have any questions, please contact our payments and information technology (Zahlungsverkehr- und Informationstechnologie – ZIT) team on: +49 30 8192 182.

The Association of German Public Banks (Bundesverband Öffentlicher Banken Deutschlands – „VÖB“) is a leading association within the German banking sector. It represents the interests of 63 banks, including the Landesbanken (the head institutions of the German Savings Banks Finance Group), as well as the development and promotional banks owned by the Federal Republic of Germany or the individual German federal states. With total assets of some €3,229 billion, VÖB's member institutions cover approximately one-third of the German banking market. Public-sector banks assume their responsibilities towards SMEs, other enterprises, the public sector, and retail customers; they are deeply rooted in their respective home regions, all over Germany. With a 59 per cent market share, ordinary VÖB member banks are market leaders in local authority financing; in addition, they provide some 23 per cent of all corporate lending in Germany. Last year, VÖB's development and promotional banks provided 81 billion euros in development loans. VÖB is the only German banking association exercising the functions of an employer association for its member institutions: Collective bargaining and the negotiation of collective agreements is carried out by the Collective Bargaining Association of Public Banks. It covers 60,000 employees of VÖB member banks (as at year-end 2021). More information is available at www.voeb.de