

## Our position

# Instant Payments



AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled more than €3.4 trillion in 2021, directly supports more than 4.9 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

## Executive summary

Payments are undergoing fundamental changes and instant payments are an important element for an innovative and competitive payments market. While the Commission's proposal aims to adapt the European system to these changes, we have concerns on the practicality of its requirements.

To best respond to customers' expectations and demands, a number of elements should be clarified. For instance, the provisions on sanctions screening should be more closely aligned with Payment Service Providers (PSPs)' broader compliance obligations and practices. Furthermore, the time and cost of necessary investments should not be marginalised. Therefore, both the implementation timelines and the restrictions on fees should be re-assessed. This is particularly true when looking at the proposed provisions on payee verification services. Finally, in light of the upcoming proposal on a Digital Euro, policymakers must ensure alignment between the various legislative developments in the payments area.

## Introduction

The European Commission proposed a regulation on instant euro-denominated credit transfers (instant payments) in October 2022. Instant payments were chosen as one of the pillars of the Retail Payments Strategy given their potential to contribute to the EU's strategic autonomy and their ability to compete with rival payment methods.

Instant payments are complementary to existing payment methods, such as credit transfers, and neither option should be promoted over the other by policymakers. Deciding which payment method is best suited for them should be left up to consumers, merchants, corporates and the market in general. This diversity leads to a more resilient European payments sector.

Instant payments have specific features and require a number of operational, technical and legal challenges to be addressed, in particular as it relates to compliance obligations. Additionally, the necessary investments required by PSPs to build the rails for instant payments will require efforts that should not be underestimated. Furthermore, instant payments have a unique risk profile and given their nature (real-time and irrevocable), are attractive to fraudsters. These elements should all be considered and further reflected in the proposal.

## Screening of instant payments for EU sanctions - Article 5d

The Commission's proposal intends to make the screening process for instant payments more efficient and based on a risk-based approach. This is key for the Financial Action Task Force (FATF) and should not only be underpinned in the overall EU AML/CTF Framework, but also be present in the sanction screening for instant payments. However, the practicality of the sanctions screening requirements contained within the proposal are concerning. Rather, the final text should be more aligned with PSPs' broader compliance obligations.

Firstly, these PSPs may have screening obligations and requirements outside of the EU and would thus have to perform screening against non-EU lists for both intra- and extra-EU transactions. While having a common and uniformed sanctions approach to Single Euro Payments Area (SEPA) instant payments may create efficiency, the text of the proposal should clarify that it does not apply to third country sanctions eg, the Office of Foreign Assets Control (OFAC)'s sanctions. To avoid unsuccessful payment executions due to non-EU compliance requirements, it should be made clear that the proposal does not prohibit screening against national lists or other risk management lists. It should also be clarified that UN sanctions lists will be covered by the proposal once transposed into EU law through restrictive measures adopted in accordance with article 215 the Treaty on the Functioning of the European Union (TFEU).

Additionally, the proposal provides for liability and compensation mechanisms (article 5d(3)) where PSPs would compensate each other for potential incurred damages should the freezing requirements or prohibition provisions be violated. The right of recourse would be difficult to exercise, and the text fails to recognise and acknowledge that financial damages are not the only way PSPs can be affected: a provider may also be affected by supervisory measures, suffer reputational damages, etc. Article 5d(3) and the associated recital 16 should be deleted.

Finally, article 5d(1) regarding the timing of verifications should be amended from ‘PSPs shall carry out such verifications immediately after the entry into force of any new or amended restrictive measures adopted’ to ‘PSPs shall initiate such verifications as soon as reasonably possible after the entry into force of any new or amended restrictive measures adopted’. Indeed, PSPs implement adopted sanctions diligently and expeditiously, but it is not possible to verify immediately after the publication in the EU Official Journal of a new listed person or entity if a customer is affected.

## Implementation timelines - Article 5a(4)

For instant payments to be successful and used, trust and security should be at the core of the offering. To develop a useful and secure service to European users, the proposal should account for the efforts and resources needed to implement the instant payments schemes that respond to customers’ expectations. Therefore, the implementation timelines for receiving and sending instant payments should be adjusted to 18-months for receiving and 24-months for sending instant payments within the euro zone. The application of the Regulation to non-euro countries is disproportionate given the low demand for euro-denominated payments, including existing standard credit transfers. The implementation costs are expected to outweigh both the likely client adoption rates and the return on investment for PSPs. Therefore, PSPs in non-euro EU countries should be excluded from the scope of the Regulation, allowing competition and other market forces to apply.

## Charges in respect of instant credit transfers - Article 5b

Although the European Commission aims to limit the charges and impose restrictions on fees, instant payments should not become an automatic replacement for other payments methods. Payment Service Users will require and utilise different payment methods for different use cases and situations. The investment costs and effort to set-up the necessary infrastructure to offer instant payments services, including building the necessary rails, will be significant. Therefore, a more proportionate approach to pricing should be adopted where fees are not restricted and where the pricing of instant credit transfers is not equated with that of regular credit transfers.

Furthermore, for the proposal to remain future proof, institutions should be given scope to charge ‘premium pricing’ for ‘premium instant payments services’. The proposal should enable innovation in instant payments services that can be built on top of more ‘basic’ or traditional services (eg bill splitting with automatic associated instant payments). Therefore, leaving room for such ‘premium pricing’ would allow in-scope entities to innovate and create a sustainable business-cases for instant payment service providers.

## Payee verification services - Article 5c

The nature of instant payments (real-time and irrevocable) may make them attractive to fraudsters. Thus, rolling out a confirmation of payee service is an important tool to combat fraud and protect customers. However, there are currently no pan-European IBAN-name check solutions. Developing such a service would involve various operational, technical and legal challenges that need to be considered. The

complexity and cost of such development should not be ignored. Further attention should be paid to the proposed measures on how to address discrepancies between the name and payment account identifier of a payee, in particular as it refers to the obligations of the payee PSP, liability and charges provisions.

## Interaction with other payments developments

Payment services are undergoing numerous fundamental changes. As the European Commission has announced its plans to introduce further legislation on payments in the coming months, including on a possible Digital Euro (in May 2023) and a review of the Payments Services Directive (in June 2023), coherence and consistency are needed for market participants.

Considering these upcoming proposals, policymakers must pay attention to the broader payments landscape in Europe and ensure alignment between these various pieces of legislation. In particular, the development of the Digital Euro is positive as there is great demand to digitise central bank money. Questions remain as to how the instant payments proposal would interact with the Digital Euro.

## Scope

The European Commission's proposal does not cover payment institutions and e-money institutions and these institutions currently do not participate in settlement systems designated under the Settlement Finality Directive (SFD). The protection offered under the SFD is of key importance to market participants and all participants should be treated equally. The list of eligible SFD participants should be extended to include payment institutions and e-money institutions. This could level the playing field and reduce inconsistencies between approaches of different Member States.

However, as highlighted by the Committee on Payments and Market Infrastructures (CPMI) in its October 2020 report to the G20 on enhancing cross-border payments, any extension of (direct) access to payment systems needs to be balanced by suitable levels of oversight and supervision. Accordingly, access criteria should be on a par, designed and applied so as to mitigate the IT, operational, credit and liquidity risks in order to protect other participants and ultimately payment service users as well as to safeguard market confidence in the payment system as a whole. Eligible SFD participants should have the choice whether to adopt a direct or indirect participation approach, according to each firm's preferred business model. We therefore support efforts on the part of payment systems and industry to create frameworks and solutions that seek to strengthen and facilitate indirect participation.

## Conclusion

As users increasingly expect payment variety, convenience and speed, as well as quality, safety and security, it is important to ensure a competitive, innovative and secure instant payments ecosystem. To best respond to this demand, and for instant payments to become common and reliable, it is paramount to ensure that trust is maintained in the payments system. Therefore, policymakers should appropriately consider the concerns raised in this paper. While the thoughts behind the provisions outlined above are understandable, they can undermine the EU's objective to encourage the uptake of safe and secure instant payments while creating legal uncertainty for market participants.