Verband der Auslandsbanken
in Deutschland e.V.
Association of Foreign Banks in Germany

European Commission
Directorate-General for Financial Stability,
Financial Services and Capital Markets Union
(FISMA)
Unit B3: Retail financial services
1049 Bruxelles/Brussel
Belgium

7 April 2021

Instant payments - Inception impact assessment - Ares(2021)1648321

Dear Sir or Madam,

We appreciate the opportunity to provide input to the referenced Inception impact assessment document.

The inception impact assessment (Ares(2021)1648321) regarding the initiative on instant payments of 10 March 2021 elaborates on the future roadmap of the Commission. It is our perception that its basic assumption is that the European market is currently highly fragmented when it comes to end-user payment solutions based on instant credit transfers and, therefore, the Commission is willing to propose legislative options. As already outlined in the Payments Strategy for the EU that was published on 24 September 2020, the Commission is aiming for the full implementation of an instant payment system in the EU. And although the inception impact assessment document takes into account in its last section that legislative options could take form as an EU directive or an EU regulation, we noted that the Commission's website already sets out that a proposal for a regulation may be planned for the first quarter of 2022.

The Association of Foreign Banks in Germany (VAB) does in general support a further harmonisation of regulatory requirements on instant payments. Most of our member institutions are part of a cross-border banking group and can benefit from the regulatory level playing field arising from the harmonisation, especially in terms of comparable standards in payment regulation.

Therefore, we would like to share our thoughts with you with respect to the following issues:

Andreas Kastl

Verband der Auslandsbanken
Weißfrauenstraße 12-16
60311 Frankfurt am Main
Tel: +49 69 975850 0
Fax: +49 69 975850 10
andreas.kastl@vab.de
www.vab.de

Interessenvertretung
ausländischer Banken,
Kapitalverwaltungsgesellschaften,
Finanzdienstleistungsinstitute
und Repräsentanzen

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Directive or Regulation
If legislative options will be applied, we would in general advocate for an EU regulation instead of an EU directive, as uniform rules in instant payments could be more accurately aligned with the existing regulatory regime that was established by the SEPA Regulation (EU 260/2012).

Implications of mandatory adherence to SEPA Instant Credit Transfers
In the inception impact assessment document, the Commission emphasizes in retrospect of its public consultation between 3 April and 26 June 2020 that a large share of respondents supported EU legislation making payment service providers' (PSPs) adherence to the SEPA Instant Credit Transfer mandatory. Furthermore, the document also refers to Article 4 para. 1 sent. 1 lit. b of the SEPA Regulation in the context of the conditions that were set out to assess the interoperability of payment schemes. Concerning future legislative steps of the Commission, we would like to recall that the exemption rule of Article 4 para. 1 sent. 2 of the SEPA Regulation shall still be applicable: "where neither the payer nor the payee is a consumer, only Member States where such services are made available by PSPs and only PSPs providing such services shall be taken into account." More specifically, future legislative approaches stipulating mandatory adherence of PSPs to a SEPA Instant Credit Transfer system or scheme should acknowledge that PSPs that do not offer SCT services to consumers are out of scope (compare for example also with Article 1 of the Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features).

All over the European Union, there are many banks whose business model does not include financial or payment services for consumers, and a future legislative approach stipulating mandatory adherence of PSPs to a SEPA Instant Credit Transfer system or scheme should not force them to enlarge their business model to offer SCT payments or even SCT instant payments to consumers.

In this context, it should furthermore be noted that there are also PSPs that are not reachable for SEPA Credit Transfers at all (cf. the Bundesbank list of reachable payment service providers on bundesbank.de/scl-directory). Any future legislative approach stipulating mandatory adherence of PSPs to a SEPA Instant Credit Transfer system or scheme should not override the PSPs chosen business model.

Compliance risks for PSPs
And as the inception impact assessment document also mentions emerging regulatory compliance risk connected to instant payments, with its example given to sanctions screening, it should be noted that certain PSPs do limit their business model and do not offer SCT instant payments in order to minimise compliance risks. Future legislative approach stipulating mandatory adherence of PSPs to a SEPA Instant Credit Transfer system or scheme should not force PSPs to enlarge their accepted compliance (or operational) risks.

A further example for compliance risks can be retrieved from the mandatory compliance of PSPs to the legal provisions of the Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006, the so-called EU Money Transfer Regulation (which the inception impact assessment document does not mention at all). Article 7 para. 2 sent. 1 of this Regulation still allows for ex-post monitoring of processed transactions, and real time monitoring need not be applied in all cases by

PSPs. At this point, we think it is important to stress that ex-post monitoring is absolutely common under and appreciated by many PSPs, and is in line with the risk-based approach as set out in the EU's AML/CFT regime. Additionally, suspicious transaction reports of PSPs to the respective FIU of the Member State as set out by the EU AML Directive will also be mandatory with regards to instant payments. There is still uncertainty on how PSPs could comply with these and many other legal requirements, and also because of these uncertainties many PSPs do not offer instant payments.

Voluntary adherence as an alternative
With respect to all above-mentioned issues arising from a possible mandatory adherence to SEPA Instant Credit Transfers, we kindly ask the Commission to reflect all possible outcomes of a future legislative approach stipulating mandatory adherence, especially with due concern to compliance risks. From our point of view, adherence of PSPs to a SEPA Instant Credit Transfer system or scheme should still be voluntary in the future. The Commission should elaborate on other means to increase the pan-European usage of instant payments and to reduce market fragmentation by enhances European interoperability of SEPA instant payment systems or schemes.

We hope to have offered constructive input for the Commission's initiative on instant payments. Please do not hesitate to contact me if you have any questions.

Kind regards,

Dr Andreas Prechtel Andreas Kastl