

29 March 2018

## **12 March 2018 AMI-Pay workshop on issues related to instant payments - outcome**

### **1. Introduction**

Value dating practices for instant payments, and in particular the application of relevant provisions in the revised Payment Services Directive (PSD2), have been raised by market participants in AMI-Pay. The PSD2 rules, which were not drafted with instant payments in mind, leave room for diverging approaches towards value dating of instant payments. In particular, for transactions made outside RTGS opening hours the PSD2 appears to leave open both the option to value date these on the (calendar) day they are executed and the option to value them on the following RTGS business day (central bank money value date). Market participants argued that diverging PSP approaches could create confusion among end-users as well as possibilities for arbitrage.

The question how to value-date instant payments from an end-user perspective was raised by market participants in AMI-Pay with the request to seek whether respective practices for SEPA Instant Credit Transfers (SCT Inst) could be harmonised. Following AMI-Pay discussions in September and December, as well as a meeting with the European Commission in November, it was agreed to organise an ad hoc workshop with interested AMI-Pay members to identify the different scenarios and to have a technical discussion in view of finding a way to resolve this matter. It was furthermore agreed to also discuss other issues related to the application of regulatory requirements to instant payments at this workshop.

A workshop was organised on 12 March 2018. In addition to value dating, sanctions screening was also discussed, focusing in particular on the handling of potential hits against asset freeze lists. This note provides a summary of the workshop, including a proposed way forward as suggested by the workshop market participants.

### **2. Value dating**

#### **2.1 The issue at stake**

Article 87(1) PSD2 states that 'Member States shall ensure that the credit value date for the payee's payment account is no later than the business day on which the amount of the payment transaction is credited to the payee's payment service provider's account', while article 87(3) states that 'Member

States shall ensure that the debit value date for the payer's payment account is no earlier than the time at which the amount of the payment transaction is debited to that payment account.'

It therefore appears that value dating instant payments on the (calendar) day they are executed would be allowed. On the payer's side instant payments are debited immediately, thereby allowing PSPs to also value date them on that same day, while on the payee's side only the last possible value date is defined, which means that PSPs are free to apply an earlier value date. However, depending on the interpretation of the definition of 'business day' in the context of instant payments, as well as what is meant by 'the payee's payment service provider's account', it can be argued that value dating on the day on which the payee's PSP receives the funds on its RTGS account could also be allowed.

According to the PSD2, article 4(37), 'business day' means 'a day on which the relevant payment service provider of the payer or the payment service provider of the payee involved in the execution of a payment transaction is open for business as required for the execution of a payment transaction.' It can be argued that PSPs that offer instant payment services are open for business for those services every day and that therefore every day is a business day for instant payments. However, some PSPs may argue that if the RTGS system is not open they cannot perform all activities related to the execution of the transaction and that therefore days when the RTGS system is closed are not business days.

In addition, since the provision on the credit value date refers specifically to 'the business day on which the amount of the payment transaction is credited to the payee's payment service provider's account', questions have been raised regarding which account this refers to: to the PSP's TIPS account/its account (balance) at an ACH or to its RTGS account. If it refers to the RTGS account it is clear that in the case of transactions executed outside RTGS opening hours, the funds can only be transferred to the beneficiary PSP's RTGS account on the next business day.<sup>1</sup> If, however, it refers to the account in TIPS or at an ACH, it could be argued that since PSPs can receive funds on any calendar day and can immediately use those funds for onward instant payments, any calendar day should be considered a business day. An alternative argumentation takes the business day applied in those systems into account. TIPS, as part of TARGET2, changes business day on weekdays shortly after 18:00 meaning that a payment received during the weekend would be value dated (in central bank money) on the following Monday. It could therefore be argued that the payee's PSP receives the funds of a transaction executed on (calendar day) Saturday only on (central bank money value date) Monday.<sup>2</sup>

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<sup>1</sup> Note however that there is no requirement for PSPs to transfer received funds to their RTGS accounts at the earliest possible time (i.e. the next business day). The timing of funding/defunding of TIPS accounts and ACH technical accounts is a decision of the individual PSP. It may very well take days before received funds are transferred from the TIPS account or ACH technical account to the PSP's RTGS account, if incoming and outgoing transactions are balanced.

<sup>2</sup> ACHs may have their own approaches towards value dating that could differ from the one applied in TIPS.

## 2.2 Potential scenarios

Based on input provided by AMI-Pay participants in preparation for the workshop as well as input received from national central banks from both euro and non-euro Member States on the current and/or preferred approaches in their countries, three possible scenarios were identified, each with its advantages and disadvantages:

1. PSPs could value date transactions on the calendar date on which they are executed, i.e. a transaction that is executed on a Saturday would be value dated on that Saturday.
2. The central bank money date could be used as a basis for value dating. In this case it seems reasonable to value date transactions on the first possible TARGET2 business day on which the payee's PSP is able to transfer the received funds to its RTGS account (either from an ACH's technical account or from a TIPS account), regardless of whether it actually chooses to do so, i.e. a transaction that is executed on a Saturday would be value dated the following Monday.
3. It could also be left open to individual PSPs to decide on their approach towards value-dating, i.e. transactions executed on a Saturday may be value-dated by some PSPs on the Saturday and by others on the following Monday.

### *Scenario 1*

Scenario 1 seems to be the most intuitive from an end-user perspective: since the funds are sent, received and made available in real-time users would likely expect them to be value-dated at that time as well. However, this approach creates a difference between the value date applied on the end-users' accounts and the one applied on the PSPs' accounts in TARGET2, which would have financial consequences for the PSPs involved.<sup>3</sup> Note furthermore that the fact that the euro area spans several time zones raises the question whether PSPs should apply their local calendar date or whether there should rather be a common cut-off time that is independent of the time zone where the PSP is located.<sup>4</sup>

The calendar date approach is or will be followed in at least two non-euro Member States, based on a legal requirement (HU) or a requirement by system operators (PL). This approach is also in line with the

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<sup>3</sup> These financial consequences would currently be relatively small due to the low interest rates and can be further reduced by setting transaction amount limits, such as the current SCT Inst scheme level limit of EUR 15,000 (PSP communities may however agree on a higher limit). Nevertheless, considering the likelihood that interest rates as well as transaction amount limits will increase in the future, the question whether TARGET2 opening hours, as well as value dating practices, should be expanded to seven days a week has been raised. However, as was noted in the previous AMI-Pay/AMI-SeCo discussion on T2/T2S opening hours, this would have wider ramifications, in particular on money market activity. Another alternative that has been raised by some PSPs is taking changes in TIPS balances into account for the calculation of minimum reserves remuneration on Saturdays and Sundays. This however would require a change in monetary policy guidelines.

<sup>4</sup> If PSPs apply their local calendar date, a transaction between two different time zones may still be value dated on different dates on the sending and receiving side. If, alternatively, a common cut-off time is applied that is independent of time zones, in some cases the value date applied on one side of the transaction will not correspond to the local calendar date, which may require some explanation to end-users.

UK Financial Conduct Authority's interpretation of 'business day' in this context.<sup>5</sup> In some euro area countries PSPs have already come to an agreement to also follow this approach (BE, LV), or are expected to do so in the near future (SI). In some others (including DE, ES, GR) there appears to be a consensus among most (if not all) PSPs to follow this approach, but without a formal agreement.

#### *Scenario 2*

Scenario 2, by contrast, has the advantage that the value dates on the end-users' accounts and the TARGET2 accounts would be aligned. However, it is less intuitive for the end-users since it would make instant payments not fully instant. Some PSPs argue that it is against the PSD2 focus on end-user PSP relationship and spirit of customer protection and in particular the idea that the debit and credit value dates should be the same as the booking date, which is implied but not explicitly stated in article 83(2) PSD2. In addition, some PSPs may argue that a future value date could be in conflict with the SCT Inst scheme requirement to ensure the possibility to re-use the received funds immediately.

At the moment, there does not seem to be any EU Member State where there is an agreement on a common approach along these lines, nor does there seem to be a preference in any national PSP community in the euro area to come to such an agreement.

#### *Scenario 3*

Scenario 3 is not providing any position and gives PSPs the freedom to decide on their own and/or their clients' preferred approach. However, if approaches between PSPs differ this could create confusion among end-users. Moreover, if for a specific transaction the practices of the sending and receiving PSP differ there is the possibility of interest being received by both payer and payee or by neither of them. This could therefore simultaneously create the impression that PSPs are purposefully reintroducing float and possibilities for arbitrage, if e.g. corporate treasuries in their cash management process were to make use of the possibility to receive interest twice, which might lead to unexpected cash flows for the PSPs involved. In fact, these issues were at the heart of the concerns raised in AMI-Pay by market participants.

It has been reported that this scenario is the status quo in countries where there is currently no common approach, including both non-euro Member States (DK, SE) and euro countries (IT, LT, PT and particularly FR where it was agreed after discussions in the PSP community to leave this up to the individual PSPs).

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<sup>5</sup> See FCA, 'Payment Services and Electronic Money – Our Approach. The FCA's role under the Payment Services Regulations 2017 and the Electronic Money Regulations 2011', September 2017, available at <https://www.fca.org.uk/publication/finalised-guidance/fca-approach-payment-services-electronic-money-2017.pdf>.

### **2.3 Way forward proposed by market participants at the workshop**

The different scenarios were discussed at the workshop, where a majority of market participants expressed a preference for scenario 1, since in their view this is the approach that is in line with their clients' expectations. As a step forward, the idea of a (non-binding) best practice was proposed, reflecting a broadly supported market approach and providing guidance to PSPs who would like to have an aligned application at pan-European level. In addition, it was suggested to further discuss the practical consequences of such an approach, including how to handle time zone differences and the possible impact on non-SCT Inst transactions (especially those that are also real-time) and how these are value dated at the next AMI-Pay meeting.

## **3. Sanctions screening**

### **3.1 The issue at stake**

EU regulations concerning embargos or other financial sanctions oblige PSPs to carry out checks before executing transactions. Such checks may need to be carried out by the beneficiary PSP even if the originator PSP has already carried out checks, in particular in the case of cross-border transactions since there may be differences between the lists that are applied in different countries. The short timelines of SCT Inst transactions do not allow the beneficiary PSP sufficient time to investigate whether a hit is truly positive or not before it has to confirm to the originator PSP whether it can accept the transaction.

Currently the EPC SCT Inst Rulebook's Risk Management Appendix recommends sending a positive confirmation message to the originator PSP while blocking the funds and not making them available to the payee until the investigations have been completed and the hit has been determined to be false. This could mean that the payer receives a confirmation that the transaction has been executed while the payee does not yet have the funds (information asymmetry), and moreover that even if the transaction can in the end be carried out it can no longer be considered instant since investigations may take hours or more.

### **3.2 Possible approaches**

The above described delays might negatively influence the take up of instant payments. It was proposed, as short-term solution, that beneficiary PSPs should reject SCT Inst transactions in the case of a potential hit, possibly with a specific reason code. This black-or-white approach would provide clarity to the end-users involved about the fate of the transaction, but it would also lead to a higher reject rate. The use of a specific reason code may alleviate some of the consequences of this, since it would allow the originator PSP to suggest sending the transaction as an SCT instead.

In the medium to long term further actions could be considered such as creating an EU-wide asset-freeze list and abolishing the national ones, adopting common guidelines on sanctions screening and as a final

step making each PSP responsible for its own clients, thereby eliminating the need for the beneficiary PSP to repeat screening that has already been done by the originator PSP.

When considering each of these suggestions, the views of (national) legislators and law enforcement authorities should be taken into account, since they may have different views on the acceptability of any proposed (common) approach towards sanctions screening and the handling of potential hits. In addition, the creation of one unique list at EU level would require a strong harmonisation effort on their side.

#### **4. Summary**

On value dating, market participants attending the workshop expressed a preference for applying the calendar date on which an instant payment (specifically, an SCT Inst transaction) as the value date on both the debit and credit side, and suggested a non-binding best practice as a way forward. They noted, however, that the practical consequences of this approach would benefit from being discussed further at the next AMI-Pay meeting.

**AMI-Pay members are invited to discuss the approach suggested by the workshop participants as well as its practical consequences, and to agree on a way forward.**

On sanctions screening, workshop participants had a first exchange of views, but did not yet come to a conclusion. It was noted that the issue and the potential solutions should be further discussed, and that the views of (national) authorities should be taken into account.

**AMI-Pay members are invited to discuss this issue, as well as potential approaches to resolving it, and whether to consult (national) authorities.**