

CRITERIA FOR PARTICIPATION IN THE SEPA SCHEMES FOR COMMUNITIES OF BANKS OR FINANCIAL INSTITUTIONS OUTSIDE THE EUROPEAN ECONOMIC AREA (EEA)

1. Introduction

The geographical scope of the SEPA Schemes is laid down in the EPC list of SEPA Scheme countries (EPC409-09).

The EPC has recognised the need to establish criteria and procedures for determining whether a community of banks or financial institutions which are equivalent to 'payment service providers' ('PSPs') in the EU/EEA from a non-EEA country or territory (an "**Applicant**") which is not yet within the geographical scope of the SEPA Schemes (please refer to EPC409-09) should be considered eligible to participate in the SEPA Schemes. Such Community can for example be represented by their national central bank or their national banking association for that matter. The below set of criteria does not apply in the case of PSPs that are licensed in EEA countries.

It should be noted that any EPC decision regarding the satisfaction of the criteria established below concerning an Applicant must be taken prior to the scheme adherence process for individual banks or institutions to the SEPA Schemes. The application for scheme adherence by individual institutions and a subsequent decision by the Compliance and Adherence Committee (CAC) of the EPC about individual applications is part of a separate process which can only be initiated once the geographical scope of the SEPA Schemes has been extended to include the relevant non-EEA country or territory.

The below criteria will be applied consistently and must be fair, proportionate and non-discriminatory. No decision will be made as to the eligibility of an Applicant until that Applicant has been considered against these Participation Criteria in accordance with the procedures set out herein.

The criteria to be considered when making a determination of eligibility (the "**Participation Criteria**") are listed in section 3 below. Section 4 describes the procedure for making a decision on eligibility, and section 5 highlights a specific issue in relation to the level-playing field for any non-EEA Applicant.

2. General principle

The EPC has adopted the following overarching principle with respect to SEPA Scheme participation. It is considered appropriate to expand the geographical scope of the SEPA Schemes beyond the EU and the EEA on a case-by-case basis provided that the level playing field criteria as outlined below in the regulatory context for SEPA Payments are met. For purposes of this document 'SEPA Payments' are understood to be payments made between SEPA Scheme participants in the form of SEPA Credit Transfer and / or SEPA Direct Debits. In all cases the application of each of the below criteria shall be understood to be limited to its relevance in the context of SEPA Payments.



3. Participation Criteria

Set out below is a set of common conditions that any Applicant must meet before institutions from those countries or territories could be considered eligible for participation in the EPC schemes. The following conditions are essential for the inclusion of a country or territory as part of the geographical scope of the SEPA Schemes:

(a) **Relationship with the EU**

- (i) The Applicant shall demonstrate that the country or territory from which it operates has strong economic links with the EU.
- (ii) The Applicant shall demonstrate that the territory or country from which it operates has a strong legal relationship with the EU, including treaties and bi-lateral agreements concluded between the territory or country from which it operates and the EU itself and/or member states of the EU, as well as the practice of adoption of EU norms or standards in national legislation in the area of payment services at a minimum level for payments in Euro.

(b) **Criteria to ensure a level playing field with other SEPA Scheme participants**

- (i) The Applicant shall demonstrate that participation of its institutions in the SEPA Schemes can take place on the basis of a legal and regulatory level playing field with other EPC Scheme participants. Specifically:
 - the Applicant shall demonstrate that the provisions of applicable EU/EEA legislation affecting payment services in euro in the territory or country from which it operates are effectively represented in the laws relevant to the Applicant or in equally binding practice applicable to the Applicant for payments in Euro.
 - the Applicant shall in particular demonstrate that provisions substantially equivalent to Titles III and IV of the Payment Services Directive (EU) 2015/2366 (as and if amended) as well as to those of Regulation (EU) 2015/847 (as and if amended) on Information on the Payer Accompanying Transfers of Funds, and those of Article 5 and the Annex of Regulation (EU) 260/2012 establishing technical and business requirements for credit transfers and direct debits in euro (as amended by Regulation (EU) 248/2014) are represented in the laws relevant to the Applicant or in equally binding practice applicable to the Applicant for payments in euro. However, with respect to the Payment Services Directive, it is recognised that the compliance obligations of the institutions that are represented by the Applicant that are not subject to the Payment Services Directive under their national law and that are operating outside the EEA should not include the obligations resulting from Article 66 and related Articles of the Payment Services Directive. This is because these Articles should only apply in combination with the authorisation framework that is applicable within the EEA in accordance with Titles I and II of the Payment Services Directive.
 - the Applicant shall demonstrate that banking or financial regulation in the country or territory from which it operates is functionally equivalent to the Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms and the regulation of other payment services providers is functionally equivalent to the Directive (EU) 2015/2366 on payment services in the internal market (as and if amended);
 - the Applicant shall demonstrate that anti money laundering processes in the country or territory from which it operates are functionally equivalent to the



Directives (EU) 2015/849 (as amended) on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing and that the country or territory from which it operates is not blacklisted by the Financial Action Task Force ("**FATF**");

- the Applicant shall demonstrate that all United Nations Security Council financial sanctions are implemented in the country or territory from which it operates to the same extent as implemented by Regulation in the EU;
- the Applicant shall demonstrate that the country or territory from which it operates has either ratified the Rome Convention on the Law Applicable to Contractual Obligations of 19 June 1980, as subsequently amended or has provisions in its domestic law that are functionally equivalent to the rule on the "freedom of choice of law" set out in Article 3 of Regulation (EC) No 593/2008.

(c) Other legal and regulatory criteria

- (i) The Applicant shall demonstrate that provisions functionally equivalent to EU competition law are effectively represented in the laws of the country or territory from which it operates or in equally binding practice applicable to the Applicant.
- (ii) There are no laws or regulations applicable to the Applicant (for example sanctions legislation) which would prohibit or impede the cross-border dealings between the institutions which the Applicant represents and a SEPA Scheme participant.
- (iii) The transfer of data to any of the Applicant's institutions by a SEPA Scheme participant would not create any legal or regulatory issues for such SEPA Scheme participant (for example, under the applicable data protection laws).
- (iv) There shall be no tax, regulatory or operational issues that would make any of the Applicant's institutions unfairly competitive vis-à-vis other SEPA Scheme participants.

(d) Market and operational criteria

- (i) The Applicant shall demonstrate the ability to use the Euro for payment transactions in the country or territory from which it operates.
- (ii) The Applicant shall demonstrate a significant volume of cross-border payments in relative terms from the country or territory from which it operates into or from SEPA countries or territories in Euro. However, such volume shall not be of a nature which could operationally disrupt or distort the operation of the EPC Schemes.

(e) Additional criteria to preserve the integrity of the SEPA Schemes

- (i) There are no political, social or reciprocity issues which could make it reputationally damaging for the EPC to recognise the Applicant's institutions as being eligible to participate in the EPC Schemes.
- (ii) The European Commission and the banking and/or payments regulator(s) in the Applicant's country or territory have all been consulted and raised no objection to the inclusion of the Applicant within the geographical scope of the SEPA Schemes.
- (iii) The size of the economy of the country or territory from which the Applicant operates, as relevant to payments in euro, is not such as to provide a risk of distortion or disruption in terms of the operation of the SEPA Schemes.



4. Procedure

(a) Consideration of Applicant against the Participation Criteria

Before admitting the Applicant's institutions to participation in the SEPA Schemes, the EPC must have taken a decision regarding the Applicant(s) in light of these Participation Criteria. Individual discussions can be held with the Applicant to determine whether or not the criteria are satisfied. These preliminary discussions will be carried out by the EPC Secretariat.

(b) Legal opinion from the Applicant

The Applicant shall ask its counsel to issue a legal opinion demonstrating how the conditions set out above are fulfilled.

The legal opinion produced by the Applicant(s)' counsel will be reviewed by the EPC's Legal Support Group (LSG). The LSG will review the legal opinion to determine whether the Applicant would be able to take part in the SEPA Schemes on a level playing field with other EEA-based participants. The EPC will expect the Applicant to cover the EPC's legal costs (such as external counsel assistance) in relation to the application.

(c) Consideration of confirmations of no objection

The LSG shall review any statements or confirmations of no objection from the institutions as contemplated in section 3(e)(ii) above.

(d) Resolution

Following the LSG's review of the compliance of the Applicant with the Participation Criteria, a resolution on the participation of the Applicant's institutions in the SEPA Schemes shall be submitted to the EPC Board for formal determination.

(e) Periodic review of membership

The EPC will reserve the right to carry out periodic checks on a successful Applicant's continuing compliance with the Participation Criteria.

5. Specific issue relating to level playing field regarding institutions from non-EEA countries or territories

The EPC recognises that a challenge to the level playing field principle arises where SEPA Scheme Participants in EU and EEA countries are eligible for waivers or other special benefits under European Directives or Regulations but which would be unavailable to Scheme Participants in non-EEA countries.

For example, Regulation (EU) 2015/847 (as and if amended) on information on the payer accompanying transfers of funds requires payment service providers ("**PSPs**") to ensure that transfers of funds are accompanied by full information on the payer. However, where both the payer and the beneficiary PSP are situated in the European Union or within the EEA only the account number of the payer or the unique identification number is currently required. This waiver would therefore not apply to institutions situated in non-EEA countries or territories. Similarly, the application of conduct of business requirements could differ under the Payment Services Directive (as amended) depending on whether both or one of the PSPs are located in the European Union or in the EEA. Again these aspects could potentially introduce an unlevel playing field for EEA and non-EEA EPC Scheme Participants.