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PAYMENT SYSTEM END-USERS COMMITTEE (EUC)

POSITION PAPER ON SEPA DIRECT DEBIT

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About the EUC

The authors of this research paper represent the community of users of payment system instruments at the European level. In particular, they constitute the group of users who sit on the European Payments Council (EPC) stakeholder consultation forum. They will be referred to in this paper as the End Users Committee (EUC). A full list of the organizations represented by the authors is given below.

In early 2009, the EUC considered that, despite a number of meetings with the EPC and individual meetings had by various members of the committee with the European Commission and the European Central Bank, there was still insufficient understanding and clarity on the part of these three bodies as to the needs and views of SEPA users on the proposed SEPA direct debit scheme. There was also insufficient understanding within the user community of the issues at stake. The EUC therefore proposed to research and compile an analysis of the major problems confronting the adoption of the Single Euro Payments Area (SEPA), with specific focus on SEPA direct debit (SDD). To this end, the EUC appointed three experts who have written this paper, with the full collaboration of all members of the EUC who have endorsed it as fully representing their views.

This report will be presented to the Commission, the European Central Bank and the European Payments Council. It will be distributed amongst the members of the EUC organizations and disseminated widely to all interested stakeholders. It will also be published on the websites of the members of the EUC.

End-users committee

The following organizations are the authors of this report:

- European Association of Corporate Treasurers (EACT)
- The Confederation of European Business (BUSINESSEUROPE)
- European Association of Craft and SMEs (UEAPME)
- Bureau Européen des Unions de Consommateurs (BEUC)
- EuroCommerce, European wholesaler and retailer organization
- European insurance and reinsurance federation (CEA)
- European E-commerce and Mail Order Trade Association (EMOTA)
- European Federation of Magazine Publishers (FAEP)

EXECUTIVE SUMMARY

This paper examines the outstanding issues surrounding the SEPA project, in particular SEPA direct debit (SDD). It looks at these issues from the point of view of the payment systems users' community, in particular the members of the End-users Committee (EUC). The views of all members of this committee have been canvassed for this paper. Where a consensus has been reached on a particular topic, it has not been necessary to rehearse individual views. Differing views have been noted and, where specific points have been brought up, these have been attributed to the specific EUC members, or to 'EUC consumer representatives' and 'EUC business representatives'. (It should be noted, however, that the business representatives also place paramount importance on consumer interest.) On certain points there were differences between the EUC members. The paper covers the following main areas and reaches the following conclusions:

SEPA governance: There is an urgent need for a change in structure of the governance of SEPA. Up to now, the payment users' community has been more or less ignored. SEPA cannot achieve its goals unless users are fully involved in its construction. End-users, payment system providers and regulators must all be involved on an equal footing in a new SEPA governance structure.

- **The user community must be equal partners in the SEPA Steering Committee.**
- **End-users should be represented by a number of European organizations who would operate in an 'End Users coordination committee' (EUC).**
- **There should be one or more specialized working groups where experts from banks and end-users discuss the technical issues and prepare proposals for the Steering Committee.**
- **The Steering Committee would make recommendations to the Commission and ECB. Each organisation casts a vote based on consultations with its members. The European Commission and the ECB will make the final decisions and act to implement them.**
- **The workings of the EPC must be open, inclusive and transparent. The EPC working groups should be open to user participation.**

Mandates: The migration of existing mandates to SEPA DD must be achieved efficiently without incurring undue costs. The majority of EUC members favour automatic transfer, with an obligation on banks to inform debtors. However the consumer representatives stress that consent to mandate migration should not be forced upon consumers, especially in countries where the DMF system has been in use.

- **EUC business representatives: Existing mandates should be automatically migrated to the SDD system and new reference data added. New mandates should only be issued on the setting up of new cross-border direct debits. There should be an obligation on banks to**

inform all direct debit customers that this was being done, but no obligation to seek a new mandate. The debtor is free to cancel a mandate at any time.

- **EUC consumer representatives:** Consumers should be clearly informed about the differences between the old and the new schemes and be given an opt-out period of e.g. 1 month. If consumers do not respond during the opt-out period, this will constitute validation; those who express a wish to give up the existing mandate may choose an alternative means of payment. (The consumer is free to pay with any means of payment.)

End-dates: The EUC does not consider the setting of end-dates to be absolutely necessary or desirable at the present time. No decision on end-dates should be taken until the remaining areas of disagreement on all three SEPA projects – SDD, credit transfer and cards – have been resolved to the satisfaction of end-users. The setting of arbitrary end-dates by legislation would result in a failure of SEPA.

- **End dates for the three SEPA products should be considered separately.**
- **The question of SEPA deadlines should be a market-driven issue. We are opposed to any legislation on SEPA end dates without the resolution of all outstanding issues to the satisfaction of all.**

Pricing: We have no option but to accept the interim pricing arrangements set down in the revision of Regulation 2560. However, we retain strong reservations about the equity of the interim fee and the process by which it was arrived at. After 2012, the current per transaction interchange fee for direct debit should be discontinued both at cross-border and national level. We welcome the guidance statement from the Commission/ECB but call for additional long-term assurances from the banking sector. A full study on SDD fee structure must be undertaken with the full involvement of the user community. Steps must also be taken at national level in good time to remove existing DD MIFs.

- **A full examination and cost/benefit analysis must be done on the issue of fees for direct debit, in particular, the proposal for an interchange fee on errors/returns. Stakeholder should have active participation in these studies and in the final decision-making process.**
- **There must be clarity and transparency on pricing of SDD post 2012. The banking sector must publicly commit to specific fee structures following the expiry of the Regulation 2560 interim period.**
- **Member state governments must take immediate action to ensure that MIFs on direct debit at national level are removed through competition law action if necessary.**

Structure of SEPA DD: We regard the SDD system as set down in the EPC Rulebooks as insufficient to meet the varied needs of users. We have proposed an additional optional system which involves extra security checks at both the creditor and the debtor bank levels (CMF+).

- **A thorough study of the true costs of payment means and of direct debit in particular should be conducted by the EU authorities.**
- **The SEPA DD scheme must incorporate the specific requirements set out by the user community in Annex 1 of this paper.**
- **The SEPA DD Scheme must cater for differing requirements from the various parties concerning levels of security required. Additional optional features which offer alternative levels of security must be made available.**

CHAPTER ONE: INTRODUCTION

1. Background

The single euro payments area (SEPA) is intrinsic to the gradual integration of Europe's financial markets. Its starting point was Regulation 2560/2001 on cross-border payments which stipulated that fees for cross-border and national payment transactions must be the same. After the introduction of the single currency in 2002, a single market for electronic payments was the next logical and necessary step. It was to be composed of two major strands: (i) legislative changes to construct a legal basis for SEPA and (ii) an 'industry' initiative to implement the necessary practical and structural changes. The former element is contained in the Payment Services Directive (2007/64/EC) which will come into force on 1 November 2009. The latter element was entrusted to the banking industry which, in 2002, formed the European Payments Council (EPC) as a forum for agreements on standards and rules for the new SEPA system.

In the view of the EUC, this structure was, from the outset, fundamentally flawed. Legislation was necessary to introduce changes to the legal structure and the EUC fully supports the PSD. However, leaving changes to standards and detailed rules essentially to the banking industry in the shape of the EPC has been a serious mistake. The way SEPA was set up, as an 'industry' and not as a 'market' project, the non-collaborative attitude of the EPC and the vacuum left at the heart of the governance of SEPA have been subject to wide criticism from end-users, sectors of the banking community and, indeed, regulators. From its inception, SEPA did not include the users of payment systems as necessary and equal partners in the process of SEPA construction. It is this exclusion which, to a large extent, has led to a situation where SEPA is in danger of grinding to a halt.

Moreover, at present, there seems to be little interest or enthusiasm for the widespread introduction of new SEPA products. This situation is clearly exacerbated by the world economic crisis and the unprecedented difficulties faced by Europe's banking sector. However, it is clear that new impetus is needed. The Commission's own figures show that in April 2009, over a year after the launch of SEPA credit transfer, only 3.1% of transfers were being made under SEPA standards. In addition, there has been wide criticism of the SDD from corporates and stakeholders organizations across Europe, uncertainties as to the transposition of the PSD and a lack of progress in discussions over open issues with the EPC.

2. SEPA is at a turning point

These issues have led users to believe that SEPA is in great danger of failing to meet its objectives and of not being taken up by the market to the extent necessary to allow it to function. Corrective measures must be taken as a matter of urgency. A further danger is that a fear of the failure of the project will lead to precipitate implementation of a SEPA model which in the long-run will prove highly unsatisfactory. Indeed, there is a distinct danger that in such a situation, payment systems in Europe would, from the point of view of users, be less efficient and more expensive under SEPA than they are under national-based structures. Speed should not be of the essence in the SEPA

process. On the contrary, it is essential that proposed SEPA structures are examined thoroughly and their soundness established to the satisfaction of all future SEPA actors.

This paper will examine the issues which have given rise to this stalemate and suggest ways of surmounting them. On SEPA overall, it will present the stakeholder view on governance, both in the immediate and in the long-term future. Our position is that SEPA is too important a project to be allowed to fail. It is essential that foundations laid down now are stable, agreed by all and, above all, equitable for all users. This must be done through a change in governance. The culture of SEPA implementation must change from a culture of imposition from high to one of common work towards common ends and the operation of the EPC must be made more open, transparent and collective.

Nevertheless, it should be noted at the outset that the creation of the EPC, as a joint decision-making body for banks, has been a significant step forward. The work already done has very positive elements: it will instigate the use of common international standards throughout Europe (XML ISO 20022) and the SEPA DD Rulebooks produced by the EPC are an essential starting point. However, the Rulebooks should be seen as a solid base for discussion and not as immutable in the medium or in the long term: changes should be discussed and agreed with end-users.

The specific focus of the paper is SEPA direct debit (SDD). It will offer an analysis of problems in the scheme as set out in the EPC Rulebooks and will offer suggested solutions with the aim of ensuring the long-term success of SEPA. It will also examine the question of an 'end-date' for direct debit, issues surrounding required additional optional services (AOS), fee structures and the issue of a multilateral balancing payment (MBP) or multilateral interchange fee (MIF) on direct debit. (For the sake of simplicity, the term 'MIF' will be used throughout this paper.)

3. Objectives and scope of research

i. Objectives

We note at this stage that the current crisis facing the European and international financial systems has undoubted bearing on the issues discussed here. It is our view that a successful creation of SEPA will bring significant benefits to the health and efficiency of the European payments market and so contribute profoundly to the recovery of the European economy as a whole. However, we do not intend to enter into a discussion on this, as it is not within the scope of this paper. We wish to make the following points at the outset:

- Focus: Our focus is on business to consumer SDD (B2C). We will also briefly touch on the other payments needs of a single payments market.
- Users' views: The second objective is to establish the requirements and positions of different users' communities on SEPA (large companies, SMEs, consumers). The views of all the author organizations, as representative of end-users of the SEPA system, have been canvassed and are set out in detail.

- Recommendations: This paper will propose an alternative option agreed by the stakeholders. The discussion is based on, but not limited to, the Rulebooks that EPC has so far approved. It is the purpose of the users to put this common position to the European Commission, the Council and the European Central Bank (ECB).
- Information to the user community: Information about SEPA and the DD Rulebooks has not been circulated widely among end-users. Few have had the time and patience to examine the EPC Rulebooks in detail - this includes corporate as well as small organizations. An objective of this paper is to act as an aid to inform stakeholders on SEPA issues.

ii. Scope

The SEPA B2C direct debit essentially covers a series of regular payments made to satisfy a recurring debt (e.g. utility bill) or a long-standing agreement to pay (e.g. donation to charity). We will not deal with B2B and we will mention, but will not examine in detail, one-off direct debit transactions via card payments which exist in some member states (notably Germany and Austria).

We also wish to make some general remarks about SEPA credit transfer and SEPA direct debit B2B, which we will make here.

SEPA Credit Transfer: The organizations representing end-users have already expressed their opinions and recommendations regarding SEPA credit transfer scheme (SCT), which came into operation in January 2008. We believe that SCT has been satisfactorily put in place with the exception of a number of 'open' points still to be agreed. These were set out in the EACT press release of 15 October 2008¹ which indicates the 7(+2) open points still to be resolved to achieve mass adoption of SCT, particularly in domestic markets. These 7 points vary in importance and, in our opinion, could be fairly easily decided one way or the other if banks and other stakeholders could cooperate more effectively within the framework of a new SEPA governance (see Chapter Three). For SCT, we are agreed that an end-date, if discussed fully with the user community, could be readily agreed.

SDD B2B: The business to business (B2B) version of SEPA direct debit is closer to existing schemes than the business to customer (B2C) version. It is essentially a well-functioning system although some problems remain. For example, SMEs complain that the 'no-refund' clause has been imposed by large companies on smaller suppliers, but this clause is already present in current schemes. Other schemes allow a short refund period (e.g. 3 - 5 days). In addition, the PSD and the Rulebook allow enough flexibility for the parties to agree, for certain transactions, on different conditions. One could imagine, for instance, the following types of collection services, all on the same technical platform:

¹ See: <http://www.eact.eu>

- A service with no refund clause, which would be used for payments for high-value frequent deliveries of goods (e.g. oil companies supplying petrol to service stations).
- A collection service with a short refund period (e.g. 3-5 days). This would be used for more standard payments.

CHAPTER TWO: SEPA DIRECT DEBIT IN EUROPE

1. Introduction

Today, direct debits are used in domestic markets mostly for business to consumer (B2C) payment collections. Many systems are considered efficient but there are wide differences in price. The McKinsey Profit Pool study² shows that a higher price is either a symptom of inefficiency or of higher bank margins.

Critics of SEPA argue that it makes no sense to scrap efficient, low-cost domestic payment systems and to invest in new pan-European systems, given that payment markets are, almost wholly, domestic. The low level of cross border payments in general (less than 4 %, most of which are credit transfers), which is often cited as an argument against SEPA, contrasts with the high level of intra-EU trade in goods (over 65 % of total European trade).

One immediate counter argument is that markets remain domestic for the very reason that no cross-border direct debit has, to date, been available: thus no market has had the chance to develop. Further, the explanation for the current situation is simple: businesses and corporates had to work within existing systems. They had to adapt to the reality of separate and different markets by organizing their own systems of payment collection using local instruments. If standard payment systems were in place throughout the EU, businesses could shed the complexity and extra costs of existing localized systems and make full use of their centralized treasuries, payment and collection factories.

SEPA DD is to be introduced on 1 November 2009, with the implementation of the PSD. The EPC, at its plenary meeting in March 2009, endorsed this implementation date. However, the French banking industry has since made a statement that it will introduce SEPA DD only from November 2010.

2. SEPA Direct debit B2C

Direct debits can be set up in two basic ways:

- DMF (debtor mandate flow): The debtor signs a mandate (e.g. to pay his electricity bill monthly) which is held by the debtor's own bank. This situation currently exists in many member states OR

²See Annex 5 Extract of 'European Payment Profit Pool Analysis: Casting light in murky waters': Wouter De Ploey, Olivier Denecker, Titus Kehrmann. Full document:

http://ww1.mckinsey.com/clientervice/bankingsecurities/latestthinking/PP2_European_Payment_Profit_Pool_Analysis_Final.pdf

- CMF (creditor mandate flow): The creditor instigates the direct debit and sends a mandate to the debtor for signature. When it is sent back, the creditor's bank holds the mandate. This is the system proposed under the EPC Rulebook.

The proposal for a basic SEPA B2C system is contained in the SEPA Core direct debit rulebook, version 3.3, of 7 April 2009, approved at the EPC Plenary of 31 March 2009. The SEPA SDD Core (consumer) scheme adopts the CMF model, where the mandate is issued, managed and stored by the creditor. Its main features are:

Scope:

- It covers current and one-off direct debits (DD)
- Mandate data is reproduced in every DD
- Debtor bank makes no check on validity of mandate or content of DD
- Debtor bank debits solely on the basis of the IBAN account

Time limits:

- The TARGET Days (TD) calendar is used to identify inter-bank business days
- DDs can be presented to a creditor bank for collection no earlier than 14 calendar days prior to due date and no later than:
 - 5 Target days for first or one off DD and
 - 2 TD for recurring DD
- The latest date for settlement of the returns is 5 Target days after the settlement date of the collection presented to the debtor bank
- Dormant mandates without collections for 36 months are considered extinct.

Returns:

- Debtor can oppose (refuse) a DD before the due date and the sum will not be debited
- Request for automatic refund, without enquiry from debtor bank, within 8 business days from debit date
- Request for refund based on unauthorized transactions (invalid mandate) within 13 months of debit date

3. Overview of direct debit schemes in Europe and major differences

Direct debits are used to pay for different types of products and services by corporates, large businesses, SMEs and consumers throughout Europe: the largest section of this market is B2C. The overwhelming majority of the national systems which have been studied only operate on the domestic market. There is only one member state where cross-border direct debit is possible under the national scheme, namely Austria, which has a separate, specifically designed, scheme. The main traits of SEPA direct debit in Europe are shown in Annexes 2-4 and the three tables which follow.

It is apparent that the problem SEPA DD faces is trying to assimilate and cater for the current variety of collection schemes used in Europe, their different features, risks, costs and legal provisions, which vary to suit different types of buying scenario. If we add to this diversity, the issue of cost and the principle of 'no regression'³ sanctioned by the European Commission and the ECB, one understands why the 'one size fits all' approach adopted by the EPC SEPA DD, with its little or no flexibility, is bound to dissatisfy a majority of users.

4. B2C Direct Debit: different buying experiences

SDD is used in a number of different purchasing/payment B2C scenarios: for utility bills, subscriptions for magazines, consumer credit installments, insurance premiums and donations to charities. In some countries, it is also used to pay taxes and for one-off purchases.

Depending on the situation, type and amount of payment, the cost and perceived risk, different instruments may be chosen for settling B2C transactions. In some countries, like the UK, recurring purchases of the same product/service for the same amount are settled via standing orders as an alternative to direct debit. The following sections detail the main types of payment and their particular characteristics.

i. Recurrent and one-off

There is an important distinction to make between recurrent and one-off direct debits, which reflect two different buying experiences. It has been argued that the current SEPA DD, with its mandate, timing and settlement scheme is too cumbersome for many low-cost, one-off payments and some recurring ones⁴.

A large percentage of German direct debits (estimated at 40%) are debit-card initiated payments, made through systems known as POZ (Point of Sale ohne Zahlungsgarantie) and ELV (Elektronisches Lastschrift Verfahren). POZ is supported by all German banks and is a signature-based system, which acts as a 'mini-mandate'. There is no authorization of the payment and therefore no guarantee but specific checks must be made for transactions over a certain amount. ELV is a system begun by merchants and while it is not officially approved by banks, most offer the service on their terminals. It is also signature based and uses the magnetic stripe on the card.

Both systems are primarily used for one-off payments and carry a flat fee but there is a possibility that payments can be returned unpaid. However, merchants are willing to run a small transaction risk in return for the very low cost of this service.

³ The "no regression" principle states that SEPA products should perform equally well, if not better than, currently existing systems.

⁴ See Business and Social Sectors' Joint Key Issue Paper on the Single Euro Payments Area (SEPA): http://www.gdv.de/Downloads/Pressemeldungen_2008/PD25_2008_SEPA_Anlage.pdf

This system works very well in small local markets where there is a high level of familiarity and of trust. It may very well continue to be used for domestic collections in Germany as an alternative to SDD. Indeed, such a system could possibly be transformed into a European standard in local markets, in which case it should conform to XML ISO 20022. It would not, however, be suitable for large markets as the level of risk would become too high.

ii. Fixed or variable amounts

Another major issue, which serves to determine the type of system used, is the nature of the amount of the payment. In one-off and some recurrent DDs, the amount is fixed in advance, something that eliminates the risk of surprises for the debtor and failed payments for the creditor. In other recurrent DDs, the amount varies according, for example, to the level of usage by a customer of the service.

iii. Pre-authorised, not pre-authorised and other

There are two instruments in Europe, the Italian Ricevuta Bancaria (RIBA) and French Titre Interbancaire de Paiement (TIP) which, like direct debit, are creditor-initiated and have the same presentation and settlement cycle. The only difference is that they do not require pre-authorization (mandate). With RIBA, the debtor is alerted each time a request for payment arrives at his bank and has a short time to decide whether to pay or not. This affords the debtor protection and gives the creditor timely confirmation of payment on the due date. It is used primarily for B2B.

Other national schemes can qualify as direct debit, e.g. the DOMElectronique (Domiciliation générale des factures) used in Luxembourg. Some other national schemes are similar but not quite the same (e.g. the Direct Debit “Einzugsermächtungsverfahren” used in Austria and in Germany).

CHAPTER THREE: PROBLEM AREAS

In this chapter we will set out what, in the view of the EUC are the major weaknesses of the SEPA scheme as currently proposed. We are concerned that the current SEPA Core DD takes a ‘one-size-fits-all’ approach and will not satisfy the requirements of all users.

1. Governance of SEPA

From its inception, European public authorities have taken a back seat regarding the mechanics of SEPA. The European institutions have taken charge of the legal framework by way of the PSD, but SEPA itself was designated an ‘industry-led’ project. However, the reality is that SEPA has been conducted by the EPC as a ‘banking project’ with no real involvement of end-users. End user representatives have had no say in the analysis and design of the new payment instruments and were presented with the finished Rulebooks on a ‘take it or leave it’ basis. The only voice for users was in the SEPA Stakeholder Forums but these were largely information sessions, leaving little or no room for changes requested by end users.

We have now reached a point where all those involved in SEPA recognize that a change of direction and a proper level of guidance are urgently required. We believe there is still time to redress the mistakes and get all stakeholders fully involved by changing the governance of the project. End-users organizations have come together and established a mechanism of coordination within the EUC. This is currently a small body with no independent resources. We would wish to extend and strengthen the ability of the EUC to gather and properly represent the interests of the stakeholder community. In this way, users will be able to cooperate effectively with the EPC and regulators in the context of a new governance structure, where open issues and alternative proposals can be discussed and commonly agreed decisions taken. Through such a mechanism, all players involved in payment systems can be properly informed, included and thereby become committed to common goals.

1. Commission SEPA Action Plan

In November 2008, the Commission released a draft SEPA Action Plan. One of its priorities was to ‘clarify and improve the governance of SEPA’. It is clear that both the ECB and the Commission recognize that the governance of SEPA is not working as had originally been hoped. At present, there is no overall guiding hand on the tiller and as a result SEPA is drifting, pushed this way and that by competing and at times contradictory interests. There is no proper mechanism through which conflicts can be aired, discussed, mediated and resolved. The Commission’s draft paper states that the coordination of the SEPA project must be improved and that it is ‘essential to take on board the interests of all stakeholders in the implementation of the project’. The proposal goes on to suggest the setting up of a SEPA Steering Group, co-chaired by the Commission and the ECB and composed of representatives of the Commission, the ECB and the EPC. The proposal is that

this group should ‘work in close association with all SEPA stakeholders (users, corporates, retailers, consumers, public authorities)’.

The EUC members unanimously consider this proposal to be an insufficient solution. We believe that a Steering Committee which did not include users would perpetuate past mistakes and herald the failure of SEPA. It is essential for representatives of the SEPA users to be involved in the steering group at an equal level and on an equal footing with the EC, ECB and the EPC. SEPA must be a collaborative effort.

Our recommendations on governance:

- **SEPA must be changed from being a banking industry project to a true market-led project under the aegis of the Commission and the European Central Bank (ECB). As a basis for stakeholder cooperation in SEPA, the user community must be equal partners in the SEPA Steering Committee.**
- **End-users should be represented by a number of European organizations who would operate in an ‘End Users coordination committee’ (EUC). This Committee would bring together the different interest groups to achieve consensus and induce stronger commitment to the decisions democratically taken by the Steering Committee.**
- **In addition, there should be one or more specialized working groups where experts from banks and end-users discuss technical issues and prepare proposals and recommendations for the Steering Committee.**
- **The Steering Committee would make recommendations to the Commission and ECB, based upon research and facts provided by these specialized working groups. Each organisation casts a vote based on consultations with its members.**
- **The workings of the EPC must be open, inclusive and transparent. The EPC working groups should be open to user participation.**

2. Mandates

The issue here is whether existing national direct debits can be automatically transferred to the new SEPA DD or whether new agreement must be sought from debtors on each mandate.

In a number of countries (Germany, Austria, Spain, France) there is great concern from the business side of the user community over the possible need to re-sign old mandates for recurring direct debits since this would be extremely costly. A study by the German Insurance Association has estimated that it would cost the German insurance sector alone €4.8 billion. In addition, such an exercise could interfere with customer relations. Both the insurers’ organization CEA and the publishers association, FAEP, are very concerned on this point. Consumer representatives strongly

feel that, especially in countries where the DMF system is the norm, consent by consumers to the migration of existing mandates should not be presumed.

The Commission and the ECB broadly support automatic mandate transfer. The Commission draft SEPA action plan states:

“Where necessary, legal solutions must be found by member states, ideally during the PSD transposition process, to ensure the continued legal validity of the old mandates. The need to obtain new mandates would entail considerable administrative burden and unnecessary costs and as such would discourage migration – it therefore needs to be avoided.”

Our recommendations:

- **EUC business representatives:** Mandates should be automatically migrated to the SDD system and new reference data added. New mandates should only be issued on the setting up of new cross-border direct debits. There should be an obligation on banks to inform all direct debit customers that this was being done, but no obligation to seek a new mandate. The debtor is free to cancel a mandate at any time.
- **EUC consumer representatives:** Consumers should be clearly informed about the differences between the old and the new schemes and be given an opt-out period of e.g. 1 month. If consumers do not respond during the opt-out period, this will constitute validation; those who express a wish to give up the existing mandate may choose an alternative means of payment. (The consumer is free to pay with any means of payment.)

3. End dates

The Commission is currently carrying out a consultation on end-dates for SEPA migration, with a view, possibly, to propose legislation at the end of 2009. Various alternative schemes have been proposed for different phases in which end dates could be implemented.

The EUC members all agree that an overall aim should be to install SEPA across Europe efficiently and completely. However, the EUC does not consider the setting of end-dates to be absolutely necessary or desirable at the present time. In addition, the three SEPA products (credit transfer, direct debit and SEPA for cards) entail separate issues and problems. They must therefore be regarded separately on the issue of end date. No end-date for any of the three products should be forced on end-users: this must be decided with their agreement and commitment.

Indeed, we are not clear why the setting of end-dates has become a priority. It seems likely to us, that if deadlines are set, this serves the interests of the banks rather than of the payments community overall, since pressure will then exist for banks to meet the deadline and for users to simply accept the proposals presented to them. The CEA strongly makes the point that there can be no useful discussion on end dates until the issue of mandates has been resolved. End-dates

must be market-driven. The priority must be getting SEPA right, not getting a flawed SEPA as quickly as possible.

Our recommendations:

- **End dates for the three SEPA products should be considered separately.**
- **We are opposed to any legislation on SEPA end dates until all outstanding issues have been resolved to the satisfaction of all.**

4. Pricing of SEPA instruments

This major and sensitive issue is the source of much of the disagreement between users and the EPC. In many countries the fear is that SEPA instruments will prove more expensive than current domestic systems. In this section, we will deal with the issue of multilateral interchange fees (MIF) for SDD, the solution that has been proposed and the EUC concerns which remain.

The pricing of cross-border payment instruments was originally established by Regulation 2560/2001 which affirmed the principle that cross-border credit transfers should not cost more than comparable domestic payments. Also, when first introducing SEPA, the Commission was clear that SEPA products should cost no more than current domestic payments. Over and above this, competition law clearly applies if multilateral pricing is in issue. Banks must not try to recoup SEPA investment on prices in the short run or SEPA will never take off. They must plan to amortize the initial investment and running costs over a long period when growing volumes would drive costs down. The EUC argue that a pricing system which brings real benefits to all is essential for the market success of SEPA.

i. Regulation 2560

Earlier this year, amendments were introduced to the revision of Regulation 2560/2001, which are intended to provide an 'interim solution' to these pricing issues. The changes would allow a maximum MIF of 8.8 cents on cross-border direct debits for a period of three years, leaving conditions on domestic direct debits unchanged. The 8.8 cents figure is not based on any cost justifications but appears to have been arrived at in an ad hoc way based on averages of levels of MIF in member states where there currently are MIFs. We very much regret that this measure was decided with such haste and that stakeholders were excluded from discussions on these proposals. We also greatly regret that European authorities apparently gave in to pressure from the banking sectors in a number of member states.

On 24 March 2009, the Commission and the ECB issued a joint guidance statement which sets out what the two bodies consider should be the position on MIF for SDD after 2012:

"The Commission considers that a general per transaction MIF does not seem necessary for direct debit transactions. Such MIFs paid by creditor banks to debtor banks for direct debits

cannot, in general, be justified for efficiency reasons, and it appears unlikely that they would be compatible with EU antitrust rules, either for national or for cross-border transactions. After 1 November 2012, they should, therefore, have been replaced by other mechanisms, at the national and at the cross-border level, for both SEPA direct debits and for national, or legacy, direct debits.”

The EUC wholeheartedly supports the position of the Commission/ECB statement quoted above. We sincerely hope it will be put into practice from November 2012. However, the user community still has grave concerns about both legs of this solution: the interim solution and the long-term proposal.

a) Re 2009-2012

We argue that this interim solution is contrary to competition law and breaches the basic principle of Regulation 2560. It has two further problems:

- It creates asymmetries and arbitrary differences between countries which have a local MIF of higher amount (so cross border DD are less interesting) and those with no or lower MIF (they receive a bonus).
- For a simple DD, a creditor gets no additional service from the debtor’s bank than he does when a credit transfer is used: the continuing per transaction payment therefore cannot be justified.

b) Re post-2012

(i) Stability

The EUC is not convinced as to the long-term stability and reliability of the arrangement currently proposed. A certain reluctance on the part of particular sections of the banking community to commit to SEPA DD suggests that long-term arrangements may need to be accompanied by long-term regulation. The alternative may be continued or recurring price schemes imposed by banks which, in the view of the users’ community, contravene European competition law and are inimical to the aims of SEPA itself. If such a recurring price structure (MIF) were imposed by banks with no control or oversight by European authorities and no involvement of users, it would be opposed by the whole stakeholder community.

In a speech on 25 May, Competition Commissioner Kroes described the Commission/ECB statement thus:

“That joint statement should, be recognised as an unprecedented form of interaction between financial regulation and competition enforcement. We do value the excellent co-operation with the European Central Bank in this area, which has made it possible to issue this 'mini-guidance'.”

However, the joint statement does not have the force of law: it is not binding on the banks as it stands. If it were not followed, the Commission would have to have recourse to competition law decisions and possible appeals, a process which could take years. The EUC is not satisfied that the guidance statement is sufficient security against this.

In addition, the EUC seeks assurances that steps will be taken at national level to remove direct debit MIFs in member states where these exist, through competition law action if necessary. Governments should not wait until November 2012 to begin such action.

(ii) Proposed possible MIF on errors/returns

The Commission/ECB statement also said:

“An MIF for error transactions could, nevertheless, be envisaged as it may create an incentive to avoid such error transactions and, therefore, encourage the efficient functioning of the SDD scheme.”

At present there is such an error fee in Germany, which acts as a penalty fee, being up to €3 per return transaction and borne by the creditor. In the German insurance sector, only 1.6% of DD transactions initiated by insurers involve errors and the sector tends to have individual arrangements with their bank on fee levels. However, the EUC is concerned that there is very little explanation or understanding at present as to how such a system should function. The following are just some of the questions we have:

- It would be possible to imagine a system where, if there is an error, the party responsible for that error would pay any subsequent costs, but what would be the mechanism for establishing fault? Would this fault-finding process itself not be cumbersome, costly and inefficient?
- Alternatively, the system could decide that in all cases of error, the creditor bank should pay the cost, which would be then borne by the creditor as part of the incentive to the debtor to use the SDD system. How would the fixed fee be fixed? How would price-fixing/competition issues be dealt with?
- What if a debtor has insufficient funds in his account to meet the payment? Surely the creditor should not be subject to a fee for a return on this ground? UEAPME, FAEP and EuroCommerce take the view that in this case, the creditor bank should not have to bear costs. UEAPME suggests that this issue should be decided directly between the consumer and the creditor.

Our recommendations:

- **A full examination and cost/benefit analysis must be done on the issue of fees for SEPA direct debit, in particular, the proposal for an interchange fee on errors/returns.**

Stakeholder should have active participation in these studies and in the final decision-making process.

- **There must be clarity and transparency on pricing of SDD post 2012. The banking sector must publicly commit to specific fee structures following the expiry of the Regulation 2560 interim period.**
- **Member state governments must take immediate action to ensure that MIFs on direct debit at national level are removed through competition law action if necessary.**

CHAPTER FOUR: ALTERNATIVE SOLUTION

1. User Confidence

User confidence is essential for the success of any payment system: both debtor and creditor must have confidence that the payment will pass effectively and that the system does not carry unacceptable risk i.e. it is not open to fraud, abuse or high error levels. But the levels of checks and security required to establish this confidence vary according to various elements. The multiplicity of DD schemes currently in use in member states reflect the differences in local communities, the perceived levels of risk and the attitudes towards those risk levels. It is for this reason that the blanket EPC Rulebook core scheme attracts criticism: it has little flexibility and does not capture the variety of existing collection schemes. It is too basic in terms of functionalities, unbalanced in the obligations of the parties involved and does not offer adequate certainty of collection to creditors and protection to debtors. There is also concern that a wide pan-European use of the scheme would create a high level of risk for fraud.

A further problematic issue is that a balance must be struck between the needs of the debtor to have a reasonable time in which to reject an unauthorised payment and the needs of the creditor to be sufficiently sure that payments will pass without delay. The e-mandate initiative is intended to solve some of these problems but will only cover a minority of mandates and contains a number of weaknesses. Consumers and a large section of corporates do not consider the mechanism of the e-mandate to be sufficient to address their concerns.

The fundamental issue for users is that the variety of needs concerning security and confidence which exist in different markets should be catered for in the new scheme. Assurances of, and different options as to, security levels would encourage the take-up of SDD and help users, on both sides, to adapt to changes in the market conditions resulting from SEPA implementation.

In addition, BEUC points out that at present, many direct debit systems are run on the DMF system e.g. France, Belgium, Spain and Italy. It is the banking community which has opted for a CMF system for SEPA DD and BEUC argues that the levels of fraud associated with CMF are greater than those for DMF. They see no consumer demand for SEPA DD and argue that consumers should not be exposed to the levels of fraud associated with CMF at national level simply because a cross-border system is being implemented. They note that, if the basic system is switched to the EPC SDD, consumers in the majority of member states would have less security on DD payments.

i. Summary of criticisms of EPC SDD scheme:

- Too much risk for debtors
- Too much uncertainty for creditors on the finality of collections due to long refund periods
- Unbalanced distribution of tasks and responsibilities, which fall mostly on the creditor
- Too passive a role for banks, particularly the debtor bank

- Too much rigidity in the operating cycle and too large an administrative burden on creditors
- Significant and unnecessary changes in creditors collection procedures.

2. EUC Alternative Option: CMF+

Note: It may be too early at this stage to define exactly what system will prove most effective and most attractive to creditors and debtors. Various AOS options may be offered by different banking sectors and it will be up to the market to decide which to adopt. The elements outlined here (and in Annex 1) are the requirements of the EUC for a system which would be acceptable to users.

The basic requirements of users for a satisfactory SEPA DD scheme are:

- the debtor bank verifies the coordinates and the mandate prior to sending DD payments,
- DDs are checked against the mandate instructions and
- the creditor is informed in good time of any changes in the life of the mandate, which are initiated by the debtor or the debtor bank.

The CMF+ solution involves the use of additional optional services (AOS) as already provided for in the SEPA DD Rulebooks, which will offer additional functionalities, e.g. more risk protection, finality of payment and shorter terms for refund. The new features will be developed according to the PSD and the ISO 20022/SEPA standard and will not interfere with the functioning of the basic EPC SDD.

This proposal has come from a scheme already developed by the Associazione Bancaria Italiana (ABI) and the Italian Banks⁵. CMF+ will be an entirely new system, re-designed to comply with the PSD and the SEPA standards. It will be open for use by all European banks and corporates.

The basic EPC SDD CMF system would function as described in the Rulebooks. CMF+ would function as an optional add-on to be chosen by the consumer on the initiation of the mandate. These would not be two separate systems but would be alternative service options which would both operate from the same Rulebook platform. It concerns additional optional features which the banks can offer their customers and does not interfere with the collection and settlement cycle of the SEPA SDD as set out in the Rulebooks.

There is therefore no question of separate investments etc. As for every AOS, banks will not be obliged to offer the service, either as creditor or debtor banks. The market will decide on the success of the new service beyond its original constituency, and this may lead to a new Rulebook or changes in the existing one. In both options, the mandate is received and stored by the creditor.

⁵ This is known as SEDA (SEPA-compliant Electronic Database Alignment). It operates in accordance with the ISO 2002 /SEPA standards and mirrors a system which has operated successfully in Italy for the last four years (known as EDA).

However, in CMF+, the debtor bank would play a more active role, to better guarantee security for his client and to facilitate the creditor's operations.

The default mode would remain the core SDD scheme as defined by EPC. Over and above this, there would be a range of optional CMF+ features:

- *For the debtor:* each debtor would choose the level of service which best fits his requirements as to security. Debtors could adjust the level of protection from time to time, according to his perception of potential risks.
- *For the creditor:* on sending mandate data to his bank, each creditor would also send information giving the level of checks he expects from the debtor's bank.
- *For the debtor's bank:* each bank would be free to offer optional features to their own customers when they act as debtors and/or to their creditors.

These options can be illustrated by means of a table:

Creditor Payer	Level 1	Level 2	Level 3
	<i>BASIC</i>	<i>MEDIUM</i>	<i>HIGH</i>
Level 1 : Basic <i>High level of trust</i>	P :BASIC SERVICE	P :BASIC SERVICE	P :BASIC SERVICE
	C :BASIC SERVICE	C : Mandate feed-back	C : Mandate feed-back + database alignment
Level 2 : MEDIUM <i>Medium level of trust</i>	P: control on mandate	P: control on mandate	P : control on mandate
	C :BASIC SERVICE	C : Mandate feed-back	C : Mandate feed-back + database alignment
Level 3 : HIGH <i>Low level of trust</i>	P: control on operations	P: control on operations	P: control on operations
	C :BASIC SERVICE	C : Mandate feed-back	C : Mandate feed-back + database alignment

NB: The full technical requirements of the CMF+ scheme are set out in Annex 1 of this document.

i. Pricing

As a general point, it is clear that there is too little information on the real costs of payment means in general and on those of direct debit in particular. It is also clear that banks engage in much cross-subsidisation of services which makes the issue of judging appropriate fees/fee allocation all

the more opaque. It follows from this that a full study of the true costs of direct debit must be carried out.

One of the major hurdles that CMF+ is intended to overcome is the problem of the interchange fee, as the system would allow SEPA DD to operate without a MIF. The basic CMF service would remain very cheap and very simple. The CMF+ would deliver greater benefits: it would be slightly more expensive but it would be optional. Creditors will be able to attract debtors to the SEPA DD scheme by offering extra security levels. This should also allow for a greater measure of competition between creditors and between banks offering SEPA DD.

- The basic CMF system involves no additional work from the banks on each transfer as there are no additional checks to be made. Therefore, it should be priced according to real costs and would not generally justify a fee for the debtor.
- CMF+ would offer a superior service to the ultimate benefit of both parties. It would attract a one-off fee when the mandate is first set up, at a level which reflects the service given. The fee, charged by the debtor bank, could be paid by the creditor as part of the incentive to the debtor to use the system. In countries where the system already exists, it should cost no more than today.

Our Recommendations

- **A thorough study of the true costs of payment means and of direct debit in particular should be conducted by the EU authorities.**
- **The SEPA DD scheme must incorporate the specific requirements set out by the user community in Annex 1 of this paper.**
- **The SEPA DD scheme must cater for differing requirements from the various parties concerning levels of security required. Additional optional features which offer alternative levels of security must be made available.**

CONCLUSION

SEPA has arisen from a political decision, which seeks to bring payments into line with the integration of European trade by creating a single payment market. It should break down national barriers, remove national and local monopolies, unify infrastructures and so reduce the overall cost of payments in the euro-domestic area. SEPA is therefore a long term project, which may require some sacrifice in the short run, but which should create lasting efficiencies to the benefit of all European providers and users of payment systems.

A standard payments system throughout the EU would allow businesses to shed the complexity and extra-cost and make full use of their centralized treasury, payment and collection factories. Long-term efficiencies and benefits will result, provided that SEPA is correctly conceived, designed, implemented and communicated to all. However, careful attention must be paid to the divergences between existing systems and how, as much as possible, to preserve their respective advantages. It must also be stressed that short-term investment requirements must not result in an overall increase in costs or any measure of acceptance of less efficient systems.

Payment systems users are committed to the realization of these goals and fear that the SEPA project is losing its way. The recommendations contained in this paper are intended to advance the SEPA direct debit project and ensure that it does indeed take a shape which will fulfill its potential and bring benefits to all users of payment systems. The members of the EUC and their organizations are committed to working together with the European authorities and the banking community to achieve the resolution of remaining problems and to ensure the success of SEPA.

SEPA End-users Committee

June 2009

Annex 1: Specifics of CMF +

The EUC study has identified 4 optional service levels which should be sufficient to incorporate the range of services needed to cover most of the requirements identified on the different markets. Therefore, transforming the basic SDD into an acceptable range of DD instruments would require the following additions to the core scheme:

(i) 2 optional levels of service on debtor's side

- *Medium*: debtor's bank allows the debtor to check and validate mandates prior to the first or one-off collection
- *High*: debtor's bank allows debtor to check and validate each collection request prior to debiting the account.

(ii) 2 optional levels of service on creditor's side

- *Medium*: the debtor's bank sends back to the creditor a message confirming validity of the mandate and/or confirmation by the debtor
- *High*: creditor and debtor's bank agree to automatically send to each other any change incurred concerning the mandate data.

In addition, the CMF+ scheme outlined in Chapter 4 of the EUC paper has the following specific requirements and advantages:

(i) Requirements:

- Confirmation by debtor bank of identity, bank coordinates and signing rights of the debtor
- Validation by the debtor bank with the debtor of 'electronic mandate data' transmitted by the creditor (in the CMF scheme)
- Timely information to creditor bank, to creditor via creditor bank and to debtor of amendments/cancellations of original mandate
- Timely information of changes in bank coordinates
- Checking incoming requests for debit with mandate clauses
- Handling additional mandate fields (e.g. max/average amount of direct debit in mandate)
- Banks check expiration of dormant mandates
- Additional services offered to clients (e.g. outsourcing of mandate management)
- Provision for a flag in a field of the ISO 2022 format so that a bank receiving core SDD and CMF+ SDD must be able to distinguish them.

(ii) Other services made possible by CMF +:

- DMF (banks holding debtors mandates)

- Portability of bank accounts and mandates
- Shorter or no refund when debtor bank checks mandates and SDD

(iii) Advantages:

- CMF+ enhances flexibility by increasing the ways in which direct debit can operate. It supports both B2C and B2B, the CMF scheme
- CMF+ does not interfere with the presentation and settlement cycle of standard SEPA direct debits. Its messages handle information, not transaction flows, so are not payment data. They therefore do not need to go through an automated clearing house (ACH) (but ACHs may opt to offer the service and the SEPA AOS required).
- The ISO is already working to standardise interbank messages concerning changes of bank coordinates. CMF+ is an extension of this work because it encompasses more messages related to DD mandates and other bank services, like transferring mandates to new banks.

ANNEX 2: List of DD systems in EU 15

Country	Name of Scheme	Type of Scheme	Coverage
Portugal	Sistema de Débitos Directo - SDD	Pre-authorised	Domestic
Spain	General Sub-system of Direct debits (SNCE-005)Autogiro	Pre-authorised	Domestic
Sweden	Autogiro	Pre-authorised	Domestic
UK	Direct debit scheme	Pre-authorised	Domestic
Austria	Abbuchungsauftrag	Pre-authorised	Domestic
	Einzugsermächtigungsverfahren	Pre-authorised	Domestic
	Einzugsermächtigung International	Pre-authorised	Cross- border
Belgium	DOM 80	Pre-authorised	Domestic
Denmark	Leverandørservice	Pre-authorised	Domestic
	Betalingservice - PBS	Pre-authorised	Domestic
Finland	Suoraveloitus (Direct Debit)	Pre-authorised	Domestic
France	Avis de Prélèvement	Pre-authorised	Domestic
	Titre Interbancaire de paiement (TIP)	Non- pre-authorised	Domestic
Germany	Abbuchungsauftragverfahren	Pre-authorised	Domestic
	Einzugsermächtigungsverfahren	Pre-authorised	Domestic
Greece	National direct debit scheme	Pre-authorised	Domestic
Ireland	Direct debiting scheme of Ireland	Pre-authorised	Domestic
Italy	Rapporto Interbancario diretto (RID)	Pre-authorised	Domestic
	Ricevuta Bancaria (RiBa)	Non pre-authorised	Domestic
Luxembourg	Domiciliation générale des factures DOM-Electrique	Pre-authorised	Domestic
Netherlands	Continuous authorisation general	Pre-authorised	Domestic
	Continuous authorisation companies	Pre-authorised	Domestic
	On-off authorisation	Pre-authorised	Domestic

Note: Source of Annexes 2-4: Internal Market DG 'Study On The Harmonisation Of The Legal Framework For Cross-Border Direct Debit Systems In The 15 Member States Of The European Union' by Landwell and Bogaert&Vandemeulebroeke
http://ec.europa.eu/internal_market/payments/docs/directdebit/final-report-part1_en.pdf

ANNEX 3

DIRECT DEBIT IN MAJOR EUROPEAN COUNTRIES (23 DIRECT DEBIT (DD) SCHEMES IN 15 COUNTRIES): DIFFERENCES AND SIMILARITIES

1. CONTRACTUAL RELATIONSHIP: DEBTOR – DEBTOR’S BANK

- A specific direct debit contract is concluded between the debtor and the debtor’s bank in only 4 direct debit schemes: the 2 Danish schemes, the Greek scheme and the Italian RID scheme. In the French Avis de Prélèvement scheme a specific contract is concluded which also contains the mandate.
- Eleven Direct Debit Schemes have specific direct debit provisions in the general terms and conditions agreed upon between the debtor and the debtor’s bank. In these cases there is no specific direct debit contract between the debtor and the debtor’s bank, except in Greece and Italy.
- Member States where no specific contractual rules regarding direct debit seem to be in place between the debtor and the debtor’s bank (either in a specific contract or in the general terms and conditions) are therefore Austria, Belgium, Finland, Ireland, Luxembourg, Portugal, and Sweden.

2. CONTRACTUAL RELATIONSHIP: CREDITOR – CREDITOR’S BANK

In 19 out of 23 direct debit schemes a separate specific agreement regarding direct debit between the creditor and the creditor’s bank is mandatory. In only 3 schemes is there no separate agreement between the creditor and the creditor’s bank, namely the schemes operated in Greece, Ireland and Portugal.

3. CREATING AND LODGING THE MANDATE

In 15 schemes the creditor’s bank is obliged to check whether the operational organisation of the creditor complies with the scheme. In the other 8 schemes, namely the 3 Austrian schemes, the Finnish, the 2 German, the Greek and the Swedish, such an obligation does not exist.

4. BLACK LISTS FOR CREDITORS AND DEBTORS

No black lists for creditors or for debtors could be identified in the schemes studied (for 3 schemes no information was available)

5. ALLOCATION OF CHARGES

- In 8 schemes only the creditor pays charges: the Belgian, 2 Danish, Finnish, Greek, Dutch continuous authorization general, Spanish and the Swedish

- Austria (3 schemes): legally speaking allocation should be agreed upon between debtor and creditor. However, in practice, in the Einzugsermächtigung International the charges are to be paid by the debtor only and in the 2 other schemes by both the creditor and the debtor in accordance with the services actually rendered by their respective banks.
- In 3 other schemes, the allocation of charges is the subject of an agreement: the Irish Scheme where such agreement is to be concluded between the banks and their customers, and the 2 Italian schemes where it is agreed upon between the debtor and the creditor.
- Portugal: agreements between the intervening parties are likely to be concluded as no other rules are provided.
- Netherlands/UK: In the Dutch continuous authorisation general and one-off authorisation schemes, as well as in the UK scheme, both the debtor and the creditor may support charges at the discretion of their bank. In the 2 German schemes, the debtor pays the charges for the services rendered by the debtor's bank, and the creditor pays the charges for the services rendered by the creditor's bank.
- France: no information available in France (2 schemes).
- Luxembourg: no fees are charged to the Debtor or the Creditor.

6. AMOUNT OF CHARGES

Very little information is available on the actual amount of the charges, but only on the basis of calculation

- 2 Italian schemes/2 French schemes: amount is fixed.
- 2 Danish schemes: a part of the charges is fixed and another varies according to the amount of the operation.
- Greece: the charges only vary in function of the amount of operations.
- In 13 schemes (the 3 Austrian, the 2 German, the Finnish, the Irish, the 3 Dutch, the Portuguese, the Spanish and the one of UK) the amount of the charges is to be agreed upon between the parties.
- Luxembourg: no fees at all are charged either to the debtor, or creditor.
- Belgium and Sweden: no information is available.

7. MANDATE BY THE DEBTOR

- In 21 DD schemes there is a unique mandate allowing the creditor to initialize DD transactions. In the 2 remaining schemes, the French TIP and the Italian RiBa, both are non-pre-authorised schemes, therefore there is no upfront unique mandate
- France: French Prélèvement scheme is based on 2 'unique mandates': one is lodged with the creditor and the other with the debtor's bank.

- Netherlands one-off authorisation scheme: this is the only scheme with an upfront unique mandate valid for one payment only. All other Schemes, in which an upfront unique mandate is used, authorise an unlimited number of DD transactions (except when a maximum number is indicated e.g. the Italian RID)

8. FLEXIBILITY IN THE AMOUNT

Most schemes provide for flexibility in the amount meaning that the creditor can initialize DD transactions of various amounts. Only 3 schemes, the French TIP, the Italian RiBa and the Dutch one-off authorisation, do not allow flexibility regarding the amount to be debited. This is due to the fact that in these schemes the mandate, whether it is issued upfront or not, can only be used for one single transaction.

9. FLEXIBILITY IN THE DUE DATE

18 out of 23 schemes allow for flexibility in the due date. Those that do not allow flexibility are the 2 Danish schemes, the Greek, the Italian RiBa and the Dutch one-off authorisation.

10. TYPES OF PAYMENTS

Most DD schemes can be used for all types of payments (14 out of 23). In the Finnish, the French Avis de Prélèvement and the Spanish scheme, the type of payment is explicitly limited to recurrent payments.

11. TYPES OF ACCOUNT ALLOWED

Current accounts are always allowed, whereas savings and deposit accounts are often excluded. Not so however in 10 Direct Debit Schemes where all types of accounts are allowed. In the 3 Dutch schemes it is up to the individual banks to define the types of accounts allowed. For Spain no information could be obtained.

12. LIMITATION ON THE NUMBER OF MANDATES PER ACCOUNT

None of the schemes contain a limit on the number of mandates that can be given per account (in the 3 Dutch Schemes it can be otherwise agreed). This issue is obviously not relevant for the 2 non pre-authorised schemes (the French TIP and the Italian RiBa) as the authorisation is provided after the request for execution and for a single transaction only.

13. INVALIDITY OF MANDATE IN CASE OF NON-USAGE

In 5 countries both creditors and debtors must pay attention to the rule under which a dormant mandate can expire and thus can automatically become invalid if no transactions have taken place for a number of months. The statutory period provided for in these countries between the last transaction and the termination of the mandate varies, but it is never shorter than 13 months. Seven national schemes allow for such a restriction to be agreed between the parties, while others do not contain such provision at all.

Expiry of dormant mandate

- Belgium 18 months
- Denmark-Betalingservice 15 months
- Finland 18 months

- Luxembourg 18 months
- United Kingdom 13 months

14. MANDATORY CONTENT OF THE MANDATE

The debtor's account number, the signature, the date of signing and the reference to the direct debit scheme are the most common mandatory content elements of the mandate throughout in all DD schemes. In 15 out of 23 schemes studied, a reference to the scheme is mandatory. In 18, the debtor's account number is mandatory. The signature and date are mandatory in 22 schemes.

Other frequent mandatory data in the mandate:

- identification of the debtor: his name and address;
- identification of the debtor's bank: his name, address and/or id code;
- identification of the creditor: his name and id code;
- the actual power of attorney
- authorisation of the original debtor, if any.

15. FORM OF THE MANDATE

Although information between the banks is usually transmitted electronically, creating and lodging a Mandate still requires a paper form in many cases. In this respect it is noteworthy that the Portuguese Scheme allows for the creation of the Mandate via "Multibanco" which is an electronic banking interface available to customers.

16. ROUTING

Regarding the routing of the lodging of the mandate, in 15 out of 23 direct debit schemes the lodging starts (or can start) with the debtor contacting the creditor. There are 4 possible next steps:

- in 5 schemes the creditor then contacts the creditor's bank
- in 3 schemes the creditor then contacts the automated clearing house (ACH)
- in 3 schemes the creditor addresses himself to the debtor's bank upon receiving the mandate from the debtor
- in 4 schemes there is no further lodging of the mandate once it has been given to the creditor.

In 9 out of 23 schemes the lodging starts (or can start) with the debtor contacting the debtor's bank. Possible next step:

- in 3 schemes the debtor's bank contacts the creditor
- in 1 scheme the debtor's bank contacts the creditor's bank
- in 4 schemes the debtor's bank contacts the ACH
- in 1 scheme there is no further lodging of the mandate once it has been given to the debtor's bank.

17. REJECTION OF THE MANDATE

In most direct debit schemes the mandate can be rejected during its lodging. In the 2 Italian schemes this is not possible. The circumstances in which a mandate can be rejected are not limited in any of the schemes. In only 3 schemes (the French avis de prélèvement, the Spanish scheme and the Finnish scheme) the justification is mandatory. Rejection occurs most often where there is repeated insufficient balance on the account (or other repeated infringement to the direct debit rules) and material errors in the data of the mandate. Twelve schemes do not oblige the rejecting party to give reasons for the rejection.

18. ROUTING OF THE REJECTION OF THE MANDATE

A great variety of Routings exists for the rejection of the Mandate. In 4 Schemes the Routing starts with the Debtor's Bank lodging the rejection with the Debtor. In 4 other Schemes the Debtor's Bank rejects the Mandate towards the Creditor. In 6 Schemes the rejection can be effected by the Creditor himself towards either the Debtor, the Debtor's Bank or the ACH. In several Schemes the ACH can also reject the Mandate. It should also be noted that in a few Direct Debit Schemes alternative Routings are possible for the rejection of the Mandate.

ACCEPTANCE OF THE MANDATE

1- CONFIRMATION OF THE ACCEPTANCE OF THE MANDATE

Nine out of 23 direct debit schemes foresee a confirmation of the acceptance of the mandate. In 11 schemes this is not the case. In the Spanish scheme it is optional. No information available on German schemes. In the French tip scheme there is no confirmation of the acceptance as such, but the façonnier (organisation in charge of the material processing of the TIP) records the information provided in the mandate in an electronic file ('TIP traités'), and sends it to the creditor.

2- ROUTING OF THE ACCEPTANCE OF THE MANDATE

Of the 9 schemes that provide for an explicit confirmation of the acceptance of the mandate, 4 schemes require confirmation to be sent both to the creditor and to the debtor. Such confirmation is issued by either the debtor's bank or the ACH.

In 3 schemes only the creditor receives confirmation of acceptance of the mandate, as he must know when to start lodging requests for execution. In the Italian RiBa, only the debtor receives a confirmation of acceptance of the mandate. In several schemes various alternative routings are in place for the acceptance of the mandate.

DIRECT DEBIT TRANSACTIONS – NORMAL EXECUTION

1. OPERATIONAL DEADLINES

Only Greece, Ireland, Luxembourg, the UK and France (for its pre-authorised Scheme Avis de Prélèvement) reported strict operational deadlines for carrying out a DD. Those strict operational deadlines are linked

with the clearing process. The German schemes do not provide for strict deadlines but the request for execution is to be made without undue delay.

Most of the deadlines apply to the submission of the requests for execution which, if not filed in due time, will not be taken into consideration. Such is the case in the Italian Ri.Ba Scheme, in the 2 Danish schemes, in Finland, Sweden, Spain, Portugal, and in the 3 Dutch schemes. Belgium is the only country where the operational deadlines must be agreed upon in the contract between the creditor and his bank.

2 RULES FOR CALCULATING VALUE DATES

Value dates are traditionally not dealt with in the direct debit regulations; they largely depend on the general terms and conditions of the participating banks.

3 MANDATORY CONTENT OF THE REQUEST FOR EXECUTION

- Identification of the scheme: In the majority of the cases, the scheme must be identified in the request for execution.
- Identification of the debtor: the most frequently used element for the identification of the debtor is his account number. In most cases the request for execution must also contain the name of the debtor. In some cases his address and/or an ID code must also be mentioned.
- Identification of the debtor's bank: the debtor's bank is not necessarily identified in the request for execution. When it is, the bank's ID code is usually used.
- Identification of the creditor: in most cases, the creditor is identified by his account number or his ID code within the scheme.
- Identification of the creditor's bank: in general, the creditor's bank does not need to be identified in the request for execution. It is usually the creditor's bank which receives the request for execution; therefore its identification is not necessary. When the creditor's bank is identified in the request for execution, it is usually done via its ID code.
- Identification of the mandate: only 8 of the 23 schemes studied oblige the creditor to refer to the mandate in his request for execution: Belgium, Luxembourg, Portugal, Spain, UK, the 2 Italian schemes and the Danish Betalingsservice scheme.
- The schemes that do not foresee a mandatory reference to the mandate do not oblige the creditor to refer to the underlying relationship.
- Transaction data: the amount of the transaction must always be mentioned in the request for execution. Usually the currency is also to be mentioned. Some schemes also provide that it is mandatory to mention the requested execution date (the Belgian, Finnish, Greek, Italian, Dutch, Luxembourg schemes) and/or the due date (the Finnish, the French Avis de Prélèvement, the Greek, the Italian and the Spanish).
- Other: Some member states (Belgium, Finland, Italy, and the Netherlands) operate schemes that oblige the creditor to mention the date of his request for execution.

- In Italy and in the UK, the request for execution must contain the confirmation that the creditor's bank participates in the scheme. In the Italian schemes the amount and allocation of charges and the date and validity of the mandate must also be mentioned.

LODGING THE REQUEST FOR EXECUTION

1 ADVANCE NOTICE TO THE DEBTOR

- The huge majority (15) of the schemes require the sending of an advance notice to the debtor. Such obligation undoubtedly enhances the legal security.
- Advance notice is optional in the 2 German schemes, the Irish scheme (but only when the amount is variable), in the Italian RID (if foreseen in the contract between the Debtor and the Creditor) and in Spain and UK (but only before the first transaction).
- In the French TIP Scheme and the Dutch one-off authorisation, no advance notice is to be sent.
- Five of the 8 schemes, which give no mandatory advance notice, give the debtor the possibility to revoke a transaction. (This is not the case in the Dutch One-off authorisation which is used for a single payment only.)
- The UK scheme and the German Abbuchungauftragsverfahren provide that the debtor can file an indemnity claim.

2 ROUTING OF THE REQUEST FOR EXECUTION

In the huge majority (16) of the schemes, the creditor sends his request for execution to the creditor's bank. The creditor's bank then transmits the request to the debtor's bank, usually directly or through the ACH. In the French avis de prélèvement scheme, the request is sent by the creditor's bank to the ACH and to the debtor's bank.

In some schemes (the 2 Danish, Greece, Luxembourg, Sweden and UK) the creditor must send his request for execution directly to the ACH which then transmits it to the debtor's bank.

The non-preauthorised French TIP scheme uses a quite specific routing for lodging the request for execution which cannot be compared with the other schemes.

CONFIRMATION OF THE EXECUTION

1. Confirmation of the execution of the request: Confirmation of the execution of the transaction is mandatory except in Italy, Portugal (optional) and Ireland (no rule).
2. Deadline: Little information is available on the deadline for the confirmation but in those schemes where a deadline is foreseen, the delay is maximum 3 banking days after the payment.
3. Routing: In the huge majority of the schemes, the debtor's bank confirms the execution to its client and the creditor's bank (or the ACH) confirms vis-à-vis the creditor. Between the banks and between the banks and the ACH, confirmations are rarely made.

CANCELLATION OF THE REQUEST FOR EXECUTION BY THE DEBTOR

1. RIGHT TO CANCELLATION AND CIRCUMSTANCES

- Cancellation by the debtor is possible in the Finnish, Luxembourg, Irish, Portuguese, UK and Spanish schemes, the French Avis de Prélèvement and the 2 Italian schemes.
- Eleven of the 23 schemes do not allow the debtor to cancel a request for execution at all.
- Only the French Avis de Prélèvement and the Irish scheme provide for specific circumstances in which cancellation by the debtor is possible.
- French Avis de Prélèvement: before requesting a cancellation, the debtor must try to find an arrangement with the creditor
- Denmark: Cancellation is possible and is the same procedure as revocation of the transaction by the debtor.
- Sweden: Cancellation takes place by suspending the mandate.

2. DEADLINES

The debtor must respect a deadline for submitting a request for cancellation, usually linked with the due date. The Italian RID has the shortest time period for cancellation, as the debtor must act at least 5 days before the due date.

- Denmark: the cancellation will be carried out 2 business days after the request. The procedure for cancellation by the debtor is the same as a revocation of the transaction by the debtor.
- Italy (2 schemes): time period allowed between the request for cancellation and the actual cancellation is to be agreed between parties.
- Spain: the direct debit is executed and immediately annulled.

REJECTION OF THE REQUEST FOR EXECUTION

1. BANKS HAVING THE RIGHT TO REJECT

- All the schemes allow the rejection of requests for execution.
- In the 3 Dutch schemes, the creditor's bank the debtor's bank and the ach may reject a request for execution
- In 10 schemes (the 3 Austrian, the Belgian, the Finnish, the French Avis de Prélèvement, the 2 German, the Irish and the Spanish) both the banks can reject the request for execution.

- In the Greek and Portuguese scheme, both the debtor's bank and the ACH can reject a request for execution.
- In the 8 remaining Schemes, only the Debtor's bank can operate a rejection.

2. CIRCUMSTANCES

Reasons for a rejection are rarely strictly limited so that most of the time only examples can be provided. Reasons need not always be given (e.g. Austria). The most common reason is insufficient credit balance on the debtor's account. Other frequently reported reasons:

- a mistake in the data of the request for execution and the absence of a valid account (e.g. because the account is closed or does not exist, because the type of account does not allow direct debits, etc);
- no valid mandate;
- amount of the request for execution is superior to the authorised amount;
- a rejection can sometimes also take place in the following circumstances: a seizure of the account, death of the debtor, insolvency/bankruptcy, a previous contestation by the debtor; if the creditor is no longer admitted to act under the scheme; if the agreement between the creditor and his bank has been violated; if the requested execution date is not an allowed date.

REVOCATION OF THE TRANSACTION BY THE DEBTOR

1. RIGHT TO REVOCATION

The majority of the schemes allow the debtor to revoke a transaction. This is not the case in 10 schemes: the Austrian Einzugsermächtigungsverfahren, the Belgian, Luxembourg, Finnish, Greek, Swedish, the German Abbuchungsauftragsverfahren, the Italian RiBa, the Dutch one-off authorisation and the UK. (But in the UK the debtor can lodge a claim on the basis of the direct debit guarantee which provides for the reimbursement of the debtor only in the event of an error by the creditor or by the debtor's bank.) The Italian RID is the only scheme where a partial revocation of a transaction is possible.

2. CIRCUMSTANCES

Only the Irish scheme limits revocation to strictly enumerated cases, i.e. if the request for execution does not comply with the mandate. In the French avis de prélèvement, if the revocation is based on an inaccuracy in the amount of the transaction or in the requested execution date, the revocation cannot be rejected.

3. DEADLINES

The deadline for the debtor to submit a request for revocation is quite variable. It ranges from the very short deadline in Italy (i.e. before the creditor's account is credited) to two months in the 2 French Schemes.

- In the 3 Dutch schemes, the deadline is extended to 12 months in case of wrongful execution.
- In the Austrian Einzugsermächtigungsverfahren and Einzugsermächtigung International, if the revocation is made later than 42 calendar days after the debiting of the debtor's account, the revocation can only be accepted on the grounds of the mandate being invalid.
- Spain: revocation of a direct debit is limited only if the amount is below EUR 2.500 and if the request for revocation is made within 30 days after the debit of the Debtor's account.
- The French Avis de Prélèvement provides the possibility of revocation beyond the deadline only when enforced by a court order.
- In the German Einzugsermächtigungsverfahren, no deadline is formally provided but revocation cannot be rejected if filed within 6 weeks of the execution date. Indeed, afterwards the debtor's bank can no longer return the debit to the creditor's bank anymore and therefore the debtor's bank might suffer a loss.
- In the Austrian Einzugsermächtigungsverfahren and Einzugsermächtigung International, the French Avis de Prélèvement and the German Einzugsermächtigungsverfahren, the Debtor must be re-credited immediately.
- The 2 Danish Schemes: deadline is 2 business days.
- In the UK, where no revocation as such is possible but an indemnity claim can be lodged, refund is immediate in cases of bank error and must be made within 14 days in cases of creditor error.
- The Dutch schemes provide a longer deadline, i.e. 9 banking days in the continuous authorisation companies scheme and 35 days in the 2 other schemes.
- In the Italian RID Scheme the reimbursement deadline is to be agreed upon between the parties.

4. CONFIRMATION OF THE REVOCATION

- Confirmation of the execution of the revocation: In all schemes except perhaps Spain where no information was available, the revocation is confirmed. In the German Einzugsermächtigungsverfahren the confirmation is not separate from the account statement. The confirmation is optional in the Italian RID scheme and is quite informal in the Portuguese scheme.
- Form of the confirmation: Confirmation is made by an account statement in the Austrian Einzugsermächtigungsverfahren and Einzugsermächtigung International, the 2 French and in the three Dutch schemes. In the Italian RID and in the Dutch One-off Authorisation, only a paper form is used for the confirmation.

5. REVOCATION OF THE MANDATE BY THE DEBTOR

Right to revocation: All schemes that are based on a unique mandate allow the debtor to revoke it. Only the Greek and the Spanish Schemes require the revocation to be justified.

Deadlines: Usually the revocation takes effect immediately upon the receipt of the request or after a short deadline (2 to 5 days). The Belgian Scheme is the only one that has a longer deadline, being 10 banking days after the receipt of the request for revocation by the debtor's bank.

DISPUTE RESOLUTION

1. APPLICABLE LAW

Applicable law is designated and cannot be altered by the parties in Danish Leverandørservice, the 2 French schemes, the 2 Italian schemes and the Irish, Luxembourg, Spanish and the UK schemes.

2. COMPETENT JURISDICTION

The competent jurisdiction is provided in the same schemes as above for applicable law plus Greece. However, this does not prevent the parties from choosing another jurisdiction in the 2 Italian and in the Swedish schemes. No information on the exclusivity was available for Luxembourg. In the 2 French schemes the choice of an alternative competent jurisdiction also remains possible but this is limited to the relationships between the debtor and the creditor, the debtor and his bank and the creditor and his bank.

3. ALTERNATIVE DISPUTE RESOLUTION

- 7 schemes provide for a specific alternative dispute resolution (ADR): the Danish Leverandørservice, the 2 Italian Schemes, the Dutch Continuous Authorisation Companies, the Spanish, Swedish and the UK schemes. Usually ADR is only available to professionals (Banks and/or ACH). ADR is in place for disputes between the customers and the banks only in the UK.
- In the Danish Leverandørservice, the 2 Italian and the Spanish scheme, the competence of the ordinary courts is not excluded by the existence of the ADR.
- In the Danish Leverandørservice, the Dutch Continuous Authorisation Companies, the Spanish and the UK schemes, ADR decisions are binding for the non-participating parties.
- The Danish Leverandørservice, the Spanish and the UK schemes provide that ADR decisions can be challenged before an ordinary court.

ANNEX 4: PROFILE OF MAJOR DIRECT DEBIT SYSTEMS

ITALY: RAPPORTI INTERBANCARI DIRETTI (RID)

This direct debit scheme is mainly governed by instructions drafted by ABI (Associazione Bancaria Italiana), which are agreed upon by all the banks that are member of ABI. All currencies may be used in the scheme.

Banks participating in the Scheme are obliged to store the relevant data. As regards the burden of proof of the parties, the general rules apply; therefore the burden is on the claiming party. On the banks' side, the contract entered into with their clients generally specifies that the bankers' books are to be deemed as full evidence against the client. Normally no clearing house is involved, unless for cross-border direct debits. The banks operate an electronic system, which allows automated processing. Only the initial signature of the mandate and the lodging of each request of execution require human intervention

I. INITIALISING THE DIRECT DEBIT

a) Contractual relationship between Debtor - Debtor's Bank

The Direct Debit services are governed by a specific contract entered into by and between the bank and the Debtor and by the general terms and conditions of the account relationship.

b) Contractual relationship between Creditor – Creditor's Bank

The direct debit services are governed by a specific contract entered into by and between the bank and the creditor and by the general terms and conditions of the account relationship. There is no central database to which all banks may have access to check the creditworthiness of their clients. Each bank investigates its clients' reliability separately. The direct debit scheme is based on a unique mandate by the debtor to his bank, for a specific period of time.

c) Fees

The debtor is charged for the services rendered by its bank, unless otherwise specified, meaning that the debtor is charged also for the payment of services rendered by creditor's bank. The allocation of bank charges related to direct debit depends on the agreement between the creditor and the debtor. Generally, banks apply fixed charges, unless there are particular terms and conditions for the benefit of special client. The creditor must submit an invoice before debiting the debtor's account.

d) Mandate

i. Debtor to Debtor's Bank:

- The debtor transmits the single original of the mandate to his bank, which keeps a copy and returns the original mandate to the debtor.
- *Mandatory*: a limitation in the amount (if applicable), the currency, the periodicity and timing of the due date, the amount and allocation of charges, the validity period (start date/end date), the actual authorisation, the signature and the date of signature.

- *Optional*: information regarding the creditor's bank account number; stipulations regarding the amount of the transactions (fixed, variable, or an "up to" limit); variability of the due date
- The mandate takes a paper form, which is then always converted into electronic information flow by the bank. The original of the mandate is given to the debtor, one copy is kept by the bank, and one copy is forwarded to the administrative centre of the bank.
- The receipt of the mandate must be confirmed by the bank, in paper form.
- If both the debtor and the creditor are undertakings (i.e. non-consumers), a paper copy of the mandate is provided to the creditor.

e) Creating and lodging the Request for Execution

Creditor-Debtor: Depending on their bilateral agreement, the creditor may be obliged to send an advanced notice to the debtor before each transaction. In such case, the parties may define the deadline, form and content of such notification.

f) Cancellation of Creditor's Request for Execution

- The debtor has the right to cancel the creditor's request for execution in any circumstances. He may do so up to five days after the due date by contacting his bank. It means that before the expiration of the five-day deadline, the debtor's bank does not make any payment notwithstanding the expiration of the due date, if so agreed between the debtor and his bank.
- The only reason for the debtor's bank to reject the debtor's request for cancellation of the request for execution is if such request is submitted after the 5-day deadline.
- The debtor's bank can reject the request of execution. The reasons for the rejection of the request for execution could be the following: account closed, wrong branch code, lack of funds, amount exceeding the maximum amount, authentication failure, or if answer data does not conform to direct debit instructions.
- The request for execution must be rejected for the full amount if the funds on the debtor's account are not sufficient to cover the entire amount of the transaction.

II. REVOCATION OF THE TRANSACTION BY THE DEBTOR

The debtor can, by contacting his bank, revoke the transaction for any reason whatsoever before the creditor's account is credited.

III. REVOCATION OF THE MANDATE BY THE DEBTOR

The debtor has the right to revoke the mandate for any reason whatsoever. It does not need to be justified. The deadlines for revocation of the mandate can be agreed upon between the debtor and his bank.

SPAIN: GENERAL SUB-SYSTEM OF DIRECT DEBIT (SNCE-005)

The Spanish Direct Debit Scheme is managed by the Sistema Nacional de Compensación Electrónica, the Spanish national clearing house within the Bank of Spain, the Spanish ACH. The scheme is primarily governed by regulations issued by the bank of Spain and the operational instructions issued by the ACH. The Euro is the only currency allowed in the scheme.

Under Spanish Law, the contractual relationship between the debtor and the debtor's bank may be considered as a mandate (mandate for payment). The direct debit services are not governed by a specific contract between the debtor and the debtor's bank, but the debtor may utilise direct debit on the basis of the current account agreement with its bank. The contractual relationship between the creditor and the creditor's bank may be considered as a mandate for direct debit execution (collection's mandate), or if the bank also lends the funds to the creditor, it shall be a discount. Direct debit services are usually governed by the general terms and conditions of the account relationship.

In establishing the relationship between the creditor and his bank, there are two possible alternatives:

- specific contract for processing payments and collections via the direct debit scheme
- a general banking services agreement

The original debtor in the underlying relationship can be different than the holder of the account where the amount is debited. In such case, the debtor, as holder of the account, has to sign the mandate.

Under the Spanish scheme, the following payments are permitted: recurrent consumer payments, periodical payments, one-off payments and transfers between current and savings accounts (with a EUR 6.000 limitation).

I. CONTENT, FORM AND ROUTING OF THE CREATION AND LODGING OF THE MANDATE

The Spanish direct debit scheme works on the basis of the creditor's bank responsibility, in the sense that the creditor's bank can not initiate a request for execution without being sure that its client is entitled to lodge such request according to a valid mandate. As a consequence, the creditor's bank does not transmit information about the mandate to the ACH.

a) Mandate

i. Step 1: Debtor to Creditor:

Usually, two originals of the mandate may be signed by the debtor. Either the debtor remits both the originals to the creditor who may give one to his bank, or the debtor remits only one original to the creditor and keeps the other original to store himself or to remit to his (the debtor's) bank.

ii. Step 2: Creditor to Creditor's Bank:

One original of the mandate may be provided to the creditor's bank (paper or electronic).the creditor's bank has the burden of proof of the existence of a valid mandate. Both the debtor's bank and the creditor's bank are subject to custody and storage obligations regarding the mandate in the same manner as the

custody and storage obligations imposed regarding all operation executed under the rendering of banking operations to their clients.

II. PREADVICE TO DEBTOR

Although it is not mandatory, when the amount of the direct debit payment is variable, the creditor usually sends an advance notice to the debtor to inform him of the request for execution, indicating the exact amount to be debited, the date of debiting and the debtor's account number.

III. TRANSACTIONS: NORMAL EXECUTION

General characteristics:

- The creditor allocates a unique filing code to each transaction, e.g. with reference to the number of client.
- The processing of the transaction takes one day from the request of the creditor until the debiting of the debtor's account.
- The creditor's bank must notify the creditor of the collection of the payment and the debtor's bank must inform the debtor that his account has been debited. It is usually sent to the creditor/debtor in a separate statement.

IV. CANCELLATION OF THE REQUEST FOR EXECUTION BY THE DEBTOR

General characteristics:

- The debtor has the right to cancel only one specific request for execution, or order his bank not to accept any further direct debit from a specific creditor.
- Such a cancellation request by the debtor to the debtor's bank may imply a revocation of the direct debit executed. Cancellations are processed by the debtor's bank the same day direct debits are processed.

V. REJECTION OF THE REQUEST FOR EXECUTION

The debtor and the creditor have the right to be notified about the reason for the rejection. The creditor has to store any evidence of the pre-authorization for the mandate to be executed and any other document that may serve as evidence for the invalidation of the rejection. The debtor's bank and the creditor's bank shall both store all documents and information related to the transactions performed.

VI. REVOCATION OF THE TRANSACTION BY THE DEBTOR

In Spain, the debtor has an unconditional right to the revocation of any transaction already debited on his account. No reason need be provided, but if the debtor does provide a reason, it is usually mentioned in the processing of the information by the participating banks.

The deadline for revocation may vary depending on the amount of the transaction in question, as follows:

- For direct debits amounting more than EUR 2.500, the revocation can be made up to nine banking days after the date of debiting of the debtor's account.
- For direct debits amounting up to EUR 2.500 the revocation can be made up to 30 calendar days after the date of debiting of the debtor's account

VI. REVOCATION OF THE MANDATE

The debtor has the right to revoke the mandate. There is no specific list of reasons that allow the debtor to revoke the mandate, but it usually needs to be motivated. Note: a notification by the debtor to the creditor about the revocation of the mandate is not a requirement for the revocation to be valid.

FRANCE

The scheme is not governed by any laws specific to direct debit, but is laid down in several inter-banking agreements. The platform is hosted by the ACH (SIT), which is not exclusively dedicated to direct debits. It also allows for the handling of all electronic retail payment instruments (direct debits, credit transfers, card payments and the like). The Euro is the only currency allowed in the scheme. The scheme does not allow for cross-border direct debit. Direct Debits are subject to clearing (netting). Apart from clearing, the role of the ACH consists of granting technical approvals and transmitting information. The netting in the ACH takes one banking day.

a) Contractual relationship

The debtor and the debtor's bank have to enter into a specific contract for the purpose of direct debits (autorisation de prélèvement). The creditor and the creditor's bank need to enter into a specific contract (convention de recouvrement).

b) Mandate

The direct debit scheme is based on a double mandate: the debtor gives one to the creditor and one to the debtor's bank. Flexibility is allowed in the amount (which can be fixed or variable) and in the due date as they are not mentioned in the mandates. The debtor in the direct debit can be different from the original debtor, although it is not common practice.

Two original mandates are created. They are both signed by the debtor and sent to the creditor. The creditor transmits one of the original mandates (autorisation de prélèvement) to the debtor's bank.

c) Rejection by the Debtor's Bank:

The debtor's bank informs the creditor of the rejection. No specific requirements exist for the content or the form of such communication. The debtor's bank informs the debtor of the rejection.

I. EXECUTION

- Before this step, the creditor must inform the debtor of the amount and date of the transaction. This can be done by any means (invoice, advance notice or statement), as long as it refers to the underlying relationship.
- There is no deadline and the debtor has to check the validity of that document.
- If execution made by creditor's bank to debtor's bank via the ACH, both banks have to check the validity of the request for execution.
- Time needed between exchange via SIT and inter-banking settlement: the transaction is effected in four banking days (avis de prélèvement normal) or two banking days (avis de prélèvement accéléré).
- It is mandatory to confirm the execution of the request.
- The creditor's bank confirms to the creditor the execution of the request through the periodic bank statement
- The debtor's bank confirms the execution of the transaction to the debtor through periodic account statements

II. CANCELLATION OF THE REQUEST FOR EXECUTION BY THE DEBTOR

The debtor has the right to cancel the request for execution with a written request to his bank, when

- he does not agree with the creditor's claim,
- the debt has already been paid,
- the amount is inaccurate,
- the due date is inaccurate,
- he requests to defer the payment.

Before requesting a cancellation of the request for execution, the debtor must first of all try to reach an agreement with the creditor. The request for cancellation must be justified and specific codes are used between banks to indicate the reason of the cancellation. The debtor's bank does not send a copy of the request for cancellation to the creditor's bank, but sends an electronic message containing coded information via the ACH. The creditor's bank then informs his client electronically. The cancellation request can be rejected by the creditor. If so, the creditor's bank and the debtor's bank are not involved in the dispute between the creditor and the debtor. (Both banks can also reject the cancellation request)

III. REJECTION OF THE REQUEST FOR EXECUTION

- Both the creditor's bank and the debtor's bank have the right to reject the request for execution. They may have several possible reasons for doing so. Rejections can only be done for the entire amount of the request for execution. When the request for execution is rejected, it is not automatically reconsidered and the creditor must lodge a new request.

- Debtor's bank to creditor's bank through the ACH within a delay of 7 days: The debtor is allowed to revoke the transaction, by written request to the debtor's bank, but only for the whole amount. Possible reasons for doing so are: inaccuracy of the amount of the transaction, of the requested execution date, etc.
- The debtor has two months as of the receipt of his account statement to exercise his right. During this period, the request for revocation cannot be rejected, provided that the request is done on the basis of the grounds indicated above. After that deadline, the revocation can be exercised only on the basis of an enforceable court order.
- Debtor must provide his bank with proof of evidence (e.g. invoice, statement). The debtor's bank can reject the request for revocation submitted by the debtor if the request is not documented (invoices, advance notice, etc.).
- The creditor's bank cannot reject the request transmitted by the debtor's bank, except if the request is not based on one of the grounds mentioned above.
- The creditor can refuse the request for revocation if the deadline for revocation has not been respected.
- The revocation of the transaction is confirmed both in the debtor's bank's statement and the creditor's bank's statement, but there is no information available on its contents.

IV. REVOCATION OF THE MANDATE BY THE DEBTOR

The debtor has the right to revoke the (two) mandates without any justification to take effect immediately. There is no specific form for the revocations and it is not possible to reject a revocation.

- Fees: It seems that some French banks intend to charge fees to the debtors, but at this stage no further information is available.
- Problems: Fewer than one percent of the transactions are subject to a revocation by the debtor. Most of the revocations happen in the context of direct debiting initialised via the web.

PORTUGAL

The Euro is the only currency allowed. Direct debits are subject to clearing (= netting). The clearing house is the sibs, which carries out the clearing and forwards the information regarding the direct debit transactions to the debtor's bank.

All participating creditors are registered in a list that, in principle, does not have a reserved character. the creditor's bank has the duty to check the creditworthiness of the creditor, because it will be held liable in case of the creditor's non-compliance with the direct debit scheme. There are no specific direct debit black lists for creditors or debtors.

I. MANDATE

The direct debit scheme is based on a unique mandate given by the debtor. There is no exact formula in use for the actual power of attorney, as it can be lodged in three different ways:

- ATMs network comprising about 9000 ATMs (Multibanco),
- over the counter with the debtor's bank
- via the creditor (creditor's bank).

Multibanco is a kind of interface that connects banks and their customers and allows for the handling of various kinds of customer transactions i.e. an interbank ATM network. The ACH has a database of the mandates: these could be delivered directly to the ACH through the debtor bank (Multibanco), delivered to the debtor bank counter or given to the creditor. Electronic information of mandate is sent/received by all participants. End Users can participate in the ACH

a) Routing

- *Via the creditor:* Creditor gives paper copy of mandate to his bank. The creditor's bank must check the validity of the Mandate, meaning whether the formal appearance of the data seems correct. who dematerializes and forwards it to ACH Debtor bank received electronic information from ACH
- *Via Multibanco:* The Debtor submits the Mandate directly to his Bank via Multibanco in an electronic manner. In this case a token signature is used. The receipt of the Mandate is also confirmed electronically, by way of a receipt. The ACH is responsible to check the validity of the Mandate.
- *Over the counter to the debtor bank:* The debtor's bank, based on the information it received from the debtor, activates the mandate electronically in the ACH database. A token signature is used. The receipt of the mandate is also confirmed electronically. The debtor's bank checks the validity of the mandate. The creditor's bank informs the creditor when the creditor does not have a direct relationship with the ACH. If the creditor has a direct relationship with ACH he is informed through his direct participation in the system.

b) Acceptance of the Mandate

The acceptance of the mandate is confirmed to the debtor in three possible ways according to the communication channel. The creditor must respect a waiting period between the lodging of the mandate and the first request for execution. The creditor is responsible for the storage of the original of the mandate, depending on the agreement between the creditor and the creditor's bank. Insofar as the creditor is responsible for the storage (only when the mandate is lodged via the creditor) he will also bear the burden of proof of the existence of the mandate.

c). Fees

- The charges are not subject to specific rules: the parties are free to agree on the amount and the allocation of charges.

- The creditor's bank can freely charge the direct debit services rendered to its clients according to what is agreed upon.
- The debtor's bank can freely charge the direct debit services rendered to its clients.

II. EXECUTION/ VALUE DATES

The operational deadline allowed for the execution is in principle three working days.

Specific rules as to value dates are also in place: the value date applied to the debit must be one of the three working days, the value date of the credit can be agreed upon between the creditor and the creditor's bank. A token signature is used if the request for execution is made electronically.

Note: The creditor is obliged to send an advance notice to the debtor to inform him of the request for execution. There is no specific deadline to send the advance notice. It should however be sent within a reasonable period of time. The advance notice should contain the amount of the transaction and the date of execution.

- a) Confirmation of execution: *Debtor's Bank to ACH*: The confirmation of the execution results from the communication of the rejected orders. All requested transactions that are not specifically indicated in this communication are deemed to have been executed. The communication is done electronically. The ACH checks the validity of the request for execution. The ACH is responsible for the storage of the data.
- b) Request of cancellation by the debtor: The Debtor has the right to cancel the request for execution. No threshold is applicable. The debtor can make a request for cancellation up to the date of the effective debit of the debtor's account. The request for cancellation must be lodged with the debtor's bank.
- c) Rejection of the request for execution: The debtor's bank has the right to reject the request for execution. The ACH only has the right to reject the request for execution for technical reasons.

III. REVOCATION OF THE TRANSACTION BY THE DEBTOR

The debtor has the right to revoke a transaction with a request to the debtor's bank without giving reasons. The revocation must be done within five working days following the day on which the debtor's account was debited. In this period the revocation must always be accepted. Both electronic and paper forms are used for the revocation of the transaction. The rejection of a revocation request is not possible.

IV. REVOCATION OF THE MANDATE BY THE DEBTOR

The Debtor has the right to revoke the mandate without giving reasons. The revocation of the mandate takes effect immediately. No specific id code is allocated to the revocation of the mandate. As the debtor can lodge the request for revocation via the creditor, via Multibanco or over the counter (with the debtor's bank), again three different routings are possible. It is not possible to reject the revocation of the mandate.

V. CONFIRMATION OF THE REVOCATION OF THE MANDATE

Two Routings are possible.

- *Creditor to Debtor*: In principle, there will be no confirmation. However, the Debtor should retain a copy of the Request for Revocation duly signed or stamped by the Creditor, in order to evidence the receipt of the Revocation by the Creditor.
- *Via Multibanco or over the counter*: The Debtor receives the confirmation of his Revocation in form of a receipt.

BELGIUM: DOM 80

The Euro is the only currency allowed in the scheme. Direct debits are subject to clearing (= netting) through the UCV/CEC. The ACH controls incoming data and is responsible for the Routing of the information to participating banks. Net amounts are transferred to participating banks at the end of the day. The maximum time allowed for clearing is five bank working days. The debtor and his bank do not enter into a contract specific to direct debit.

A specific ID code is allocated by the bank to the mandate. Creditors operating under the direct debit scheme are in principle registered under their VAT-number. Debtors are sometimes identified by their bank account number. Creditors are registered in a list kept by the ACH. Information on the creditors is accessible to all banks that participate in the direct debit scheme.

I. MANDATE

The Direct Debit Scheme is based on a unique Mandate given by the Debtor. When no direct debit transaction has taken place during a period of 18 months, the creditor's bank may cancel the mandate.

a). Fees

Banks do not charge debtors for direct debits. There is no specific information available on the charges to be paid by the creditor.

b). Routings: There are two possible Routings.

- Routing 1:

Step 1: Debtor to debtor's bank: three originals of the mandate are transmitted to the debtor's bank.

Step 2: Debtor's bank to creditor: one original of the mandate, completed by the debtor's bank with the direct debit number, the date and its seal, is given to the creditor and another original is given to the debtor. Other information provided to the creditor concern the date of acceptance, the ID code of the creditor within the direct debit scheme, of the direct debit and of the debtor's bank and the date the mandate takes effect. This information is given in an electronic manner. There is no confirmation by the creditor. The debtor's bank must check the validity of the mandate.

- Routing 2:

Step 1: Debtor to Creditor: Three originals of the mandate are transmitted to the creditor

Step 2: Creditor to debtor's bank: All three originals of the mandate are then transmitted to the debtor's bank, who must confirm the receipt of the mandate. The debtor's bank must check the validity of the mandate.

Step 3: Debtor's bank to debtor: One original is then returned to the debtor. There is no confirmation that the Mandate has been received.

Step 4: Debtor's bank to creditor: one original is also returned to the creditor together with information concerning the date of acceptance, the id code of the creditor within the direct debit scheme, of the direct debit and of the debtor's bank and the date the mandate takes effect. This information is given in an electronic manner.

Variation of Routing 2: DOM 70: A variation of the second routing is also possible. In that case there is a prior agreement between the debtor's bank and the creditor (a 'DOM- 70 contract) allowing the latter to collect and store the mandates himself. In that case there would be only one mandate to be stored by the creditor who would be obliged to transmit the information regarding the mandate on a data carrier towards the debtor's bank. In case of any problems or if the debtor's bank thinks it necessary, there may be a transfer of the original mandate to the debtor's bank. This variation is only used for very reliable creditors with many debtors. It simplifies the direct debit procedures for the banks.

c) Acceptance of the Mandate

The acceptance of the mandate is confirmed as both the creditor and the debtor receive an original of the mandate with the seal of the debtor's bank, the date of processing and the direct debit number. As soon as the originals are returned, the direct debit scheme becomes operational.

The debtor's bank has storage obligations regarding the mandate. However, as already mentioned, the creditor can agree with the debtor's bank to store the mandates related to that bank himself. In that case, he has to keep the mandate for 10 years following the last transaction. In such case the creditor must also provide the debtor's bank with a copy of the mandate at the request of the latter.

II. PRIOR INFORMATION TO DEBTOR

The creditor sends an advance notice to the debtor to inform him of the request for execution, and more precisely of the amount of the transaction. The advance notice must be delivered to the debtor no later than 5 days prior to the submission of the request by the ACH to the debtor's bank.

III. EXECUTION

The creditor and the creditor's bank can agree upon operational deadlines for the execution of the transaction and the applicable value dates. It is mandatory to confirm the execution of the request.

a). Fees

- **Creditor's Bank:** the creditor's bank is entitled to fees according to its listed tariffs. on the other hand, it must check the validity of the request for execution.

- Debtor's Bank: The debtor's bank must check the validity of the mandate as well as of the request for execution

b). Cancellation of request for execution: It is not possible either for the debtor or for the Creditor to cancel his request for execution.

d) Rejection of the request for execution

Both the creditor's bank and the debtor's bank have the right to reject the request for execution. The creditor's bank can do so for instance if the data are erroneous. The debtor's bank must check both the mandate and the request for execution and can therefore reject the request in case there is a problem. Obviously it can also reject the request if the remaining credit balance on the account is insufficient.

IV. REVOCATION

- *Of the transaction by the debtor:* The Belgian system does not allow for a Revocation of the Transaction: disputes concerning payments that have already been executed must be settled between the parties
- *Of the mandate by the debtor:* the debtor and all the intervening parties, except for the ach, have the right to revoke the mandate without reasons. The revocation of the mandate takes effect ten banking days after the revocation has been received by the debtor's bank.

GERMANY: EINZUGSERMÄCHTIGUNGSVERFAHREN

The Einzugsermächtigungsverfahren is the most commonly used Direct Debit Scheme in Germany. The other direct debit scheme, the Abbuchungsauftragsverfahren is used only for some B2B-transactions (where larger amounts of money are involved) and on special request of the creditor. The direct debit scheme allows for straight through processing (fully automated), the volume of paper based direct debits being of no importance. The euro is the only currency allowed in the scheme.

There is no direct debit platform as such, only rules of procedure, which govern the relationship between banks and their customers. The direct debit scheme is therefore set up as a set of rules which allows for straight through processing.

The direct debit scheme is laid down in an agreement between banking associations and the German Bundesbank. The Deutsche Bundesbank and the Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) are responsible for the oversight of the scheme. The execution of direct debits between banks is done bilaterally or via the Deutsche Bundesbank (which is the national ACH for all payments/direct debits which are not exchanged bilaterally). Both variants use standardised message formats and communication channels. The system is based on the assumption that the debtor will stand up against direct debit requests, which are not justified.

I. CONTRACTUAL RELATIONSHIP

There is no specific contract for direct debit services between the debtor and his bank, other than the terms and conditions of the account relationship. Only one provision in that agreement addresses direct debit, which states that the debtor must bring forward his objections against a direct debit no later than six weeks after having received the periodic account statement, unless the debtor has already approved the debit.

A specific contract (Inkassovereinbarung) is concluded between the creditor and his bank, which governs their relationship. In this contract, the creditor commits to initialise direct debits only on written authorisation from the debtor. Moreover, in accordance with the general banking terms, the initialisation of the direct debit is accompanied by an assignment of the creditor's claim to the creditor's bank. Through this contract, the creditor's bank allows the creditor to operate under the direct debit scheme. The bank only admits the creditor into the scheme if it considers that the creditor is eligible.

II. MANDATE

The scheme is based on an authorisation given by the debtor to the creditor in the form of a mandate to execute direct debit requests through the creditor's bank. The mandate, which is made in one original, contains a reference to the chosen direct debit scheme, the debtor's name, address and account number, the creditor's name, the name and the sort code of the debtor's bank, information on the underlying relationship, the date and place of signature and optionally a limitation of the amount and the time after which the mandate becomes invalid in case of non-usage. The signature is usually manual.

The creditor's bank is entitled to make the admission of creditors to the direct debit scheme dependent on the requirement that mandates be given in writing. However, it is normal practice to make an exception so that it is possible to give a mandate over the telephone or by way of electronic communication (e.g. the mandate is often given over the phone to pay for newspaper advertisements). These exceptions are allowed only for amounts below EUR 50.

a). Fees

- Creditors and debtors may pay a fee to their bank in accordance with the agreed tariffs. There is no MIF.
- The services rendered by the creditor's bank are payable by the creditor and those rendered by the debtor's bank are payable by the debtor (according to the pricing model of his account).
- The debtor's bank has the right to apply extra charges of maximum EUR 3 per rejected direct debit and possibly to charge interest if the amount of the rejected transaction exceeds 10,000 EUR.

b) Execution

- The transactions are identified by a code (Textschlüssel 05). No operational deadline is established for the execution of the direct debit transactions, which shall be executed without undue delay. By receiving the request for execution, the creditor's bank checks its validity. It has the right to be presented with the mandate.

- The receipt of the request for execution is confirmed to the creditor only when he has submitted his request for execution electronically. In such case, he gets a detailed summary with the detected errors in the requests for execution.
 - No copy of the request is transmitted to the debtor's bank. All information pertaining to the direct debit transaction is communicated electronically.
 - No copy of the request is transmitted to the debtor. The debtor will be informed of the transaction in the account statement.
- c) Pre-advice to debtor: The Creditor may send an advance notice (normally contained in the invoice) to the Debtor to inform him of the amount which will be withdrawn from his account. No deadline or specific form is required.
- d) Cancellation of the request for execution by the creditor: This is possible, except in the framework of electronic debiting: the Cancellation must occur outside of the electronic processing of the debits.
- e) Cancellation of the request for execution by the debtor: The Debtor has no possibility to cancel the Request for Execution.

III. REJECTION

- The creditor's bank can reject a request for execution if the creditor is not admitted to the direct debit scheme or if the contract between the bank and the customer is violated, e.g. A pre-agreed limit for a direct debit has been exceeded. The creditor's bank cannot reject the request once it has started processing it.
- The debtor's bank can reject the request for execution, if funds on the debtor's bank account are insufficient, if the account number of the debtor is missing or incorrect, or if the debtor's account is closed.

IV. REVOCATION

- *Of the transaction by the debtor:* The debtor is in principle entitled to revoke the transaction at any time. However, if he revokes a transaction after six weeks have elapsed from the date of execution, the debtor's bank can no longer return the debit to the creditor's bank. As a result, the debtor's bank suffers a loss. Accordingly, it may have a claim against the debtor for compensation.
- *By the debtor's bank:* The revocation can be rejected by the debtor's bank only during six weeks after the quarterly settlement. The creditor's bank is entitled, after six weeks following the debiting of the debtor's account, to reject the return debit of the debtor's bank.
- *Of the mandate by the debtor:* The revocation of the mandate regards only the relationship between the creditor and the debtor. Neither the creditor's bank nor the debtor's bank is involved in this process. The debtor can normally revoke the mandate at any time. The revocation of the mandate is not subject to any formal requirements, but it is advisable for evidence purposes for the debtor to revoke the mandate in writing.

UNITED KINGDOM: Rules of the Direct Debiting Scheme (RDDS)

The direct debit scheme is governed by a direct debit inter-banking agreement called 'Rules of the Direct Debiting Scheme' (RDDS). The body hosting the platform is BACS Limited. BACS Limited's services include processing electronic mandates, processing automated data containing records of direct debits for onward transmission to destination bank accounts, generating reports addressed to the creditor setting out processed, returned, amended and cancelled direct debits and mandates. Unpaid direct debits executions are normally returned by the debtors' bank via the BACS Automated Return of Unpaid Direct Debits ("ARUDD") with a reason for their refusal.

I. FEES

- Transaction charges are levied by BACS on the members of BACS as detailed above.
- BACS makes no direct charges to creditors or to debtors.
- Transaction charges are levied by BACS on the members of BACS as detailed above.
- BACS makes no direct charges to creditors or to debtors.
- The member banks may pass these charges on to the Debtor and Creditor, at their discretion. Members do not usually pass on BACS funding costs. Each Creditor's Bank has its own charging schedule for its clients.

II. ACCESS TO BACS

- Specific security measures are in place as the access to BACS is controlled through the use of passwords. Specific authenticity measures are also in place as passwords are generated by a device called "BACSAFE". A unique BACSAFE device will be issued for each creditor.
- However this will be replaced by BACSTEL IP which provides a secure channel for submission of payment instructions to BACS by customers and members and enables them to receive reports electronically.
- No specific rules are in place regarding the storage of Direct Debit-related data, except those deriving from the privacy protection and the anti money laundering legislation. In addition to hosting the platform for the scheme, BACS Limited also provides interbank clearing services, direct credit and standing order services among other industry services.

III. EXECUTION

BACS, as a clearing house, operates on a three day processing cycle. However, all transactions are credited and debited simultaneously on day three of the processing cycle. Operational deadlines for executing transactions are set out in separate service level agreements with each participant bank.

Creditors operating in the direct debit scheme are registered at BACS Ltd, by a member of the scheme, and assigned a unique 'Originator's Identification Number' (OIN), which must be detailed on the mandates issued to debtors.

The creditor must submit a file with all the direct debit payments due for collection to the ach at least two working days before the direct debit payment due date. The ACH processes the data containing the records of the direct debit for onward transmission to destination bank accounts. The operational cycle takes three UK bank working days however all transactions are credited and debited simultaneously on day three of the cycle.

a). The Request for Execution

Step 1: Creditor to ACH:

- An advance notice is sent to the debtor by the creditor to inform him of the request for execution, but it is only mandatory before the first direct debit payment is collected and thereafter in the event of changes in respect of the direct debit amount, due date and/or frequency: The period of the advance notice may be agreed upon between creditor and debtor. In absence of agreement, the default period is a minimum of ten working days plus postal time.
- Creditors must collect the direct debit payment on or within three working days after the specified due date as advised to the debtor in the advance notice. If not, the creditor must give further notification to the debtor of the new collection date.
- The advance notice can be given in written form, electronic form or orally. Oral notice is not allowed where the mandate has set up a series of payments. An oral notice is permitted for one-off direct debits only. The ACH confirms the execution to the creditor.

IV. CONTRACTUAL RELATIONSHIPS

No reference has been found to a specific contract or terms and conditions of the Direct Debit Scheme governing the account relationship between the bank and their customer, which relate to the Direct Debit services, as these matters are covered by the bank's contract with the customer. The Banking Code and the Business Banking Code are voluntary codes setting standards of good banking practice for banks. Case law provides that a money transfer order (including a direct debit) is treated by English courts as a simple instruction from a customer to its bank, which the bank is under a duty to carry out with reasonable care and skill.

V. MANDATE

- The direct debit scheme is based on a unique mandate (direct debit instruction) issued by the creditor and agreed to by the debtor. The amount and frequency of each direct debit cannot be fixed in advance on the mandate. Only variable amount mandates are supported by the scheme.
- The creditors must transmit the mandate to the debtor's bank within ten days of the date that the mandate was signed even if the creditor does not intend to commence collection immediately. (This timescale only applies to a mandate sent by electronic transmission; for a paper mandate the timescale is 6 months.)

- Mandates usually take a paper form, but can be accepted without signature by telephone, Internet, face to face meetings, telephone keypad, interactive television (Paperless Direct Debit Service), following agreed scripts expressed verbally or in writing.
- Where a paper mandate is used, the creditor lodges the mandate directly with the debtor's bank. If the Automated Direct Debit Instruction Service (AUDDIS) is used to lodge the mandate with the debtors' bank, the mandate is sent electronically to BACS Ltd and BACS Ltd sends the mandate information electronically to the relevant debtor's bank.
- Where the paperless direct debit service is used, the creditor must use an approved script, to ensure that the debtor is given a clear message and is left in no doubt that they have agreed to pay by direct debit and have set up a mandate. Upon receipt of the mandate, the debtor's bank will verify that the debtor is one of its customers and that the mandate has been properly executed. This will validate the mandate.
- The receipt of a valid mandate is not confirmed. Invalid mandates are returned to the creditor via the BACS Messaging Service.

a) Rejection of the Mandate

The Mandate can be rejected within three working days from the date of receipt. It is not mandatory to justify the rejection. The Creditor has the right to be informed if the Mandate is invalid or cannot be lodged with the Debtor's Bank. Creditors must not collect Direct Debits from a Debtor's account earlier than three working days after lodgement of the Mandate by AUDDIS.

b) Revocation of mandate

The debtor has the right to revoke the mandate. However, it should be noted that if goods or services have been delivered, a revocation of the mandate will give the creditor the right to sue the debtor on the same basis as if the creditor had accepted a cheque on delivery of goods or services, and that cheque was later dishonoured by the debtor.

The creditor must action the advices for revocation immediately or within 3 working days from receipt. Creditors must ensure that they keep an audit trail of messages in order to respond to indemnity claims raised.

The debtor's bank must progress on the debtor's instruction to amend/revoke the mandate immediately (or within 3 working days). Failure to do so may result in liability of the debtor's bank.

c) Cancellation of request for execution

- The creditor has the right to cancel his request for execution by contacting his bank. No particular reason seems to be necessary as long as it is done on a timely basis.
- A creditor can only cancel an entire file (i.e. all payment instructions that he has requested on one particular input day) and a new (correct) file may be re-submitted. A cancellation cannot be accepted for one or more particular payment instruction. In practice, in those instances, the file

shall continue to be processed and the creditor will make a request for an indemnity claim for the particular payment instructions (so that the debtor is reimbursed for the incorrect direct debit).

- The Banking Code commits banks to providing information to debtors about how to cancel direct debits and the direct debit guarantee. Instructions for cancellation are only accepted by the ACH up to the input deadline time for the intended ACH processing cycle and must be given through the creditor's bank.
- The debtor can instruct his bank not to execute a payment under the mandate e.g. as a result of him disputing the advance notice given.
- The debtor can also simply revoke the mandate, which is the debtor's right under the direct debit guarantee, or ask the creditor to cancel the request for execution

d) Rejection of the request for execution

The debtor's bank has the right to reject the request for execution in the case of the freezing of the debtor's account, bankruptcy, liquidation or the like; if the debtor disputes the advance notice given; if the debtor or his bank has cancelled the mandate; if the debtor is deceased; if the account of the debtor has been transferred to another bank; if the account number is not recognised by the debtor's bank; there is no mandate held with the debtor's bank; if the amount of the direct debit differs from the amount on the mandate or advance notice; or if the date of debiting is in advance of the due date specified on the mandate or advance notice.

The ACH can only accept rejections if they match the original direct debits submitted under the current processing cycle and which are received on day 3 or 4 of the ACH processing cycle.

e) Unpaid requests

The unpaid direct debit is not automatically reconsidered. The creditor has the authority to re-present an unpaid direct debit for payment (without advice to the debtor, however it is recommended that advance notice is given) provided that he may reasonably assume that the conditions necessary for payment will be met and the re-presentation takes place within one month of the date on which the first presentation was made. If payment by the debtor has not been made within the one-month period, the creditor must make other arrangements directly with the debtor.

VI. REVOCATION OF THE TRANSACTION BY THE DEBTOR

Following the execution of a direct debit transaction, the debtor can file an indemnity claim through the direct debit guarantee. The debtor will be reimbursed by his bank in the event of an error of the creditor or the debtor's bank.

As a result of the direct debit guarantee, the debtor is entitled to an immediate refund from the debtor's bank. If the error is in the hands of the creditor, the debtor's banks will raise the indemnity claim with the creditor (n.b. claims for partial amounts are not allowed under the scheme.)

The creditor must settle the claim (i.e. transfer the amount in question to the debtor's bank) within 14 days. Failure to do so will result in the forfeiting of any counterclaim issued by the creditor. If after 3

months from the settlement deadline the creditor fails to settle the claim, the debtor's bank may claim settlement from the creditor's bank which will settle the funds immediately and debit the account of the creditor.

A debtor can also claim consequential loss as a result of an erroneous direct debit and the debtor's bank will use a separate indemnity claim form in this respect. The debtor's bank is however not under an obligation to refund the debtor immediately.

VII. REFUND

The debtor is guaranteed a full and immediate refund from his bank should there be an error in the direct debiting process by the creditor or the debtor's own bank.

On document storage, if the creditor is using the paper procedure to lodge the mandate with the debtor's bank, he has no obligation to keep the original mandate, which is forwarded to the debtor's bank.

If the creditor is using AUDDIS, the creditor sends the details of the mandate electronically to the debtor's bank through the ACH. If the creditor is using AUDDIS, he must satisfy itself of the debtor's identity and his capacity to authorise direct debits. The creditor must therefore ensure that it has adequate procedures in place to authenticate a debtor's identity and his authority to sign before submitting the mandate to the debtor's bank.

The creditor can decide how long to retain the mandate and the method of storage. The creditor is required to provide a copy of the mandate within seven working days if requested by the debtor's bank.

VIII. PRE-ADVICE TO DEBTOR

The direct debit scheme does not require the creditor to submit an invoice. However, they must submit advance notice of the direct debit payments before the first payment and advance notice must also be given when the amount, frequency or due date changes. The period of the advance notice may be agreed upon between creditor and debtor. In absence of agreement, the default period is a minimum of ten working days plus postal time.

IX. GUARANTEE

A direct debit guarantee is in place. This guarantee states that if the amounts to be paid or the payment dates change, the creditor will notify the debtor a given number of days in advance of his account being debited. This guarantee also states that if an error is made by the creditor or the debtor's bank, the debtor is guaranteed a full and immediate refund. Finally the guarantee provides that the debtor can cancel a direct debit at any time. Creditors must not collect direct debits from a debtor's account earlier than ten working days after dispatching the paper mandate.

X. DORMANT MANDATES

A mandate which is dormant for a minimum of 13 months will be removed from the debtor's bank's systems. If a creditor does not present a direct debit transaction against a mandate within this period, any subsequent direct debit transaction must be preceded by a new mandate, otherwise the direct debit will be returned marked 'no instruction' (i.e. no mandate).

Annex 5: Extract from Mc Kinsey Pan European Profit Pool Analysis

“Europe: Walking the Tightrope towards Further Integration. European Profit Pool Analysis: Casting Light on Murky Waters”

Wouter De Ploey, Olivier Denecker and Titus Kehrman

The truth is that there really is no such thing as a homogenous European payment profit pool. A few countries (like Italy, France, Spain and the U.K.) make solid profits; most other EU countries hover around break-even, while Poland shows a substantial loss (Exhibit 3).

The group breaks down into three broad categories (Exhibit 4):

1. Balance earners: In France and the U.K., balance-related activities contribute most to profits; in the U.K., credit card loans provide these profits, while in France profits come from non-remunerative current accounts.

2. Fee-oriented: Italy is by far Europe’s most profitable payments market. True, Italy has relatively high costs, but these are easily compensated by the revenues Italian banks derive from high bank balances and profits from transactional and account fees. As you can see from Exhibit 4, Spain is profitable as well. Poland also belongs to the group of fee-oriented countries, but the payments and the size of balances in Poland are insufficient to compensate for the high cost of cash.

3. Efficiency-focused: Belgium, the Netherlands, and Sweden have highly efficient payment systems and a relatively low share of such cost-intensive instruments as cash and checks. Germany could also fall into this category, although its costs are inflated by the use of cash. All four countries here have significantly lower fees than the fee-oriented countries, and lower balance income than France and the U.K.

Exhibit 4 shows that the U.S. could be classified as extremely fee-oriented, since it has both higher costs and higher revenues than any European country, but in truth it is in a category of its own. The U.S. payments picture combines elements from the U.K. (high balance income from credit cards), Italy and Spain (transactional and account fee income), and also Poland (high number of cash transactions per capita).

Even within the categories mentioned above, the payments story for each nation is different. The U.K. for example, derives the lion’s share of its profits from credit cards (Exhibit 5).

This product generates almost €3 billion of U.K. payment profits, and without it, U.K. payments overall would generate more than €1 billion in losses. Similarly, French profits are driven by the margin on the current account, a legacy from a deal where banks would not charge consumers for checks in return for not paying interest on current accounts. As a result, French banks lose more than €2 billion on checks, but earn €50 in interest margin per current account, about double the European average.

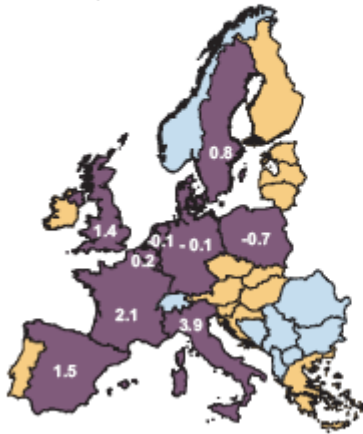
One might be tempted to argue that the differences are largely explained by differences in the use of payment instruments; for example the Polish loss is largely caused by the fact that cash still accounts for 98 percent of all transactions, the highest level in Europe (Exhibit 6). But this is only part of the story. Even within products there are differences in fees. The average revenue for a direct debit is estimated at 65 cents in Italy, for example, compared to only 2 cents in Belgium. And French banks list an average annual fee of around €30 for debit cards, while most of their German colleagues do not explicitly price this product.

Some of the differences in fees reflect a fundamentally different philosophy about who pays for payments: business or consumers. Again, the differences are striking: Dutch banks depend heavily on their business customers. These generate 75 percent of all payment revenues, which may explain why Dutch consumers pay so little for their banking products. German businesses, by contrast, contribute only 30 percent of payment revenues in their country (Exhibit 7)

Exhibit 3

LARGE DIFFERENCES IN PROFITABILITY AMONG COUNTRIES

Total operating profit
€ Billions, 2002

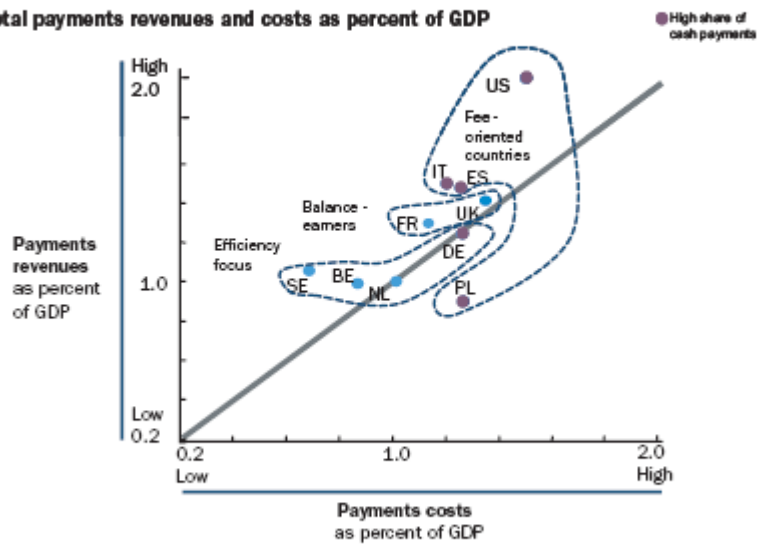


	Total profit	Direct profit	Balance-related profit
Italy	3.9	1.0	2.9
France	2.1	-0.9	3.0
Spain	1.5	-0.7	2.2
U.K.	1.4	-2.0	3.4
Sweden	0.8	0.3	0.5
Belgium	0.2	-0.1	0.3
Germany	-0.1	-1.5	1.4
Netherlands	-0.1	-0.7	0.6
Poland	-0.7	-0.8	0.1

Exhibit 4

LOWER COST DOES NOT ALWAYS MEAN HIGHER PROFIT

Total payments revenues and costs as percent of GDP



Source: McKinsey Payments Practice

Table 1: Composition of payments in major EU countries (number of transactions)

2003 % no. payments	German y	France	Italy	Spain	UK	Belgiu m	Netherlan ds	Austria	Finlan d	EU 25
Credit Transfer	43.09	11.80	31.50	18.97	17.97	43.80	35.49	50.86	49.37	28.45
Direct Debits	37.85	17.19	12.82	42.17	19.75	11.52	27.93	37.45	5.55	24.86
Cards	15.01	31.71	30.46	33.43	43.98	36.81	33.53	11.31	44.94	32.09
Cheques	0.98	31.12	15.64	5.40	18.29	1.42	-	0.38	0.07	13.34
E-money	0.28	0.13	0.08	0.04	-	6.41	3.05	1.02	0.07	0.53
Other	-	0.95	9.49	-	-	0.03	-	-	-	0.76
TOTAL.	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
No. payments(m io)	13,432. 10	13,691. 77	3,232. 75	3,279. 51	12,304. 42	1,669. 32	3,582.46	1,728. 64	1,152. 63	58,009. 90
% share of EU 25	23.12%	23.60%	5.57%	5.65%	21.21%	2.88%	6.18%	2.98%	1.99%	100%
Germany =100 %	100%	102.6 %	24.1% %	24,4 %	91.2%	12.5%	26.8%	12.9%	8.6 %	-
No. per capita	162.77	221.08	56.12	78.08	206.61	160.91	220.83	212.95	221.11	151.15

Source: ECB Blue Book 2007

Table 2: Composition of payments in major EU countries (value of transactions)

2003 % Value of payments	Germany	France	Italy	Spain	UK	Belgium	Netherlands	Austria	Finland	EU 25
Credit transfer	87.28	96.16	69.98	61.78	96.43	98.85	93.21	95.82	97.21	93.86
Direct Debits	10.22	0.74	3.33	11.20	0.85	0.32	5.30	3.66	0.67	2.18
Cards	0.43	0.20	1.22	1.36	0.34	0.23	1.48	0.41	0.51	0.38
Cheques	2.06	2.39	16.73	25.66	2.37	0.57	-	0.52	1.61	3.18
E-money	-	-	-	-	-	-	0.01	-	-	-
Other	-	0.52	8.74	-	-	0.03	-	-	-	0.40
TOTAL	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
% share of EU 25	11.29	3.54	2.77	1.43	39.0	5.25	1.39	1.06	1.34	100%
Value per capita (€ '000)	393.64	1,647.20	122.44	97.75	1,883.50	1,456.76	245.73	374.37	740.93	749.35

Source: ECB Blue Book 2007

Table 3: Comparison of DD systems in major countries and SDD B2C

Features	Germany Einzug..	France Prélèvement	Italy RID Commerciale	Spain	SEPA Core B2C
ACH or no ACH	No	Yes			ACH
Signed mandate	No	Yes	Yes	No/Yes	Yes
Mandate to creditor, debtor, both	Creditor	Both Debtor bank checks validity of mandate	Both Debtor bank checks validity of mandate Creditor or Debtor bank store mandates	Both Creditor or Debtor bank can store mandates	Creditor
A MIF on DD exists ?	No	12 cents ?	28 cents	Yes Same fee for same or other bank	-Same as domestic non- SEPA - Default 8,8 cents on cross-border
Debtor bank checks mandate	No	Yes		Yes	No
Charges paid by Creditor, Debtor, Both	Both	Creditor	Mainly Creditor	Creditor	
Standard fees creditor				0,6 - 0,12	
Pre-advice mandatory	No		Optional	Optional	Mandatory but no check
Deadline for presentation / Execution	D-30 up to D-1 days	D- 4 banking days D- 2 banking days	D-8 same bank D-14 other bank	D-5, D-2 , D-8 hour	Max - D-10 days D-5 days - 1 st , one-off D-2 days - recurrent
Rejection of DD before D date	Yes	Yes	Yes	Yes	Yes
Time for refund - DD - invalid mandate					
Revocation of transaction (refund)	6 weeks after receiving the statement	D+ 6 days	D+ 5 days	> € 3.000 D+9 wkg. days < € 3.000 - D+30 cal .Days	- 8 weeks from debit - 13 months from debit for invalid mandate
Creditor informed of refund (unpaid)			5 - max 14 days		
Revocation of mandate	Yes	Yes	Yes	Yes	Yes
Dormant Mandates		18 months			36 months
Book of bad creditors/debtors				Debtors	

Source: EACT