



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/client-service/banking-securities/latest-thinking/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-authorized, not pre-authorized 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 "Einzugsermächtigungsverfahren" 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	Level 1	Level 2	Level 3
Payer	<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