

30 April 2014  
ERP/2014/006

## **HIGH LEVEL REQUIREMENTS FOR A CONSUMER NO- REFUND DIRECT DEBIT SCHEME IN SEPA**

### **1. Introduction**

The SEPA migration end date regulation (EU Reg. 260/2012) established 1 February 2014 as the deadline by when legacy euro credit transfer and direct debit schemes have to be replaced by the SCT and SDD schemes in the euro area. There are currently three live SEPA schemes to be used for migration by stakeholders: the SCT scheme, the SDD Core scheme (intended primarily for consumers as payers) and the SDD (business-to-business) B2B scheme. However, in some countries<sup>1</sup> in the euro area there are legacy direct debit schemes which do not provide for a refund right for consumers as payers because of the particular payment situation they are used in. Thus a genuine demand seems to remain – especially on the creditor side – for a SEPA Direct Debit scheme which can be used by consumers but which does not provide a refund right.

Based on this demand the EPC prepared a draft “SDD Fixed Amount Scheme” already in 2010. The significant difference between this scheme and the SDD Core scheme was the lack of refund right and the explicit mentioning of the fixed amount in the Mandate. However, no final consensus was achieved to implement the “SDD Fixed Amount Scheme” in practice. In addition the impact it would have on the euro direct debit market in general was perceived by some stakeholder groups as unclear. With the end date nearing, in some countries authorities decided to continue until 2016 with the similar no-refund national legacy product as niche product under a waiver given by the Regulation.<sup>2</sup>

The SEPA Council in its meeting on 23 September concluded that a call for no-refund SDD scheme might be justified if a clear understanding exists on the set of goods or services that it can be used to pay

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<sup>1</sup> I.e. the Netherlands and Italy. In Spain the legacy scheme included the refund right, but the refund right was contractually waived in relation to some creditors. In addition in the DMF-model countries the legacy scheme usually did not provide for a refund right either.

<sup>2</sup> Italy and the Netherlands retain their direct debit schemes, having the no-refund feature for some limited range of payment situations as niche products.

for. The SEPA Council agreed to set up a task force on discussing the details of and pre-conditions for such a scheme.<sup>3</sup>

## 2. Conclusive summary and next steps

This note suggests that it is possible to meet the noted demand for a no-refund consumer direct debit scheme in SEPA and at the same time accommodate genuine concerns of practicality, efficiency and consumer protection. In this note a way is outlined to establish such a scheme on the basis of seven principles: a) ensuring full transparency to consumer, b) limiting the set of goods or services that the scheme can be used for, c) making collections subject to a maximum amount, d) the consumer refund right for unauthorised transactions remains fully intact to ensure full consumer-protection, e) making it easy for PSPs to determine which creditors are entitled to use the scheme, f) no requirement for PSPs to check or police individual underlying transactions, and g) having the potential for reaching the legally defined PSP adherence threshold for a pan-European direct debit scheme.

The set-up of the list of goods and services should be made subject to a final decision by the EU legislators. One possible solution to preserve the flexibility of adapting the list to changing market demand would be that the European Commission sets it up by means of delegated act based on an authorisation given to it on the basis of PSD2.

In order to provide more certainty for future participants of such a new scheme it is important that the scheme be viable over the long-term and not be threatened by possible discontinuation due to the current provision in the SEPA migration end date regulation requiring that the majority of PSPs adhere to it in the majority of member states. Thus, it may be considered by EU legislators to review the requirements in the SEPA migration end date regulation on the explicit threshold that a scheme needs to achieve in terms of participation by PSPs.

In case the ERPB agrees with the proposed principles for the establishment of a no-refund consumer SEPA direct debit scheme set forth in this note, the next steps are to be envisaged: a) invite the European Commission and the EU legislators (Council and Parliament) to take into account the considerations related to the PSD2 proposal and to the review of the SEPA migration end date regulation, and b) invite the European Payments Council to prepare and finally launch a no-refund SEPA direct debit scheme according to the agreed principles.

***The ERPB is invited:***

- ***to discuss the proposed high level requirements for the establishment of a no-refund consumer SEPA direct debit scheme set forth in the note, and***
- ***to agree on the next steps.***

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<sup>3</sup> The task force was open for all members/associations represented in the SEPA Council at that time. Representatives of the following organisations volunteered to participate: EACT/BusinessEurope, European Payments Council, European Banking Federation, European Association of Cooperative Banks, Public Administrations / FSC, De Nederlandsche Bank, Deutsche Bundesbank, Banco de España and Banca d'Italia. The task force was chaired by the ECB.

### 3. The demand for a no-refund consumer SDD scheme

The choice of the creditor mandate flow (CMF) model for the SDD Core scheme was based on considerations of the advantages of this model<sup>4</sup> and also on the fact that several of the largest direct debit markets operated a CMF-model legacy scheme.<sup>5</sup> Nevertheless the switch to the CMF-type SDD Core from a debtor mandate flow (DMF) legacy direct debit scheme is a significant change for all stakeholders and especially for creditors who face a very different risk profile due to the refund right and more room to claim unauthorised transactions by debtors.

The eight-week no questions asked refund provided in the SDD Core scheme is an extension of the payer's refund right compared even to the former CMF-model schemes existing in the EU. Therefore the demand for a no-refund consumer SDD scheme apparently comes from two sources: 1) from creditors previously working in a DMF environment and 2) from creditors accustomed to the CMF model, but finding the SDD core refund rights too extensive and causing too much uncertainty on their side<sup>6</sup>.

Therefore in a number of euro area countries, there is a demand from creditors for a consumer direct debit scheme for payment situations where a) the goods or services paid for have already been consumed or b) their nature is such that their consumption cannot be reversed or denied after the initiation of the contract (e.g. insurance, lottery). Many of the creditors in these communities claim that in these payment situations they are not willing or not capable of running the risk of having to refund their customers for properly authorised DD transactions<sup>7</sup>.

During the 2010 public consultation conducted by the EPC on the draft "SDD Fixed Amount Scheme" several sectors from various countries had already indicated to the EPC their interest in having such additional SDD scheme. At that time, it was reported that such a scheme would be useful for the following services and products:

**Table 2: Demand for a consumer no-refund direct debit scheme in euro area countries (based on EPC consultation conducted in 2010<sup>8</sup>, source: EPC)**

<b>Belgium</b>	<i>Insurances, certain types of cheques</i>
<b>Greece</b>	<i>Insurances, financial leasing</i>
<b>Ireland</b>	<i>Insurances, lottery, fixed mortgages, charitable donations, club subscriptions</i>

<sup>4</sup> In a creditor mandate flow (CMF) model direct debit scheme the creditor receives and stores the mandate given by the debtor and the debtor bank only need information on the mandate in case there is a disputed transaction. See further elaboration of the major differences between the CMF and the DMF model in the Annex

<sup>5</sup> The ratio of direct debits processed in the EU, based on the CMF model (the SDD model), to those based on the DMF was around 3:1 in the pre-SEPA era.

<sup>6</sup> This group also includes creditors which operated in countries that had a CMF-model legacy scheme in which the refund right was waived for certain payment situations.

<sup>7</sup> It is important to bear in mind that for unauthorised transactions the debtor will always have the 13-month refund right.

<sup>8</sup> Consultation conducted publicly among all interested stakeholders

<b>Italy</b>	<i>Fixed mortgages, capital accumulation plans, fixed amount revolving credit, contributions in investment funds, public sector collections</i>
<b>Latvia</b>	<i>Financial leasing, utility payments</i>
<b>Netherlands</b>	<i>Lottery, tax payments, mobile phone top-ups, public transport, tuition fees</i>
<b>Spain</b>	<i>Insurances, tax payments, rent payment, credit repayments</i>

The above reflects the expressed demand for no-refund SDD scheme by the creditor / creditor bank, but communities differ as to what extent they have been using such payment instrument in their legacy environment. Some of the above communities (e.g. Belgium) have a debtor-mandate-flow legacy direct debit scheme which in most cases does not provide a refund right.<sup>9</sup>

In other communities the creditor-mandate-flow model has been used but in some payment situations and under special mandates the refund right was waived by the debtor. The special situations include paying for lottery (the Netherlands) and the collection of social insurance fees and tax by administrations (Spain, Greece) or payments related to financial services (Italy).

Some of the euro area countries deemed the survival of a consumer no-refund DD scheme so important that their countries made use of the waiver in the SEPA migration end date regulation for niche products to keep these consumer no-refund schemes alive until 2016 (Italy, the Netherlands).

#### **4. Principles for a no-refund consumer direct debit scheme in euro**

Those arguing against the introduction of a no-refund SDD scheme argue that

- It would undermine public trust in the SDD in general because it would give too little control in the hands of a payer in a creditor-mandate-flow world where payer authorisation cannot be checked in many cases before the payment is executed. Furthermore, even if restricted to special situations there is a risk that creditors would abuse this scheme and would simply replace the SDD Core scheme with it.
- There are well-functioning direct debit markets that have been operating with the full refund-right consumer scheme without any problems. This is also true even in those economic sectors where many argue that only a no-refund scheme can be used. This should serve as a proof that the refund scheme also works in these payment situations.
- It would be costly for PSPs to implement such a scheme on top of the existing SEPA schemes and to check the necessary pre-conditions for its use or generally police over creditors making use of it.

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<sup>9</sup> It has to be noted though that in some countries developments since 2010 changed the approach of stakeholders to a no-refund DD. In Latvia for example a clear preference has emerged to use SCT-based e-invoicing instead of direct debits by the creditors.

These are obviously valid concerns so any no-refund consumer direct debit schemes used in SEPA should be engineered to mitigate these risks and take the above into account to the maximum extent possible.

Therefore, any future no-refund consumer SDD scheme should respect the following **basic principles**:

- I. It should be always **100 % transparent** to the consumer (payer) whether he or she is giving a mandate for a no-refund scheme or not. Mandates for this scheme should **not only contain the maximum amount as an additional element to the SDD Core mandate**, but should also **prominently indicate to the payer that he or she is now giving an authorisation for collections (for a certain maximum amount specified in the mandate) for which he will have no right of refund.**<sup>10</sup> It has to be noted that pre-notification to the debtors before collections would also be required by default from creditors also in this Scheme.
- II. The scheme should be used **only for paying for those goods or services in the cases of which it is indeed acceptable. The set of these goods or services should be limited**<sup>11</sup> in order to preserve the pre-dominance of the SDD Core with its no-questions asked 8-week refund right as the default consumer direct debit scheme in the euro area.<sup>12</sup>
- III. The scheme should be used **for payments subject to a maximum amount specified by the debtor in the mandate**<sup>13</sup>. The debtor has to have certainty on the magnitude of the collections to be debited on his or her account when giving the mandate. Nevertheless, there is a need for a limited flexibility on the amount for the parties in order to avoid the need to renew the mandate for each recurrent transaction in case a pre-agreed and minor adjustment of the amount (based on the underlying contract) is made. However, this flexibility cannot be abused by creditors, who should not force the debtors to accept unreasonably large maximums.
- IV. Needless to say that **the refund right for unauthorised transactions remains fully intact** also under this scheme (as provided by the PSD). Whenever an unauthorised transaction takes place<sup>14</sup> or the conditions under Principle I are not met the consumer is refunded by its own service provider for up to 13 months from the collection in question.

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<sup>10</sup> If these two elements are not appropriately reflected in the mandate signed by the debtor, the transaction will be an unauthorised one (explicitly regarded as such under Scheme rules) and the debtor will consequently have the usual 13 months money-back guarantee.

<sup>11</sup> This limitation could be set by means of a European legal act (e.g. the new PSD and a delegated act by the Commission, see chapter 5).

<sup>12</sup> If the collection relates to a good or service beyond the agreed upon limited list, the transaction will be an unauthorised one (explicitly regarded as such under Scheme rules) and the debtor will consequently have the usual 13 months money-back guarantee.

<sup>13</sup> If a maximum amount is set in the mandate, this allows for subsequent direct debits of varying amounts. These varying amount no-refund direct debits may pose an issue, as – according to the SEPA End Date Regulation (article 5.3.d.ii) – each subsequent no-refund direct debit has to be checked by the debtor to verify that the amount is equal to the amount on the mandate and that the periodicity is correct.

<sup>14</sup> i.e. the amount or the periodicity of collections differ from that given in the mandate or there is evidence that the creditor is using the mandate to get a payment not related to the limited set of goods and services

- V. **It should be easy for creditor PSPs to check whether the creditor is indeed entitled to use the no-refund scheme** and the creditor PSP should get (at least self-) certification from the creditor that it uses it for those particular purposes it is intended for. Only creditors qualified to provide the goods or services mentioned under Principle II should be in the position to initiate a no-refund direct debit. This would provide a further line of defence against any abusive use of this scheme.
- VI. **PSPs should never be required to check or police the underlying transaction** (apart from the one-off check on the creditor before providing it the services under the scheme described above) and whether goods or services have indeed been consumed or not.
- VII. The scheme has to have the potential to overcome the barrier set in the SEPA migration end date regulation, namely to **be signed up for by the majority of PSPs in the majority of member states over the long run.**<sup>15</sup>

## 5. A potential practical approach to the no-refund consumer SDD scheme

It would not be impossible to establish the no-refund consumer SDD scheme in a way which meets the requirements described above.

### 5.1 Meeting the requirements of the principles in practice

#### I. Transparency

As for basic principle I (transparency) it is relatively easy to formulate a mandate accordingly. The mandate for the no-refund consumer direct debit scheme should clearly contain a prominent statement that the payer has no refund right under the mandate for an authorised transaction. It should also clearly state that the refund right for unauthorised transactions does exist for 13 months after the collections. The mandate has to contain the maximum amount for individual collections specified by the debtor. For recurrent collections the frequency should also be stated. Pre-notification (from the creditor to the debtor) should be part of the scheme. For recurrent transactions pre-notification should be mandatory for creditors, for one-off direct debits parties could agree on whether the mandate for the collection would make a separate pre-notification unnecessary.<sup>16</sup>

#### II. Narrow set of goods or services

The set of services and goods that may be paid for by a transaction under the no-refund consumer SDD scheme should be limited to those for which the payment situation warrants waiving of the refund right by the debtor. In any of these payment situations the debtor would be aware of the maximum amount to be

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<sup>15</sup> Article 4 1 b): “the participants in the payment scheme represent a majority of PSPs within a majority of Member States, and constitute a majority of PSPs within the Union, taking into account only PSPs that provide credit transfers or direct debits respectively”. A maximum of 3 years of temporary exemption may be provided by the relevant competent authorities from these conditions to new schemes used in at least 8 member states as stipulated in Article 4 4.

<sup>16</sup> This is in line with what the SDD Core provides in terms of options for pre-notifications: the creditor and the debtor can agree on a different time line for pre-notification which implies that the pre-notification can be made upon the issuance of the mandate.

paid before he or she gives the authorisation (mandate) for the collection(s). Payments under such scheme would be made only to qualified creditors. The goods and services should be such that they would have already been consumed or their nature is such that their consumption cannot be reversed or denied after the initiation of the contract. Based on actual demand, considering the above mentioned principles and the need to avoid the “crowding out” of the SDD Core scheme, the list of goods and services for which the no-refund consumer SDD scheme could be used should be limited to the following list:

- A. **Tax and social insurance contributions paid to public authorities.** A tax is not something a payer is supposed to refund and tax or social insurance contribution collecting agencies are not expected to abuse the scheme. They are also easily recognised by creditor banks.
- B. Specific financial services:
  - i. **Insurance.** Insurance is a special and heavily regulated service the consumption of which is not redeemable or reversible and which might be prone to debtor abuse (of the refund right) in case it turns out after the period covered that the debtor has not needed it.
  - ii. **Mortgage payments.** In a fixed rate mortgage contract the debtor undertakes to pay off its debt in fixed (usually monthly) instalments. If the contract is clear and matches the mandate on the instalments there is very little room for a refund. In addition the creditor in this payment situation is a credit institution licensed to provide mortgage credit, so there is a very low likelihood of abuse from the creditor side.
  - iii. **Capital accumulation plans and investment funds.** These services are also provided by qualified and regulated financial service providers (investment fund managers, brokerage firms) and their inclusion can be reasoned by the fact that the contract should not be made void by a refund from the debtor based on the ex post yield it achieved.
- C. Topping up of pre-paid customer balances to pay for
  - i. **Public transport:** In some Member States it is very common to pay for public transport services by means of pre-paid balances which are regularly topped up by recurrent direct debits based on mandates given by consumers.
  - ii. **Mobile telecommunication services:** Most mobile telecommunication companies offer pre-paid voice or data communication plans to consumers the balance to which are often topped up by recurrent or one-off direct debits.

Pre-paid balances are spent on these regulated services on a pay-as-you-go basis and once the service is used and the pre-paid balance is spent there should be no refund made to reverse the original topping up.

- D. **Lottery.** Along the same lines as investment funds, payment for lottery should not be refunded by the debtor if he or she fails to win in the game. Furthermore lottery providers are heavily regulated or state-controlled in the Union.

- E. **Charity donations.** Registered charities should not be exposed to the risk of refunds as creditors as this would substantially limit their usage of funds collected with direct debits.

It has to be stressed however, that it is only the EU-legislators who could make any final decisions on such lists or to delegate the setting up of such a list by the EU Commission. In any case the final list has to go through the European political process for creating legislation.

### **III. Collections subject to a maximum amount**

It is important for the debtor to have an a priori control over the amounts of the collections under the scheme. This is achieved by setting a maximum amount in the mandate which the individual collections cannot exceed. The creditor may provide guidance to the debtor upon accepting the mandate on what range this maximum should be set, but cannot and should not ask for a maximum amount to be set outside the reasonably expectable range of the actual collections under the contract. This limited flexibility is important to create an efficient scheme which is usable in practice. It allows avoiding the need to renew the mandate every time e.g. a change in VAT or a pre-agreed indexation or other pre-agreed and minor adjustments are made to the amounts of the collections. The debtor should be in a position to select another payment instrument (e.g. credit transfer or card payment) if he or she does not want to pay by a no-refund direct debit.

### **IV. Refund right for unauthorised transactions**

A scheme has no other choice but to follow the law which makes refunds in case of an unauthorised transaction mandatory. However, schemes can be more strict in defining unauthorised transactions and the conditions which automatically trigger the treatment of disputed transactions as unauthorised ones. To alleviate any concerns on the payer side whenever the amount of a collection is above the maximum set in the mandate or the periodicity of the collections differ from that given in the mandate, the scheme should treat the transaction as an unauthorised one. In addition if the collection has been made in relation to services or goods not on the list for which the scheme can be used for, the transaction should also be treated as an unauthorised one. Likewise, if the mandate does not clearly indicate that the debtor is renouncing the right of refund, the transaction would also be considered unauthorised. Claims of such transactions by the debtor should be subject to immediate investigation and a fast resolution. The only case when such claims would be denied should be when the creditor provides clear evidence of the valid mandate which fully matches the transaction concerned.

### **V. Creditor PSP should control the creditors it allows to use the no-refund scheme**

A creditor PSP is responsible for whom it allows to use a no-refund scheme. As the set of goods and services outlined above imply a narrow set of qualified creditor companies, the PSP should be in the position – also based on the general principle of ‘Know Your Customer’ – to tell whether its customer is indeed in any of the businesses listed above. Throughout the life of the contract between the creditor PSP and the creditor the former should also investigate the circumstances and the behaviour of its creditor in general if there are disputed transactions claiming lack of authorisation in relation to that creditor. Limiting the risk of (claims of) unauthorised transactions is in the interest of the creditor PSP as it will be



liable towards the debtor PSPs in relation to such claims. The most efficient way to limit this risk is to strictly monitor who the creditor is and what the creditor is doing in the context of the scheme ('Know Your Customer' principle).

#### **VI. PSPs should not be required to police the underlying business based on general criteria**

The creditor or the debtor PSP should not be required to judge whether a particular service has been consumed or not or whether in a given transaction the underlying contractual obligations have been met or not. With a closed list of services the creditor PSP would only need to check at the initiation of its contract with the creditor whether the latter is in one of the businesses above, and in case of disputed transactions be open for investigations on whether there is any sign of the creditor using the scheme for purposes other than those included in the above list.

#### **VII. Reaching the threshold of a pan-European scheme**

The SEPA migration end date Regulation stipulates that a payment scheme has to be attractive enough so that at least the majority of PSPs in the majority of EU member states adhere to it in the long run. In its first three years though it is enough to have participants in at least 8 member states provided the national competent authority of the location of the scheme (after consulting its counterparts in countries where scheme participants are located) grants this temporary exemption to the scheme.<sup>17</sup> Since tax and social insurance payments, but also private insurance payments via direct debits are quite common in nearly all member states of the Union it is not at all impossible for the new scheme to meet this threshold even with the above-mentioned narrow list of goods and services. However, this provision introduces an uncertainty in regards to whether the scheme can survive also after three years from its introduction or not. This uncertainty could be alleviated by the review and possible amendment of this provision by the EU legislators upon the 2017 review of the Regulation.

### **5.2 Further elements preventing unauthorised transactions within a no-refund scheme**

In a no-refund scheme there is a special emphasis on preventing unauthorised transactions and the related refund claims (whether rightful or not) as the normal refund right does not apply and the debtor's trust in the scheme depends to a large extent on the guarantees against any abuse and the efficiency of handling disputed transactions.

The SEPA migration end date regulation requires debtor banks to check each collection against the mandate related information received from the creditor if there is no refund right in a consumer direct debit scheme.<sup>18</sup> Thus, there is more burden on the debtor banks' side and there is more protection for the consumer compared to the SDD Core scheme.

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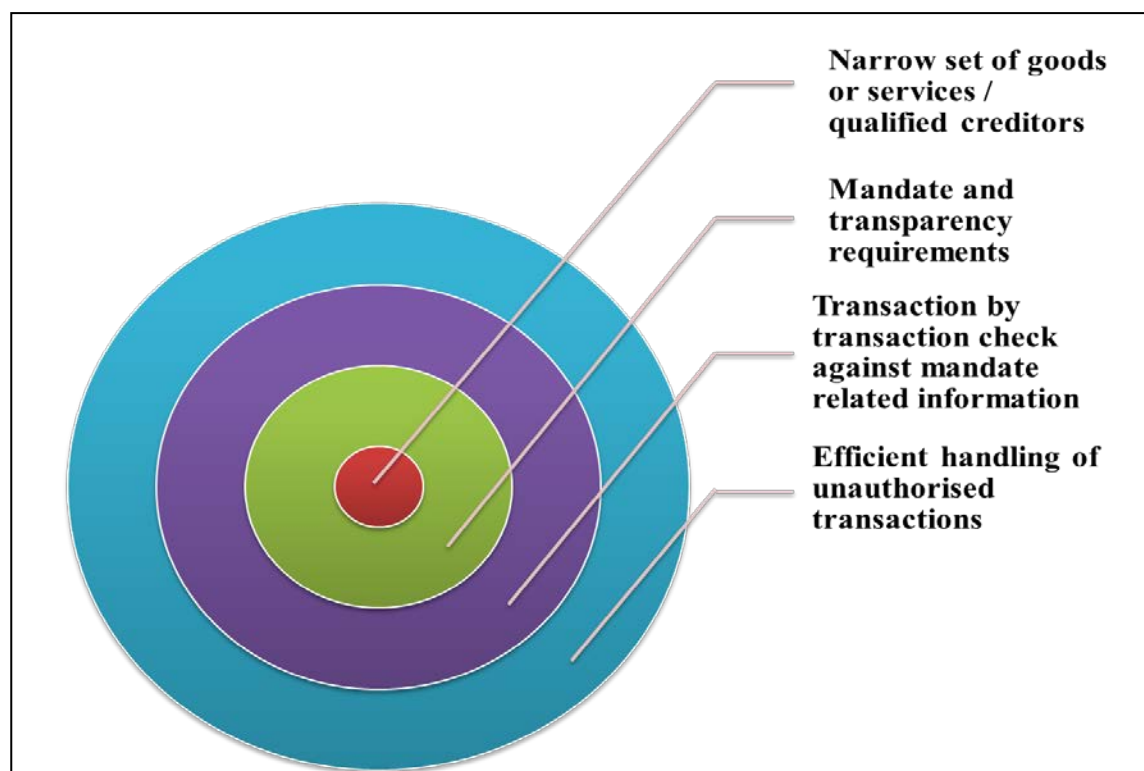
<sup>17</sup> The aim of this provision was to prevent banking communities to develop their own "pan-European" schemes for themselves and fragmenting the single market. In the case of the EPC the relevant national competent authority is the Belgian one.

<sup>18</sup> Article 5, 3 d) ii)

In the SEPA Business-to-Business Direct Debit scheme (SDD B2B, the only existing pan-European direct debit scheme without a refund right for authorised transactions) there is an additional confirmation from the debtor to the debtor's bank on the validity of the mandate before the first collection can be executed on the account. This introduces a DMF-type feature into the otherwise CMF-model scheme substantially reducing the likelihood of unauthorised transactions. This provides the benefit of trust from the debtor's side and certainty on the creditor's side, but comes at the cost of much heavier debtor bank involvement, the need for additional communication between the debtor bank and the creditor bank.<sup>19</sup> Overall this creates a more cumbersome procedure<sup>20</sup> which may limit the use of this type of direct debits to certain payment situations (e.g. excluding the one-off use of direct debits e.g. by charities).

Although it would certainly be an option to include such additional protective elements these would most probably decrease the likelihood of any take-up of the new scheme. To preserve the practicality and ease of use of the scheme protective elements have to be carefully balanced with the administrative burden of parties to the transaction. The Consumer protection elements outlined in the above principles (section 4.1) are adequate to insure the security, practicality and usability of the scheme in regards to the consumer. It would therefore be unnecessary to include any additional protection elements.

*Chart 1: Potential consumer (payer) protection elements in a no-refund consumer direct debit scheme*



<sup>19</sup> In fact 4-corner electronic mandate models do the same by requiring the debtor to give authorisation via his bank's online banking service in real time. However, they require that the debtor bank and the creditor bank to be part of the same particular e-mandate service.

<sup>20</sup> Many stakeholders are citing this complexity and the lack of proper communication between the debtor bank and the creditor bank on the confirmation of the mandate as one of the reasons for the slow take-up of the SDD B2B scheme.

## 6. The Commission's proposal for the review of the Payment Services Directive ("PSD2")

In its proposal for the review of the Payment Services Directive published at the end of July 2013<sup>21</sup>, the Commission proposes to change the right for a refund for the payer in direct debits. According to the proposal the payer should have an unconditional right of refund, except where the payee has already fulfilled its contractual obligations and the services have already been received or the goods have been consumed by the payer.

The proposal as currently drafted created uncertainty among many stakeholders with regards to the future of refund rights for direct debits and this has a major impact on discussions on a no-refund consumer SDD scheme as well. Many argue that contrary to strengthening consumer protection, it appears likely that the unlimited refund rights under the current SEPA direct debit scheme would no longer be allowed under this proposal. To comply with these provisions on the refund right, payment service providers would most probably have to collect information about their customers' purchases, an issue which might raise privacy concerns, as well as increasing the administrative burden on payment service providers.

The Commission seems to be aware of the unintended consequences the PSD2 proposal has in this context and it is expected that this will be corrected by European Parliament and Council while agreeing on the final text of the PSD2.

To make legal rules on refunds more clear as a general rule the refund right for unauthorised transactions for 13 months should continue to exist but on top of that an unconditional refund right for a period of 8 weeks should also apply for all consumer direct debits. Next to that for the above listed goods / services, debtors and creditors should be able to agree separately that no refund rights will apply. It is important that the reference list of such services be adjustable but on the other hand should clearly be under regulatory control to prevent any misuse and the crowding out of the SDD Core scheme. A solution to this would be that the Payment Services Directive would give the European Commission the right to maintain this list via delegated act<sup>22</sup>.

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<sup>21</sup> Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on payment services in the internal market and amending Directives 2002/65/EC, 2013/36/EU and 2009/110/EC and repealing Directive 2007/64/EC.

<sup>22</sup> This idea is also reflected by the legal opinion of the ECB on the PSD2 proposal made by the EU Commission: <http://www.ecb.europa.eu/ecb/legal/date/2014/html/index.en.html?skey=CON/2014/9>

## Annex

### A comparison of the benefits and drawbacks of CMF and DMF direct debit models

Until 1 February 2014 euro area countries had separate national (legacy) direct debit schemes which differed from each other in many aspects. One of the main differences is whether they apply the debtor mandate flow (DMF) or the creditor mandate flow (CMF) model in the scheme. In the debtor mandate flow model the debtor (payer) gives the mandate (authorisation) to its own bank and the bank checks each and every collection against the mandate before debiting the account. In many DMF schemes creditors received some information on the existence of the mandate from the debtor bank indirectly via the creditor bank after the mandate was given. In this model the debtor has a stronger a priori control over what is happening on his or her account but on the other hand the creditor has no real-time information on whether a mandate was given or not to authorise the transaction(s). This feature makes the DMF model schemes less practical for one-off payment situations than CMF-type models where the creditor receives and stores the mandate and the debtor bank only needs information on the mandate in case there is a disputed transaction. In the CMF-type models there is a weaker a priori control over debiting the debtor's account (as no check of mandate or confirmation from the debtor takes place before collections are executed) but the transaction can be executed much faster and with less communication between or less additional resources from the parties.

*Table 1: Comparing the debtor-mandate-flow (DMF) and the creditor-mandate-flow (CMF) direct debit models*

DMF	CMF
+ a priori control for debtor	+ requires significantly less resources and communication in case of authorised transactions
+ no room for unauthorised / disputed transactions	+ faster set-up and execution
+ certainty for creditors	+ less admin burden on debtor banks
+ less admin burden on creditors	+ can also be used in one-off payment situations
- more complicated and resource intensive procedure	- less certainty for creditors due to refund right
- slower and more cumbersome execution	- more admin burden on creditors
- only suitable for long-lasting relationships	
- more admin. burden on debtor banks	

To conclude the CMF model skews risk of unauthorised or disputed transactions and administrative burden towards the creditor but provides a much more resource-efficient process in the case of non-disputed transactions (even making one-off direct debits a viable alternative to card payments in remote payment situations). The DMF model gives a priori control to debtors and more certainty to creditors but at the cost of a more resource-consuming process and a narrower set of payment situations in which direct debit can be used as a payment instrument.