

ERP/2014/014
FINAL

7 November 2014

**REPORT ON THE
PAN-EUROPEAN USE OF ELECTRONIC MANDATES
FOR SEPA DIRECT DEBIT – ISSUES AND
THE WAY FORWARD**

ERP Working Group
on Pan-European Electronic Mandate Solutions

Table of contents

Concluding summary and next steps	3
Background.....	7
Recommendations for removing/mitigating the barriers	9
A) Definition and legal validity of e-mandates	9
B) Responsibilities/liabilities and trust on the cross-border level in using e-mandate solutions	11
C) Technical interoperability and European reachability of e-mandate solutions	14
Annexes.....	17
Annex 1. Digital identity – identification, authentication and authorisation	17
Annex 2 (A) Identified barriers	18
Annex 2 (B). Questionnaire of the public call on issues with pan-European use of electronic mandate solutions	23
Annex 3. General description of the liabilities and interests of the stakeholders	24
Annex 4. List of participants of the ERPB E-mandate Working Group	26

Concluding summary and next steps

At the first meeting in May 2014 the Euro Retail Payments Board (ERPB) discussed issues stemming from the diversity of national electronic mandate (e-mandate) solutions for SEPA direct debits (SDD) and the lack of really working pan-European solutions.

“With regard to a longer-term perspective, the ERPB agreed that truly pan-European electronic mandate solutions needed to be found and implemented. This made it necessary to analyse the existing barriers to cross-border integration. This work would be conducted by an ERPB working group specifically created for this purpose.”

This report is the final outcome of the discussions in the ERPB working group (WG) set up to carry out the related task. The report presents an analysis of the current situation regarding the usage of e-mandate solutions for SDDs¹ and the barriers of using e-mandates on a cross-border level. **The aim of the report is to make observations and suggest a number of high level recommendations to address legal, technical or any other issues which prevent pan-European e-mandate solutions to emerge and to be used.** The recommendations in this report follow a customer-centric approach and aim at facilitating knowledgeable choices of payment service users and market competition in the field of electronic mandates.

The current landscape of electronic mandate solutions and the uncertainty among stakeholders on the usability and validity of electronic mandates have the potential to prevent the usage of domestic and the take-up of cross-border SEPA direct debits. Therefore the market needs clear guidance and understanding on the way electronic mandates for SDD are to be handled.

The vision of SEPA is only fulfilled if – while ensuring the freedom of creditors and debtors to choose and implement any electronic mandate solution for SDD – the handling of electronic mandates does not prevent the integration of the SDD market. Also the location of the payment account to be used by payment service users is not restricted due to barriers related to a multitude of electronic mandate solutions.

It is important to emphasize that the integration of the SDD market does not require the full harmonisation of electronic mandate solutions or a single infrastructure for electronic mandates. The way a mandate for SDD is given is primarily a matter between the debtor and the creditor, but the basis for the legal validity (i.e. the form of the mandate) in case of dispute is agreed² between the debtor and his PSP. As the SDD is a creditor-mandate-flow³ scheme the mandate itself is only checked by the debtor bank if and when the debtor makes a claim (after the first 8 weeks but before the 13 months from the date of the collection) that an unauthorised transaction has taken place. Therefore **the recommendations made should facilitate the continuance of current business, without causing an instant need for migration from “legacy” electronic mandate solutions to pan-European solutions.** However, all creditors have to respect the pan-European nature of the SDD scheme and strictly follow the law according to which also non-domestic payment accounts should be

¹ The report focuses especially on the SEPA Core Direct Debit Scheme, which serves consumers and non-consumers.

² Nevertheless, in Article 54 of the Payment Services Directive it is elaborated that payment transactions are considered authorised only if the debtor has given consent in the form agreed between the debtor and its payment service providers.

³ The mandate is given by the debtor via the creditor.

accepted, even if they use an electronic mandate solution which was used only for domestic payments in the legacy environment. Thus, creditors accepting electronic mandates should adapt and offer at least one solution for accepting mandates from debtors using a non-domestic payment account. It is up to the creditors' to decide whether they do this by expanding the scope of their existing legacy electronic mandate solutions or by applying a new solution available to all debtor accounts in addition to the legacy one.

While preserving the choice for debtors and creditors on the way they give and accept electronic mandates there is a need for an incentive for creditors to move generally towards solutions with proper debtor authentication⁴ and mandate authorisation. At the pan-European level this can be done by offering SEPA-wide solutions which provide such possibilities and hence the opportunity for creditors to lower or eliminate their risk stemming from refund-requests based on claims for unauthorised transactions. In this regard it is important to clarify which debtor authentication and mandate authorisation methods are accepted by all Debtor PSPs at the pan-European level.

For market integration and better reach for payment service users throughout SEPA it is also recommended to have interoperability between the planned and/or existing electronic mandate solutions. To this end at least the e-mandate solutions based on technically similar models (e.g. solutions using 4-corner models which are based on Annex VII of the EPC's SDD Rulebook) should be open for interoperability between each other over the longer term. The feasibility of different possibilities for achieving this should be assessed by the relevant e-mandate service providers.

For identifying the barriers the ERPB E-mandate WG gathered and analysed information from market participants (PSPs and PSUs, on both the creditor and the debtor side) on their considerations of using or not using electronic mandates both in the national and cross-border context for SDD. For that the working group launched an EU-wide survey. The summary, including the questionnaire is annexed to the report.

Based on the analysis the WG categorized the most relevant barriers for market integration and the emergence of pan-European solutions in the field of electronic mandates into three groups:

- a) different interpretations and understanding of definition and legal validity of e-mandates;
- b) lack of clarity on responsibilities and liabilities of different stakeholders and lack of trust in cross-border use;
- c) technical interoperability and pan-European reachability issues on a cross-border level for e-mandates and e-signatures.

The WG doesn't attempt to provide specific technical solutions for removing the barriers, it recommends ways forward to overcome the identified issues and propose groups of stakeholders and entities that are best suited for taking certain issues further. Please see the summary of the proposed recommendations provided in the next table.

⁴ E.g. using means of strong customer authentication defined in the proposal of the EU Commission for the review of the Payment Services Directive.

Summary of proposed ERPB recommendations

Recommendation	Addressees	Rationale
DEFINITION AND LEGAL VALIDITY OF E-MANDATES		
<p>1. Publish an country specific inventory of all identified national and pan-European legally binding methods of signature applicable for e-mandate solutions, which might be accepted as proof (by the Debtor PSP) in case of an after 8-week refund claim of an unauthorised direct debit transaction. Including also elaborating by Debtor PSP country on the applicable law when assessing the validity of the signature and mandate in case of a non-domestic e-mandate solution.</p>	<p>The European Payments Council</p>	<p>Transparency of the possibilities used in the most relevant (at least top-10) SDD countries will help the Debtor PSPs in their decisions when assessing the after eight-week refund claim.</p> <p>If necessary the EPC can liaise with the ECB in compiling the snapshot of current market practices employed by PSPs (e.g. in contacting the national competent authorities). A plan will need to be agreed by both parties.</p>
RESPONSIBILITIES/LIABILITIES AND TRUST ON THE CROSS-BORDER LEVEL		
<p>2. Handling of electronic mandates should be opened up for foreign IBANs. Either by updating the used solution or providing an alternative way of giving the mandate, with clear usage guidance from the Creditors to the Debtors on how such solutions can be used for cross-border SDDs.</p>	<p>The Creditors via the representatives in the ERPB</p>	<p>To ensure compliance with the law (2012/260/EU Art 9.2.) and to ensure a better integration in the single market for SDD</p>
<p>3. The Debtor PSPs should make use of the inventory (see rec. 1) of different legally valid methods of electronic signature for assessing the Debtor authentication and authorisation of the electronic mandate, in case of an after eight-week refund claim, within the constraints of applicable law.</p>	<p>PSPs via the representatives in the ERPB</p>	<p>Transparent background information on the inventory will help to harmonise the behaviour of Debtor PSPs.</p>
<p>4. Develop and make publicly (alongside the SDD rulebooks) available a clarification paper, explicitly explaining to the Creditor the possible risks (liabilities) of not being able to prove to the Debtor PSP that a legally binding method of electronic signature was used.</p>	<p>The European Payments Council</p>	<p>It is important that all Creditors using SDD clearly understand the consequences of its choice regarding electronic mandate solutions</p>
TECHNICAL INTEROPERABILITY AND EUROPEAN REACHABILITY		
<p>5. After putting in place the implementation acts as foreseen in the regulation 2014/910/EU, continue to monitor the cross-border usage of qualified electronic signatures and – if needed – take further steps to ensure cross-border usability for PSPs and PSUs.</p>	<p>The European Commission</p>	<p>It important to harmonise the assessment of electronic signatures by Debtor PSPs in case of an after eight-week refund claim in a non-domestic context.</p>
<p>6. For increasing cross-border reach of the existing and to be developed e-mandate solutions based on technically similar models, the ERPB recommends the service providers to be open to interoperability and if feasible make use of the technical description provided in annex VII of the SEPA Direct Debit scheme rulebooks.</p>	<p>Liaison between e-mandate solution providers</p>	<p>Annex VII is the (optional) part of the EPC's scheme. If the service providers have implemented it fully, it is possible to agree on the technical interoperability aspects.</p>
<p>7. Creditors (and if relevant PSPs) should carefully consider whether the e-mandate solution they choose to employ provides the possibility to the Debtors for handling and managing the changes and cancellations</p>	<p>The Creditors via the representatives in the ERPB.</p>	<p>The Creditors have to ensure the continued validity of electronic mandates.</p>

of the re-current mandates or not.

The ERPB is invited to:

- discuss the identified barriers and recommendations on electronic mandates outlined in the report;
- agree on and endorse the recommendations and addressees for the follow-up summarised in the table above;

Background

Based on the SEPA vision⁵ payment service users were promised that after the migration they can send and receive payments in euro under the same conditions and with the same rights and obligations, regardless of their location within Europe. Now the SEPA (Core) Direct Debit (SDD) is in place, with few exceptions, in all SEPA countries. The SDD is a creditor-mandate-flow direct debit scheme which means that the mandate (which represents the authorisation for debiting the payer's account) is given by the Debtor to the Creditor. As the creation of the common euro direct debit scheme was a process led by the payment service providers, the scope of harmonisation did not include the issuing and authorisation of the mandates for SDDs which have been perceived as a matter between the Debtor and the Creditor.

The SDD scheme rules give guidance on the minimum mandatory information present in mandates for SDD but they do not specify how the mandate is to be given by the Debtor to the Creditor. The handling of paper mandates has been very similar in legacy direct debit schemes. The information on the mandate is put on paper, the Debtor signs the paper with a handwritten signature and the paper mandate is given to the Creditor. For electronic mandates on the other hand the legacy practices differed to a great extent and the lack of intervention in this domain has left the existing practices unaffected during the migration to SDD. This has been a logical choice with a view to the very different Creditor practices and uses of direct debits throughout SEPA.

The SDD is still in its take-up phase as a functioning cross-border payment instrument. Therefore many Creditors and Debtors have had very limited time and resources to adapt to the changed environment. This is also due to the lack of business rationale for many Creditors to invest in the updating of their mandate processes. The SDD is a creditor-mandate-flow direct debit scheme with an 8-week unconditional refund right for the Debtor which means that the mandate as proof is only used by stakeholders if more than eight weeks after the collection⁶ the debtor makes a claim for an unauthorised transaction. Hence from a Creditor point of view the accepted and stored mandates will only lower or eliminate the refund risk in the period between the first 8 weeks and the 13 months from the date of the collection.

However, this lack of harmonisation of electronic mandate solutions has led to a situation where the cross-border integration of the SDD market is potentially endangered by these very differing practices and the lack of information on these practices among stakeholders in the electronic mandates domain. If cross border SDDs cannot be processed because of to the fragmentation of electronic mandate solutions, or if a payment account is not usable for SDD solely because its location is different from the location of the Creditor who only provides electronic mandate solutions for accounts in its own country then the key elements of the SEPA vision are questioned.

⁵ SEPA is the vision of an area in which consumers, companies and other economic actors are able to make and receive payments in euro, whether between or within national boundaries under the same basic conditions rights and obligations, regardless of their location.

⁶ In the first 8 weeks after the collection the Debtor has a no questions asked (i.e. automatic) refund right even for authorised transactions. Therefore, if a refund claim is made by the Debtor in this period there is no need to check the mandate, the refund is automatically due regardless of any information thereof.

In the following this report elaborates on the issues / barriers that present a source of fragmentation and that have the potential to prevent the cross-border use of SDD from taking up.

Based on the analysis (see also annex 2) the WG categorized the most relevant barriers for market integration and the emergence of pan-European solutions in the field of electronic mandates into three groups:

- a) different interpretations and understanding of definition and legal validity of e-mandates;
- b) lack of clarity on responsibilities and liabilities of different stakeholders and lack of trust in cross-border use;
- c) technical interoperability and pan-European reachability issues on a cross-border level for e-mandates and e-signatures.

Recommendations for removing/mitigating the barriers

A) Definition and legal validity of e-mandates

Based on the survey national legal frameworks and requirements do not seem to be the only key barriers preventing the cross-border use of e-mandates for SEPA Direct Debits (SDD). The difficulties are also of a technical and business nature and stem from different interpretations and understanding of what is written in the law and in the SDD rulebooks.

The general definition of a mandate applicable for SEPA Direct Debits is clear. The regulation 2012/260/EU defines a mandate as *“the expression of consent and authorization given by the payer to the payee and (directly or indirectly via the payee) to the payer’s PSP to allow the payee to initiate a collection for debiting the payer’s specified payment account and to allow the payer’s PSP to comply with such instructions”*.

The regulation doesn’t specifically state a single definition or formal requirements for electronic mandates and this is causing different interpretations and requirements also on the national level. Most importantly, it does not tackle the crucial issue of how the Debtor’s consent and authorization can be obtained and evidenced in the case of an electronic mandate. These two elements constitute the basic proof of valid e-mandate when handling disputes of unauthorized collections in the period of after 8 weeks and within 13 months.

However, in Article 54 of the directive 2007/64/EC, it is elaborated that Member States shall ensure that a payment transaction is considered to be authorised only if the Debtor has given consent to execute the payment transaction. The consent shall be given in the form agreed between the Debtor and the Debtor PSP. But as the SDD is a creditor-mandate-flow scheme the process of issuing and authorising the mandate is outside of the SDD scheme, which makes it possible to use all kind of different e-mandate solutions.

The version 8.0 of the EPC SDD Scheme Rulebook will be clearer in respect of the permissibility of different methods of signature for electronic mandates. According to it *“the mandate may be an electronic document which is signed using a legally binding method of signature”*. This clarifies that the SDD scheme is open for the use of very differing electronic mandate solutions if they are interpreted as making use of a legally binding method of signature.

However, as pointed out by some stakeholders in the consultation process the *“legally binding method of signature”* may highlight the existing diversity at the pan-European level because the national legal frameworks define these methods differently. Currently the wording (without clarification on some minimum criteria on legally binding methods of signature) may even amplify the usage of different flavours and interpretations. In the end this may result in a situation where all Debtor PSPs continue to apply their national or own understanding of a legally valid e-mandate in case of disputes of unauthorized collections. Coupled with the different technical solutions and user applications this may have a detrimental effect on cross-border usage of SDD.

In today’s environment there are different definitions, expectations and practices in the usage of *“electronic”* mandates and *“electronic”* signatures in place. All these stem from the fact

that before SEPA there were no working pan-European direct debit schemes in place and there is not an official European definition or “minimum criteria” of a valid e-mandate. There are also many different possibilities of giving electronic signatures, using methods that may be legally valid in one Member State but not in the other. The outline of reported authentication and authorisation possibilities is provided in annex 1 and 2.

But it has to be pointed out that the issues causing different interpretations stem also from the current and past business practices of Creditors in interacting with their Debtors, who based on the Member State have different needs and expectations. These practices (flavours) strongly influence the national or regional requirements posed on e-mandate solutions, including the usage of certain legally binding methods of signature for authorizing the e-mandates. To avoid confusion in case of cross-border e-mandates, it should also be clarified which country’s law applies when assessing if an e-mandate signature is legally binding or not. Depending on the applicable consumer protection legislation, it might be the law of the country where the Debtor is located. However, the applicable legislation should provide for flexibility in this context, the jurisdiction where the Debtor’s PSP is located would seem to be a logical reference point.

Currently beside paper-based signatures there are only three electronic methods of signatures which – in a non-domestic context – could give better assurance to Debtor PSPs that the mandate can be considered as having been authorized by the Debtor with a legally binding method of signature, no matter the Member State:

- using a qualified electronic signature (as defined by regulation 2014/910/EU);
- using a solution where the Debtor PSP is involved in the authorization process of the mandate (e.g. compliant with Annex VII of the SDD rulebooks);
- or by involvement of a trusted service provider (accepted or acting on behalf of the Debtor PSP), using features that allow a proper authentication of the Debtor and ensure the integrity of the electronic mandate in order to demonstrate that the mandate was duly authorised.

If the electronic mandate has been authorized/signed by other means then the Creditor should accept the risk that, in case of an after eight-week refund claim, the money is likely to be debited from its account (the credit risk will be apparent). It is a decision of the Creditor to use a more secure, risk avoiding, safe and provable electronic mandate solution, based on the relation between his costs and risks

Considering the significance, the most important issue to tackle is the broad understanding, what a legally binding method of electronic signature means in the SDD rulebooks, and how the Debtor PSPs interpret it in case there is an after eight-week refund request of an unauthorized SDD. For transparency and shared understanding and whilst recognising that this will only provide a snapshot view it is recommended to:

- *publish an country specific inventory of all identified national and pan-European legally binding methods of signature applicable for e-mandate solutions, which might be accepted as proof (by the Debtor PSP) in case of an after 8-week refund claim of an unauthorised direct debit transaction;*
- *including also elaborating by Debtor PSP country on the applicable law when assessing the validity of the signature and mandate in case of a non-domestic mandate solution.*

B) Responsibilities/liabilities and trust on the cross-border level in using e-mandate solutions

Different interpretations make it difficult for the stakeholders to understand how they should act when dealing with cross-border SEPA Direct Debits. The survey indicated that there is a lack of clarity on responsibilities and liabilities of different stakeholders. This is also affecting the trust in usage of cross-border SDDs. The recommendations made aim to harmonise the understanding of responsibilities/liabilities and practices of different stakeholders at the European level.

1. Not all existing e-mandate solutions are technically ready to accept non-domestic IBANs

SEPA Direct Debits are pan-European, but that doesn't mean that Creditors, who are interested only in their national market and are already using national e-mandate solutions, are obliged to invest at once in pan-European e-mandate solutions. Considering the different business models/activities and target markets, not all Creditors aim for reaching customers in foreign markets. Also the regulation 2012/260/EU⁷ doesn't directly address the harmonisation of different e-mandate solutions used for SDDs. It only enforces that in SEPA providing payment accessibility to customers using non-domestic IBANs is compulsory also to the Creditors, who make collections with SDD. The implementation has been left open and all current e-mandate solutions can be continued, but the used solutions mustn't impede the usage of domestic or the take-off of cross-border SDD.

Currently it is very likely that a foreign Debtor living in a Member State has to adapt to the Creditors and the signature methods used for authorizing an electronic mandate. Respectively this goes also for Creditors, they are not able to accept/support the same legally valid methods of electronic signatures the Debtors are used to in their countries. Therefore, for doing business with foreign customers at the cross-border level they should adapt the solutions to fit the needs of the foreign market. But there are also issues impeding the usage of cross-border SDD. The survey revealed that some Creditors have not updated their e-mandate software yet to allow for non-domestic IBANs (i.e. there are automatic checks that are tuned only to accept domestic IBANs). This was also confirmed by some practical tests. Unfortunately in many cases the Creditors do not know that it is their responsibility to ensure that non-domestic IBANs can be used within their e-mandate solution.

Therefore it is recommended to communicate to the Creditors that handling of electronic mandates should be opened up for foreign IBANs. Either by updating the used solution or providing an alternative way of giving the mandate, with clear usage guidance from the Creditors to the Debtors on how such solutions can be used for cross-border SDDs.

2. PSPs apply different interpretations and practices when assessing the validity of electronic mandates in a cross-border context.

The SDD scheme itself is a four party structure where a Creditor, a Creditor PSP, a Debtor PSP and a Debtor intervene. The structure of four corners entails interactions between all actors involved and not all these interactions are governed by the SDD rulebooks. The SDD scheme rulebooks explain the operational rules, responsibilities and liabilities between the involved PSPs. As a payment scheme, the SDD rulebook only sets forth the rules governing

⁷ Article 9 (2) – “a payee accepting a credit transfer or using a direct debit to collect funds from a payer holding a payment account located within the Union shall not specify the Member State in which that payment account is to be located”.

the relationships between PSPs and does not interfere with the relationships between PSPs and their customers (Creditors and Debtors). Accordingly, the SDD Scheme remains neutral about the use of the existing e-mandate solutions.

The relationships between the PSPs and their customers are regulated by their contractual relationships and governed by applicable law. Regarding the mandates (including e-mandates) the PSPs must carry out direct debits in accordance with the requirements set out in Article 5 (3) of the regulation 2012/260/EU. There it is stated that the Creditor's PSP must ensure that the Debtor gives consent both to the Creditor and to the Debtor's PSP (directly or indirectly via the Creditor) by (normally) making this requirement part of the bilateral agreement between the Creditor PSP and the Creditor. This is not dealt with in the SDD rulebooks and is currently left to the decision of the individual PSPs. From the Creditors' perspective the current situation may create confusion if a Creditor uses PSPs in different countries, because PSPs can apply slightly different local interpretations in assessing the validity of the mandate, also in the context of the legally binding method of signature. This complexity could be reduced if the PSPs at the EU level would apply similar practices in assessing the validity of electronic mandates, within the constraints of the applicable law. Some clarifications to Debtor PSPs might be given with the renewal of the Payment Services Directive and with the envisaged provision of the European Banking Authority's guidelines on strong customer authentication.

In the medium time it is recommended that the Debtor PSPs should make use of the inventory (see recommendation on page 10) of different legally valid methods of electronic signature for assessing the Debtor authentication and authorisation of the electronic mandate, in case of an after 8-week refund claim, in a harmonised way, within the constraints of applicable law.

3. Creditors don't know their liabilities when using different e-mandate solutions.

The responsibilities and liabilities are not the same in the context of the different types of electronic mandates (4-corner, 3-corner and 2-corner models), simply because the actors involved are not the same. The PSPs are not involved in all e-mandate solutions and the Debtor PSP shouldn't intervene in the final dispute between the Debtor and the Creditor on the underlying business or directly in the mandate signing method agreed between the latter.⁸ Therefore, in the SDD scheme a key role is played by the Debtor PSP which, in case of a refund claim for an unauthorised collection by its customer, will have to decide if the mandate is valid or not. Doing that based on the proof of a valid authorisation/legally binding method of e-signature (to be clearly defined) and information on later mandate amendments/cancellations received from the Creditor. It is important to leave the final decision on the validity of a mandate to the Debtor PSP because it has to respect the local civil legislation and contractual practices on mandates.

Between every Creditor and Debtor there are underlying contractual relationships referring to the actual business transaction and also on the agreed form of payment. Considering the eight-week no questions asked refund right and the possible difficulties in providing proof of the validity of an e-mandate (if other methods than qualified electronic signatures, or solutions involving the Debtor PSPs are used) the Debtor will easily get his/her funds back. But the Debtor must also take note of the possibility that even if a successful refund claim occurred the Creditor can still recover the funds by taking the Debtor to court if it can prove

⁸ A general description of the liabilities and interests of the stakeholders is provided in annex 3 of this report.

the existence of the underlying contract and that it has fulfilled the obligations from this contract (e.g. goods/services were delivered).

The liability issues are mostly linked with the way of giving consent to an electronic mandate and whether the Creditor is able to prove that the authorisation was given by the right Debtor. To ensure that after the 8-week unconditional refund right period there won't be any refund claims debited from the Creditor's account, the latter has to use e-mandate solutions accepted by all Debtor PSPs. But in the end, it is always the Creditor who is liable for the proof of the validity of the mandate, even if a Debtor PSP is involved in the authorisation process in which case the quality of proof of the mandate will be higher as long as the mandate has not been amended or cancelled through other channels.

The proof of an authorised e-mandate is closely linked with the question of authentication and electronic signature. Therefore uncertainties of the electronic signature make the evaluation by the Debtor PSP and the understanding of the burden of proof difficult. In some cases it also makes the Creditor hesitant in accepting mandates from non-domestic Debtors using a foreign IBAN, because he is not sure that in case of a problem the Debtor PSP will accept his pieces of evidence.

In practice there are also Creditors who are willing to take the responsibility of light procedures and not very strong signatures because they are confident in their processes and have a very broad base of customers and respective risk assessments. E.g. they mostly work on 2-corner solutions and their main concern is how to present the electronic mandate to the Debtor PSP in case of a refund claim, in order to be sure that the Debtor PSP will be able to understand and accept it. As that might prove cumbersome, some creditors even prefer not to have to deal with search of proof, but are willing to be debited and deal directly with their customers. It is also important to recognize that the Creditor often looks for a solution which allows him to be comfortable in his relationship with his customer and that this is also very much linked with the Creditor to Debtor relationship, i.e. with the type of commerce involved. E.g. the security need of a big utility provider, with a stable customer base, and being able to rapidly interrupt the service in case of non-payment is different from the need of e-merchant selling physical articles in one-off transactions to a moving customer base.

Additionally unclear mandate information or badly automatically translated mandate data elements can lead to non-understanding of the transactions following and then to refunds. So, in the pan-European context it is important that all Debtor PSPs can understand whether a legally binding method of signature was used. It should also be taken into consideration that not all kinds of legally binding methods of signature provide evidence that the Debtor has signed the electronic mandate.

Therefore it is recommended to develop and make publicly (alongside the SDD rulebooks) available a clarification paper:

- ***explicitly explaining to the Creditor the possible risks (liabilities) of not being able to prove to the Debtor PSP that a legally binding method of electronic signature was used;***

4. Creditors (and also e-mandate service providers) don't have currently a strong business case in implementing pan-European e-mandate solutions.

The issues around the development, acceptance and accessibility of different electronic mandate solutions definitely influence the usage of SEPA Direct Debits on the cross-border level. The possibility of making easily use of electronic mandate solutions will stimulate the

PSUs to adapt their behaviour in accepting or making payments remotely on the cross-border level using SDD. At the moment the general usage volume of cross-border SDDs is still rather low. The most frequent users are international companies who have consolidated their payment centres in one Member State and now make cross-border SDD collections. As more companies are consolidating their payment collection centres the volumes of cross-border SDDs will grow in the future.

Easy to use, secure, safe and provable electronic mandate solutions require potential large investments from all mandate parties involved. Up to now, there are no unique electronic mandate solutions in place on the EU level, but several practices have successfully evolved mainly on national levels. The consultation clearly raised the question about the business case – from the Creditors', PSPs' and other e-mandate service providers' perspective there is often no great interest to make large investments for an additional pan-European electronic mandate solution if the corresponding risk is considered still acceptable and the number of cross-border transactions remains rather low.

SDD is definitely a valid option for closing a business transaction and getting the money from the payer's (Debtor) account. From the Debtor's perspective using a SDD is very convenient, because there are "built-in" consumer protection measures, which also adds confidence in using e-commerce. Regarding e-commerce electronic mandates enable cross-border sales in the EU Single Market and help to reduce the costs involved with paper mandates (i.e. keeping copies of signatures and sending original paper mandates back to the Creditor).

So, the decision by all parties involved to invest in the implementation of pan-European e-mandate solutions should be a trade-off between mitigating risks, efficiency and gaining new business.

C) Technical interoperability and European reachability of e-mandate solutions

1. Use of qualified electronic signatures for electronic mandates

The most important element of the process of issuing an electronic mandate is that of authentication and authorisation of the Debtor, as this determines the validity of the mandate. The key problem to solve is to find methods which produce electronic signatures that can be later used by a party originally not involved in the process (Debtor PSP) as proof that the e-mandate was properly authorized.

EU policymakers previously chose the concept of qualified electronic signatures as the candidate for an EU-wide and interoperable means of electronically signing (i.e. authorising) documents. Infrastructures for qualified electronic signatures have been set up in all Member States and the concept has been implemented as well in all national legal frameworks.

The topic on national electronic identities, qualified electronic signatures and their interoperability in the EU is tackled by the regulation 2014/910/EU on electronic identification and trust services for electronic transactions in the internal market. There will be implementing acts in September 2015, which will require (legal) follow-up actions by the Member States. Based on best practice in some Nordic and Baltic⁹ Member States it can be said that electronic identities (backed by the government) make accepting and giving

⁹ E.g. Estonia <http://www.id.ee/index.php?id=35748>

qualified electronic signatures available in the private sector (e.g. for Creditors and Debtors). Making these national solutions interoperable on the EU level is a major building block also for harmonizing the authorization of e-mandates on the pan-European level. When applied in electronic mandate models, it can be expected that the electronic mandate models which use qualified electronic signatures would instantly have an authorisation accepted at the pan-European level.

However, full harmonisation of practices and infrastructures for qualified electronic signatures is a long-term project. Unfortunately the current application of qualified electronic signatures differs to a great extent among Member States. In some countries the government has already issued national identities based on qualified electronic signatures to citizens in others it barely available to consumers and is only used by businesses. Furthermore the national certification authorities have not been made interoperable so qualified electronic signatures could be very difficult to verify (in many cases even impossible in practice) in a cross-border context.

Therefore at the European level after putting in place the implementing acts as foreseen in the regulation 2014/910/EU, there is a need to monitor the situation further and - if needed – to elaborate on how to issue and verify qualified electronic signatures in practice (inter alia) to be used for authorising electronic mandates in the cross-border context in other SEPA countries.

2. Ensuring pan-European interoperability of technically similar electronic mandate solutions

The EPC has defined an efficient four-corner electronic mandate model involving the Debtor banks online banking service and making use of strong customer authentication and qualified electronic signatures. This optional model is described in detail in Annex VII of the SDD (Core) Rulebook. The model standardises interbank messages and provides a close-to-real-time reconciliation among the parties involved.

At least four banking communities in SEPA are planning or already rolling out solutions conforming to this model. There is also a pan-European solution already rolled out and provided to interested PSPs. However, these solutions will be closed loops with limited reach in the sense that an electronic mandate issued in one of them can only be used within that particular solution. This means that the Debtor bank and the Creditor bank have to be part of the same solution in order for an electronic mandate to be issued in them. This situation has the potential of creating islands of electronic mandate communities in SEPA relying on the same model and same technical standards.

At the moment there are no other formal descriptions available, besides the optional Annex VII of the SDD (Core) Rulebook, which would make it possible to develop e-mandate solutions on the same technical standards and make use of the same architecture. This also means that interoperability among those 4-corner solutions is more easily established than among totally different models. The same rationale is applicable also in case of 3-corner solutions if they use at least the same technical standards. The possible integration of these solutions could enhance the reach on the cross-border level.

The feasibility of different possibilities for achieving technical interoperability between different solutions should be assessed by the relevant e-mandate service providers.

Therefore for increasing cross-border reach of the existing and to be developed e-mandate solutions based on technically similar models, the ERPB recommends to

electronic mandate service providers to be open to interoperability and if feasible make use of the technical description provided in annex VII of the SEPA Direct Debit scheme rulebooks.

3. Implementing electronic mandate change management processes in electronic mandate solutions

After authorizing (issuing) an e-mandate the Debtor can Decide at any point in time to change it. Based on information received from the survey carried out by the working group and from other qualitative sources it seems that many electronic mandate solutions do not offer the function to change existing mandates.

Therefore Creditors (and if relevant PSPs) should carefully consider whether the e-mandate solution they choose to employ provides the possibility to the Debtors for handling and managing the changes and cancellations of the re-current mandates or not.

4. Working on message standards for presentation of the mandate in the Creditor PSP and Debtor PSP domain

For the cases where there is a refund request some standardization could prove useful. It would help to have standardisation in the messages to be sent by the Debtor PSP to request the mandate copy, and to be sent by the Creditor and the Creditor PSP to transmit the mandate, and why not from the Debtor PSP to the debtor. But the communication channel should be left open. Having an ISO 20022 request message and another for the answer would smoothen procedures in the PSPs and between the Creditor bank and the Creditor, as well as, when the Debtor is not a consumer, between the Debtor PSP and the Debtor. Especially in the context of electronic mandates, it would save human intervention at every step. Such messages should also be able to transport attached documents, e.g. mandate in the form of a pdf document signed.

This issue is not considered as a barrier which prevents the usage of e-mandates, therefore no recommendations are made. But it is acknowledged that this might make the related processes more efficient.

Annexes

Annex 1. Digital identity – identification, authentication and authorisation

Digital identity describes an environment where “real life” identities can be used electronically (meaning online) for making agreements and transactions as the consumer would be in person at the service provider’s office. The whole process consists of initial identification (e.g. in person based on the ID), authentication (e.g. based on credentials issued in the identification process) and authorisation (e.g. signing or approving an e-mandate).

Identification and later authentication of the payer (debtor)

- A) The debtor has been identified in person by the creditor before giving consent to the mandate. To prove that the creditor has made sure that the debtor is who he claims to be there might be:
 - a. a (short or long term) contract,
 - b. a copy of the payer’s ID,
 - c. an agreement that the creditor issued log-in credentials to the debtor (for later authentication/authorisation), etc.
- B) The debtor has not been identified in person by the creditor, but before giving his consent to the mandate the creditor makes sure who the person is via authentication solutions provided by third parties. The debtor might be asked to:
 - a. identify himself via social media networks (e.g. logging in with Facebook credentials), but this does not ensure that the debtor is who he claims to be.
 - b. authenticate himself by using an national ID-card/mobile ID or credentials issued by a certified third party or his PSP, in this case the debtor has been identified (in person) by the government, a certified third party or his own PSP and the creditor can be sure that the debtor is who he claims to be. Provided that the debtor has kept his personal credentials safe.
- C) The debtor has not been identified in person by the creditor. There are no good possibilities to check or prove that the debtor is who he claims to be. The debtor might be asked to:
 - a. fill in his details in the “online” environment of the creditor, but in reality this does not prove the identity of the person typing in the details;
 - b. skip the registration and authentication step and to proceed to the mandate authorisation part.

There are **different practices which can be used for authorising an electronic mandate**: pushing “I agree” in an online environment (not logged-in); recorded voice consent; handwritten signature (basically a picture); electronic signature (simple, advanced, and qualified). These differ remarkably based on the level of security (against fraud) they provide to the payers. But as explained earlier in order to provide proof whether the right person has given the authorisation there is a need for proper identification/authentication of the customer.

Annex 2 (A) Identified barriers

For identifying the barriers the working group followed a step by step approach, first doing a desk research, followed by a discussion at the first meeting on 15 July 2014, identifying the preliminary set of barriers and issues on the European level. In the second step, as expected by the ERPB, the working group gathered and analysed information from market participants (PSPs and PSUs, on both the creditor and the debtor side) on their considerations of using or not using electronic mandates both in the national and cross-border context for SDD. For that the working group launched an EU-wide survey with the aim to confirm the already identified issues and to find out additional legal, technical or other barriers in providing and using electronic mandates for SDD at the pan-European level.

Based on the desk research, including previous surveys (e.g. EPC's survey on different e-mandate solution providers, 2013) and the initial input from all the participants of the working group six barriers were identified. Additionally some elaborations regarding the issues behind were included.

Barrier	Issues behind
1. Different interpretations what an electronic mandate is?	<p>The PSD and SEPA regulation (EU 260/2012) give a broad concept and are open to different ways how an electronic mandate is to be given. The major concern is that different stakeholders give it narrower definitions based on their business needs.</p> <p>Additionally confusion may be caused by the different understandings of customer authentication and mandate authorisation (incl. touch points with legal issues).</p>
2. Unclear responsibilities and liabilities of different stakeholders	<p>All electronic mandate categories (2-, 3-, 4-corner model) entail different risk profiles, which based on the level of Debtor authentication, pose diverging liabilities on the involved stakeholders (i.e. creditors, creditor PSPs, debtor PSPs, debtors). There is definitely clarity needed regarding the burden of proof based on the strength of customer authentication of electronic mandate solutions.</p>
3. Lack of TRUST in cross-border use (Creditor, Creditor PSP, Debtor) of e-mandate solutions and SDD in general	<p>There are different influencing factors – consumer behaviour, language, the habits of the creditor, etc. The known and commonly used solutions at the national level (comfort zone) make the creditors as well as the debtors uneasy when accepting e-mandates / foreign IBANs from non-domestic payers (perceived to entail higher financial risks) or giving their consent for a direct debit in much easier way (perceived to be unsecure) then used to. E.g. for minimising the creditor's financial risks, there are no good possibilities (databases) to check whether the foreign debtor has had any credit issues previously. There are also no minimum criteria for service level in place, which could harmonise the user experience on both sides.</p>
4. Different and not interoperable (on a cross-border level) standards for e-	<p>In the different solutions of the existing electronic mandate models creditors might use a variety of standards. These function well within</p>

mandates and e-signatures

one country, but for customers from another country (e.g. in an internet shop) this might cause problems (e.g. cannot authorise the mandate via the debtor bank, the software doesn't support reading the digital signature, etc.). There is no (cross-border) framework for interoperability between different electronic mandate models and even between the same models.

Although the SDD collection order and the mandate related information therein must be in ISO 20022 XML, the formats used in electronic mandate solutions may be quite different. This may also influence the information exchange when the debtor PSP asks for a copy of the mandate in case of a disputed direct debit collection.

5. No pan-European reach of e-mandate solutions

According to the SEPA regulation (EU 260/2012) full reachability is compulsory if SEPA direct debits are offered and debtors from foreign member states must have the possibility to use their IBANs. There are efficient national solutions for e-mandates which the foreign debtors cannot use, due to the creditor or debtor PSP or the third party (electronic mandate) service provider. But for example authorising the electronic mandates in a 4-corner model on the pan-European level would require full reachability of all Debtor PSPs. Currently this is not the case with the existing electronic mandate solutions.

6. Different national (legal) requirements for e-mandates and e-signatures

There have been differences in how (national) courts have interpreted the validity of electronic signature types → this affects the payers and the payees (including the PSPs) → validity of authentication and authorisation. There might be also diverging requirements for electronic mandates in national legislations.

The first set of barriers served also as an input for compiling the questionnaire for the public survey. The questionnaire is annexed to this report (see annex 2b). The questionnaire targeted all parties which currently use or provide electronic mandate solutions or will use or provide an e-mandate solution in SEPA. The first part (A) of the questionnaire focused on payment service users (creditors and debtors), the second part (B) focused on different service providers of e-mandate solutions.

The questionnaire was sent out on the 8th of August with the deadline on 15 September 2014. The distribution and collection of replies was organized via the national SEPA/retail payments committees/forums and professional associations representing different stakeholders on the EU-level. The national central banks acted as the link between the national forums and committees, the WG participants were responsible for distributing the questionnaire to the associations they represent. The national committees, forums and professional associations were free to decide how to consult the market participants at the national or professional association level.

Despite the short timeframe altogether for the A-part close to 50 and to the B-part close to 40 individual and (market) consolidated replies were received. Representation of euro area countries was very good. It cannot be said that the replies from all countries were exhaustive, but in the context of this report and for confirming the most important barriers they were sufficient. Replies were received from Austria, Belgium, Germany, France, Portugal, Italy, Greece, Spain, Luxembourg, Malta, France, Slovakia, Finland, Latvia, and the Netherlands. It covers fully those countries which initiate the majority of SEPA Direct Debits – Germany, France, and Spain.

In general the survey showed that at the national and especially at the cross-border level the usage of electronic mandate solutions is rather low, this was confirmed by the individual and also community replies. At the national level there were some creditors who stated that they

did use e-mandate solutions before SEPA migration but not any longer. Of course this might change after the creditors have recovered from the migration and have the need and resources for doing that. At the cross-border level only a small minority of creditors use SEPA Direct Debits for making collections from abroad. But it has also been stated that some international big billers have in fact made use of the SEPA advantages by consolidating their payment centres into one country, which indicates that the cross-border volumes are bound to grow in the future.

The survey also indicated that among creditors who use e-mandates the most used are in-house solutions (e.g. company own web-based solutions), but many also use different 2-3-4 corner solutions provided by third parties. Some replies indicate that there might be differentiation between how national and cross-border mandates are being treated (e.g. some creditors accept only paper mandates for cross-border SDDs even though they accept e-mandates at national level). It was stated by those who accept cross-border electronic mandates that they use the same solution for foreign debtors that they use at the national level.

The creditors pointed out different reasons why they are not using e-mandate solutions at the national, nor cross-border level. The issues that were mentioned confirm also the barriers identified by the ERPB E-mandate working group (see page 18–19). Most frequently the following issues were mentioned: lack of standardisation, uncertain reaction by debtor banks, legal uncertainty on the acceptance of electronic signatures, lack of business case, technical difficulties of implementation, lack of confidence in third party providers and lack of interoperability.

At the cross-border level more emphasis was put on the lack of business case (justifying it with low volumes) and also on the differing practices of recognising electronic signatures in different countries. In addition as an issue the need for adapting to many differing national requirements and banking practices by the creditor were also cited: different e-mandate (i.e. customer authentication and authorisation) solutions are regarded as appropriate by debtor banks in different EU countries. Interestingly in some cases (e.g. Germany) the inability to check the creditworthiness of a foreign debtor is also cited as an obstacle. Therefore in some communities some creditors tend to accept an e-mandate for foreign accounts of their own national citizens but not from foreign debtors.

Nearly all community and individual respondents reported that the debtor side is aware that by law an account in SEPA can be used for cross-border SDD transactions. Regarding the SDD protective measures (as foreseen by the SEPA migration end date regulation) it was indicated that the consumers are not always informed on these measures and that these services might require more fine-tuning from PSPs. In some cases apparently consumers seem to be worried that the pan-European nature of SDD exposes them to a higher risk of fraud. This is also in line with what was mentioned by the creditors that at the cross-border level there is more need for strong customer authentication.

Regarding general obstacles which prevent creditors and debtors to use (pay or collect funds) SDD on the cross-border level some respondents noted that the difficulties are more of technical and business nature than legal. E.g. some creditors fear that for cross-border collections they would have higher ratio of refunds and a more difficult communication with the debtor side. One e-mandate related issue is that some creditors have not updated their software yet to allow for non-domestic IBANs (i.e. there are automatic checks that are tuned only to accept domestic IBANs).

All respondents confirmed that currently for authentication and authorisation there are no additional requirements in the national law on top of the Payment Services Directive (PSD) and EU e-signature directives. The only observed difference in the national legal requirements was related on the storing of electronic mandates or evidence of authorisation (i.e. minimum time periods and technical requirements for storing documents signed with e-signatures). To sum up, based on the feedback received legal requirements on debtor authentication and mandate authorisation, nor the national legal frameworks do not seem to be the key barriers preventing the cross-border use of electronic mandates used for SEPA Direct Debits.

Regarding e-mandate service providers the following categories were cited: four-corner EPC SDD (Core) Rulebook Annex VII compliant solutions; umbrella services provided to creditors and creditor PSPs; third party three and two-corner solutions (not involving the debtor PSP); creditors' own two corner solutions. The survey also confirmed the results on the variety of existing and planned solutions of the previous EPC's survey (2013). The national solutions differ to a great extent and many 2-, 3-corner solutions used in the online space do not enable the creditor to prove that the authorisation was actually given by the holder of the account.

Based on the service provider's replies the two theoretical steps (customer authentication and mandate authorisation) are not always separated in practice. However, the distinction becomes important as many e-mandate providers (especially in 2- and 3-corner solutions) only provide mandate authorisation service to creditors but leaves the authentication (identification) of the customer to the creditor. In most cases the e-mandate service provider issues a certificate on the mandate and stores data related to the authorisation of the mandate (e.g. IP-address, token, registration, phone number, time stamps, etc.). Unfortunately in most of two- and three-corner solutions used for online or one-off transactions (due to proper debtor authentication and mandate authorisation) the creditor is not in the position to prove to the debtor PSP that the authorisation was given by the account holder.

In the following a summary of different means of customer authentication and mandate authorisation is provided.

Means of customer authentication	Means of mandate authorisation
a) Debtor bank online banking service (4-corner models)	a) Two factor authorisation provided by debtor bank (4-corner models involving debtor banks)
b) Advanced (including qualified) electronic signature based on existing e-identity solution (not involving the debtor bank)	b) Advanced electronic signature (use of PKI certificate issued by third party)
c) Use of special existing third-party identification service (e.g. national e-ID, TGIC-registration, DE-mail, Deutsche Post Post-Ident service, etc.) at the national level	c) Other simple electronic signature solutions: – Voice (telephone) authorisation – Simple 1 'click' solutions (giving IBAN and pressing webpage button)
d) Reliance on 'trial' transactions in an existing payment scheme (e.g. credentials directly communicated to the account holder via a trial payment transaction)	– Creating and transmitting electronic image of hand signature
e) Reliance on creditors' own solution for existing and already identified customers and issued credentials	– One-time password sent by SMS or email (based on customer giving phone number / email address when registering on website)
f) No customer authentication	

The survey revealed that most e-mandate solutions are technically available for cross-border use and the service providers already operating on a cross-border basis do not report major practical problems. Most reported e-mandate solutions are not focusing on a particular national market and are / would be available for cross-border use. However, in case the creditor wants to make use of remote strong customer authentication its options seem very limited with 2- or 3-corner solutions. In addition there seem to be no working interoperability arrangement in practice, but most solutions indicated that they would be open to interoperability arrangements. It was noted that EPC SDD (Core) Rulebook Annex VII compliant 4-corner e-mandate solutions could relatively easily be made interoperable with each other.

Based on the analysis before, discussions in the ERPB E-mandate WG and the results of the public survey there were a number of barriers related to electronic mandates identified and confirmed. The report will concentrate on the following barrier groups:

- d) different interpretations and understanding of definition and legal validity of e-mandates
- e) lack of clarity on responsibilities and liabilities of different stakeholders and trust in cross-border use;
- f) technical interoperability and pan-European reachability issues on a cross-border level for e-mandates and e-signatures.

Annex 2 (B). Questionnaire of the public call on issues with pan-European use of electronic mandate solutions

ALL RESPONDENTS

Information on replying entity
1. Name:
2. Category of entity: (<i>electronic mandate service provider, debtor payment service provider, creditor payment service provider, debtor, creditor</i>):

(A) NATIONAL RETAIL PAYMENT COUNCILS / FORUMS AND PAYMENT SERVICE USERS (E.G. DEBTORS; CREDITORS – BIG BILLERS, E-MERCHANTS)

General issues identified with cross-border and pan-European usage of electronic mandate solutions in SEPA. (e.g. as a debtor wanting to use SDD in a foreign country or as a creditor wanting to use SDD for collecting funds from a payer using a foreign IBAN)
<p>3. Creditor side</p> <p><i>General questions</i></p> <ul style="list-style-type: none"> a) Do you use an electronic mandate solution? b) If so, what solution do you use? c) If not, what are the obstacles that prevent you from using an electronic mandate solution (e.g. legal uncertainty, lack of a business case, including cost recovery aspects, lack of an electronic mandate solution functioning with the communication channel used (e.g. telephone), etc.)? <p><i>In case the respondent sends cross border direct debit collections to foreign debtors in the SEPA area:</i></p> <ul style="list-style-type: none"> d) Do you use an electronic mandate solution for your foreign debtors in the SEPA area? e) If so, what solution do you use? f) If not, what are the obstacles that prevent you from using an electronic mandate solution for these foreign debtors (e.g. legal uncertainty, lack of EU legal background, lack of a business case, including cost recovery aspects, financial risks, etc.)? How can foreign debtors then use SDD in electronic channels? g) Are there any other issues preventing the use of cross-border electronic mandate solutions that you would like to point out? <p>4. Debtor side</p> <ul style="list-style-type: none"> a) Are you aware that SDDs can be used with the domestic payment account throughout SEPA? For using that, do you need cross-border electronic mandate solutions to sign mandates issued by foreign creditors? b) In your country, are debtors able to use <u>the protective measures stated in the SEPA regulation for direct debit transactions</u>? (e.g. set limits/periodicity; white/black lists; ask for one by one verification of direct debit transactions by the debtor bank) c) Please describe what you as a debtor perceive as key issues / barriers in not using or wanting to use electronic mandate solutions for cross-border SEPA direct debits at the pan-European level: <p>5. National retail payments council/forum side</p> <ul style="list-style-type: none"> a) How is the authentication of the debtor and authorisation of an electronic mandate regulated in the national legislation? Are there obstacles in accepting electronic mandates from foreign countries? b) Are there any legal or business obstacles, which prevent payment service users from other EEA countries to use SDDs for paying invoices (debtor side) or collecting funds (creditor side)?

(B) PAYMENT SERVICE PROVIDERS OR THIRD PARTY (ELECTRONIC MANDATE) SERVICE PROVIDERS

<i>Information on electronic mandate solution provided / planned to be provided</i>
6. Name of solution(s)
7. Short description of solution(s)
8. Type of electronic mandate model used (2-, 3- or 4-corner):
9. Type of authorization process used for the signing of an electronic mandate (e.g. advanced electronic signature, qualified electronic signature, any other, please specify). If applicable, type of customer authentication method used (strong, alternative, any other, please specify)
10. Please explain how Creditors can provide the necessary proof that an electronic mandate has been properly issued and electronically signed by the debtor (account holder) on request (e.g. as part of a refund request for a non-authorised transaction)
11. Explain the involvement of payment service providers (if applicable)
12. Is the solution open for use by multiple creditors or is it operated by / serves only one creditor?
<i>Cross-border availability of electronic mandate solution</i>
13. Is the electronic mandate solution focused on only one national market (if yes, which one)?
14. Is the electronic mandate solution available for cross-border use? (<i>i.e. the creditor and the debtor has their payment accounts in two different countries within SEPA</i>)
15. If cross-border usage is not available, why not? (<i>e.g. legal uncertainty, lack of solution for debtor authentication, differing market practices, language barriers, higher cost of international outreach, including cost recovery aspects, any other, please specify</i>)
<i>Interoperability of electronic mandate solution(s)</i>
16. Explain whether and how the solution is interoperable with other electronic mandate solutions? (<i>e.g. a debtor using the solution can issue a mandate to a creditor using another solution</i>)
17. Would interoperability of the electronic mandate solution with other solutions be feasible? What are the main issues?

Annex 3. General description of the liabilities and interests of the stakeholders

Creditors are in any case responsible for the validity of the mandate because Debtors (payers) can always decide during 13 months to claim funds back in the case of “weak” mandates (in the event of unauthorised transactions). Via the SDD scheme the creditor will then be re-debited the amount of the underlying collection.

In general the Creditors have different interests depending on their position towards the Debtor or on type of sector they work in. The Creditor has to fully understand the risk model, operate a risk management system and basically make a decision whether there is a business case of offering SDDs in the online environments. The Creditor might need also some knowledge about the payer’s identity in order to apply proper risk factors (if needed). Based on the involved risks and cost/income ratio they may decide which authorisation or electronic signature methods they are willing to use. This should require of course an agreement with the PSP. The cost recovery of investments for the mandate authorization procedure, risk management system and potential payment defaults has to be part of the Creditor’s cost structure. If the probability of high rate of refunds is low, it is unlikely that the Creditor is willing to invest in more expensive e-mandate solutions. Therefore if the PSP poses too high (expensive) requirements for e-mandates, the Creditor is likely to choose another payment

instrument to suffice its needs or may search for another PSP. Here the PSPs are in a good place to come up with and offer/mediate to the Creditors a “simple-ready-to-use” authentication/authorisation service if available. On the national levels there are good practices (e.g. in the Nordics and Baltics), but on the cross-border level there is a need for more cooperation of course there are solutions taking off.

Creditor PSPs can elaborate offers towards the Creditors in order to ensure that the mandate elements are provided in the right way and also offer electronic signature solutions, if available. Because the PSP has financial risks in case of refunds, the PSP calculates and mitigates the credit risk associated with a particular Creditor. To reduce the risk involved Creditor PSPs could define specific requirements on electronic mandate solutions and the involved methods for electronic signature to Creditors (e.g. based on “comply or explain” principle). There should be an agreement between the Creditor and its PSP which e-mandate solution and the method of e-signature is used, otherwise Creditor PSPs are not able to appropriately manage the credit and operational risk involved in direct debits.

Debtor PSPs in the case of a refund request of the debtor finally decides if it considers that a transaction under a specific mandate has been authorised or not. If the Debtor PSP is involved in the mandate authorisation then there is no question in the validity of the mandate. But for all other cases to validate electronic mandates the Debtor PSP needs an easy to implement verification process – the understanding the proof provided by the Creditor is key in making the right decision. Investments in the infrastructure are hard to recover, if the implementation of a new model is necessary.

The Debtor PSP is also in the position to offer additional security for the Debtor, e.g. visibly displaying (notification in the internet bank) that a direct debit collection from a certain creditor is about to be debited. Based on that and if needed in the market (by the Debtors) PSPs could have in place solutions as a layer of additional security enabling to ask the Debtor beforehand to confirm the cross-border. Customers’ behaviour cannot be changed overnight the service providers should be flexible.

Debtors are protected by the legal regime in place. For the first eight weeks they have the right to ask the funds back from the Debtor PSP, there are no questions asked whether the e-mandate was valid or not. Of course this doesn’t free the Debtor from the underlying business agreement and obligations with the Creditor. After that there is a 13-month refund right for unauthorised transactions where the proof of a legally valid e-mandate is the basis for the decision of the Debtor PSP whether to approve or refuse the refund request.

Additionally according to the regulation 2012/260/EU the Debtor has the right to block or restrict direct debit payments by setting limits or specifying black/white lists of Creditors.

Annex 4. List of participants of the ERPB E-mandate Working Group

Institution	Category	Name of the participant
EPC	Co-chair	Mr. Francis De Roeck
Ecommerce Europe	Co-chair	Mr. Paul Alfing
ESBG	Member	Mr. Roland Flommer
EuroCommerce / ERRT	Member	Mr. Hans Rainer van den Berg
BEUC	Member	Mr. Farid Aliyev
EPIF	Member	Ms. Katja Lehr
EMA	Member	Mr. Thaer Sabri
EACT	Member	Mr. Massimo Battistella
EACB	Member	Mr. Eric Véronneau
EPC	Member	Mr. Séraphin Tsete
EBF	Member	Mr. Marcus Nasarek
Ecommerce Europe	Member	Mr. Josep Bernat
National Public Authorities	Member	Mr. Michael Taggart
Banco de Espana	National Central Bank	Ms. Ana Fernández
De Nederlandsche Bank	National Central Bank	Mr. Rein Kieviet
Banque de France	National Central Bank	Mr. Paul Capocci
Banca d'Italia	National Central Bank	Ms. Daniela Laudonia
European Central Bank	Secretariat	Mr. Rainer Olt