

SEPA FIXED AMOUNT DIRECT DEBIT RULEBOOK

EPC Consultation

BEUC Response

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Summary

- The SEPA Fixed Amount Direct Debit Rulebook adopted by the European Payments Council December Plenary, limits consumers' refund rights with SEPA direct debit.
- The proposal of this new rulebook was made by the Dutch banking community.
- BEUC does not see the benefit of expanding a specific national system to the rest of the SEPA countries. Consumers must have an unconditional refund right with SEPA direct debit, as provided for in the Core SEPA Direct Debit Rulebook.
- BEUC has striven for a long time now to achieve better protection for consumers with SEPA direct debit. Adoption of the new rulebook would decrease consumer confidence in SEPA direct debit and endanger the whole SEPA project. We strongly believe that the EPC will respond to the consumer requests beginning with cancellation of the Fixed Amount Direct Debit Rulebook.

BEUC does not see the benefit of expanding a specific national system to the rest of the SEPA countries. The proposal of non-refundable direct debit was made by the Dutch banking community under the pretext that such mandates are used in the Netherlands for specific purchases consumed immediately by buyers (e.g. lotteries) to the satisfaction of consumers and banks alike. One should not omit the tradition of good cooperation that exists in the Netherlands between all stakeholders, which is far from being the case in a majority of Member States.

At the same time, in some other countries services/goods that are consumed immediately are sold using the mandate granting unconditional refund right to consumers. As far as we know, such a system functions well in Germany in the lottery business. Normally, if a service/good is consumed, the consumer will not ask for a refund. The rejectability of the payment does not affect the legal obligation to pay. It is rather the matter of consumer trust towards the direct debit service.

Implementation of article 62¹ of the PSD does not require a specific SEPA Direct Debit rulebook. In case of dispute, only a court can decide how this article must be interpreted and applied to a specific case.

¹ Article 62 of the PSD :
Refunds for payment transactions initiated by or through a payee:
1. Member States shall ensure that a payer is entitled to a refund from his payment service provider of an authorised payment transaction initiated by or through a payee which has already been executed, if the following conditions are met:
(a) the authorisation did not specify the exact amount of the payment transaction when the authorisation was made; and
(b) the amount of the payment transaction exceeded the amount the payer could reasonably have expected taking into account his previous spending pattern, the conditions in his framework contract and relevant circumstances of the case.
At the payment service provider's request, the payer shall provide factual elements relating to such conditions.
The refund consists of the full amount of the executed payment transaction.
For direct debits the payer and his payment service provider may agree in the framework contract that the payer is entitled to a refund from his payment service provider even though the conditions for refund in the first subparagraph are not met.

The SEPA Fixed Amount Direct Debit Rulebook may directly limit consumer rights: Consumers will not be entitled to a refund even if their creditors do not deliver. This is particularly relevant for ongoing services contracts and pieces of goods delivered separately. For example, in case of breakdown of Internet access due to the Internet provider, the consumer will not be entitled to be reimbursed and will be obliged to pay him until he withdraws his consent in accordance with article 54 (3): *"3. Consent may be withdrawn by the payer at any time, but no later than the point in time of irrevocability under Article 66. Consent to execute a series of payment transactions may also be withdrawn with the effect that any future payment transaction is to be considered as unauthorised. (...) The procedure for giving consent shall be agreed between the payer and the payment service provider." The PSD does not prevent banks from charging consumers for such request.*

The banking community has sought to convince us that the use of the new Rulebook will be limited to specific businesses (e.g. lotteries). However, there is no safeguard against potential abuse on behalf of unscrupulous creditors in certain SEPA countries. Some unfair traders who want to be sure to be paid at any price (see commercial practices in door-to-door selling) may ask consumers to sign mandates with fixed amounts, among various papers. Consumers will realise they have lost their refund right only if they had not been delivered.

Furthermore, consumers will never know in advance which bank has adhered to the Fixed Amount SDD Rulebook and consequently which creditors use it. According to art. 62 (1) of the PSD, *"For direct debits the payer and his payment service provider may agree in the framework contract that the payer is entitled to a refund from his payment service provider even though the conditions for refund in the first subparagraph are not met"*. How many consumers are really able to detect such provision in their framework contract and its impact? How many consumers are really able to ask their bank to cancel such a provision?

Besides, it sounds quite strange that the EPC have adopted the new Rulebook before defining the scope of its application (this is an objective of the present consultation) and analysing its impact in case of abuse by unfair traders. By adopting a specific SDD Rulebook, even if it is optional, the EPC has opened a Pandora's box.

The way the EPC plenary adopts its decisions make us question the legitimacy of those decisions. The EPC explains the adoption or rejection of any particular suggestion by the fact that the suggestion did/did not receive sufficient support from the banking communities represented in the EPC.

2. However, for the purposes of point (b) of the first subparagraph of paragraph 1, the payer may not rely on currency exchange reasons if the reference exchange rate agreed with his payment service provider in accordance with Articles 37(1)(d) and 42(3)(b) was applied.

3. It may be agreed in the framework contract between the payer and the payment service provider that the payer has no right to a refund where he has given his consent to execute the payment transaction directly to his payment service provider and, where applicable, information on the future payment transaction was provided or made available in an agreed manner to the payer for at least four weeks before the due date by the payment service provider or by the payee.

BEUC has now worked for a long time to ensure better protection for consumers with SDD. While all its requests have been rejected by the banking community, the EPC tends to decrease the consumer protection by adopting a Fixed Amount SDD Rulebook. In turn, consumer confidence risks being undermined which would endanger the whole SEPA project. Furthermore, self-regulation in the area of financial services continues to prove its inconsistency. Financial institutions do not make any effort so that their self-regulatory initiatives work.

We still strongly believe that the EPC will respond to the consumer requests, beginning with cancellation of the Fixed Amount SDD Rulebook. Consumers must have an unconditional refund right with SDD, as provided for in the Core SDD Rulebook.

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