

Proposal for a
REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
Establishing technical requirements for credit transfers and direct
debits in euro and
AMENDING REGULATION (EC) No 924/2009

BEUC position

Contact: Anne Fily & Farid Almiyev – financialservices@beuc.eu
Ref.: X/2011/032 - 17/03/11

BEUC, the European Consumers' Organisation
80 rue d'Arlon, 1040 Bruxelles - +32 2 743 15 90 - www.beuc.eu

Summary

BEUC welcomes the European Commission proposal for a Regulation establishing technical requirements for credit transfers and direct debits in euro. We are generally satisfied with the content of the Commission text which takes into account many consumer demands and should contribute towards reassuring consumers, in particular with regard to SEPA Direct Debits.

BEUC supports the principle of two separate end-dates. While migration from national credit transfer to SEPA Credit Transfer poses few problems for European consumers, features of the SEPA direct debit (its safety and price) need to be improved. The Commission text brings the following improvements:

- *SEPA Direct Debit safety* (Annex, paragraph 3, points (c) and (e)). The Consumer would have the possibility to instruct his bank to limit a direct debit collection to a certain amount or periodicity, or both; instruct his or her payment service provider (bank) to block any direct debits to the payer's account or to block any direct debits coming from one or more specified payees or to authorise direct debits only coming from one or more specified payees.
- *SEPA Direct Debit pricing* (Article 6). BEUC welcomes the Commission proposal that opts for R-fees when the payment order is rejected, refused, returned or reversed (R-transactions).

BEUC suggestions for further improvements are as follows:

- *Refund right (SEPA Direct Debit)*. Paragraph 3(d) of Annex needs to be amended as it does not comply with Article 62 of the Payment Services Directive. The right to a refund is not granted by the payee and therefore cannot be excluded by the payee.
- *SEPA Direct Debit pricing*. Amendments (a-bis), (a-ter) and (a-quaer) are proposed by BEUC to Article 6 in order to protect the consumer from being mistakenly held responsible for R-transactions that he/she has not caused.
- *The use of IBAN and BIC* as the only possible identifiers should be reviewed.
- *Tools facilitating the use of IBAN and BIC* by consumers using paper direct debits and credit transfers are necessary.

The creation of an Internal Market for payments in euro (Single Euro Payments Area or SEPA) is regularly presented as a project comparable to the introduction of the Euro currency in 2002. Its aim is to replace the current electronic payment instruments, which very often can only be used at national level, with payment services to be used both at national and cross-border level in 32 European countries for all Euro payments.

This project was not particularly demanded by consumers: with or without SEPA, the bulk of their payments will continue as before within their national territory. The lack of EU-wide credit transfers and direct debits has never been an issue for most consumers.

In order to convince consumers to exchange their national payment services for SEPA payment instruments, they should be convinced that these new services will be reliable, efficient and cheap.

Although it is obviously too early to determine if consumers will take real advantage of SEPA, the proposal for a Regulation on credit transfers and direct debits should contribute towards reassuring them. This is why BEUC is generally satisfied with the content of this text which takes into account many consumer demands.

In addition, with this text SEPA is expanding beyond the banking sector area to finally become a general interest project. Launched by the banking industry through the European Payments Council (EPC), the SEPA Credit Transfer and Direct Debit scheme was not initially designed to come up to users' expectations. As acknowledged by the European Parliament, Council and Commission¹, the EPC has been unable to offer SEPA payment services of sufficient quality to gain users' support. The numerous suggestions made by BEUC and by other payment service users' representatives², notably in order to improve direct debits use and safety, have been neglected by the EPC.

Proposal for a Regulation: Key points for consumers

1. Migration end-dates for credit transfers and direct debits / IBAN & BIC

BEUC supports the principle of two separate end-dates. Migration from national credit transfer to SEPA credit transfer poses few problems for European consumers as credit transfer is a payment service similar in almost all Europe. Moreover, it is already known by an increasing number of European consumers as it entered the market much earlier than SEPA direct debit.

¹ See the ECOFIN Council Conclusions of 2 December, 2009 on SEPA, the European Parliament Resolution of 3 March, 2010 on the Implementation of SEPA and the joint European Commission/ECB letter to the EPC of 10 March 2010.

² The Payment Systems End-Users' Committee (EUC) includes the following organisations: BEUC, EACT, EuroCommerce, UEAPME, CEA, EMOTA, and FAEP.

However, the migration end-date for credit transfers still needs to take into account that some Member States are far less advanced, in comparison with others, in the implementation of SEPA. For example, IBAN and BIC identifiers³ are totally unknown by consumers in some countries like in Germany.

The use of BIC for national payments should be reconsidered as well: if the elements contained in IBAN make it possible to execute payments properly (i.e. identify the bank and account number), then BIC should not be used at national level.

It is thus regrettable that the Regulation refers to IBAN and BIC as the only possible identifiers. The Payment Services Directive does not mention them. Although it might be difficult to provide an alternative to these identifiers in the short term, it should be possible to provide other more appropriate and also shorter⁴ identifiers in the future.

In the meantime, and in order to facilitate the use of these identifiers and avoid data capture mistakes, tools should be provided for all interested consumers. Some measures have been put in place by the banking industry in different countries to help consumers, e.g. automatic conversion of BBAN to IBAN or the possibility to automatically save the payee's IBAN and BIC for electronic recurrent payments.

The development of similar tools by banks in order to help their customers using paper credit transfers and direct debits (elderly people or people with no access to online banking) is necessary.

However, migration from national to SEPA direct debit is a much more substantial change for most European consumers (see below). Before talking about an end-date, direct debit features should be improved. Only after this, can a migration end-date be envisaged.

2. SEPA Direct Debit safety

The issue of SEPA direct debit safety is crucial for strengthening consumers' confidence in this payment service.

National direct debits vary considerably from one Member State to another. Two main models exist:

- A 'CMF' (creditor-driven mandate flow), which provides that the mandate is stored with the creditor. It is the unique model in 4 European countries⁵;
- A 'DMF' (debtor-driven mandate flow), which provides that the mandate stays with the debtor's bank. It is the unique model in 8 European countries⁶

The two models co-exist in nine countries⁷.

³ IBAN: International Bank Account Number/Code BIC: Bank Identification Code.

⁴ Some IBAN may have 34 characters.

⁵ Germany, Spain, Netherlands and the UK (Cf. the second annual progress report on the state of SEPA migration in 2009, European Commission, 9 November, 2009).

⁶ Finland, Greece, Malta, Slovenia, Slovakia, Hungary, Latvia and Lithuania.

⁷ Austria, Belgium, France, Italy, Portugal, Denmark, Estonia, Poland and Sweden.

The EPC has unilaterally decided that the SEPA model would be based on CMF without allowing the end-users to express their views. Yet, although this model has given satisfaction in the countries where it is currently used and where the reliability of creditors and payment service providers is high, it carries more risks in terms of safety.

With the CMF model, the consumer's bank (i.e. debtor's bank) does not have control over the mandate, so the risk of fraud is higher. For instance, a recent report⁸ on the UK market shows that during 2010 alone, 26,000 Britons found fraudsters taking out regular direct debit payments in their name, with an average of £540 (€643) going missing before they noticed and stopped it.

Until now, money could be debited from a consumer's account only on national territory. With the 'reachability' obligation, every bank account becomes reachable from anywhere. It increases the risk of fraud by unscrupulous creditors who will only need to draw false mandates, based on real consumers' bank data, to debit unduly.

This risk can seriously damage consumers' confidence in SEPA direct debits. When a consumer entrusts his money to his bank, he expects his bank account to be protected from any intrusion. Although the Payment Services Directive provides the consumer with the right to a refund of monies fraudulently debited from his account within a period of 13 months⁹, it is necessary to provide measures which seriously prevent the risk of fraud. A fraudulent direct debit carried out when it is more difficult for a consumer to reach his bank account (e.g. holidays, hospitalisation) or from the account of a consumer who can only check his transactions once a month because he only has access to monthly paper-based account statements (e.g. elderly, vulnerable households, areas without internet), can seriously put the affected consumer's finances in difficulties and prevent payment of recurrent invoices, repayment of credit, etc...

The proposal for a regulation provides a number of measures which should give consumers more control over their bank accounts.

BEUC notably supports the measures (see Annex, paragraph 3, points (c) and (e)) which allow the consumer to instruct his bank to:

- limit a direct debit collection to a certain amount or periodicity, or both;
- instruct his or her payment service provider (bank) to block any direct debits to the payer's account or to block any direct debits coming from one or more specified payees or to authorise direct debits only coming from one or more specified payees.

However, point (d) which deals with cases where the right to a refund would not be possible, needs to be amended as it does not comply with Article 62 of the Payment Services Directive. The right to a refund is not granted by the payee and therefore cannot be excluded by the payee.

⁸ 'The UK's real identity fraud crisis: The rise in fraudulent direct debit payments', Centre for Economic and Business Research Ltd., a report for LV, October 2010.

⁹ Even if fraudulent payments are exempted from the refund rule of 8 weeks, giving back a payment after this period will take time, as it is already the case in Germany.

Point (d) should be written as follows:

“Where the **framework** agreement between the payer (*consumer*) and ~~the payee~~ **his or her payment service provider** (*his or her bank*) excludes the right to a refund, the payer’s payment service provider shall, ~~at the payer’s request~~, check each direct debit transaction, to see whether the amount of the submitted direct debit transaction is equal to the amount agreed in the mandate, before debiting the payer’s account, based on the mandate-related information.”

3. Communication of personal data in a credit transfer

Paragraph 2(d) of the Annex provides that the following data elements shall be provided by the payer to his or her payment service provider and passed along the payment chain to the payee (this is in accordance with the obligations laid down in the national law implementing Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and the free movement of such data):

- (i) the name of the payer and/or the IBAN of the payer’s account;
- (ii) the amount of the credit transfer;
- (iii) the IBAN of the payee’s account;
- (iv) the name of the payee;
- (v) the remittance information, if any.

In some European countries, the bank account number is considered as particularly sensitive personal data and can be communicated to a third person only in a restricted way. Contrastingly, in other countries, the account number can be read on the debit cards and is easily communicated.

Given the risk of fraud mentioned above, BEUC is of the opinion that the IBAN of the payer should never be communicated to the payee automatically and without the payer’s consent.

4. Interchange fees for direct debit transactions

Defining the most appropriate business model is not the role of consumer organisations.

However, consumer organisations are in favour of transparent systems where the consumer would be aware of the amount he pays directly or indirectly and of the services provided in exchange for his payment(s).

The system of multilateral interchange fees (MIFs) per transaction proves to be highly untransparent and misleading for the consumer who ignores the amount of these fees, sometimes too high in comparison with transaction actual costs, and that these fees are passed on to the pricing of products and services.

The fact that MIFs per transaction only exist in six EU Member States shows that direct debit is viable by other means.

Therefore, BEUC welcomes the Commission proposal that opts for R-fees when the payment order is rejected, refused, returned or reversed (R-transactions). In order to protect the consumer from being mistakenly held responsible for R-transactions that he/she has not caused¹⁰, article 6 should be amended as follows (see (a-bis), (a-ter) and (a-quater)):

Article 6

Interchange fees for direct debit transactions

1. Without prejudice to paragraph 2, no multilateral interchange fee per direct debit transaction or other agreed remuneration with an equivalent object or effect shall apply to direct debit transactions.
2. For direct debit transactions which cannot be properly executed by a payment service provider because the payment order is rejected, refused, returned or reversed (R-transactions) carried out by payment service providers, a multilateral interchange fee may be applied provided that the following conditions are complied with:
 - (a) the arrangement shall be aimed at efficiently allocating costs to the party that has caused the R-transaction, while taking into account the existence of transaction costs and the aim of consumer protection;
 - (a-bis) Consumers shall be charged only in case of insufficient funds on their accounts at the time the direct debit payment is due;**
 - (a-ter) In all other cases the R-fee shall be paid by the payee. If applicable, the problem shall be solved between the payer and the payee, and/or between the payer's bank and the payee's bank if they have caused the R-transaction (error);**
 - (a-quater) The payee, the payee's bank or the payer's bank shall not be allowed to pass on the payer fees for R-transactions not caused by the payer;**
 - (b) the fees shall be strictly cost based;
 - (c) the level of the fees shall not exceed the actual costs of handling an R-transaction by the most cost-efficient comparable payment service provider that is a representative party to the multilateral arrangement in terms of volume of transactions and nature of services;
 - (d) the application of the fees in accordance with points (a), (b) and (c) shall prevent the payment service providers to charge additional fees related to the costs covered by these interchange fees to their respective payment service users;

¹⁰ Our German member VZBV proposes the following amendments to Article 6:

(a) R-Fees can only be collected by payment providers from the party that initiated the direct debit i.e. the payee exclusively. The payer must never be charged by the payment service providers.

(a-bis) This provision does not prejudice any agreement between the payer and the payee on the final burden of the cost.

- (e) there must be no practical and economically viable alternative to the collective agreement which would lead to an equally or more efficient handling of R-transactions at equal or lower cost to consumers.

For the purposes of the first subparagraph, only cost categories directly and unequivocally relevant to the handling of the R-transaction shall be considered in the calculation of the R-transaction fees. These costs shall be precisely determined. The breakdown of the amount of the costs, including separate identification of each of its components, shall be part of the collective agreement to allow for easy verification and monitoring.

- 3. Paragraph 1 and the conditions set out in points (a), (b) and (d) of paragraph 2 shall apply also to bilateral and unilateral arrangements that have an equivalent object or effect.

END