

EPC Clarification Paper on the Use of Electronic Mandate Solutions

1. Aim of the document

The purpose of this paper is to clarify some implications of the use of electronic mandate solutions for the creditor and the debtor for purposes of direct debit collections under the SEPA Direct Debit Schemes ('SDD Schemes') and the possible risks for the creditor in the event that he/ she is unable to prove that a legally binding electronic signature was used. In the event of the debtor's claim that there was an unauthorised SDD collection, it is the debtor bank that has the final say in the assessment of the validity of an SDD mandate.

2. EU legislation with respect to mandates

The efficient handling and the acceptance of electronic mandates are very important elements for the successful use of SEPA Direct Debits (SDD).

The Payment Services Directive (PSD)¹ and the SEPA Regulation² (EU 260/2012) do not specify *how* a mandate should be signed by the payer (debtor). This varies based on business practices in the EU member states and is subject to the relevant national legislation.

Article 54 of the PSD prescribes that the Member States shall ensure that a payment transaction is considered to be authorised only if the payer has given consent to execute the payment transaction. The consent to execute a payment transaction or a series of payment transactions shall be given in the form agreed between the payer and his payment service provider.

With the EPC SDD Core scheme and the SDD Business-to-Business (B2B) scheme being creditor-mandate-flow schemes, the process of issuing and authorising an electronic mandate does not necessarily involve the debtor bank and lies outside of the scope of the EPC SDD schemes.

Article 2 (21) of the SEPA Regulation defines a mandate as “ ‘mandate’ means the expression of consent and authorisation 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;”

It is therefore to be noted that the way a mandate for SDD is validly concluded to allow the settlement for the provision of goods and services via SDD is primarily a matter between the debtor and the creditor based on the contractual provisions with their PSPs. However, the basis for the assessment of the legal

¹ Directive 2007/64/EC on Payment Services in the Internal Market

² Regulation (EU) No 260/2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009

validity (i.e. the form of the consent) in case of a dispute is what was agreed³ between the debtor and the debtor bank.

3. Aspects to be considered about electronic mandate solutions used between the creditor and the debtor

A. Differentiation between the SDD Core and the SDD B2B Scheme

SDD scheme participants and creditors are reminded that for SDD Core transactions, it is always the decision of the debtor bank which is final for all scheme participants in the SDD Core scheme to decide if a direct debit has been authorised or not. Reference is made to the process step PT04-24, the section 5.7 and Annex VI (1) (h) of the SDD Core Rulebook.

The responsibility and the risks are with the creditor bank to pay the amount of each refund to the relevant debtor bank, regardless of the status of the creditor's account or the creditor itself.

However, for SDD B2B transactions the debtor bank is obliged – in accordance with sections 4.2 and 5.8 of the SDD B2B Rulebook - to obtain the confirmation from the debtor on the B2B mandate data received before or as part of the first collection presented and before debiting the debtor's account. Furthermore, the debtor bank is obliged in the case of SDD B2B transactions, before debiting the debtor's account, to check, for each collection presented by the creditor Bank, the correlation between the mandate related data part of the collection and the stored mandate data received as part of the confirmation by the debtor described in section 4.1. If no correlation is found between the two sets of mandate data, the debtor bank must act in accordance with the instructions received from the debtor. The responsibility and the risks are consequently - after two interbank business days - for the debtor bank in the SDD B2B scheme in case of any unauthorised transaction.

The EPC also makes reference to document EPC147-14⁴ providing guidance for SDD B2B scheme participants about SDD B2B scheme mandate confirmations.

B. Impact for Creditors

The creditor is always liable for the proof of the validity of the mandate when requested to do so by the debtor bank (through the creditor bank). In the event that the creditor is unable to provide proof of the validity of the mandate it is possible that he would be exposed to a refund claim from the debtor (via the creditor bank).

The creditor should be aware that not all kinds of legally binding methods of signature may allow for easy proof that the mandate has been authorised by the debtor. This remaining risk should be part of the normal business risk analysis of the creditor. If a refund request for an unauthorised transaction has been executed, it remains the free decision of the creditor to take necessary legal action outside of the scope of the SDD Core scheme and claim his contractual rights in accordance with the underlying agreement.

³ Article 54 of the PSD indicates 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.

⁴<http://www.europeanpaymentscouncil.eu/index.cfm/knowledge-bank/epc-documents/guidance-for-sepa-direct-debit-business-to-business-scheme-mandate-confirmations/>



C. Impact for Debtors

Debtors are entitled to request a refund for any SDD Core collection within eight weeks from the date on which the amount of the SDD Core collection was debited from the account of the debtor. Within this eight-week period, refunds will be provided to the debtor by the debtor bank on a no-questions-asked basis.

If the debtor claims that an unauthorised SDD Core collection had taken place, the debtor must present its claim within 13 months of the debit date of the claimed unauthorised direct debit in accordance with article 58 of the PSD.

On the other hand, the SDD Core Rulebook prescribes a specific process (PT-04.20 to PT-04.24 under SDD Core rulebook section 4.6.4) to be respected by the debtor, the debtor bank, the creditor bank and the creditor. As mentioned before, it is always the decision of the debtor bank, which is final for all participants in the SDD Core scheme to decide if a SDD Core collection has been authorised or not.

A refund does not relieve the debtor of its responsibility to resolve any issues in respect of the disputed collection with the creditor, nor does the payment of a refund by the debtor bank prejudice the outcome of such a dispute. Issues in respect of any disputes or discussions between a debtor and a creditor in relation to a collection are outside the scope of the SDD Core scheme.

Creditor banks and debtor banks are encouraged to communicate the above explanations to their respective payment service users.