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Amendments Proposed by EPC - Update March 2011

Regulation of the European Parliament and of the Council establishing technical requirements for credit transfers and direct debits in euros and amending Regulation (EC) No 924/2009

Proposed amendments of the regulation text are marked as follows: Additions / ~~Deletions~~

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1. INTRODUCTION

This document (EPC467-10) details the amendments suggested by the European Payments Council (EPC) to the proposal for a Regulation of the European Parliament and of the Council establishing technical requirements for credit transfers and direct debits in euros and amending Regulation (EC) No 924/2009 published on 16 December 2010 (hereinafter referred to as the "Proposal").

Version 1.0 of these detailed EPC comments on the Proposal was first published in February 2011. Version 2.0 of these detailed EPC comments on the Proposal is published in March 2011.

Following further evaluation of the possible implications of the Proposal on the SEPA Direct Debit business model, the EPC Plenary at its meeting on 23 March 2011 adopted the position

- **that Article 6 (and related articles and recitals) should be removed from the Proposal, and**
- **that the 'November 2012' date mentioned in Regulation (EC) No 924/2009 should be removed from that Regulation.**

A summary of the arguments supporting the EPC position with regard to Article 6 of the Proposal is included in our comments on this article below.

The executive summary of the EPC comments on the Proposal is made available in a separate document (EPC468-10 enclosed). This executive summary has been updated to reflect the EPC position on Article 6 taken at the 23 March 2011 EPC Plenary meeting.

2. RECITALS – PROPOSED AMENDMENTS

The comments below only address those Recitals proposed in this Regulation which, in the view of the EPC, require amendments.

Text	Proposed Amendments and Supporting Arguments
Recitals	
(1) The creation of an integrated market for electronic payments in euros, with no basic distinction between national and cross-border payments is necessary for the proper functioning of the Internal Market. To this end, the Single Euro Payments Area (hereinafter 'SEPA') project aims to develop common Union-wide payment instruments to replace current national payment instruments. As a result of the introduction of open, common payment standards, rules and practices, and through integrated payment processing, SEPA should provide Union citizens and businesses with secure, competitively priced, user-friendly, and reliable payment services in euros. Completing SEPA should also create favourable conditions for increased competition in payment services and for the unhindered development and swift, Union-wide implementation of payments-related innovations. Consequently, as a result of improved economies of scale, increased operating efficiency and strengthened competition, electronic payment services in euros should create a best-of-breed basis downward price pressure. The effects of this should be significant, in particular in Member States where payments are, comparatively speaking, relatively expensive. The transition to SEPA should therefore not be accompanied by overall price increases for payment service users in general and for consumers, in particular.	**Recital (1) should be amended as follows:** **(1)** The creation of an integrated market for electronic payments in euros, with no ~~basic~~ distinction between national and cross-border payments is necessary for the proper functioning of the Internal Market. To this end, the Single Euro Payments Area (hereinafter 'SEPA') project aims to develop common Union-wide payment ~~instruments~~ services to replace current national payment ~~instruments~~ services. As a result of the introduction of open, common payment standards, rules and practices, and through integrated payment processing, SEPA should provide Union citizens and businesses with secure, competitively priced, user-friendly, and reliable payment services in euros. Completing SEPA should also create favourable conditions for increased competition in payment services and for the unhindered development and swift, Union-wide implementation of payments-related innovations. Consequently, as a result of improved economies of scale, increased operating efficiency and strengthened competition, electronic payment services in euros should create a best-of breed basis downward price pressure. The effects of this should be significant, in particular in Member States where payments are, comparatively speaking, relatively expensive. The transition to SEPA should therefore not be accompanied by overall price increases for payment service users in general and for consumers, in particular. **Supporting argument for proposed amendment of Recital (1):** The term 'payment instruments' should be replaced by the term 'payment services' to ensure alignment with the terminology used in the PSD, where 'payment instrument' refers to a 'payment verification instrument'. The same change is suggested in recitals (7), (8) and (16).
(5) In addition, self-regulatory efforts of the European banking sector through the SEPA initiative have not proven sufficient to drive forward concerted migration to Union-wide schemes for credit transfers and direct debits on both the supply and demand sides. Moreover, this self-regulatory process has not been subject to appropriate governance mechanisms, which may partly explain the slow uptake on the demand side. Only rapid and comprehensive migration to Union-wide credit transfers and direct debits will generate the full benefits of an integrated payments market, so that the high costs of running both 'legacy' and SEPA products in parallel can be eliminated.	**Comment on Recital (5):** Self-regulatory efforts by the European banking industry cooperating in the EPC are exclusively aimed at defining the business rules and standards governing the SEPA Schemes and Frameworks and to engage the banking industry in the process of implementing these Schemes and standards. Self-regulation by banks, however, was neither intended nor designed to impose migration to SEPA payment instruments on the demand side.

Text	Proposed Amendments and Supporting Arguments
Recitals	
(6) Rules should therefore be laid down to cover the execution of all credit transfers and direct debit transactions denominated in euros within the Union. However, it is not appropriate at this stage to cover card transactions, since common standards for Union card payments are still under development. Money remittance, internally processed payments, large-value payment transactions between payment service providers and payments via mobile phone should not fall under the scope of those rules since these payment services are not comparable to credit transfers and direct debits.	**Recital (6) should be amended as follows:** Rules should therefore be laid down to cover the execution of all credit transfers and direct debit transactions denominated in euros within the Union. However, it is not appropriate at this stage to cover card transactions, since common standards for Union card payments are still under development. Money remittance, internally processed payments, ~~large-value~~ payment transactions processed via large-value payment systems ~~between payment service providers~~ and payments via mobile phone should not fall under the scope of those rules since these payment services are not comparable to credit transfers and direct debits. **Supporting argument for proposed amendment of Recital (1):** The reference to "large-value payment transactions between payment service providers" needs to be amended to "payment transactions processed via large-value payment systems**"** to support the proposed change to **Article 1(2)(b)**.
(7) Several payment instruments currently exist, mostly for payments through the internet, which also use the international bank account number (IBAN) and the bank identifier code (BIC) and are based on credit transfers or direct debits but which have additional features. These schemes are foreseen to expand beyond their current national borders and could fulfil a consumer demand for innovative, safe and cheap payment instruments. In order not to foreclose such schemes from the market, the regulation on end dates for direct debit and credit transfer should only apply to the credit transfer or direct debit underlying the transaction.	**Recital (7) requires clarification:** Recital (7) requires clarification to facilitate understanding of the meaning of Article 1 paragraph 3: precisely what type of payment instruments' and 'schemes' are referred to? The first sentence of Recital (7) refers to 'payment instruments'; the second sentence refers to 'payment schemes'. The use of the term 'payment instrument' which remains undefined seems to imply a different meaning when compared with its use in the PSD. Such confusion of terminology should be avoided. A definition of the term may need to be inserted. The term 'payment instrument' used in the second sentence should be replaced with the term 'payment services'.

Text	Proposed Amendments and Supporting Arguments
Recitals	
(8) For a credit transfer to be executed, the payee's account must be reachable. Therefore, in order to encourage the successful take-up of these payment instruments, a reachability obligation should be established Union-wide. To improve transparency, it is furthermore appropriate to consolidate that obligation and the reachability obligation for direct debits already established under Regulation (EC) No 924/2009 in one single act.	**Recital (8) should be amended as follows:** For a credit transfer to be executed, the payee's account must be reachable. Therefore, in order to encourage the successful take-up of these payment services ~~instruments~~, a reachability obligation should be established Union-wide. To improve transparency, it is furthermore appropriate to consolidate that obligation and the reachability obligation for direct debits already established under Regulation (EC) No 924/2009 in one single act. **Supporting argument for proposed amendment of Recital (8):** Please refer to our comments on Recital (1) and (7).
(9) Technical interoperability is a prerequisite for competition. In order to create an integrated market for electronic payments systems in euros, it is essential that the processing of credit transfers and direct debits should not be hindered by technical obstacles and should be carried out under a scheme whose basic rules are adhered to by a majority of payment services providers from a majority of Member States and be the same both for cross-border and for purely national credit transfer and direct debit transactions. Where more than one such scheme is developed or where there is more than one payment system for the processing of such payments, these schemes and systems should be interoperable so that all users and payment service providers can enjoy the benefits of seamless euro payments across the Union.	**Recital (9) should be amended as follows:** **(9)** Technical interoperability is a prerequisite for competition. In order to create an integrated market for electronic payments systems in euros, it is essential that the processing of credit transfers and direct debits are not hindered by technical obstacles and should be carried out under a scheme whose basic rules are adhered to by a majority of payment services providers ~~from a majority of~~ across and within all Member States and be the same both for cross-border and for purely national credit transfer and direct debit transactions. Where ~~more than one such scheme is developed or where~~ there is more than one payment system for the processing of such payments, these ~~schemes and~~ systems should be interoperable so that all users and payment service providers can enjoy the benefits of seamless euro payments across the Union. Given the specific characteristics of the business market, whilst any business-to-business direct debit or credit transfer scheme needs to comply with all other provisions in this Proposal, including having the same rules for cross-border and national transactions, the requirement to have participants representing a majority of payment service providers across and within all Member States does not need to apply. **Supporting argument for proposed amendment of Recital (9):** Please refer to our detailed remarks with regard to Article 4 in section 3 below.

Text	Proposed Amendments and Supporting Arguments
Recitals	
(10) It is crucial to identify technical requirements which unambiguously define the features which Union-wide payment schemes to be developed under appropriate governance arrangements have to respect in order to ensure inter-operability. Such technical requirements should not restrict flexibility and innovation but should be open to and neutral towards potential new developments and improvements in the payments market. They should be designed taking into account the special characteristics of credit transfers and direct debits, in particular with regard to the data elements contained in the payment message. They should also contain, especially for direct debits, measures to strengthen the confidence of payment service users in the use of such instruments**.**	**Recital (10) should be amended as follows:** **(10)** It is crucial to identify technical requirements which unambiguously determine the features which Union-wide payment schemes developed or to be developed under appropriate governance arrangements have to respect in order to ensure inter-operability**.** Such technical requirements should not restrict flexibility and innovation but should be open to and neutral towards potential new developments and improvements in the payments market. They should be designed taking into account the special characteristics of credit transfers and direct debits, in particular with regard to the data elements contained in the payment message; however, to allow the market to implement innovative changes to Union-wide schemes in response to market demand and technological progress, technical requirements as specified in the Annex should be restricted to an absolute minimum. ~~They should also contain, especially for direct debits, measures to strengthen the confidence of payment service users in the use of such instruments.~~ **Supporting argument for proposed amendment of Recital (10):** EPC has already developed SEPA Schemes since 2003, the SEPA Credit Transfer (SCT) Scheme was launched in January 2008, the SEPA Direct Debit (SDD) Schemes were launched in November 2009. For specific comments on technical requirements, see our remarks on the Annex (technical requirements) to this Proposal in section 4 below..
(13) Separate migration dates should be set in order to take into account the differences between credit transfers and direct debits. Union-wide credit transfers and direct debits do not have the same level of maturity, since a direct debit is a more complex instrument than a credit transfer and, consequently, migration to Union-wide direct debits requires significantly more resources than migration to Union-wide credit transfers.	**Recital (13) should be amended as follows:** **(13)** ~~Separate~~ One migration date~~s~~ should be set ~~in order to take into account the differences between credit transfers and direct debits.~~ for Union-wide credit transfers and direct debits ~~do not have the same level of maturity, since a direct debit is a more complex instrument than a credit transfer and, consequently, migration to Union-wide direct debits requires significantly more resources than migration to Union-wide credit transfers.~~ **Supporting argument for proposed amendment of Recital (13):** In particular payment service users including businesses and public administrations should be required to engage only once in the implementation effort.

Text	Proposed Amendments and Supporting Arguments
Recitals	
(14) Regulation of multilateral interchange fees (MIFs) for direct debits is essential to create a level playing field between the payment service providers and so to permit the development of a single market for direct debits. Per transaction MIFs for direct debit restrict competition between payees banks and inflate the charges such banks impose on payees and thus lead to hidden price increases to payers. Whilst no or limited objective efficiencies have been demonstrated for per transaction MIFs, such fees for transactions which are rejected, refused, returned or reversed because they cannot be properly executed (R-transactions) could help to allocate costs efficiently within the single market. Therefore, it would appear beneficial for the creation of an effective European direct debit market to prohibit per transaction MIFs. Nevertheless, R-transaction should be allowed, provided that they comply with certain conditions. In any event, rules should be without prejudice to the application of Articles 101 and 102 of the TFEU to multilateral interchange fees for R-transactions	**Recital (14) should be deleted:** ~~(14) Regulation of multilateral interchange fees (MIFs) for direct debits is essential to create a level playing field between the payment service providers and so to permit the development of a single market for direct debits. Per transaction MIFs for direct debit restrict competition between payees banks and inflate the charges such banks impose on payees and thus lead to hidden price increases to payers. Whilst no or limited objective efficiencies have been demonstrated for per transaction MIFs, such fees for transactions which are rejected, refused, returned or reversed because they cannot be properly executed (R-transactions) could help to allocate costs efficiently within the single market. Therefore, it would appear beneficial for the creation of an effective European direct debit market to prohibit per transaction MIFs. Nevertheless, R-transaction should be allowed, provided that they comply with certain conditions. In any event, rules should be without prejudice to the application of Articles 101 and 102 of the TFEU to multilateral interchange fees for R-transactions~~ **Supporting argument for proposed deletion of Recital (14):** See our comments on Article 6.
(15) Therefore, the possibility to apply per transaction MIF for national and cross-border direct debits should be limited in time and general conditions should be laid down for the application of interchange fees for R-transactions.	**Recital (15) should be deleted:** ~~(15)Therefore, the possibility to apply per transaction MIF for national and cross-border direct debits should be limited in time and general conditions should be laid down for the application of interchange fees for R-transactions.~~ **Supporting argument for proposed deletion of Recital (14):** See our comments on Article 6.

Text	Proposed Amendments and Supporting Arguments
Recitals	
(16) In some Member States, there are certain legacy payment instruments which are credit transfers or direct debits but which have very specific functionalities, often due to historical or legal reasons. The transaction volume of such products is usually marginal; they could therefore be classified as niche products. A transitional period for such niche products, sufficiently long to minimise the impact of the migration on payment service users, should help both sides of the market to focus first on the migration of the bulk of credit transfers and direct debits, thereby allowing the majority of the potential benefits of an integrated EU payments market to be reaped earlier.	**Recital (16) should be amended as follows:** In some Member States, there are certain legacy payment <u>services</u> ~~instruments~~ which are credit transfers or direct debits but which have very specific functionalities, often due to historical or legal reasons. The transaction volume of such products is usually marginal; they could therefore be classified as niche products. A transitional period for such niche products, sufficiently long to minimise the impact of the migration on payment service users, should help both sides of the market to focus first on the migration of the bulk of credit transfers and direct debits, thereby allowing the majority of the potential benefits of an integrated EU payments market to be reaped earlier. **Supporting argument for proposed amendment of Recital (16):** Please refer to our comments on Recital (1) and (7).
(22) The Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty in respect of the update of the technical requirements for credit transfers and direct debits.	**Recital (22) should be deleted:** ~~**(22)** The Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty in respect of the update of the technical requirements for credit transfers and direct debits.~~ **Supporting argument for proposed deletion of Recital (22):** Please refer to our detailed comments on Article 5(4).
(26) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data governs the processing of personal data carried out pursuant to this Regulation.	**Comment on Recital (26):** The EPC recommends that a cross-check is undertaken to ensure that Directive 95/46/EC is not violated in relation to personal information that is required to be passed on to the payee under Annex (2b) of this Regulation..
(28) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the action, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives,	**Comment on Recital (28):** It is questionable whether the principle of proportionality is respected with regard to all elements that have been included in the Annex. .

3. ARTICLES – PROPOSED AMENDMENTS

The comments below only address those Articles proposed in this Regulation which, in our view, require amendments.

Text	Proposed Amendments and Supporting Arguments
Articles	
Article 1 *Subject matter and scope* **1.** This Regulation lays down rules for the execution of credit transfer and direct debit transactions denominated in euros within the Union where both the payer's payment service provider and the payee's payment service provider are situated within the Union, or where the sole payment service provider in the payment transaction is located in the Union. **2.** This Regulation shall <u>not</u> [underscore added] apply to the following: (a) payment transactions carried out internally within payment service providers as well as payment transactions between payment service providers for their own account (b) payment transactions processed and settled through large value payment systems for which both the original initiator and the final recipient of the payment is a payment service provider (c) payment transactions through a payment card, including cash withdrawals from a payment account, if they do not result in a credit transfer or direct debit to or from a payment account identified by the basic bank account number (BBAN) or the international account number (IBAN) (d) payment transactions through means of any telecommunication, digital or IT device, if they do not result in a credit transfer or direct debit to or from a payment account identified by BBAN or IBAN (e) money remittance transactions where funds are received from a payer, without any payment accounts being created in the name of the payer or the payee, for the sole purpose of transferring a corresponding amount to a payee or to another payment service provider acting on behalf of the payee, and/or where such funds are received on behalf of and made available to the payee. **3.** When payment schemes are based on payment transactions by credit transfers or direct debits but have additional features, the provisions of this Regulation shall apply only to the underlying credit transfers or direct debits.	**Article 1, paragraph 1 should be amended as follows:** **1.** This Regulation lays down rules for ~~the execution of~~ credit transfer and direct debit transactions denominated in euros within the Union where both the payer's payment service provider and the payee's payment service provider are situated within the Union, or where the sole payment service provider in the payment transaction is located in the Union. **Supporting argument for proposed amendment of Article 1 paragraph 1:** The legislative acts regarding the 'execution' of payments are a matter for the PSD. The scope of Article 1 paragraph 1 is too broad since such a description would also encompass euro payments made via high value systemically important payment systems such as the ECB's TARGET2 and EBA's EURO1. Instead, the focus should be on what we might call 'SEPA-eligible' euro credit transfers and euro direct debits.. **Article 1, paragraph 2 (b) should be amended as follows:** **(b)** payment transactions processed and settled through large value payment systems ~~for which both the original initiator and the final recipient of the payment is a payment service provider~~ **Supporting argument for proposed amendment of Article 1 paragraph 2 (b):** Payment transactions processed and settled through large value payment systems such as TARGET2 have never been within the scope of SEPA and should therefore be excluded from the Regulation. There would be major issues caused by mandating that customer payments in such systems would fall within the scope of the Regulation and need to be executed via XML ISO 20022 at such an early stage. Additionally, for one leg out transactions processing, T2 would still have to support the existing FIN message types, requiring changes to the systems enabling differentiation of such transactions. Participants would be forced to develop the capability to handle a mix of FIN and ISO20022 given that the rest of the world will not move to ISO 20022 in the same time-frame. Maintaining the double messaging formats in the short term will lead to further increases of transaction costs and could also increase the level of operational risk.

Article 2 *Definitions* For the purposes of this Regulation, the following definitions shall apply: (1) 'credit transfer' means a payment service for crediting a payee's payment account, where a payment transaction or a series of payment transactions is initiated by the payer on the basis of the consent given to his payment service provider (2) 'direct debit' means a payment service for debiting a payer's payment account, where a payment transaction is initiated by the payee on the basis of the payer's consent (3) 'payer' means a natural or legal person who holds a payment account and allows a payment order from that payment account (4) 'payee' means a natural or legal person who is the intended recipient of funds which have been the subject of a payment transaction (5) 'payment account' means an account held in the name of one or more payment service users which is used for the execution of payment transactions (6) 'payment system' means a funds transfer system with formal and standardised arrangements and common rules for the processing, clearing and/or settlement of payment transactions	**Article 2 (1) should be amended as follows:** (1) 'credit transfer' means a national or cross-border payment service for crediting a payee's payment account, where such a payment transaction or a series of payment transactions is initiated by the payer on the basis of the consent given to his payment service provider **Article 2 (2) should be amended as follows:** (2) 'direct debit' means a national or cross-border payment service for debiting a payer's payment account, where such a payment transaction is initiated by the payee on the basis of the payer's consent **Supporting argument for proposed amendment of Article 2 (1) and (2):** This amendment is in line with Recital (1) and (4). **Article 2 (6) should be amended as follows:** (6) 'payment system' means a funds transfer system with formal and standardised arrangements and common rules for the processing, clearing and/or settlement of payment transactions and which is separated from any payment scheme(s) that it supports.' **Supporting argument for proposed amendment of Article 2 (6):** This amendment is required to better reflect the basic principles of separation of payment schemes from supporting infrastructures in line with ECB's recommendations in the 7th SEPA Progress Report. The so-called SEPA 3 layer model as recommended by the ECB separates the first layer (scheme management) from the second layer (product offering by payment service providers in respect of the scheme rules) and from the third layer (operating an infrastructure supporting the delivery of products in respect of the scheme rules). This principle is recognised in Article 2(7) of the proposed Regulation.

(7)	'payment scheme' means a set of rules, practices and standards for making payments between the scheme participants, and which is separated from any infrastructure or payment system that supports its operation across and within Member States	**Comment on Article 2 (7):** An additional definition of 'Union-wide payment scheme' is required as it is an important element for the demarcation of the rules on Reachability (see Article 3) and Interoperability (see Article 4). The addition of the reference to Union-wide schemes is extremely important for the correct application and enforcement of Article 3 as it ultimately defines under Article 3 to what extent payment schemes shall be reachable. See after the comments on Article 2 (16).
(8)	'payment service provider' means any of the categories referred to in Article 1(1) of Directive 2007/64/EC and the legal and natural persons referred to in Article 26 of that Directive, but excludes those institutions listed in Article 2 of Directive 2006/48/EC of the European Parliament and of the Council benefiting from a Member State waiver exercised under Article 2(3) of Directive 2007/64/EC	
(9)	'payment service user' means a natural or legal person making use of a payment service in the capacity of either payer or payee, or both	
(10)	'payment transaction' means an act, initiated by the payer or by the payee of transferring funds, irrespective of any underlying obligations between the payer and the payee	**Article 2 (10) should be amended as follows:** 'payment transaction' means an act, initiated by the payer or by the payee of transferring funds, irrespective of any underlying obligations between the payer and the payee. <u>In the context of this Regulation, this term only relates to credit transfers and direct debits.</u> **Supporting argument for proposed amendment of Article 2 (10):** For greater clarity it should be specified that only credit transfers and direct debits are relevant in the context of this Regulation:
(11)	'payment order' means any instruction by a payer or payee to his payment service provider requesting the execution of a payment transaction	
(12)	'interchange fee' means a fee paid between the payment service providers of the payer and of the payee for each direct debit transaction	**Articles 2 (12) and 2 (13) should be deleted:** ~~(12) 'interchange fee' means a fee paid between the payment service providers of the payer and of the payee for each direct debit transaction~~ ~~(13) 'multilateral interchange fee' means an interchange fee which is subject to a collective agreement between payment service providers~~ **Supporting argument for proposed deletion of Article 2 (12) and 2 (13):** See our comments on Article 6.
(13)	'multilateral interchange fee' means an interchange fee which is subject to a collective agreement between payment service providers	
(14)	'BBAN' means a payment account number identifier, which uniquely identifies an individual account with a payment service provider in a Member State and can only be used for national transactions	
(15)	'IBAN' means an international payment account number identifier, which uniquely identifies an individual account with a unique payment service provider in a Member State, the elements of which are specified by ISO 13616, set by the International Organization for Standardisation (ISO)	**Article 2 (16) should be amended as follows:** 'BIC' means a code that unambiguously identifies a payment service provider, the elements of which are specified by ISO <u>9362</u> ~~13616~~, set by the International Organization for Standardisation (ISO) **Supporting argument for proposed amendment of Article 2 (16):** The appropriate ISO definition in relation to BIC is ISO 9362, not ISO 13616. This needs to be corrected. In fact, ISO 13616 refers to the IBAN as set out in definition 15.
(16)	'BIC' means a code that unambiguously identifies a payment service provider, the elements of which are specified by ISO 13616, set by the International Organization for Standardisation (ISO)	

(17)	'ISO 20022 XML standard' means a standard for the development of electronic financial messages as defined by the International Organisation for Standardisation (ISO), encompassing the physical representation of the payment transactions in XML syntax, in accordance with business rules and implementation guidelines of Union-wide schemes for payment transactions in scope of this Regulation.	**Definitions for the following terms used in the Proposal should be added in Article 2:** • **'Large value payment system' (used in (1)(2b))** means a payment system which is designed primarily to process large-value and/or urgent payments related to important financial market activities such as money market or foreign exchange transactions as well as commercial transactions and is regarded as essential to the proper functioning of the financial system. • **'Single Euro Payments Area (SEPA)'**[1] means the area where citizens, companies and other economic participants can make and receive payments in euro, within the European Union, whether within or across national boundaries under the same basic conditions, rights and obligations, regardless of their location. • **'Technical requirement' (used in Article (5) and the Annex)** means basic standards applicable to direct debits and credit transfers processed under a Union-wide scheme. • **'Union-wide payment scheme'(used in Recital (5) and (10))** means a payment scheme within which all payment service providers participating in the scheme are able, while satisfying the scheme requirements for achieving this access, to reach all payment accounts in SEPA held by payment service providers adhering to the Union-wide scheme. • **'Union-wide payment scheme' (used in Recital (5) and (10))** means a payment scheme within which all payment service providers participating in the scheme are able, while satisfying the scheme requirements for achieving this access, to reach all payment accounts in SEPA held by payment service providers adhering to the Union-wide scheme.

[1] It must be noted that this definition is aligned with the scope of this Regulation which applies to the 27 EU Member States only.

Article 3 *Reachability* A payment service provider reachable for a national credit transfer or a direct debit transaction, or both denominated in euro on a given payment account shall be reachable, in accordance with the rules of the payment scheme, for credit transfer and direct debit transactions initiated through a payment service provider located in any Member State.	**Article 3 should be amended as follows:** ~~A payment service provider reachable for a national credit transfer or a direct debit transaction, or both denominated in euro on a given payment account shall be reachable, in accordance with the rules of the payment scheme, for credit transfer and direct debit transactions initiated through a payment service provider located in any Member State.~~ 1. A payment service provider reachable for a national credit transfer denominated in euro on a given payment account shall be reachable, in accordance with the single set of rules under one Union-wide payment scheme applicable to national and cross-border payments, for credit transfer transactions denominated in euro initiated through a payment service provider located in any Member State. Article 3 of this Regulation shall not apply to payment schemes which are not open for use by consumers. 2. A payment service provider reachable for a national direct debit denominated in euro on a given payment account shall be reachable, in accordance with the single set of rules under one Union-wide payment scheme applicable to national and cross-border payments, for direct debit transactions denominated in euro initiated through a payment service provider located in any Member State. Article 3 of this Regulation shall not apply to payment schemes which are not open for use by consumers **Supporting argument for proposed amendments of Article 3:** The EPC proposes to specify the reachability obligation in separate paragraphs. The EPC proposes to unequivocally clarify that Article 3 mandates reachability specifically for credit transfers and direct debits processed under one Union-wide scheme, respectively. One of the objectives of the Regulation is to reduce the duplicate cost of having to operate multiple schemes. With the provisions of article 3 drafted as is, there a distinct risk that a new category of costs will develop in that there is no limitation to the number of credit transfer and direct debit schemes that Payment Service Providers would potentially have to be reachable for. The article should be redrafted to clarify that the reachability obligation only concerns one Union Wide Credit Transfer Scheme and one Union Wide Direct Debit Scheme. Please also refer to the supporting argument for Article 4, paragraph 2. For further information, please refer to document 'Interoperability Of Payment Schemes Is Not Feasible' (EPC038-11 enclosed). The additional sentence on the scope of Article 3 is consistent with Recital (12) of Regulation (EC) No 924/2009

Article 4 *Interoperability* 1. Payment service providers shall carry out credit transfers and direct debits under a payment scheme which complies with the following conditions: (a) its rules are the same for national and cross-border credit transfer and direct debit transactions across and within Member States (b) the participants in the scheme represent a majority of payment service providers within a majority of Member States	**Article 4 should be amended as follows:** **1.** Payment service providers shall carry out credit transfers and direct debits under the relevant Union-wide payment scheme which complies with the following conditions **(a)** its rules are the same for national and cross-border credit transfer and direct debit transactions across and within Member States and **(b)** the participants in ~~the~~ a Union-wide payment scheme represent a majority of payment service providers within and across ~~a majority of~~ all Member States. Article 4 (1)(b) of this Regulation shall not apply to payment schemes which are not open for use by consumers.

2. Payment systems and, where applicable, payment schemes shall be technically interoperable through the use of standards developed by international or European standardisation bodies. 3. The processing of credit transfers and direct debits shall not be hindered by technical obstacles.	**2.** Operators of ~~P~~payment systems ~~and, where applicable, payment schemes~~ shall ~~be~~ make the payment systems, which process the payments carried out accordingly to paragraph 1 above, technically interoperable through the use of standards developed by international or European standardisation bodies. **3.** The processing of credit transfers and direct debits shall not be hindered by technical or legal obstacles or business rules. **New article 4.4.** The timescales in Article 5 shall also apply to the application of Article 4(1)-(3) **Supporting argument for proposed amendments of Article 4:** Article 4, paragraph 1: the article should clarify that the provision refers to and mandates the exclusive use of Union-wide schemes. Article 4, paragraph 2: the concept of 'interoperable' Union-wide payment schemes defeats the purpose of SEPA. For any given payment to be correctly executed under a specific payment scheme, the same scheme rules must be observed – at a minimum – by the following parties: the payer's bank[2], the payment system (CSM) facilitating the clearing and settlement of funds between two banks, and the payee's bank. In the absence of such unique scheme rules observed by these parties, it is impossible to execute a payment. For this reason, the EPC considers that the terminology 'essential requirements' is more appropriate than the terminology 'technical requirements' as used in Article (5) and the Annex. The SEPA-wide Straight-through-Processing (no manual intervention) of a combined 33.3 billion credit transfers and direct debits in the euro area annually requires agreement on the business rules and standards governing the execution of euro payment transactions. Payment services can only be delivered SEPA-wide if the payment service providers of all customers adhere to the exact same basic scheme rules and standards; i.e. if banks are "reachable" based on their adherence to the same payment scheme. Hence, integration of the currently fragmented euro payments market for euro credit transfer and euro direct debits requires that all PSPs adhere to the same Union-wide euro credit transfer and euro direct debit schemes.

[2] The term bank is used in a non-discriminatory fashion and does not exclude payment service providers which are not credit institutions.

	The concept of "interoperability" of "multiple" Union-wide schemes for euro credit transfers and euro direct debits puts at risk the fundamental requirement of full reachability of all payment service providers across SEPA. In consequence, implementing this concept would counter the objective of overcoming the fragmentation of the euro payments market and disregards the principles governing an optimally efficient payment environment. In addition, it will not allow that payment service providers are able to make a choice for their preferred CSM, where those CSMs adhere to different Union-wide schemes. Last but not least, establishing multiple Union-wide schemes would rule out cost savings to the benefit of bank customers resulting from the consolidation of cash management operations. Migration to a single set of Union-wide schemes for euro credit transfers and euro direct debits is the precondition for consolidation and full integration to take place. **Supporting argument to add the exemption for payment schemes not open for use by consumers to new Article 4.1 (b):** This Proposal is consistent with Recital (12) of Regulation (EC) No 924/2009 **Article 4, new paragraph 4:** The same time periods indicated in Article 5 should also apply to the requirements in Article 4.

Article 5 *Requirements for credit transfer and direct debit transactions* **1.** By [*insert concrete date* 12 months after entry into force of this Regulation] at the latest, credit transfers shall be carried out in accordance with the technical requirements referred to in points 1 and 2 of the Annex. **2.** By [*insert concrete date* 24 months after entry into force of this Regulation] at the latest, direct debits shall be carried out in accordance with the technical requirements referred to in points 1 and 3 of the Annex. **3.** Notwithstanding paragraphs 1 and 2, earlier dates than those referred to in paragraphs 1 and 2 may be set by Member States. **4.** The Commission may amend the Annex in order to take account of technical progress and market developments. Those measures shall be adopted by means of delegated acts in accordance with the procedure laid down in Article 12.	**Article 5, paragraph 1 should be amended as follows:** **1.** By [insert concrete date ~~12~~ 24 months after entry into force of this Regulation] at the latest, credit transfers shall be carried out in accordance with the technical requirements set out in points 1 and 2 of the Annex. **Supporting argument for proposed amendments of Article 5, paragraph 1:** In the view of the EPC the investment cycle of 3 – 5 years must be taken into consideration in setting an end date. Both the supply and the demand sides must be given sufficient time to allocate the funds required to implement mass migration. **Comment on Article 5, paragraphs 1 and 2:** The EPC points out that the provisions set out in Article 5, paragraphs 1 and 2 (i.e. the chosen timing mechanism) do not provide for any planning security for market participants as it is completely open at this point when this Regulation might be adopted. It would have been preferable to identify a concrete date upfront (as was done in Regulation 924/2009 Article 8 (3)) to allow for planning security for market participants. The preferred option of the EPC is to set one migration end date at EU level for migration of both credit transfers and direct debits to Union-wide schemes. The proposed periods can only apply after the moment in time where it can be concluded that the approved technical requirement do not imply major changes to the systems/procedures developed by payment service providers to support the SEPA payment schemes.

	Article 5, paragraph 4 should be deleted: ~~**4.** The Commission may amend the Annex in order to take account of technical progress and market developments. Those measures shall be adopted by means of delegated acts in accordance with the procedure laid down in Article 12.~~ **Supporting argument for proposed deletion of Article 5, paragraph 4:** The Proposal fails to deliver a convincing rationale which would justify the granting of such extensive and unilateral powers to the Commission ahead of the three year review foreseen under Article 16. Any modification of the payment functionalities already requires at least two years to be processed and implemented by both the demand and supply sides as part of a recognized change management cycle in the industry. Moreover, it is our view that it is not appropriate for the Commission to take on the role of a de facto Scheme Manager responsible for the development of payment functionalities. This Regulation currently also disregards the basic principles of good governance and legal certainty: the technical requirements will impact the entire payment services user community; i.e. both the demand and supply sides. If endorsed by the legislator, the Regulation would confer unlimited powers to the European Commission to amend the Annex (technical requirements) through delegated acts. In other words, the Commission reserves the right to amend – anytime and at its entire discretion, without any consultation – the requirements to be met by a compliant Union-wide Scheme. The scope of the potential "technical requirements" and consequently the scope of the delegation of powers to the Commission remains undefined. This lack of definition of the delegation of powers to the Commission as foreseen is not acceptable. The chosen terminology 'technical requirements' should furthermore be considered as misleading in light of the current content of the Annex to the draft Regulation. The Annex not only includes references to formats of messages and identifier standards of the ISO, it also includes 'rules' which should not be commonly labelled as purely 'technical requirements'[3]

[3] Some of these rules also relate to consumer-protection aspects and should rather be considered in the context of a potential review of the Payment Services Directive.

	With regard to the delegated powers to be conferred on to the European Commission the Proposal fails to meet the following three key criteria applicable to EU Regulation: •Proportionality: there is a lack of proportionality of the delegated powers with respect to the intended objective of the Proposal which is to ensure migration to SEPA •Subsidiarity: the subsidiarity principle would suggest that self-regulation is better placed to achieve the stated objectives, i.e. innovation in the payments market. •Restraint of administrative burden: the Proposal would incur additional costs and administrative burden on payment services users such as businesses and public administrations as well as payment service providers. Both the demand and supply side who would in future would have to invest into the renewal of their payments applications to comply (a) with standards and scheme rules defined by international standardisation and European scheme management bodies and (b) with 'technical requirements' set by the European Commission. Such additional costs and administrative burden, however, would not be offset by any advantages. Recital 22 of the Proposal states that "The Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty in respect of the update of the technical requirements for credit transfers and direct debits". However, Article 290 (1) of the Treaty on the Functioning of the European Union clarifies that a "legislative act may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act". The EPC points out that the requirements set out in the Annex to the Proposal were referred to as 'essential' requirements in previous drafts of this Proposal. The EPC assumes that the term 'essential' formerly applied to describe these requirements was changed to 'technical' for the sole purpose of suggesting compliance of Articles 5 (4) and 12 – 15 of the Proposal with the Treaty. The EPC confirms that the requirements set out in the Annex to the Proposal are essential to the functioning of a payment scheme. In the view of the EPC, therefore, Article 5 (4) and 12 – 15 are not compatible with Article 290 of the Treaty. The EPC considers that the terminology 'essential requirements' is more appropriate than the terminology 'technical requirements'. The EPC is therefore in favour of deleting articles 5 (4) and 12 – 15. The EPC invites the legislator to recognise that self-regulation by banks in close consultation of the representatives of customers at national and European level has generally proven to be the most efficient means to create and maintain innovative, effective, secure and stress-resistant payment systems. In addition, the standards the EPC uses are ISO standards that are approved by the global ISO organisation in a decision process where all ISO members reflect positions of the supply side, of the buy-side and of vendors who use the ISO standards. It is our firm belief that innovation must not be hampered by the European Commission's interference in the development process in the context of this Regulation to the detriment of both the demand and supply sides.

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.

   (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

Article 6 should be deleted:

~~*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.~~

~~(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~~

Supporting argument for proposed deletion of Article 6:

1. The EPC decided at its Plenary meeting of 23 March 2011 to adopt the position:
- that Article 6 (and related Articles and Recitals) should be removed from the Proposal, and
- that the 'November 2012' date mentioned in Regulation (EC) No 924/2009 should be removed from that Regulation.

This position is supported by our analysis with regard to European law (summarised under point 2) and European competition law (summarised under point 3) – see next page**.**

2. Summary of legal analysis in respect of European law:

2.1 Regarding the procedure and the legislative measure chosen

By prohibiting multilateral interchange fees (MIFs) the Proposal is premature and inconsistent with the provisions of Regulation (EC) No 924/2009, in particular its 11th Recital and its Article 15.

2.2 On the validity of the Proposal

2.2.1 With regard to the legal basis for the Proposal: Article 114 of the TFEU

It is questionable whether a prohibition as far-reaching as currently foreseen under Article 6 can be based on Article 114 of the TFEU (formerly Article 95 of the EU Treaty). In our view, any measures based on Article 114 of the TFEU (ex-ante) "*must genuinely improve the conditions for the establishment and functioning of the internal market.* Accordingly, *"a mere finding of disparities between national rules and the abstract risk of infringements of fundamental freedoms or distortion of competition is not sufficient to justify the choice of Article 95 EC as a legal basis"*. (See Rulings of 10 December, 2002, British American Tobacco (Investments) and Imperial Tobacco, C-491/01, Rec. p. I-11453, point 60, and that of 2 May, 2006, UK/Parliament and Council, C-217/04, Rec. p. I-3771, point 42)

2.2.2 With regard to the general principles of European law:

The assessment has been made as to whether the Proposal respects the following Principles:

 The principle of proportionality, as laid down by European Community law

As measures must be limited to what is necessary to attain its objectives, we consider that this Proposal infringes upon the principle of proportionality.
As the Commission must examine (and to date has failed to examine) if the objectives pursued justify negative consequences for some operators, we consider that by failing to make a thorough assessment, the principle of proportionality has not been respected.

 The principle of legitimate confidence

The prohibition of a per-transaction MIF would oblige banks to build a new business model at a time when they could legitimately base their forecasts on the possibility of applying cost-based MIF. Such a turnaround would infringe upon the principle of legitimate confidence in the policy hitherto pursued in this area.

 The principle of freedom of trade, freedom of contract and freedom of enterprise

The prohibition of the principle of interbank fees infringes upon the fundamental principle of freedom of trade when they do not respect the principle of proportionality. This is the case here as the objective to strengthen the single payment services market could be met by basing the fee level on the costs for by banks in supplying this service, without prohibiting them in principle.

.(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.	By eliminating the possibility to apply interbank fees, the proposed amendment to Regulation (EC) No 924/2009 affects the freedom of enterprise beyond the limits allowed by article 52 of the Charter of fundamental rights. **The principle of the market economy** Eliminating the possibility to apply interbank fees constitutes an infringement upon the Community principle of an open market economy that must benefit all economic operators, notably those in the banking sector with regard to the reciprocal relations necessarily resulting from their payment services activities. 3. **European competition law aspects** We consider that there is an error of judgment as regards the allegedly limited competition in the area of MIFs applying to direct debits. The statements in Recital 14 appear to be based on initial assessments conducted and published in 2008. As we indicated above (see paragraph 2.2.2: "on the principle of proportionality" and "on the principle of legitimate confidence"), such a claim with regard to MIF has never been substantiated to date, notably in the various cases examined by the Directorate General (DG) of Competition concerning different means of payment. Indeed, DG Competition even recently recognized the possibility of such interbank fees, in moderate amounts, in the area of bank cards (see the recent communiqués of DG Competition concerning the MasterCard and Visa cases of 1 April 2009 and 8 December 2010). The European Commission fails to explain how the complete ban on MIFs, assuming the prohibition could be based on European competition law, must equally apply to MIFs or BIFs for national transactions which are outside the scope of the European competition law rules. Furthermore, the Proposal does not lay out why MIFs for R-transactions are fundamentally different and why they are allowable in principle – as opposed to regular 'per-transaction MIFs' (even though R-transaction MIFs are only allowable within the strict limitations of Article 6 (2)). **4. The EPC continues to support:** •The EPC continues to support The default multilateral balancing payment (MBP) of maximum 8.8 euro cent (as decided by the EPC in June 2007 with the value amended in June 2009), and the commitment expressed to DG Competition and the European Competition Network (ECN) to review the figure after 3-5 years (1 September 2008). **5. The EPC continues to monitor:** The EPC will monitor the progress on a MBP (MIF) for SEPA Direct Debit (SDD) by the public sector, and will continue to analyse the implications on the SDD business model.

	6. The following text is a reminder on the EPC position regarding interchange fees for direct debit transactions since 2003 Since the start of the SEPA Direct Debit ('SDD') Scheme development in 2003, the EPC has always considered that the use of a Multilateral Balancing Payment ('MBP') arrangement is an essential component for the functioning of the Core SDD Scheme. In June 2007, the EPC Plenary approved the Core SDD Scheme Rulebook, including the definition and application of Balancing Payment Arrangements and Multilateral Balancing Payment ('MBP') Arrangements in section 5.14. The proposal of the EPC regarding the adoption in the Core SDD Scheme of a default (maximum) MBP was to use a default (maximum) MBP of 9.3 eurocent for regular SDD transactions. The EPC presented its proposal on a default (maximum) MBP to all the members of the European Competition Network and informed them that the default MBP of 9.3 eurocent will be reviewed 3 to 5 years after the launch of the Core SDD Scheme. The Joint Statement of March 2009 by the European Commission and the European Central Bank together with the approval of the Regulation 924/2009 on cross-border payments in the Community, defined an interim phase from 1 November 2009 until 31 October 2012, date after which no transaction based MIF for regular SDD transactions will be accepted. The joint statement of March 2009 clarified that for the post interim period, only a MIF for exception transactions may be considered, if justified. In June 2009, it was decided that the EPC as Scheme Manager will not make further efforts for obtaining a positive guidance from DG Competition on an inter-bank MIF for the exception transactions. EPC will make the necessary efforts to support scheme participants, willing to apply such a MIF, in efficiently operating such MIF arrangements. The EPC reserves its position to propose a default MIF for scheme participants to DG Competition and to the members of the European Competition Network as soon as the Council and European Parliament have provided clarity on which MIF model - a regular transaction based model or an exception transaction based model - is allowed for SEPA Direct Debit for the period from 1 November 2012. This clarification should take into account the impact the choice of the Council and the Parliament will have on the interest of consumers and large billers (corporates and public administrations) and on the realisation of the SEPA objective.

Article 7 *Waiver* 1. Member States may allow their competent authorities to waive all or some of the requirements set out in paragraphs 1, 2 and 3 of Article 5 until [*insert concrete date* 36 months after entry into force] for those credit transfer or direct debit transactions with a cumulative market share, based on the official payment statistics published annually by the European Central Bank, of less than 10 % of the total number of credit transfer or direct debit transactions respectively, in that Member State. 2. Member States may allow their competent authorities to waive all or some of the requirements set out in paragraphs 1, 2 and 3 of Article 5 until [*insert concrete date* 60 months after entry into force] for those payment transactions initiated through a payment card at the point of sale which result in direct debit from a payment account identified by BBAN or IBAN. 3. Where a Member State allows its competent authorities to apply the waiver provided for in paragraphs 1 and 2, it shall notify the Commission accordingly by [*insert concrete date* 6 months after entry into force]. The Member State shall notify the Commission forthwith of any subsequent change.	**Article 7, paragraph 1 should be amended as follows:** **1.** Member States may allow their competent authorities to waive all or some of the requirements set out in paragraphs 1, 2 and 3 of Article 5 until [insert concrete date 36 months after entry into force of this Regulation] for those credit transfer or direct debit transactions with a cumulative market share, based on the official payment statistics published annually by the European Central Bank, of less than 10 % of the total number of credit transfer or direct debit transactions respectively, in that Member State and which are processed based on current niche products covering very specific customer needs. Such niche products remain the responsibility of national communities with regard to migration and are subject to a SEPA-equivalent being available. **Comment on Article 7, paragraph 1:** Similarly to our comments on the timing mechanisms chosen in Article 5 (1) and (2) above it is problematic in our view that the timing mechanism does not provide for any planning security for market participants as it is completely open at this point when this Regulation might be adopted. Also in this context it would have been preferable to identify a concrete date upfront (as was done in Regulation 924/2009 Article 8 (3).) to allow for planning security for market participants. In our view, an additional qualitative and objective yardstick should be used to define 'niche' services, building on the concept of "corresponding payments" already used in Regulation 924/2009 Recital (7) and (8) and Article (3). **Article 7, paragraph 2 should be deleted:** ~~**2**. Member States may allow their competent authorities to waive all or some of the requirements set out in paragraphs 1, 2 and 3 of Article 5 until [insert concrete date) 60 months after entry into force of this Regulation] for those payment transactions initiated through a payment card at the point of sale which result in direct debit from a payment account identified by BBAN or IBAN.~~

	Supporting argument for proposed deletion of Article 7, paragraph 2: Article 7, paragraph 2 is not compatible with the purpose of this regulation, i.e. integration and harmonisation of the euro payments market for the following reasons: • It applies exclusively to direct debits in one Member State which is the Member State where 40 percent of direct debits in the Union are processed. It applies to a percentage of direct debit transactions processed in this Member State which far exceeds the 10 % of the total number of direct debit transactions in any one Member State eligible for the waiver stipulated in paragraph 1. Exemption of a thus significantly larger percentage of relevant transactions in one Member State is not compatible with the principles of a level playing field. It grants a transitional period of 60 months which far exceeds the transition period of 36 months stipulated in paragraph 1 for niche products which must be phased out in other Member States. This extended transition period is incompatible with the principles of a level playing field. It remains unclear what justification can be found for such exceptionally long transition period which would applied to a large portion of direct debit transactions in one specific Member State. • It is inaccurate: the direct debit transactions referred to are not "initiated through a payment card". In one Member State, a payment card is used to read the name of the payer and the payer's bank account details. This information is then used to generate a mandate authorising the payee to collect payment under the national direct debit scheme. The direct debit collection based on this mandate is initiated like any other direct debit. • It would force all market participants to continue operating parallel systems in one Member State far longer than in all other Member States. This would put an unjustifiable burden on the supply side in this Member State and prevent the demand side in this Member State from reaping the full benefits of SEPA.

Article 8 *Payment accessibility* 1. A payer using credit transfers to transfer funds from his or her payment account to other payment accounts with payment service providers located in the same Member State shall not refuse to make credit transfers to payment accounts with payment service providers located in another Member State and reachable in accordance with Article 3. 2. A payee using direct debits to receive funds on his or her payment account from other payment accounts with payment service providers located in the same Member State shall not refuse to receive direct debits from payment accounts with payment service providers located in another Member State and reachable in accordance with Article 3.	**Comment on Article (8):** The EPC is doubtful whether Article 8 (1) can have any real effect as Payment Service Users should ultimately remain in the position to decide by themselves what type of payment service they wish to use.

Article 12 *Exercise of delegated powers* 1. The powers to adopt the delegated acts referred to in Article 5(4) shall be conferred on the Commission for an indeterminate period of time. Where imperative grounds of urgency so require, Article 15 shall apply. 2. As soon as it adopts a delegated act, the Commission shall simultaneously notify the European Parliament and the Council of that act. 3. The powers to adopt delegated acts are conferred on the Commission subject to the conditions laid down in Articles 12 and 13.	**Article 12 should be deleted:** ~~**Article 12: Exercise of delegated powers**~~ ~~**1.** The powers to adopt the delegated acts referred to in Article 5(4) shall be conferred on the Commission for an indeterminate period of time. Where imperative grounds of urgency so require, Article 15 shall apply.~~ ~~**2.** As soon as it adopts a delegated act, the Commission shall simultaneously notify the European Parliament and the Council of that act.~~ ~~**3.** The powers to adopt delegated acts are conferred on the Commission subject to the conditions laid down in Articles 13 and 14.~~ **Supporting argument for proposed deletion of Article 12:** Please refer to our detailed comments related to Article 5 (4).
Article 13 *Revocation of the delegation* 1. The delegation of power referred to in Article 5(4) may be revoked at any time by the European Parliament or by the Council. 2. The institution which has commenced an internal procedure for deciding whether to revoke the delegation of power shall endeavour to inform the other institution and the Commission within a reasonable time before the final decision is taken, indicating the delegated powers which could be subject to revocation and the reasons for revocation. 3. The decision on revocation shall put an end to the delegation of the powers specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the *Official Journal of the European Union*.	**Article 13 should be deleted:** ~~**Article 13: Revocation of the delegation**~~ ~~**1.** The delegation of power referred to in Article 5(4) may be revoked at any time by the European Parliament or by the Council.~~ ~~**2.** The institution which has commenced an internal procedure for deciding whether to revoke the delegation of power shall endeavour to inform the other institution and the Commission within a reasonable time before the final decision is taken, indicating the delegated powers which could be subject to revocation and the reasons for a revocation.~~ ~~**3.** The decision of revocation shall put an end to the delegation of the powers specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the Official Journal of the European Union.~~ **Supporting argument for proposed deletion of Article 13:** Please refer to our detailed comments related to Article 5 (4).

Article 14 *Objections to delegated acts* 1. The European Parliament and the Council may object to the delegated act within a period of two months from the date of notification. At the initiative of the European Parliament or the Council this period shall be extended by one month. 2. If, on expiry of that period, neither the European Parliament nor the Council has objected to the delegated act, it shall be published in the *Official Journal of the European Union* and shall enter into force on the date stated in its provisions. 3. The delegated act may be published in the *Official Journal of the European Union* and enter into force before the expiry of that period if the European Parliament and the Council have both informed the Commission of their intention not to raise objections. 4. If the European Parliament or the Council objects to the adopted delegated act, it shall not enter into force. The institution which objects shall state the reasons for objecting to the delegated act.	**Article 14 should be deleted:** ~~**Article 14: Objections to delegated acts**~~ ~~**1.** The European Parliament and the Council may object to the delegated act within a period of two months from the date of notification. At the initiative of the European Parliament or the Council this period shall be extended by one month.~~ ~~**2.** If, on expiry of that period, neither the European Parliament nor the Council has objected to the delegated act, it shall be published in the Official Journal of the European Union and shall enter into force on the date stated in its provisions. The delegated act may be published in the Official Journal of the European Union and enter into force before the expiry of that period if the European Parliament and the Council have both informed the Commission of their intention not to raise objections.~~ ~~**3.** If the European Parliament or the Council objects to the adopted delegated act, it shall not enter into force. The institution which objects shall state the reasons for objecting to the delegated act.~~ **Supporting argument for proposed deletion of Article 14:** Please refer to our detailed comments related to Article 5 (4).

Article 15 *Urgency procedure* 1. A delegated act adopted under the urgency procedure shall enter into force without delay and apply as long as no objection is expressed in accordance with paragraph 2. The notification of the act to the European Parliament and to the Council shall state the reasons for the use of the urgency procedure. 2. The European Parliament and the Council may within a period of six weeks from the date of notification object to the delegated act. In such a case, the act shall cease to be applicable. The institution which objects shall state the reasons for objecting to the delegated act.	**Article 15 should be deleted:** ~~**1.** A delegated act adopted under the urgency procedure shall enter into force without delay and apply as long as no objection is expressed in accordance with paragraph~~ ~~**2.** The notification of the act to the European Parliament and to the Council shall state the reasons for the use of the urgency procedure.~~ ~~**2.** The European Parliament and the Council may within a period of six weeks from the date of notification object to the delegated act. In such a case, the act shall cease to be applicable. The institution which objects shall state the reasons for objecting to the delegated act.~~ **Supporting argument for proposed deletion of Article 15:** Please refer to our detailed comments related to Article 5 (4). .

Article 18 *Amendment of Regulation (EC) 924/2009* 1. In Article 6 and the words "before 1 November 2012" are replaced by the following: "before [*insert concrete date* 24 months after entry into force of this Regulation]". 2. Articles 7 is amended as follows: *(a)* in paragraph 1, the words "before 1 November2012" are replaced by the following: "before [*insert concrete date 24 months after entry into force of this Regulation]"* (b) in paragraph 2, the words "before 1 November2012" are replaced by the following: "before [*insert concrete date 24 months after entry into force of this Regulation]"* (c) in paragraph 3, the words "before 1 November2012" are replaced by the following: "before [*insert concrete date 24 months after entry into force of this Regulation]"* 3. Article 8 is deleted.	**1. Article 18 (1) should be amended as follows:** 1. In Article 6 ~~and~~ the words "executed before 1 November 2012" are deleted. ~~are replaced by the following: "before [insert concrete date 24 months after entry into force of this Regulation]".~~ **2. Article 18 (2) should be amended as follows:** (a) in paragraph 1, the words "executed before 1 November2012" are deleted. ~~replaced by the following: "before [insert concrete date 24 months after entry into force of this Regulation]"~~ (b) in paragraph 2, the words "before 1 November 2012" are deleted. ~~replaced by the following: "before [insert concrete date 24 months after entry into force of this Regulation]"~~ (c) in paragraph 3, the words "where that national direct debit transaction was executed before 1 November 2012" are deleted. ~~replaced by the following: "before [insert concrete date 24 months after entry into force of this Regulation]"~~ **Supporting arguments for proposed amendments of Article 18 (1) and (2):** See our comments under Article 6. **3. Article 18 should also be amended by adding an additional point (4) as follows:** 4. In Article 5 (1) the words "up to EUR 50.000" are deleted. **Supporting argument for this additional item :** To allow the full efficiency benefits of SEPA to be realised and to promote competition between payment systems, it would be necessary for the SEPA Regulation to finally bring an end to all settlement-based national reporting obligations on payment service providers for balance of payments statistics in respect of payments in euro. Accordingly this amendment to Regulation 924/2009 is proposed.

4. ANNEX – TECHNICAL REQUIREMENTS (ARTICLE 5) – PROPOSED AMENDMENTS

The comments below only address those "technical requirements" proposed in this Annex which, in the view of the EPC, should be amended.

The EPC considers that the terminology 'essential requirements' is more appropriate than the terminology 'technical requirements'.

ANNEX: TECHNICAL REQUIREMENTS (ARTICLE 5)	
(1) The following technical requirements shall apply to both **credit transfer** and **direct debit** transactions: (a) Payment service providers and payment service users shall use the IBAN for the identification of payment accounts regardless of whether both the payer's payment service provider and the payee's payment service provider are or the sole payment service provider in the payment transaction is, located in the same Member State or whether one of the payment service providers is located in another Member State. (b) Payment service providers shall use message formats based on ISO 20022 XML standard when transmitting payment transactions to another payment service provider or a payment system. (c) Where a payment service user initiates or receives individual transfers of funds which are bundled together for transmission, message formats based on ISO 20022 XML standard shall be used. (d) The remittance data field shall allow for 140 characters. Payment schemes may allow for a higher number of characters, except if the device used to remit information has technical limitations related to the number of characters, in which case the technical limit of the device shall apply.	**Section 1 (c) of this Annex (technical requirements) should be deleted**: ~~**(c)** Where a payment service user initiates or receives individual transfers of funds which are bundled together for transmission, message formats based on ISO 20022 XML standard shall be used.~~ **Supporting argument for proposed amendment of section 1 (c) of this Annex:** In the view of the EPC, usage of the ISO 20022 XML standards in accordance with business rules and implementation guidelines of Union-wide schemes for payment transactions in scope of this Regulation in the customer-to-bank interface is strongly recommended, however should be optional. It is not necessary for customers to implement XML ISO 20022 themselves in order to benefit from harmonised payment services in euro. In fact, the cost/benefit assessment of such a move has not been made thus far and users have not been appropriately consulted on this potential requirement. Additionally, mandating customer XML ISO 20022 by law would also constitute an interference with the competitive space, where today payment service providers provide multiple solutions to ensure customer access to pan-European euro transaction solutions. **Section 1 (d) of this Annex requires clarification:** The second sentence of Section 1(d) is unclear and it requires clarification in order to understand the

(e) Remittance reference information and all the other data elements provided in accordance with points 2 and 3 of this Annex, shall be passed in full and without alteration between payment service providers throughout the payment chain. (f) Once data is available in electronic form payment transactions must allow for a fully automated, electronic processing in all process stages throughout the payment chain (end-to-end straight through processing), enabling the entire payment process to be conducted electronically without the need for re-keying or manual intervention. This shall also apply to exceptional handling of credit transfer and direct debit transactions, whenever possible. (g) Payment schemes shall not set any minimum threshold for the amount of the payment transaction allowing for credit transfers and direct debits. (h) Payment schemes shall not be obliged to carry out credit transfers and direct debits exceeding the amount of EUR 999 999 999,99.	precise meaning of the phrase *"except if the device used to remit information has technical limitations related to the number of characters, in which case the technical limit of the device shall apply"*.
(2) In addition to the requirements referred to in point (1), the following requirements shall apply to **credit transfer** transactions: (a) A payee accepting credit transfers shall communicate its IBAN and the BIC of its payment service provider to its payers, every time a credit transfer is requested. (b) The following mandatory data elements shall be provided by the payer to his or her payment service provider and passed along the payment chain to the payee in accordance with the obligations laid down in the national law implementing Directive 95/46/EC: (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.	**Section 2 (b) (i) of this Annex should be amended as follows:** **2 (b) (i)** the name of the payer ~~and/or the IBAN of the payer's account~~ **Supporting argument for proposed amendment of section 2 (b) (i) of this Annex:** It is not recommended to make mandatory the transmission of the payer's IBAN to the payee – regardless of the payer's explicit consent – from a data protection, banking secrecy, security and fraud perspective. Indeed, the transmission of such data to the payee is currently not allowed in many EU Member States It would therefore be unmanageable to have such a requirement for a scheme that caters for SEPA. **Comment on Section 2(b)(iv) of this Annex:** The mandatory use of the name of the payee appears to be in conflict with Article (74) of the PSD (use of incorrect unique identifiers). It should be avoided that confusion is being created between the requirements of the PSD and this Regulation in this context.

(c) In addition, the following mandatory data elements shall be provided by the payer's payment service provider to the payee's payment service provider: (i) the BIC code of the payer's payment service provider (if not agreed otherwise by the payment service providers involved in the payment transaction) (ii) the BIC code of the payee's payment service provider (if not agreed otherwise by the payment service providers involved in the payment transaction) (iii) the identification code of the payment scheme (iv) the settlement date of the credit transfer (v) the payer's payment service provider reference number of the credit transfer message.	
(3) In addition to the requirements referred to in point (1), the following requirements shall apply to **direct debit** transactions: (a) Only once before the first direct debit transaction, a payer shall communicate its IBAN and, where applicable, the BIC of its payment service provider to its payee. (b) With the first direct debit transaction and one-off direct debit transactions and with each subsequent direct debit transaction, the payee shall send the mandate-related information to his or her payment service provider. The payee's payment service provider shall transmit such mandate related information to the payer's payment service provider with each direct debit transaction. (c) A payer shall have the possibility to instruct his or her payment service provider to limit a direct debit collection to a certain amount and/or periodicity, or both. (d) Where the agreement between the payer and the payee excludes the right to a refund, the payer's payment service provider shall, at the payer's request,	For details related to our comments on section 3, see the EPC document "The Principles Governing the SEPA Direct Debit Schemes" (EPC017-11 enclosed). **Section 3 (c) of this Annex should be deleted:** ~~**3 (c)** A payer shall have the possibility to instruct his or her payment service provider to limit a direct debit collection to a certain amount or periodicity, or both.~~ **Supporting argument for proposed deletion of section 3 (c) of this Annex:** This requirement does not reflect the needs of the vast majority of direct debit users in the Union. It should therefore be optional for payment service providers to offer this feature in response to market demand. This is something which may be agreed between the payer and the payee, not with the payment service provider. Additionally it should be reminded that it is the purpose of the PSD, not of this Regulation, to establish the appropriate harmonised consumer protection in relation to Direct Debit Schemes. Any move to extend these protections further by law should await the review of the PSD which is due at the end of 2012. **Section 3 (d) of the Annex should be deleted:**

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. (e) The payer shall have the option of instructing his or her payment service provider 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. (f) Consent shall be given both to the payee and to the payment service provider of the payer (directly or indirectly via the payee) and the mandates, together with later modifications and/or cancellation, shall be stored by the payee or by a third party on behalf of the payee. (g) The following mandatory data elements shall be provided by the payee to his payment service provider and passed along the payment chain to the payer: (i) the type of direct debit (recurrent, one-off, first, last or reversal) (ii) the name of the payee (iii) the IBAN of the payment account of the payee to be credited for the collection (iv) the name of the payer (v) the IBAN of the payment account of the payer to be debited for the collection (vi) the unique mandate reference (vii) the date of signing of the mandate (viii) the amount of the collection (ix) the unique mandate reference as given by the original payee who	~~**3 (d)** Where the agreement between the payer and the payee 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.~~ **Supporting argument for proposed deletion of section 3 (d) of this Annex:** This requirement does not reflect the needs of the vast majority of direct debit users in the Union. It should therefore be optional for payment service providers to offer this feature in response to market demand. Furthermore, it should be recalled that it should remain the objective of the PSD – and not be the objective of this Regulation – to achieve a harmonised level of consumer protection in relation to direct debit schemes. Moreover, the legislator should keep in mind that a Union-wide direct debit scheme for use exclusively by customers that are <u>not</u> consumers[4] has already been successfully implemented in the market. This requirement, in conjunction with Article 5, would effectively prohibit use of this Union-wide scheme which is already operational for business to business use. **Section 3 (e) of this Annex should be amended:** **(e)** The payer shall have the option of instructing his or her payment service provider 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~~. **Supporting argument for proposed amended of section 3 (e) of this Annex:** This requirement does not reflect the needs of the vast majority of direct debit users in the Union. It should therefore be optional for payment service providers to offer their customers (payers / debtors) 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 in response to market demand. Furthermore, it should be recalled that it should remain the objective of the PSD – and not be the objective of this Regulation – to achieve a harmonised level of consumer protection in relation to direct debit schemes. With the exception of the possibility to totally block an account for direct debits, the proposed requirements should not be part of the mandatory obligations to be fulfilled by payment service providers of the payer and should rather be left as optional features which may be offered in the competitive space. Moreover, as with the comments under Annex points 3(c) and 3(d), it should be recalled that it is the purpose of the PSD, not this Regulation, to establish the appropriate harmonised

[4] SEPA Business to Business Direct Debit Scheme (SDD B2B) developed by the EPC. As of December 2010, 3364 PSPs have adhered to this scheme.

issued the mandate (if the mandate has been taken over by another payee than the payee who issued the mandate) (x) the identifier of the payee (xi) the identifier of the original payee who issued the mandate (if the mandate has been taken over by a payee other than the payee who issued the mandate) (xii) the remittance information from the payee to the payer, if any. (h) In addition, the following mandatory data elements shall be provided by the payee's payment service provider to the payer's payment service provider: (i) the BIC code of the payee's payment service provider (if not agreed otherwise by the payment service providers involved in the payment transaction) (ii) the BIC code of the payer's payment service provider (if not agreed otherwise by the payment service providers involved in the payment transaction) (iii) the name of the payer reference party (if present in dematerialised mandate) (iv) the identification code of the payer reference party (if present in dematerialised mandate) (v) the name of the payee reference party (if present in the dematerialised mandate) (vi) the identification code of the payee reference party (if present in dematerialised mandate) (vii) the identification code of the payment scheme (viii) the settlement date of the collection (ix) provider's reference for the collection	consumer protections in relation to Direct Debit Schemes. Any move to extend these protections further by law should await the review of the PSD which is due at the end of 2012. **Section 3 (g) of this Annex should be amended:** (g) The following mandatory data elements shall be provided by the payee to his payment service provider and passed along to ~~the payment chain to the payer~~ the payer's payment service provider: **Supporting argument for proposed deletion of section 3 (d) of this Annex:** These data elements should only be passed along to the payer's payment service provider (not the payer), because not all these data elements are relevant for the payer.

(x) the type of mandate (xi) the due date for the collection.	

[end of document]