

**Joint statement by the European Commission and the European Central Bank
clarifying certain principles underlying a future SEPA direct debit (SDD)
business model**

The introduction of a transitional regime concerning the SEPA direct debit (SDD) business model is currently debated in the framework of the revision of Regulation 2560/2001. The European Commission and the ECB welcome and support these efforts which will provide legal clarity during a period expiring on 31st October 2012.

Beyond these discussions and awaiting their outcome, banks have requested additional clarifications¹ regarding the long term business model for the SDD. It is claimed that these clarifications are urgently needed by the banks, as they have to take important process decisions by the end of March 2009 in order to enable the launch of SDD per 1 November 2009.

The overall objective should be to achieve an efficient use of the SEPA Direct Debit, which is expected to provide many benefits to European companies and consumers, both on a cross border and on a domestic level. This means that both creditor companies (e.g. utility companies, insurers, telecom companies, etc.) and debtors (e.g. consumers) should have appropriate and sufficient incentives to use the scheme.

Direct debits represent an efficient and convenient way for debtors to pay their bills. However, many of the benefits of the use of the direct debit as a payment instrument are on the creditor's side (i.e. cost savings by electronic payments handling, increased certainty of payment, better liquidity management, etc.). As such, the direct debit market is a two-sided market in which creditors have a clear interest to attract debtors to engage in a direct debit relationship. Creditor companies have effective means to directly encourage customers to make use of direct debit, in particular by granting rebates. Due to the availability of such a direct way of promoting efficient consumer use of direct debit, it appears neither necessary nor efficient that banks apply a collective, indirect mechanism in the form of a general *per transaction* multilateral interchange fee paid by creditor banks to debtor banks. Indeed, the direct debit MIF is collectively determined by banks. Creditor banks charge fees to corporate clients for executing direct debit payments. As the MIF is a common cost element, it predetermines a floor on top of which creditor banks set their charges. It can therefore be assumed that these charges restrict competition between creditor banks in the sense of Article 81 (1) EC Treaty. According to Article 81 (3) EC Treaty, companies have the burden of proving on a case by case basis any alleged efficiencies. Without prejudice to its assessment in any future individual case, the Commission is of the preliminary view that, given the availability of direct incentivising mechanisms, it will in general be very difficult to establish that multilateral interchange fee agreements concerning direct debit transactions are justified and necessary for efficiency reasons and that they can fulfil the other conditions required by article

¹ Reference is made to the communications on transitional arrangements by the European Central Bank and the European Commission, see http://www.ecb.europa.eu/press/pr/date/2008/html/pr080904_1.en.html

81(3) EC Treaty. They will, therefore, generally be presumed not to be compatible with the EU competition rules, either for national or for cross border transactions².

On the basis of the information presently available, there appears to be no clear and convincing reason for *per transaction* MIFs to exist after 31.10.2012. At that time they should, therefore, have been replaced by other mechanisms, at the national level and at the cross border level, for SEPA Direct Debits and for national 'legacy' Direct Debits. However, in order to encourage the efficient functioning of the SDD scheme, effective charging procedures may be put in place in order to create incentives to reduce mistakes and efficiently allocate the costs that errors generate. To achieve this aim, a multilateral charging arrangement for error transactions could be envisaged, provided that the arrangement is economically justified, enhances efficiency and benefits users.

The Commission's preliminary assessment of MIFs is made in the light of the EC competition rules, and in particular Article 81 which applies to restrictive agreements between banking undertakings and which are capable of affecting trade between Member States. The principles outlined in this statement do not affect the existing possibilities of individual banks to charge their own customers for services provided to them, e.g. via account fees or direct charges. Competition between debtor banks should ensure that such charges are in proportion to costs. In any event, in the case of direct debit services, creditors derive an advantage from the use of direct debit and from the abolition of *per transaction* MIFs -where they exist- and they should be expected to encourage consumers to use direct debits by granting rebates which may compensate consumers for any such direct charges. In order to promote economic efficiency, payments services should be priced transparently. Currently, direct debit services are perceived by consumers as free-of-charge in many Member States as they are integrated in a package. The Commission will closely monitor the evolution of consumer pricing in this respect.

The European Commission and the ECB stand ready, during the proposed three year interim period (from 1 November 2009 to 31 October 2012), to discuss with banks and other stakeholders how to ensure a fair distribution of costs and benefits among the various actors. Provided that the Commission will have received the necessary contributions by relevant market actors, the Commission expects to be in a position to provide further guidance by November 2009, which would clarify the eventual case-by-case assessment under Article 81(3) EC Treaty.

² It is noted that this conclusion does not necessarily apply for card transactions.