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C. PART 3: PROPOSALS FOR A HARMONISED LEGAL FRAMEWORK

1. METHODOLOGY

In Part I and Part II of this study, we have respectively provided individual descriptions and a comparative analysis of the 23 existing national Direct Debit Schemes. We identified the differences that would become obstacles when attempting to operate Cross-border Direct Debit by combining today's national Schemes. We thereby tried to evaluate the impact those obstacles would have on the functioning of Cross-border Direct Debit.

In this third Part of the study, we will put forward basic proposals with the aim of removing barriers to efficient and user-friendly Cross-border Direct Debit.

But before going into the proposals, a first chapter will be dedicated to the technical possibilities and the economic realities pertaining to a Cross-border Direct Debit Scheme. Our technology advisors will give a high level overview of technology requirements that may be relevant for smooth, fully automated (STP) and cost-efficient Cross-border Direct Debit.

Then we will pick up the legal approach again in view of formulating proposals to counter the many obstacles we detected before. Our proposals follow once more the same order as used in the preceding Parts and follow therefore the lifecycle of a Direct Debit relationship.

The proposals clearly focus on those features that were identified as potential obstacles as defined above. We did not limit ourselves to those obstacles that we categorised before as major ones, but our proposals address all of the potential obstacles, from minor to major, as our objective is a Cross-border Direct Debit that is as efficient, user-friendly and flawless as possible.

For the sake of convenience, the obstacles are briefly repeated hereinafter before each proposal, but the reader who wants more detail on them is referred to the relevant section in Part II. In addition to proposals that are to remove obstacles, our suggestions also include key elements that, although they do not pose problems today, should preferably be laid down at EU level.

One of our objectives was to have our proposals draw on those existing national Direct Debit Schemes that had proven to be efficient and user-friendly. Fact is that we only received little information on common problems experienced in the Direct Debit Schemes. On the basis of that criterion almost all of the Schemes appear to be efficient and user-friendly. Benchmarking then becomes a difficult if not impossible exercise. As a consequence, to draft our basic recommendations, we let us lead by our own sense of efficiency and user-friendliness, picking the best elements from various Schemes. At a later stage, when the proposals will have to take a more concrete and detailed form, it could be useful to look more closely at those Schemes that are ranked in the TOP 5 tables we drew in Part I on the basis of the Bluebook of the European Central Bank. As this

goes beyond the scope of the present study, we will not further comment on these rankings.

In addition to the proposals, we also indicate the required level of harmonisation, namely minimum or maximum. By minimum harmonisation we mean that legislative measures should only provide the principles that ought to be respected without laying down exact and detailed rules. By maximum harmonisation we mean that the legislative measures should leave no room for variances, additions or omissions.

2. TECHNOLOGY MATTERS

I. INTRODUCTION

When the Euro currency was officially launched on January 1st, 1999, highly efficient national Direct Debit platforms already existed throughout Europe. However, when comparing these national platforms within Europe, it was noticed that these domestic systems differ widely in terms of operating rules (e.g. settlement cycles, operational deadlines), communication standards (most often proprietary standards) and legal requirements (i.e. domestic Direct Debit Schemes)¹. Moreover,

- only a couple of these domestic Schemes and platforms supported Cross-border Direct Debit Transactions.
- no efficient Automated Clearing House (ACH) infrastructure existed to process mass low value cross-border transfers.

Due to these differences, the processing of Cross-border Direct Debit Transactions is still a complex, expensive, time-consuming and non-transparent process². Common features of the various national Schemes, in general, are the pre-Authorisation and the Debtor's right to revoke the Transaction³.

All these non-conforming matters should be considered and resolved to achieve an integrated technical infrastructure for Cross-border Direct Debit Transactions.

Information on the general technical requirements to realize an efficient and effective cross-border payments area for Direct Debit Transactions is provided in section 2. The third section describes the technical initiatives that already have been taken by several institutions to achieve this environment. Section 4 discusses the technical obstacles that still prevent an integrated Cross-border Direct Debit environment.

II. GENERAL TECHNICAL REQUIREMENTS FOR A CROSS-BORDER DIRECT DEBIT INFRASTRUCTURE

In our opinion, an efficient and effective technical platform for Cross-border Direct Debit processing should meet at least the following requirements:

- Straight Through Processing (STP)
- Agreed upon architectural model
- Secure transmission and processing environment
- Inter-operational and harmonised Direct Debit Scheme(s)

¹ X. (European Credit Sector Association ed.), "Euroland, Our Single Payment Area!", White Paper, May 2002, p. 18.

² European Payments Council, "Issues to be addressed in a blueprint for a Single Euro Payments area, Version 2.3", p. 24.

³ Bundesverband deutscher Banken, "Direct Debiting, Why Europe needs a pan-European direct debit scheme" presentation during the conference about "Payments in Euro in the Internal Market", Brussels, September 2001.

- Standardised Transaction message formats and content codes
- Multiple currency processing

All these requirements are explained hereafter.

A. STRAIGHT THROUGH PROCESSING

Straight Through Processing (STP) is the automated end-to-end processing of trades/payment transfers from the Creditor's Bank to the Debtor's account including the automated completion of confirmation, generation, clearing and settlement of instructions. Manual intervention during the processing should be avoided to improve efficiency, reduce costs and maximize the benefits of STP.

To achieve an environment that fully supports end-to-end STP processing, the following requirements should be met⁴:

- Common approach to identify the involved parties
- Agreed-upon messaging frameworks
- Integrated and shared networks
- Standardisation (bank-to-bank and customer-to-bank)
- Enforce standards
- Interoperability

B. AGREED UPON ARCHITECTURAL MODEL

To process and settle Cross-border Direct Debit Transactions, multiple architectural models for the connectivity of the financial institution's systems are possible. For example the following alternatives may be considered⁵:

- Centralised approach:
 - Banks directly connected to a single common European ACH
 - Banks connected via a domestic ACH, which is connected to a single common European ACH
 - A mixed environment where some banks connect directly to a single common European ACH and other banks via their domestic ACH
- Decentralised approach:
 - Banks connected via a domestic ACH, which is connected to multiple cross-border domestic ACHs
 - Bilateral exchanges between banks directly without the use of ACHs

An agreement on this architectural model is needed to allow banks to rebuild their current environment in order to communicate and process these Cross-border Direct Debit instructions.

⁴ X. (European Credit Sector Association ed.), "Euroland, Our Single Payment Area!", White Paper, May 2002, p. 27.

⁵ X. (European Credit Sector Association ed.), "Euroland, Our Single Payment Area!", White Paper, May 2002, p. 20.

C. SECURE TRANSMISSION AND PROCESSING ENVIRONMENT

Security measures are inevitable when transferring instructions over shared networks. These measures can be summarised as integrity, authenticity, and non-repudiation controls. The following paragraphs briefly explain these security requirements.

Identification and authentication

Before accepting and processing transactions, the origin of the transaction should be verified as well as the identity of the communicating parties (i.e. the claimed identity of all entities involved in the transaction should be identified and verified) to check that the message has not been replaced while in transit.

This results in the need for an agreement on the account identification code that uniquely identifies a bank account held at a financial institution. Additionally a bank identifier is required that allows to uniquely identify a bank, and possibly a branch as part of a financial institution⁶.

Integrity

Integrity measures should ensure that the data content and consistency of the Transaction messages is preserved during the transmission and processing of the transactions.

Non-repudiation

When transferring Transaction messages it is important that none of the entities involved in the communication can deny its participation in all or part of the communication (i.e. having sent or received the Transaction messages).

Confidentiality and encryption

If the content of the Transaction messages is considered as confidential there is a need to encrypt the Transaction flow or the message content when the instruction is routed over non-trusted networks. Encryption is the process by which plain text data is transformed to conceal their meaning. It's a reversible process performed by using a cryptographic algorithm and key.

D. INTER-OPERATIONAL AND HARMONISED DIRECT DEBIT SCHEME(S)

When Cross-border Direct Debit Transactions should be processed and settled, it is necessary to have an agreement, within the European Union, on the Direct Debit Scheme(s) used. If legal provisions remain different across the European Member States, it will be difficult to process and settle these Cross-border Transactions. For example, differences in settlement cycles, operational deadlines, or Revocation periods may result in STP processing difficulties. Agreement on one or more Direct Debit Scheme(s) and on operational rules should be in place to enable STP processing.

⁶ European Committee For Banking Standards, "Cross-border automated direct debits", TR201V1, January 2003.

E. STANDARDISED TRANSACTION MESSAGE FORMATS AND CONTENT CODES

When parties start exchanging Cross-border Direct Debit instructions, this requires that parties involved should be capable to understand and process these instructions. As a consequence, the parties should negotiate the format and content of the Cross-border Direct Debit messages. Whether this is an eXtensible Markup Language (XML) or a fixed length ASCII file is not important as long as everybody uses the same format or can automatically transfer it into the required format.

In a Cross-border Direct Debit payments environment we can distinguish multiple required Transaction messages. The most important ones are commented hereafter:

1- SETTING UP THE RELATIONSHIP

A) Registration and identification of the Creditor:

Important in this phase is that the Creditor can be uniquely identified and registered. During STP processing this information should be used to settle the Transactions.

B) Registration and identification of the Debtor:

To be able to process the Transactions and transfer the money involved with the transaction, a process should be in place to uniquely identify and register the Debtor. During the STP processing this information should be used to settle the Transactions.

C) Direct Debit Mandate:

The Direct Debit Mandate authorises the Creditor to initiate Direct Debits on the Debtor's account. Before executing the pre-authorised Direct Debit Transaction and when legally required, the processor (e.g. ACH or Debtor's bank) should check the Mandate. In a STP environment it should be possible to verify this Mandate without manual intervention. This requires an automated process to manage (addition and removal of Mandates) all these Mandates.

Depending on the chosen operational environment the need for a standardised Mandate message format will be required or not. If the architecture of a common European ACH is chosen which manages the Direct Debit Mandates, standard messages are required in order to update the Mandates database. On the other hand if banks process Direct Debit Transactions directly, i.e. without the intervention of an ACH, Mandates will be managed locally (for example at the Debtor's bank) and consequently the use of a propriety message format (however bilaterally agreed upon) may be sufficient.

2- DIRECT DEBIT REQUEST FOR EXECUTION

Communication and message standards are also required during the operational phase. When transferring a Direct Debit Request for Execution it should be required to use agreed upon message formats.

Besides agreed upon message formats, it is necessary to have an agreement on the content codes as well. The content code is a restricted list of allowable code values that a particular field within the standardised message may contain. For example a content code is required to identify the Direct Debit Scheme in case that multiple Schemes are allowed.

3- ACCEPTANCE AND CONFIRMATION REPORTING

During the operational phase, several messages will be communicated like for example the submission of the Mandate, the Request for Execution, the Request for Revocation or Cancellation, etc. In order to get assurance about the receipt and/or acceptance of all these Transaction messages it is recommended to standardise messages for the receipt, acceptance and/or confirmation of these particular operations as well.

4- REJECTION REPORTING

In case particular Direct Debit Transactions cannot be processed for Execution due to technical reasons (e.g. non-conformance to standard message format, non-valid identification code, lack of funds) the message is rejected and returned to the Creditor's Bank without debiting the Debtor's account. A standard message should be defined detailing standardised reason codes to indicate the reason of a particular Direct Debit Rejection. The same remark is applicable for the rejection of the Mandate.

5- CANCELLATION OF REQUESTS FOR EXECUTION AND REVOCATION OF TRANSACTIONS

During the process it may occur that the Debtor requests the Cancellation of the Request for Execution (if allowed by the applicable Direct Debit Scheme). Moreover, when allowed by the Direct Debit Scheme the Debtor may claim the reimbursement of a Direct Debit Transaction after settlement (i.e. Revocation). Standard messages should be defined in order to communicate the Cancellation of the Requests and the Revocation of the Transactions. This is also applicable to the Revocation of the Mandate.

F. MULTIPLE CURRENCY PROCESSING

As some countries of the 15 Member States of the European Union haven't implemented the Euro yet, the cross-border infrastructure should allow the processing of non-Euro currencies as well. This implies that all banks involved should be able to process these non-Euro currencies as well, unless a currency exchange mechanism will be built in.

III. CURRENT INITIATIVES FOR A CROSS-BORDER DIRECT DEBIT TRANSACTION PLATFORM

Currently, initiatives have already been started to achieve a single payment area within the European Union, including Cross-border Direct Debit Transactions. This section provides an overview of the different initiatives taken within the European Union:

- The SEPA initiative on achieving a single European payments area
- The Euro Banking Association's initiative in developing platforms for cross-border payments processing

- The European Central Bank’s inventory of the main payment and securities settlement systems in the Member States of the European Union
- The development of the IBAN and BIC standards
- SWIFT’s message formats
- The Inter-Federation Cross-border Direct Debit Working Group
- The European Committee for Banking Standards

A. THE SEPA⁷ INITIATIVE

1- EUROLAND: OUR SINGLE PAYMENT AREA

The banking community (i.e. the European Credit Sector Association (ECSA)) published a white paper in May 2002 on the requirements to move to an integrated payment area: ‘Euroland: Our Single Payment Area’. The following action plan and key recommendations was agreed upon by the banking community related to Direct Debit Transactions:

- Banks should also start developing an efficient Cross-border Direct Debit instrument
- A clear preference was expressed in the development of a Pan-European Clearing House with fair and open access⁸
- A set of basic value added standards and rules for STP will need to be implemented

2- THE PAYMENTS INSTRUMENTS WORKGROUP

Based on this action plan, workgroups were put together to start realising the achievement of a single payment area. The white paper clearly indicated that the implementation of a Direct Debit instrument entails challenges in terms of fraud management and legal constraints, as well as the harmonization of current differences in national inter-bank rules, which will require close collaboration with regulators.

The following responsibilities related to Direct Debits were assigned to the ‘Payments Instruments’ working group:

- Substantiate customer demand
- Define a pan-European Direct Debit product
- Define clearly the value proposition
- Launch standards development effort on a pan-European level
- Influence the harmonization of legal frameworks in collaboration with each country and the EU
- Develop requirements for a possible pan-European infrastructure for Direct Debits, leveraging maximally the credit transfers initiatives
- Develop possible options for migration paths

⁷ SEPA stands for “Single Euro Payment Area”

⁸ They define fair and open access as ‘direct access granted to everybody, provided they have a banking license and meet minimal solvency requirements

The banking community's ambition is having the demand substantiated, a product defined and standards developed by July 2003 and the first pan-European Direct Debit instruction processed as early as July 2005.

3- CREATION OF A PAN-EUROPEAN CLEARING HOUSE

The banking community evaluated in its white paper 6 main architectural models comparable to the ones outlined in section "**B. AGREED UPON ARCHITECTURAL MODEL**". A clear preference was expressed in the development of a Pan-European Clearing House with fair and open access.

B. THE EURO BANKING ASSOCIATION (EBA)

The Euro Banking Association was formed in 1985 by 18 commercial banks to act as an initiator and to assist in the development of European-wide payment infrastructures.

Over the last years, the EBA developed several platforms to facilitate a European-wide payment infrastructure, i.e. the EURO1, STEP1 and STEP2 platforms. A general overview of these platforms will be given hereafter. However it is important to realise that these platforms are designed to process only Euro currency transactions.

The EBA's Information note (d.d. November 2002) about the STEP1 environment mentions the technical ability to process debit transfer messages (MT104⁹ and MT204¹⁰) since September 2002 for the EURO1 and STEP1 platforms. STEP2 will support these messages in their second release. The following sections provide more information on these environments.

1- EURO1 SYSTEM

The EURO1 system established by the Euro Banking Association is based on an information-messaging infrastructure provided by SWIFT using SWIFT message standards. It provides a method to facilitate end-to-end processing of payment messages denominated in Euro. The current system processes MT100, MT102, MT103, MT104, MT202, MT204 and MT400 SWIFT standard messages. This platform was in principle established for large-value payments and hence not focused to mass payment processing¹¹. In order to provide a solution for cross-border low-value payments processing as well, the STEP1 platform was created.

2- STEP1

The STEP1 was launched on 20th November 2000. Over 200 banks are participants and more than 8000 Bank Identification Codes are available in this environment.

⁹ MT104: Direct Debit and request for debit transfer message

¹⁰ MT204: Financial Markets Direct Debit Message

¹¹ European Central Bank, "Improving Cross-border Retail Payment Services – Progress Report", September 2000, page 10.

As the EURO1 system is not entirely appropriate for retail cross-border payments, the EBA implemented a payment system specifically designed for cross-border low-value payments. STEP1 processing takes place on the EURO1 processing engine without being subject to the strict risk management requirements of the EURO1 system. However STEP1 does not provide the central sorting function traditionally included in ACH-type solutions. Consequently banks must group payment instructions according to the bank of the beneficiary before transferring them to the ACH¹².

The STEP2 platform was designed to offer this central sorting function traditionally included in ACH-type solutions.

3- STEP2

The STEP2 project is about the development of an ACH-type arrangement for cross-border retail payments in Euro to meet the bank's future requirements in terms of bulk payment processing. This system will offer direct access to a wide banking community, whose payment instructions, routed through to STEP2, will be distributed to any bank operating in the EU.

The new pan-European ACH was scheduled to go live in a pilot phase in the 1st quarter of 2003. Support for Direct Debit processing will be offered in a second release of the STEP2 platform.

Compared to the EURO1 and STEP1 platforms, the STEP2 environment also grants support for XML (eXtensible Markup Language) messages, using the SWIFT defined format.

C. THE EUROPEAN CENTRAL BANK

The European Central Bank (ECB) published a Blue Book in 2001 about "Payment and Securities Settlement Systems in The European Union".¹³ In this Blue Book the ECB mentions that the EBA's STEP1 platform is the only retail payment system which covers the whole of the Euro area and which is open to all banks.

The Blue Book provides a comprehensive description of the main payment and securities settlement systems in the Member States of the European Union. These descriptions cover both the domestic and cross-border aspects of the systems. It gives also an overview of the interbank transfer and settlement systems and the various securities settlement systems.

D. IBAN AND BIC STANDARDS

ISO standards are currently available to uniquely identify parties involved in payment transactions.

¹² European Central Bank, "Improving Cross-border Retail Payment Services – Progress Report", September 2000, page 11.

¹³ European Central Bank, "Payment and Securities Settlement Systems in the European Union", Blue Book, June 2001.

The IBAN (International Bank Account Number) is an international standard for presenting bank account numbers, which includes a check digit, thereby allowing a unique identification of a bank account number. Banks should have a harmonised schedule for the distribution of IBANs to customers and implement it in their systems involved with Cross-border Direct Debit Transactions to enable cross-border payments processing.

The Bank Identification Code (BIC) is an international standard providing a unique identification of banks and their branches. The BIC code should be implemented by banks in order to route payments as long as banks' systems are not able to route payments on the basis of the IBAN only¹⁴.

E. THE SWIFT MESSAGE FORMATS

SWIFT developed some message formats, which can be used for Direct Debit Transaction purposes. These message formats are quite flexible and open. Currently these messages are used in a Message User Group environment and hence a bilateral agreement needs to be signed by the sender and receiver. The bilateral agreement covers for example the Transaction amount limits and the definitions of the Direct Debit Scheme. The EURO1, STEP1 and STEP2 platforms are based on these SWIFT developed message formats.

1- MT 104 DIRECT DEBIT AND REQUEST FOR DEBIT TRANSFER MESSAGE

MT 104 is a SWIFT defined message format for the transfer of Direct Debit instructions between financial institutions. It's tailored to support 'Customer Direct Debit Messages' as well as 'Request for Direct Debit Messages'.

2- MT 107 GENERAL DIRECT DEBIT MESSAGE

The MT 107 message is based on the MT 104 but doesn't support the functionality of the 'Request for Direct Debit Messages'.

3- MT 204 FINANCIAL MARKETS DIRECT DEBIT MESSAGE

A MT 204 message¹⁵ can be sent by an exchange or clearing house to instruct the receiver of the message to debit the account of a specified third party and to pay or credit the corresponding amount in favour of the sender of the message.

F. INTER-FEDERATION CROSS-BORDER DIRECT DEBIT WORKING GROUP

During the first meeting of the Inter-Federation Cross-border Direct Debit Working Group legal and technical ideas were collected in order to move forward with the cross-border integration of Direct Debit Transactions. The workgroup focused on the legal framework, the process and information flow and the impact on national clearings.

¹⁴ European Central Bank, "Improving Cross-border Retail Payment Services – Progress Report", September 2000, page 14.

¹⁵ SWIFTStandards, "Category 2, Financial Institution Transfers", November 2003.

G. EUROPEAN COMMITTEE FOR BANKING STANDARDS (ECBS)

ECBS' primary aim is to enhance the European technical banking infrastructure by developing standards. ECBS produces technical reports and standard implementation guidelines aimed at assisting the European banking sector's application of relevant standards.

In 2003 the ECBS aligned its work to the strategic needs in the payment area identified by the European Payments Council (EPC). The ECBS' Technical Committee 2 "Automated Cross-border Payments" Working Group 5 focuses on the Cross-border Direct Debit Transactions. Technical Report 210, released in January 2003, is used as the core for further work on a pan-European Direct Debit Scheme. A second report released by the same working group describes the national Direct Debit Schemes currently in place in Europe.

IV. TECHNICAL OBSTACLES FOR MOVING TOWARDS A CROSS-BORDER DIRECT DEBIT PLATFORM

The European Credit Sector Association's (ECSA) white paper on "Euroland: Our Single Payment Area" (May 2002) mentions that the key pan-European standards facilitating cross-border payments and Straight-Through-Processing are already in place (e.g. IBAN, BIC, MT103+, MT104) but have not been implemented by all banks yet. The banking community mentions the following root causes in its white paper:

- Limited incentives to implement these pan-European standards, given the relatively small volumes of cross-border payments
- Process automation in a given bank is dependent upon automation efforts made by ordering clients as well as sending banks. United effort made by all the actors involved is required
- Existing standards bodies often lack the authority to enforce implementation
- Barriers created by different rules and regulations across the EU

However the bank-to-bank and customer-to-bank standardisation should be enhanced in order to achieve *end-to-end* STP. The ultimate success of STP depends on all parties involved (financial institutions and domestic ACHs) and their willingness to migrate to this new environment, for example by implementing the IBAN and BIC codes.

The following table provides an overview of the status today based on our research of the several projects in progress. The first column summarizes the requirements we defined to achieve this integrated Cross-border Direct Debit environment. The second column specifies the initiatives already taken or in progress to meet these requirements.

Table 1: Technical requirements for an integrated Cross-border Direct Debit environment

Requirements	Business activities to meet these requirements	Remaining technical obstacles
Common approach to identify parties involved (Debtor's Bank, Debtor, Creditor's Bank, Creditor)	BIC and IBAN standards have been developed	Too few banks and ACHs already implemented the IBAN code to achieve full STP processing
Integrated and shared networks	The EBA developed the STEP1 and STEP2 platform to process mass low-value payments, including Direct Debit messages STEP1 is a platform that covers the whole of the Euro area and is open to all banks	
Agreed upon architectural model	The ECSA expressed their preference in a Pan-European Clearing House architectural model. EBA's development on STEP2 is intended to fulfil that role of Pan-European ACH	
Secure transmission and processing environment: - Identification and authentication - Non-repudiation - Confidentiality and encryption	Public Key Infrastructure (PKI) technology can deliver these security features of authentication, non-repudiation and encryption. The SWIFT connection to the EBA platforms is secured by PKI technology	
Inter-operational and harmonised Cross-border Direct Debit Scheme(s)	Under examination	
Standardised transaction message formats and content codes: - Setting-up the relationship - Direct Debit Transaction message - Error reporting - Cancellation and Revocation of transactions	SWIFT already defined some of the message formats for Direct Debit Transactions, which are open and flexible	Based on the required operation messages (e.g. error reports, returns, mandate information, etc) more standardised messages need to be developed. However this has no impact on the technology level. For example, SWIFT currently offers standardised FIN or XML message formats

Multiple currency processing	Currently the EBA platforms only allow Euro currency based Transaction processing	Other non-Euro currencies within the EU should be supported as well. The Inter-Federation Cross-border Direct Debit Working Group mentions that this wouldn't present insoluble technical problems or other obstacles but would entail additional costs, as all banks involved would have to be able to process them
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V. CONCLUSION

Based on our research of requirements, current initiatives and the status of the STEP1 and STEP2 platforms, we conclude that the final success of an integrated Cross-border Direct Debit platform is not influenced by current technical capabilities. The technology is present to realise the objectives for Cross-border Direct Debit Transactions.

Its success will to a large extent depend on the willingness from the financial institutions and the domestic ACHs to migrate to a cross-border payments platform for Direct Debits. Moreover, enough effort should be spent on standardisation, bank-to-bank and customer-to-bank, to allow for Straight Through Processing.

The main challenge today is to take the necessary actions to build, operate and manage the new cross-border payments environment. Additionally, proprietary payment methods should be migrated to standardised instruments. As demonstrated in table 1 above, a lot of these initiatives have already been taken. If all parties involved are keen to participate, the integrated Cross-border Direct Debit Transaction platform isn't that far away.

3. PROPOSALS

PRELIMINARY PROPOSAL

DIRECT DEBIT TERMINOLOGY

Obstacle or not ?

During the conduct of our study, we noticed that many differences exist in the terminology used in the different Direct Debit Schemes. Obviously these differences can constitute real obstacles in Cross-border Direct Debit.

Proposal for harmonisation

EU legislation should lay down the rule that the same Direct Debit terminology, as it will be defined in the EU legislation, be applied in all of the Schemes.

Level of harmonisation

Maximum.

I. DIRECT DEBIT SCHEME

A. INTERBANKING AGREEMENT

Obstacle or not ?

As we demonstrated above, when there are no legally binding provisions, even not in another legal document, or when those provisions differ from one Scheme to the other, this could respectively constitute a legal vacuum or legal inconsistencies and would therefore be a serious threat to Cross-border Direct Debit.

The existence of an interbanking agreement or equivalent governing the relationship between the banks and possibly the ACH seems to be a minimum to ensure an efficient operation of the Direct Debit Schemes. Moreover the essential rules laid down in those agreements or other legal documents should not differ too much from each other.

Proposal for harmonisation

EU legislation should provide for the mandatory existence of a specific legally binding document for all these issues for which legislation would not be an adequate means. Of course, such legally binding document should be compliant with EU Cross-border Direct Debit legislation and EU legislation in general. In addition, it could be useful to provide for rules that determine the applicable agreement in case of conflicting agreements (if any). For instance, it could be imposed that the interbanking agreement of the Member State of the Debtor would prevail.

Level of harmonisation

Maximum as for the existence and the compliance of an interbanking agreement or equivalent.

Minimum as for the applicable agreement in case of conflicts.

B. ALLOWED CURRENCIES

Obstacle or not ?

The restrictions on the allowed currencies would be an obstacle.

Proposal for harmonisation

All the Schemes should allow each of the 4 European currencies. EU legislation should provide for this. Moreover as STP is a key objective, the principle of automated currency exchange would also preferably be dealt with at EU level. Finally exchange rates and related costs should be transparent and not discriminatory.

Level of harmonisation

Maximum as for the allowed currencies.

Minimum as for the principle of automated currency exchange and the transparency and non-discrimination of exchange rates and related costs.

C. INTERVENTION OF CLEARING HOUSE

Obstacle or not ?

The differences regarding the intervention or not of a clearing house is not regarded as an obstacle.¹⁶

Proposal for harmonisation

Not relevant.

Level of harmonisation

Not relevant.

D. STRAIGHT THROUGH PROCESSING

Obstacle or not ?

Not having the possibility of STP would constitute an obstacle as STP is one of the key objectives of the European Commission.

Proposal for harmonisation

EU legislation should impose that the Schemes must allow for STP and should prohibit any restrictions (for instance form related ones) or any provisions that would make STP less attractive from an operational, financial or legal point of view.

Level of harmonisation

Maximum as for the possibility of STP.

Minimum as for the operational implementation.

II. INITIALIZING THE DIRECT DEBIT

A. CONTRACTUAL RELATIONSHIP DEBTOR – DEBTOR'S BANK

1- SPECIFIC DIRECT DEBIT CONTRACT AND/OR SPECIFIC DIRECT DEBIT PROVISIONS IN GENERAL TERMS AND CONDITIONS

Obstacle or not ?

Obstacles to Cross-border Direct Debit can arise from the non-existence of a specific contract or equivalent (e.g. general terms and conditions).

¹⁶ We stress that this makes abstraction from the operational impact of its intervention. The existence of an ACH playing the role of entry point clearing house in each jurisdiction for Cross-border Direct Debits could mean a significant step forward.

Proposal for harmonisation

As for the issue of the interbanking agreement, EU legislation should provide for the mandatory existence of a specific legally binding document for all these issues for which legislation would not be an adequate means.

Level of harmonisation

Maximum as for the existence of a legally binding document.

2- MANDATORY CONTENT

Obstacle or not ?

Obstacles to Cross-border Direct Debit can arise from inconsistencies between the rules laid down in the contracts or general terms and conditions of different national Schemes as well as from inconsistencies with other legally binding documents.

Proposal for harmonisation

As for the issue of the interbanking agreement, the contracts and general terms and conditions should obviously be compliant with EU Cross-border Direct Debit legislation and EU legislation in general.

Level of harmonisation

Maximum.

B. CONTRACTUAL RELATIONSHIP CREDITOR – CREDITOR'S BANK

1- SPECIFIC DIRECT DEBIT CONTRACT AND/OR SPECIFIC DIRECT DEBIT PROVISIONS IN GENERAL TERMS AND CONDITIONS

Obstacle or not ?

Obstacles to Cross-border Direct Debit can arise from the non-existence of a specific contract or equivalent (e.g. general terms and conditions).

Proposal for harmonisation

EU legislation should provide for the mandatory existence of a specific legally binding document for all these issues for which legislation would not be an adequate means.

Level of harmonisation

Maximum as to the existence of a legally binding document.

2- MANDATORY CONTENT

Obstacle or not ?

Obstacles to Cross-border Direct Debit can arise from inconsistencies between the rules laid down in the contracts or general terms and conditions of different national Schemes as well as from inconsistencies with other legally binding documents.

Proposal for harmonisation

As for the issue of the interbanking agreement, the contracts and general terms and conditions should of course be compliant with EU Cross-border Direct Debit legislation and EU legislation in general.

Level of harmonisation
Maximum.

C. CREATING AND LODGING THE MANDATE

1- CONTROL BY THE CREDITOR'S BANK THAT THE CREDITOR'S OPERATIONAL ORGANISATION COMPLIES WITH THE SCHEME

Obstacle or not ?

Clear risks could arise from inconsistencies and different checking obligations regarding the Creditor's operational organization, as the starting point within the Direct Debit cycle. The lack of control by the Creditor's Bank or another competent party would reduce the confidence of the users of the Scheme, especially the Debtor - often a consumer. Moreover it would create legal uncertainty as to the responsibility and liability of the Creditor's bank (or other competent party).

Proposal for harmonisation

EU legislation should impose (i) the principle of such kind of control and (ii) a) assign this control to the Creditor's Bank or b) set criteria that would allow determining which party would have the responsibility for the control. In our opinion the modalities and subject matter of the control does not have to be dealt with at EU level.

Level of harmonisation

Maximum as to the principle of control.

Maximum or minimum as to the responsible party.

Not relevant for the modalities and subject matter of the control.

2- BLACK LISTS FOR CREDITORS AND DEBTORS

Obstacle or not ?

No difference was found here.

Proposal for harmonisation

Not relevant.

Level of harmonisation

Not relevant.

3- ALLOCATION OF CHARGES

Obstacle or not ?

The many differences regarding the allocation of charges pose a real threat to the rights of the involved parties.

Proposal for harmonisation

EU legislation should provide that the allocation of charges must be transparent and should not allow any kind of discriminatory treatment.

Level of harmonisation

Minimum.

4- AMOUNT OF CHARGES

Obstacle or not ?

The differences would lead to a lack of transparency and make therefore Cross-border Direct Debit less attractive. In this sense it could constitute an obstacle.

Proposal for harmonisation

EU legislation should provide that the way of calculation of the amount of charges must be transparent and not discriminatory.

Level of harmonisation

Minimum.

5- MANDATE BY THE DEBTOR

- Unique Mandate

Obstacle or not ?

The detected differences would certainly pose an obstacle. As a consequence pre-authorized Schemes should not be combined with non pre-authorized Schemes and the one-off Authorisation Scheme of the Netherlands.

Proposal for harmonisation

EU legislation should explicitly exclude non pre-authorized Schemes and the like from the scope of Cross-border Direct Debit legislation.

Level of harmonisation

Maximum.

- Wording of the actual power of attorney

Obstacle or not ?

The differences regarding this aspect can raise questions as to the rights created by the Mandate and lead therefore to confusion and a lack of transparency.

Proposal for harmonisation

EU legislation should determine the formula's to be used in the different languages.

Level of harmonisation

Maximum.

- Flexibility in the amount

Obstacle or not ?

Differences regarding this aspect could give rise to legal uncertainty with regard to the permissibility of Transactions of various amounts.

Proposal for harmonisation

As said above, we believe that non pre-authorized Schemes and the One-off Authorisation Scheme of the Netherlands (that per definition do not permit flexibility) should not be combined with pre-authorized Schemes. If this will be set as a rule at EU level, no further initiative is to be taken in terms of removing barriers. However it would be useful to confirm the principle of flexibility that exists in practice in EU legislation and prohibit

derogations. As a counter balance for the principle of flexibility a maximum (and minimum) limit could be set for the allowed amount.

Level of harmonisation

Maximum.

- Flexibility in the Due Date

Obstacle or not ?

The differences as to flexibility in the Due Date could give rise to legal uncertainty with regard to the permissibility of Transactions at various Due Dates.

Proposal for harmonisation

EU legislation should lay down the principle of flexibility in the Due Date and prohibit derogations.

Level of harmonisation

Maximum.

- Allowed types of payments

Obstacle or not ?

The differences could give rise to legal uncertainty with regard to the permissibility of Transactions of a certain nature.

Proposal for harmonisation

EU legislation should (i) prohibit any restrictions on the type of allowed payments or (ii) define what types of payments are to be allowed.

Level of harmonisation

Maximum.

- Allowed types of accounts

Obstacle or not ?

The differences could give rise to legal uncertainty with regard to the permissibility of accounts of a certain nature.

Proposal for harmonisation

EU legislation should (i) prohibit any restrictions on the type of allowed accounts or (ii) define what types of accounts are to be allowed.

Level of harmonisation

Maximum.

- Limitation on the number of Mandates per account

Obstacle or not ?

None of the Schemes has in principle a limitation on the number of Mandates per a given account. However differences could be created contractually and could become obstacles for instance if the infringement of the limitation rule would cause the invalidity of the Mandate.

Proposal for harmonisation

EU legislation should set an unlimited number of Mandates as a rule and prohibit derogations.

Level of harmonisation

Maximum.

- Invalidity of the Mandate in case of non-usage

Obstacle or not ?

The differences lead to uncertainty regarding the validity of a Mandate which can clearly be an obstacle and can give cause to complaints, claims and conflicts regarding the respective liabilities of the parties involved. It could render the outcome of the whole operation highly aleatory.

Proposal for harmonisation

EU legislation should set the time period of non-usage that leads to the invalidity of the Mandate.

Level of harmonisation

Maximum.

- Mandatory content of the Mandate

Obstacle or not ?

Uncertainty regarding the validity of the Mandate due to inconsistencies between the Mandates of the various Schemes would be really damaging for the efficiency and legal certainty of Cross-border Direct Debit.

Proposal for harmonisation

EU legislation should define the mandatory content of the Mandate and prohibit derogations as well as national initiatives to add other mandatory elements.

Level of harmonisation

Maximum

- Form of the Mandate

Obstacle or not ?

The differences in the allowed form of the Mandate could also be one of the elements leading to confusion and legal uncertainty. Moreover it would certainly be an obstacle to STP Cross-border Direct Debit.

Proposal for harmonisation

EU legislation should preferably deal with the form of the Mandate by (i) prohibiting any restrictions on the form of the Mandate or (ii) defining what form the Mandate should take. Either way the chosen approach will take into account the key objective that STP must be possible.

Level of harmonisation
Maximum.

6- ROUTING

Obstacle or not ?

We believe that the differences here would cause complete chaos as to the initialisation of a Cross-border Direct Debit relationship: none of the involved parties would indeed be clear as to his role in the Routing or as to the effect of the steps he would take. Therefore we view these differences as a real major obstacle.

Proposal for harmonisation

EU legislation should (i) define the party with whom the Mandate should be lodged and define one possible subsequent Routing or (ii) allow the Mandate to be lodged either with the Creditor or the Debtor's Bank and define one possible Routing for each option.

Level of harmonisation
Maximum.

D. REJECTION OF THE MANDATE

1- POSSIBILITY OF REJECTION OF THE MANDATE AND CIRCUMSTANCES

Obstacle or not ?

The few identified differences could be an obstacle when dealing with the Schemes that do not allow the rejection.

Proposal for harmonisation

EU legislation should impose the possibility of rejection. It should moreover confirm the principle that exists already in practice namely that there are no restrictions on the circumstances. In order to enhance the protection of the users, EU legislation should preferably also lay down the obligation that a rejection must be justified.

Such right of rejection could be coupled with the obligation for either the Debtor's Bank or the first Bank/ACH that receives the Mandate in the Routing, to check the validity of the Mandate. That obligation would however become less relevant if the Scheme would allow the Debtor to revoke a Transaction anyway.

Level of harmonisation
Maximum.

2- ROUTING OF THE REJECTION OF THE MANDATE

Obstacle or not ?

Once more we fear that the differences could cause chaos as to the initialisation of a Cross-border Direct Debit relationship. None of the involved parties would indeed be clear as to his role or to the effect of the steps he would take. Therefore we also view these differences as a real major obstacle.

Proposal for harmonisation

EU legislation should define the parties that can reject the Mandate and define one possible subsequent Routing for each option. Furthermore we suggest that there be no limitation on the parties that can reject.

Level of harmonisation

Maximum.

E. ACCEPTANCE OF THE MANDATE

1- CONFIRMATION OF THE ACCEPTANCE OF THE MANDATE

Obstacle or not ?

The differences can contribute to uncertainty and inefficiency and constitute an obstacle.

Proposal for harmonisation

EU legislation should lay down the confirmation of the acceptance as a rule.

Level of harmonisation

Maximum.

2- ROUTING OF THE ACCEPTANCE OF THE MANDATE

Obstacle or not ?

The many differences that exist could obviously again bring chaos to the process of initialising a Cross-border Direct Debit relationship. None of the involved parties would indeed be clear as to his role or to the effect of the steps he would take. Therefore we view these differences as a serious obstacle.

Proposal for harmonisation

EU legislation should designate the responsible party for the confirmation of the acceptance of the Mandate and define the Routing to be followed.

Level of harmonisation

Maximum.

III. DIRECT DEBIT TRANSACTIONS - NORMAL EXECUTION

A. GENERAL

1- OPERATIONAL DEADLINES

Obstacle or not ?

The differences in the operational deadlines for submitting Requests for Execution could certainly pose a threat to smooth Cross-border Direct Debit.

The differences in the deadlines for the Execution itself would lead to uncertainty and misunderstandings especially about the rights of the Creditor.

Proposal for harmonisation

EU legislation should set strict deadlines for submitting Requests for Execution and set out the principles for the deadlines for the Execution itself.

Level of harmonisation

Maximum for the deadlines for submitting Requests for Execution.

Minimum for the Execution itself.

2- RULES FOR CALCULATING VALUE DATES

Obstacle or not ?

This item is no obstacle at all.

Proposal for harmonisation

Not relevant. However, to improve transparency, minimum rules could be considered.

Level of harmonisation

Not relevant (subject to the above).

3- MANDATORY CONTENT OF THE REQUEST FOR EXECUTION

- Identification of the Scheme

Obstacle or not ?

Insofar the accurate identification of the Scheme would be essential for a Cross-border Direct Debit to take place in an efficient manner from an operational point of view, the detected differences would be an obstacle to smooth Cross-border Direct Debit.

Proposal for harmonisation

Harmonisation measures at EU level are subject to the condition above.

Level of harmonisation

Minimum.

- Identification of the Debtor

Obstacle or not ?

As long as the Debtor is identified in an equally satisfying manner, the differences in the manner of identification matters little.

Proposal for harmonisation

EU legislation should confirm the rule of the identification of the Debtor and preferably determine the possibilities of a satisfactory identification.

Level of harmonisation

Minimum.

- Identification of the Debtor's Bank

Obstacle or not ?

Insofar the explicit identification of the Debtor's Bank would not be essential from an operational point of view, the fact that there are Schemes that do not foresee this identification should not create obstacles. In addition, not using the same manner of identification should not be a legal obstacle if the identification could be done in an equally satisfying manner.

Proposal for harmonisation

The measures to be taken are subject to the operational condition above.

Level of harmonisation

None or minimum.

- Identification of the Creditor

Obstacle or not ?

Not using the same element for the identification of the Creditor should not be a legal obstacle insofar the identification could be done in an equally satisfying manner.

Proposal for harmonisation

We do not believe that measures would be strictly necessary.

Level of harmonisation

None or minimum.

- Identification of the Creditor's Bank

Obstacle or not ?

Insofar the explicit identification of the Creditor's Bank would not be essential from an operational point of view, the fact that there are Schemes that do not foresee this identification should not create obstacles. In addition, not using the same manner of identification should not be a legal obstacle if the identification could be done in an equally satisfying manner.

Proposal for harmonisation

The measures to be taken are subject to the operational condition above.

Level of harmonisation

None or minimum.

- Identification of the Mandate

Obstacle or not ?

If the identification of the Mandate would be an essential element in one Scheme and not in the other, this would make the Execution of the Transaction uncertain. As a consequence this would be an obstacle for smooth Cross-border Direct Debit.

Proposal for harmonisation

EU legislation should determine whether or not this element would be mandatory. It does not seem necessary to determine how it must be done.

Level of harmonisation

Maximum as to the necessity to identify.

Minimum as to the method.

- Data of the Transaction

Obstacle or not ?

Insofar certain data of the Transaction would be essential elements in one Scheme and not in the other, this would make the Execution of the Transaction uncertain as it would be difficult for the intervening banks to know whether a Request for Execution is valid or not. As a consequence this would be an obstacle for smooth Cross-border Direct Debit.

Proposal for harmonisation

EU legislation should determine the mandatory data in a Request for Execution. Preferably these should contain at least the amount and the currency.

Level of harmonisation

Maximum.

- Other elements

Obstacle or not ?

Insofar certain elements would be essential in one Scheme and not in the other, this would make the Execution of the Transaction uncertain. As a consequence this would be an obstacle for smooth Cross-border Direct Debit.

Proposal for harmonisation

EU legislation should determine the mandatory content in a Request for Execution.

Level of harmonisation

Maximum.

4- FORM OF THE REQUEST FOR EXECUTION

Obstacle or not ?

The fact that paper can still be used would be an obstacle with these Schemes that refuse to take paper Requests for Execution into consideration. If paper is the only allowed form, it would also be an obstacle for STP Cross-border Direct Debit.

Proposal for harmonisation

EU legislation should preferably deal with the form of the Request for Execution by (i) prohibiting any restrictions on the form or (ii) by defining what form it should take. Either way the chosen approach will take into account the key objective that STP must be possible.

Level of harmonisation

Maximum.

B. LODGING THE REQUEST FOR EXECUTION

1- ADVANCE NOTICE TO THE DEBTOR

Preliminary remark

In our view, the Advance Notice has two major functions:

- To inform the Debtor of the upcoming Direct Debit so that he can arrange for sufficient funding on his account,
- To allow the Debtor to check the accuracy of the information contained in the Advance Notice.

From a user protection point of view, the accuracy check is only efficient insofar the Debtor can then intervene in the actual Execution of the Transaction to avoid wrongful debiting. Therefore, the Advance Notice should be coupled either with (i) the obligation for the Creditor to suspend the lodging of his Request for Execution until the Debtor

agrees with the data of the Advance Notice or (ii) preferably, the right for the Debtor to cancel the Request for Execution.

Insofar that the Creditor could lodge a Request for Execution that does not match with the Advance Notice, the right for the Debtor to revoke the Transaction would be of prime importance.

Obstacle or not ?

Whether the differences would act as obstacles or not depends on the legal impact of the advance notice on the process of lodging a Request for Execution. If this were determining for its validity, then these differences would be obstacles.

Proposal for harmonisation

EU legislation should determine whether an advance notice is necessary or not and lay down the rules and, subject to it having an impact on the validity of the Request for Execution, set its modalities.

Level of harmonisation

Maximum for both the question of the necessity and the modalities (subject to the above).

2- ROUTING OF THE REQUEST FOR EXECUTION

Obstacle or not ?

The differences between the Schemes are rather small and seem to concern only the role of the Creditor's Bank. This would be a case of some uncertainty about the parties' respective roles rather than a real obstacle for Cross-border Direct Debit.

Proposal for harmonisation

EU legislation should confirm the practice existing in the majority of the Schemes and define the Routing to be followed.

Level of harmonisation

Maximum.

C. CONFIRMATION OF THE EXECUTION

1- CONFIRMATION OF THE EXECUTION OF THE REQUEST

Obstacle or not ?

The fact that in some Schemes the Execution of the Direct Debit is not confirmed could harm the rights of the involved parties, especially the Debtor and the Creditor.

Proposal for harmonisation

EU legislation should (i) impose a confirmation, (ii) designate responsible parties and (iii) indicate what parties must receive confirmation. The modalities of the confirmation are not necessarily to be laid down.

Level of harmonisation

Maximum except for the modalities.

2- DEADLINE

Obstacle or not ?

This is not to be considered as an obstacle.

Proposal for harmonisation

Not relevant.

Level of harmonisation

Not relevant.

3- ROUTING

Obstacle or not ?

The differences in the Routing could create legal uncertainty as to the role, rights and obligations, and, as a consequence, the liability of the respective parties and could therefore be a threat to the quality of Cross-border Direct Debit.

Proposal for harmonisation

The Routing to be followed should be defined at EU level.

Level of harmonisation

Maximum.

4- MANDATORY CONTENT OF THE CONFIRMATION

Obstacle or not ?

The differences could harm the rights of the involved parties to be duly informed.

Proposal for harmonisation

EU legislation should lay down the minimum mandatory content of the confirmation.

Level of harmonisation

Minimum.

5- FORM OF THE CONFIRMATION

Obstacle or not ?

This is not to be regarded as an obstacle.

Proposal for harmonisation

Not relevant.

Level of harmonisation

Not relevant.

IV. DIRECT DEBIT TRANSACTIONS – CANCELLATION OF THE REQUEST FOR EXECUTION BY THE CREDITOR

A. GENERAL

1- RIGHT TO CANCELLATION

Obstacle or not ?

The fact that the Creditor does not have the right to cancel his Request for Execution in all of the Schemes would certainly be a major obstacle.

Proposal for harmonisation

EU legislation has to provide that the Creditor has the right to cancel his Request.

Level of harmonisation

Maximum.

2- CIRCUMSTANCES AND AMOUNT OF THRESHOLD

Obstacle or not ?

There were no obstacles detected.

Proposal for harmonisation

Not relevant.

Level of harmonisation

Not relevant.

3- DEADLINES

Obstacle or not ?

The differences in the deadlines would be obstacles especially for the Creditor who might remain ignorant on whether his Request will be processed.

Proposal for harmonisation

EU legislation should set the applicable deadlines.

Level of harmonisation

Maximum.

4- CONTACT POINT FOR REQUESTING A CANCELLATION

Obstacle or not ?

The differences can lead to the Creditor ignoring to whom he should address himself and eventually this could result in a late Request and then become an obstacle to an efficient Cross-border Direct Debit.

Proposal for harmonisation

EU legislation should determine the contact point.

Level of harmonisation

Maximum.

5- MAXIMUM ALLOWED TIME BETWEEN THE REQUEST AND THE CANCELLATION

Obstacle or not ?

The differences regarding this aspect are not to be considered as an issue. However rules thereto would improve transparency and the protection of the rights of the Creditor to cancel his Request.

Proposal for harmonisation

Not relevant, but for the sake of transparency, minimum rules could be considered.

Level of harmonisation

Not relevant, subject to the above.

6- MANDATORY CONTENT OF THE REQUEST FOR CANCELLATION

Obstacle or not ?

Insofar certain elements of the Request for Cancellation are essential elements in one Scheme and not in the other, it would be difficult for the intervening banks to know whether a Request for Cancellation is valid or not. As a consequence this would be an obstacle.

Proposal for harmonisation

EU legislation should define the mandatory content and not leave room for additional mandatory items to be added.

Level of harmonisation

Maximum.

7- FORM OF THE REQUEST

Obstacle or not ?

Insofar the form of the Request for Cancellation remains free, the actual differences in their form are no obstacles. However this would not be in line with the key objective of the European Commission that Cross-border Direct Debit should allow STP.

Proposal for harmonisation

EU legislation should preferably deal with the form of the Request for Cancellation by (i) prohibiting any restrictions on the form or (ii) by defining what form it should take. Either way the chosen approach will take into account the key objective that STP must be possible.

Level of harmonisation

Maximum.

B. ROUTING OF THE REQUEST FOR CANCELLATION

Obstacle or not ?

The differences do not seem to be that important, there being only two options for the first step. However the fact that the Creditor would ignore to whom he should address himself could eventually result in a late Request and then become an obstacle. Moreover the other parties would also be confused as to their role in the Routing.

Proposal for harmonisation

EU legislation should define the Routing.

Level of harmonisation

Maximum.

C. CONFIRMATION OF THE CANCELLATION

1- EXISTENCE OF THE CONFIRMATION

Obstacle or not ?

The differences do not have a big impact but can be very annoying for the Creditor who remains uncertain about the outcome of his Cancellation Request and therefore also on further measures he should take or not towards the Debtor.

Proposal for harmonisation

From a user protection point of view, EU legislation should preferably lay down as a rule that the parties who were already involved in the lodging process should receive confirmation of the Cancellation.

Level of harmonisation

Maximum.

2- DEADLINE FOR THE CONFIRMATION

Obstacle or not ?

Due to a lack of information we can not forecast possible obstacles in this regard.

Proposal for harmonisation

Not relevant.

Level of harmonisation

Not relevant.

3- ROUTING OF THE CONFIRMATION OF THE CANCELLATION

Obstacle or not ?

The differences here can eventually harm the rights of the Creditor.

Proposal for harmonisation

The Routing should be defined at EU level.

Level of harmonisation

Maximum.

4- MANDATORY CONTENT AND FORM OF THE CONFIRMATION

Obstacle or not ?

Due to a lack of information we can not forecast possible obstacles in this regard.

Proposal for harmonisation

Not relevant.

Level of harmonisation

Not relevant.

V. DIRECT DEBIT TRANSACTIONS – CANCELLATION OF THE REQUEST FOR EXECUTION BY THE DEBTOR

A. GENERAL

1- RIGHT TO CANCELLATION AND CIRCUMSTANCES

Obstacle or not ?

The fact that the Debtor does not have the right to cancel his Request for Execution in all of the Schemes would certainly be a major obstacle

Proposal for harmonisation

EU legislation has to provide that the Debtor has the right to cancel the Request subject to what will be provided for the Revocation. Alternatively Cancellation and Revocation could become one and the same action.

Level of harmonisation

Maximum.

2- AMOUNT OF THRESHOLD

Obstacle or not ?

There are no obstacles.

Proposal for harmonisation

Not relevant.

Level of harmonisation

Not relevant.

3- DEADLINES

Obstacle or not ?

The differences in deadlines would be obstacles especially for the Debtor who might remain ignorant on whether and when his Request will be processed.

Proposal for harmonisation

EU legislation should set the applicable deadlines.

Level of harmonisation

Maximum.

4- CONTACT POINT FOR THE REQUEST FOR CANCELLATION

Obstacle or not ?

The differences can lead to the Debtor ignoring to whom he should address himself and this could eventually result in a late Request and then become an obstacle. In practice the risk is very small as the differences are very limited.

Proposal for harmonisation

EU legislation should confirm the existing practice in order to exclude the creation of new differences.

Level of harmonisation

Maximum.

5- CONTENT OF THE REQUEST FOR CANCELLATION

Obstacle or not ?

Where certain elements of the Request for Cancellation are essential elements in one Scheme and not in the other, it would be difficult for the intervening banks to know whether a Request for Cancellation is valid or not. As a consequence this would be an obstacle.

Proposal for harmonisation

EU legislation should define the mandatory content and not leave room for additional mandatory items to be added.

Level of harmonisation

Maximum.

6- FORM OF THE REQUEST FOR CANCELLATION

Obstacle or not ?

Where the form of the Request for Cancellation constitutes a validity requirement, the differences can constitute obstacles. Moreover the obligatory use of paper forms is not in line with the key objective of the European Commission that Cross-border Direct Debit should allow STP.

Proposal for harmonisation

EU legislation should preferably deal with the form of the Request for Cancellation by (i) prohibiting any restrictions on the form or (ii) by defining what form it should take. Either way the chosen approach will take into account the key objective that STP must be possible.

Level of harmonisation

Maximum.

B. ROUTING OF THE REQUEST FOR CANCELLATION

Obstacle or not ?

The few differences in the Routings could anyhow lead to legal uncertainty as to the role, rights and obligations of the intervening parties and therefore become an obstacle.

Proposal for harmonisation

EU legislation should define the Routing.

Level of harmonisation

Maximum.

C. CONFIRMATION OF THE CANCELLATION

1- EXISTENCE OF THE CONFIRMATION OF THE EXECUTION OF THE CANCELLATION

Obstacle or not ?

The differences do not have too big an impact on the Debtor (who will be informed anyway) but can be very annoying for the Creditor who remains uncertain about the outcome of the Cancellation Request and therefore also on further measures he should take or not towards the Debtor.

Proposal for harmonisation

From a user protection point of view, EU legislation should preferably lay down as a rule that the Creditor must receive confirmation of the Cancellation.

Level of harmonisation

Maximum.

2- DEADLINE FOR THE CONFIRMATION

Obstacle or not ?

Due to a lack of information we cannot forecast possible obstacles in this regard.

Proposal for harmonisation

Not relevant.

Level of harmonisation

Not relevant.

3- ROUTING OF THE CONFIRMATION

Obstacle or not ?

The differences detected here can eventually harm the rights of the Creditor and the Debtor.

Proposal for harmonisation

From a user protection point of view the Routing should be defined at EU level.

Level of harmonisation

Maximum.

4- MANDATORY CONTENT OF THE CONFIRMATION

Obstacle or not ?

The differences do not seem to be of any importance.

Proposal for harmonisation

Not relevant.

Level of harmonisation
Not relevant.

5- FORM OF THE CONFIRMATION

Obstacle or not ?

The differences in the form are a negligible potential source of obstacles but could conflict with the STP key objective of the European Commission.

Proposal for harmonisation

As EU legislation should prohibit any form related restrictions in general and impose the possibility of STP, it would implicitly cover this matter as well.

Level of harmonisation

Maximum as for the general principles regarding the form and STP.

VI. DIRECT DEBIT TRANSACTIONS – REJECTION OF THE REQUEST FOR EXECUTION

A. BANKS HAVING THE RIGHT TO REJECT

Obstacle or not ?

The inconsistencies in this matter could for sure lead to major obstacles to smooth Cross-border Direct Debit.

Proposal for harmonisation

EU legislation should determine which parties (banks and ACH) have the right to Rejection.

Level of harmonisation

Maximum.

B. CIRCUMSTANCES

Obstacle or not ?

As the circumstances are not limited in any of the Schemes there should be no obstacle.

Proposal for harmonisation

Not relevant. However, for the avoidance of doubt, EU legislation should confirm the rule that there are no limitations.

Level of harmonisation

Not relevant (subject to the above).

C. PARTIAL REJECTION

Obstacle or not ?

Partial Rejection does not seem to be a possibility.

Proposal for harmonisation

Not relevant. However, for the avoidance of doubt, EU legislation should confirm the rule that partial Rejections are not allowed.

Level of harmonisation

Not relevant (subject to the above).

D. RECONSIDERATION OF THE REQUEST FOR EXECUTION

Obstacle or not ?

The differences could pose a threat to the protection of the rights of the Creditor and the Debtor because they will be uncertain about the further treatment of the Request for Execution.

Proposal for harmonisation

EU legislation should lay down rules regarding reconsideration: it should be either an obligation (possibly subject to certain conditions) or either excluded.

Level of harmonisation

Maximum.

E. ROUTINGS

Obstacle or not ?

The differences will cause confusion which in turn could lead to the Creditor and the Debtor remaining uninformed of the Rejection. The differences are therefore a threat to the protection of their rights, as they will be in doubts on possible further measures they should take or not.

Proposal for harmonisation

EU legislation should define the Routing for each party that can reject.

Level of harmonisation

Maximum.

F. MANDATORY CONTENT OF THE REJECTION

Obstacle or not ?

The differences that exist in practice do not lead to obstacles.

Proposal for harmonisation

From a user protection point of view, EU legislation should define anyhow a minimum mandatory content that would include the identification of the Transaction and the reason of the Rejection.

Level of harmonisation

Minimum.

G. FORM OF THE REJECTION

Obstacle or not ?

The differences are no obstacles but could be conflicting with the objective that Cross-border Direct Debit should allow STP.

Proposal for harmonisation

As EU legislation should prohibit any form related restrictions in general and impose the possibility of STP, it would implicitly cover this matter as well.

Level of harmonisation

Maximum for the general principles regarding the form and STP.

VII. DIRECT DEBIT TRANSACTIONS – REVOCATION OF THE TRANSACTION BY THE DEBTOR

A. GENERAL

1- RIGHT TO REVOCATION

Obstacle or not ?

The differences could cause a lot of uncertainty, especially for the Debtor but also for the other parties who will remain uncertain of their rights and obligations. As a consequence these differences can be a major obstacle for Cross-border Direct Debiting.

Proposal for harmonisation

EU legislation has to provide that the Debtor has the right to revoke the Transaction subject to what will be provided for his right to Cancellation. Alternatively Cancellation and Revocation could become one and the same action.

Level of harmonisation

Maximum.

2- CIRCUMSTANCES

Obstacle or not ?

Obstacles would arise in Cross-border Direct Debit with the Scheme where the number of possible circumstances is limited.

Proposal for harmonisation

EU legislation should preferably prohibit restrictions on the circumstances that can justify a Revocation. Alternatively it should determine what circumstances do justify a Revocation, either in a positive or in a negative manner.

Level of harmonisation

Maximum.

3- THRESHOLD

Obstacle or not ?

None.

Proposal for harmonisation

Not relevant.

Level of harmonisation

Not relevant.

4- DEADLINES

Obstacle or not ?

Many differences have been detected in deadlines as regards both the submission as well as the processing of the Request. Both could be an obstacle to smooth and efficient Cross-border Direct Debit. Differences in submission deadlines could be a major obstacle where they have an impact on the validity of the Revocation. Differences in processing lead to a lack of transparency.

Proposal for harmonisation

EU legislation should define the deadline for submitting the Request. As regards processing deadlines, the principles should preferably be set out in order to improve the user protection.

Level of harmonisation

Maximum for the deadline for submitting the Request.

Minimum for the execution of the Request.

5- CONTACT POINT FOR REVOCATION

Obstacle or not ?

The few differences that exist can lead to a very limited risk that the Debtor would ignore to whom he should address himself and could experience problems because of that.

Proposal for harmonisation

EU legislation should nevertheless determine with whom the Debtor must lodge his Request for Revocation in order to avoid that new differences be created in the future.

Level of harmonisation

Maximum.

6- MANDATORY CONTENT OF THE REQUEST FOR REVOCATION

Obstacle or not ?

Insofar certain elements of the Request would be mandatory for its validity, the differences between the Schemes would lead to uncertainty about what will happen to a Request for Revocation and how to deal with it. This would be an obstacle.

Proposal for harmonisation

EU legislation should define the mandatory content and not leave room for additional mandatory items to be added.

Level of harmonisation

Maximum.

7- FORM OF THE REQUEST FOR REVOCATION

Obstacle or not ?

If the form of the Request would have an impact on its validity, even the few differences between the Schemes could cause conflicts and disputes and lead to liability claims. Moreover the use of paper forms in some Schemes would be an obstacle for the key objective that is STP Cross-border Direct Debit.

Proposal for harmonisation

EU legislation should deal with the form of the Request for Revocation by (i) prohibiting any restrictions on the form or (ii) by defining what form it should take. Either way the chosen approach will take into account the key objective that STP must be possible.

Level of harmonisation

Maximum.

B. ROUTING OF THE REQUEST FOR REVOCATION

Obstacle or not ?

The differences between the Schemes could lead to serious uncertainty as to the role of the intervening parties in the Routing and therefore in the processing of the Request. As a consequence the rights of the Debtor could be at risk and it could also give rise to conflicts, disputes and even liability claims.

Proposal for harmonisation

EU legislation should define the Routing.

Level of harmonisation

Maximum.

C. CONFIRMATION OF THE REVOCATION

1- EXISTENCE OF A CONFIRMATION OF THE REVOCATION

Obstacle or not ?

The differences are really very small and should not constitute an obstacle as the Debtor will be informed anyway via his account statement.

Proposal for harmonisation

Not relevant.

Level of harmonisation

Not relevant.

2- DEADLINE

Obstacle or not ?

As confirmation or not of the Revocation is not being regarded as a potential source of obstacles, the same goes obviously for the deadlines of this confirmation.

Proposal for harmonisation

Not relevant.

Level of harmonisation

Not relevant.

3- ROUTING OF THE CONFIRMATION OF THE REVOCATION

Obstacle or not ?

As confirmation or not of the Revocation is not being regarded as a potential source of obstacles, the same goes obviously for the Routing of this confirmation.

Proposal for harmonisation

Not relevant.

Level of harmonisation

Not relevant.

4- MANDATORY CONTENT OF CONFIRMATION OF THE REVOCATION

Obstacle or not ?

Again, as confirmation or not of the Revocation is not being regarded as a potential source of obstacles, the same goes obviously for the mandatory content of this confirmation.

Proposal for harmonisation

Not relevant.

Level of harmonisation

Not relevant.

5- FORM OF THE CONFIRMATION

Obstacle or not ?

As confirmation or not of the Revocation is not being regarded as a potential source of obstacles, the same goes in principle for the form of this confirmation. However, the exclusive use of paper forms in some Schemes would be an obstacle for full STP Cross-border Direct Debit.

Proposal for harmonisation

As EU legislation should prohibit any form related restrictions in general and impose the possibility of STP, it would implicitly cover this matter as well.

Level of harmonisation

Maximum for the general principles regarding the form and STP.

VIII. REVOCATION OF THE MANDATE BY THE DEBTOR

A. GENERAL

1- RIGHT TO REVOCATION

Obstacle or not ?

The differences between the Schemes do not regard the right to revoke but its mandatory justification. They could especially pose a threat to the rights of the Debtor and thus become an obstacle.

Proposal for harmonisation

In order to avoid that differences be created, EU legislation should confirm the principle that exists in practice of the right to Revocation. Moreover, EU legislation should deal with the circumstances justifying a Revocation by (1) preferably, prohibit any restrictions in the allowed circumstances or (2) determine which circumstances are allowed.

Level of harmonisation

Maximum.

2- DEADLINES

Obstacle or not ?

The differences in the time period for the Revocation to take effect can create uncertainty with the intervening parties in this sense that they could take conflicting positions on the effect of the Revocation. This is a source of obstacles.

Proposal for harmonisation

EU legislation should determine the precise moment at which the Revocation takes effect.

Level of harmonisation

Maximum.

3- MANDATORY CONTENT OF THE REQUEST FOR REVOCATION

Obstacle or not ?

Where certain elements of the Request have an impact on the validity of the Request, the detected differences could lead to uncertainty about the effect of a Request and how to deal with it. It would need to be considered as a serious obstacle.

Proposal for harmonisation

EU legislation should define the mandatory content and not leave room for additional mandatory items to be added.

Level of harmonisation

Maximum.

4- FORM OF THE REQUEST FOR REVOCATION

Obstacle or not ?

Insofar the form has an impact on the validity of the Request for Revocation, the differences between the Schemes could lead to uncertainty about the effect of a Request and how to deal with it. It would need to be considered as a serious obstacle.

Proposal for harmonisation

EU legislation should deal with the form of the Request for Revocation by (i) prohibiting any restrictions on the form or (ii) defining what form it should take. Either way the chosen approach will take into account the key objective that STP must be possible.

Level of harmonisation

Maximum.

B. ROUTING OF THE REQUEST FOR REVOCATION

Obstacle or not ?

The differences in the Routings can lead to chaos, cause extra delays and, even worse, it could have the consequence that the Request for Revocation would not even be processed. These differences are therefore in our view serious obstacles.

Proposal for harmonisation

EU legislation should (i) define the party with whom the Request for Revocation should be lodged and define one possible subsequent Routing or (ii) allow the Request for Revocation to be lodged either with the Creditor or the Debtor's Bank or the ACH and define one possible Routing for each option.

Level of harmonisation

Maximum.

C. CONFIRMATION OF THE REVOCATION

1- CONFIRMATION OF THE REVOCATION

Obstacle or not ?

The differences are no real obstacles. However the fact that the Debtor is rarely informed of the execution of the Revocation raises questions with regard to the protection of his rights as a user of the system.

Proposal for harmonisation

From a user protection point of view, EU legislation should provide that the Debtor must receive confirmation and designate a responsible party. The modalities can be left open.

Level of harmonisation

Maximum for the obligation to confirm and the responsible party.

Minimum for the modalities.

2- DEADLINE

Obstacle or not ?

No obstacles were reported.

Proposal for harmonisation

EU legislation should preferably set the principles for the deadline for the confirmation.

Level of harmonisation

Minimum.

3- ROUTING OF THE CONFIRMATION OF THE REVOCATION

Obstacle or not ?

The many varieties in the Routings would lead to uncertainty for all the intervening parties as to their role and especially for the Debtor and the Creditor as to their respective rights and obligations.

Proposal for harmonisation

EU legislation should define the Routing.

Level of harmonisation

Maximum.

4- MANDATORY CONTENT OF THE CONFIRMATION

Obstacle or not ?

It was not really possible to draw conclusions on the differences detected. However even if they would be numerous, such would have very little impact on Cross-border Direct Debit.

Proposal for harmonisation

Not relevant.

Level of harmonisation

Not relevant.

5- FORM OF THE CONFIRMATION

Obstacle or not ?

No obstacle was detected. However the few differences could conflict with the objective of STP.

Proposal for harmonisation

As EU legislation should prohibit any form related restrictions in general and impose the possibility of STP, it would implicitly cover this matter as well.

Level of harmonisation

Maximum for the general principle regarding the form and STP.

IX. DISPUTE RESOLUTION

A. APPLICABLE LAW

Obstacle or not ?

Whatsoever is agreed upon or not regarding the applicable law, it is clear that differences regarding this issue would be an obstacle.

Proposal for harmonisation

EU legislation should determine the applicable law for instance by the criterion of the applicable law of the Debtor.

Level of harmonisation

Maximum.

B. COMPETENT JURISDICTION

Obstacle or not ?

Whatsoever is agreed upon or not regarding the competent jurisdiction, it is clear that differences regarding this issue would be an obstacle.

Proposal for harmonisation

EU legislation should determine the competent jurisdiction for instance by the criterion of the competent jurisdiction of the Debtor.

Level of harmonisation

Maximum.

C. ALTERNATIVE DISPUTE RESOLUTION

Obstacle or not ?

Again this issue would be an obstacle.

Proposal for harmonisation

EU legislation should encourage the use of alternative dispute resolution and provide that co-operation must take place between different bodies for alternative dispute resolution. EU legislation should also set forth a rule to deal with conflicting competences.

Level of harmonisation

Maximum.

3. OVERVIEW OF OBSTACLES AND PROPOSALS

Key elements	Obstacle	No obstacle	Proposal for harmonization	Level of harmonization
PRELIMINARY: Direct Debit terminology	X		Lay down rule that same Direct Debit terminology must be applied in all Schemes	Maximum
a. Direct Debit Scheme				
<u>i. Interbanking agreement</u>	X		- Impose existence of specific legally binding document compliant with EU legislation for all issues for which legislation would not be adequate - Provide rules determining applicable agreement	- Maximum as for existence and compliance of interbanking agreement or equivalent - Minimum as for applicable agreement
<u>ii. Allowed currencies</u>	X		- Oblige to allow each of the 4 EU currencies - Deal with principle of automated currency exchange - Provide exchange rates and related costs to be transparent	- Maximum as for allowed currencies - Minimum as for principle of automated currency exchange and transparency and non-discrimination of exchange rates and related costs
<u>iii. Intervention of Clearing House</u>		X	Not relevant	Not relevant
<u>iv. Straight Through Processing</u>	X		Impose possibility of STP and prohibit restrictions and provisions making STP less attractive	- Maximum as for possibility of STP - Minimum as for operational implementation
b. Initializing the Direct Debit				
<u>i. Contractual relationship Debtor – Debtor’s Bank</u>				

- Specific Direct Debit Contract	X		Impose existence of specific legally binding document for all issues for which legislation would not be adequate	Maximum as for existence of legally binding document
- Specific Direct Debit provisions in General Terms and Conditions	X		Impose existence of specific legally binding document for all issues for which legislation would not be adequate	Maximum as for existence of legally binding document
- Mandatory Content	X		Impose contracts and General Terms and Conditions to be compliant with EU Cross-border Direct Debit legislation	Maximum
<u>ii. Contractual relationship Creditor – Creditor’s Bank</u>				
- Specific Direct Debit Contract	X		Impose existence of specific legally binding document for all issues for which legislation would not be adequate	Maximum as to the existence of legally binding document
- Specific Direct Debit provisions in General Terms and Conditions	X		Impose existence of specific legally binding document for all issues for which legislation would not be adequate	Maximum as to existence of legally binding document
- Mandatory content	X		Impose contracts and General Terms and Conditions to be compliant with EU Cross-border Direct Debit legislation	Maximum
<u>iii. Creating and lodging the Mandate</u>				
- Control by the Creditor’s Bank that the Creditor’s operational organisation complies with the Scheme	X		Impose (i) principle of control and (ii) a) assign control to Creditor’s Bank or b) set criteria to determine responsible party	- Maximum as to principle of control. - Maximum or minimum as to responsible party. - Not relevant for modalities and subject matter of control
- Black lists for Creditors and Debtors		X	Not relevant	Not relevant
- Allocation of charges	X		Provide that allocation of charges must be transparent and not discriminatory	Minimum
- Amount of charges	X		Provide that way of calculation of amount of charges must be transparent and not discriminatory	Minimum
- Mandate by the Debtor				
- Unique Mandate	X		Exclude non pre-authorised Schemes and the like from	Maximum

			scope of Cross-border Direct Debit legislation	
- Wording of the actual power of attorney	X		Determine the formula's to be used in different languages	Maximum
- Flexibility in the amount	X		- Exclude combination between non pre-authorised Schemes and the like with pre-authorised Schemes. - Confirm principle of flexibility and prohibit derogations. - Set maximum (and minimum) limit for allowed amounts	Maximum
- Flexibility in the Due Date	X		Lay down principle of flexibility in Due Date and prohibit derogations	Maximum
- Allowed types of payments	X		(i) Prohibit restrictions on type of allowed payments or (ii) define types of payments that are to be allowed	Maximum
- Allowed types of accounts	X		(i) Prohibit restrictions on type of allowed accounts or (ii) define types of accounts that are to be allowed	Maximum
- Limitation on the number of Mandates per account	X		Set an unlimited number of Mandates as a rule and prohibit derogations	Maximum
- Invalidity of Mandate in case of non-usage	X		Set time period of non-usage leading to invalidity of Mandate	Maximum
- Mandatory content of the Mandate	X		Define mandatory content of Mandate and prohibit derogations/additions	Maximum
- Form of the Mandate	X		(i) Prohibit restrictions on form of Mandate or (ii) define form STP must be possible	Maximum
- Routing	X		(i) Define party with whom Mandate should be lodged and 1 possible subsequent Routing or (ii) allow Mandate to be lodged either with Creditor or Debtor's Bank and define 1 possible Routing for each option	Maximum
iv. Rejection of the Mandate				
- Possibility of rejection of the Mandate and circumstances	X		- Impose possibility of rejection - Confirm principle of no restrictions on circumstances - Lay down obligation that a rejection must be justified	Maximum
- Routing of the rejection of the Mandate	X		- Define parties that can reject and one possible subsequent Routing for each option	Maximum

			- Confirm no limitation on parties that can reject	
<u>v. Acceptance of the Mandate</u>				
- Confirmation of the acceptance of the Mandate	X		Lay down confirmation of acceptance as a rule	Maximum
- Routing of the acceptance of the Mandate	X		Designate responsible party for confirmation and define Routing to be followed.	Maximum
<u>c. Direct Debit Transactions - Normal Execution</u>				
<u>i. General</u>				
- Operational deadlines	X		- Set strict deadlines for submitting Requests - Set principles for deadlines for Execution	- Maximum for submission deadlines - Minimum for Execution deadlines
- Rules for calculating value dates		X	Optional : minimum rules	Not relevant
- Mandatory content of the Request for Execution				
- Identification of the Scheme	X		Harmonisation measures are conditional	Minimum
- Identification of the Debtor		X	- Confirm rule of identification - Preferably determine possibilities of satisfactory identification	Minimum
- Identification of the Debtor's Bank		X	Harmonisation measures are conditional	None or minimum
- Identification of the Creditor		X	Measures not necessary	None or minimum
- Identification of the Creditor's Bank		X	Harmonisation measures are conditional	None or minimum
- Identification of the Mandate	X		Determine whether or not mandatory element	- Maximum as to necessity to identify - Minimum as to method
- Data of the Transaction	X		Determine mandatory data	Maximum
- Other	X		Determine mandatory elements	Maximum

- Form of the Request for Execution	X		-Preferably prohibit restrictions or define the form -STP must be possible	Maximum
<u>ii. Lodging the Request for Execution</u>				
- Advance notice to the Debtor	X		- Decide on necessity or not and lay down rule - Set modalities if validity requirements	- Maximum for both question of necessity and modalities
- Routing of the Request for Execution	X		Define Routing to be followed	Maximum
<u>iii. Confirmation of the Execution</u>				
- Confirmation of the Execution of the Request	X		(i) Impose confirmation, (ii) designate responsible parties and (iii) indicate what parties must receive confirmation	Maximum except for modalities
- Deadline		X	Not relevant	Not relevant
- Routing	X		Define Routing to be followed	Maximum
- Mandatory content of the confirmation	X		Lay down minimum mandatory content	Minimum
- Form of the confirmation		X	Not relevant	Not relevant
<u>d. Direct Debit Transactions – Cancellation of the Request for Execution by the Creditor</u>				
<u>i. General</u>				
- Right to Cancellation	X		Provide that Creditor has right to cancel his Request	Maximum
- Circumstances and amount of threshold		X	Not relevant	Not relevant
- Deadlines	X		Set applicable deadlines	Maximum
- Contact point for requesting a Cancellation	X		Determine contact point	Maximum
- Maximum allowed time between the Request and the Cancellation		X	Not relevant	Not relevant
- Mandatory content of the Request for Cancellation	X		Define mandatory content not leaving room for additional mandatory items to be added	Maximum

- Form of the Request	X		-(i) Prohibit any restrictions on form or (ii) define form -STP must be possible.	Maximum
<u>ii. Routing of the Request for Cancellation</u>	X		Define Routing	Maximum
<u>iii. Confirmation of the Cancellation</u>				
- Existence of the confirmation	X		Preferably lay down as a rule that parties already involved in lodging process should receive confirmation	Maximum
- Deadline for the confirmation		X	Not relevant	Not relevant
- Routing of the confirmation of the Cancellation	X		Define Routing	Maximum
- Mandatory content and form of the confirmation		X	Not relevant	Not relevant
<u>e. Direct Debit Transactions – Cancellation of the Request for Execution by the Debtor</u>				
<u>i. General</u>				
- Right to Cancellation and circumstances	X		- Provide that Debtor has right to cancel - Alternatively provide Cancellation and Revocation as one and same action	Maximum
- Amount of threshold		X	Not relevant	Not relevant
- Deadlines	X		Set applicable deadlines	Maximum
- Contact point for the Request for Cancellation		X	Confirm existing practice	Maximum
- Content of the Request for Cancellation	X		Define mandatory content not leaving room for additional mandatory items to be added	Maximum
- Form of the Request for Cancellation	X		-Preferably (i) prohibit any restrictions on form or (ii) define form -STP must be possible.	Maximum
<u>ii. Routing of the Request for Cancellation</u>	X		Define the Routing	Maximum
<u>iii. Confirmation of the</u>				

<u>Cancellation</u>				
- Existence of the confirmation of the Execution of the Cancellation	X		Preferably lay down as rule that Creditor must receive confirmation	Maximum
- Deadlines		X	Not relevant	Not relevant
- Routing of the confirmation of the Execution of the Cancellation	X		Define the Routing	Maximum
- Mandatory content of the confirmation		X	Not relevant	Not relevant
- Form of the confirmation		X	Prohibit any form related restrictions and impose possibility of STP	Maximum (general principles)
<u>f. Direct Debit Transactions – Rejection of the Request for Execution</u>				
- Banks having the right to reject	X		Determine which parties have right to Rejection.	Maximum
- Circumstances		X	Not really relevant	Not relevant
- Partial Rejection		X	Not really relevant	Not relevant
- Reconsideration of the Request for Execution	X		Lay down rules regarding reconsideration (obligation or exclusion)	Maximum
- Routings	X		Define Routing for each party that can reject	Maximum
- Mandatory content of the Rejection		X	Define minimum mandatory content	Minimum
- Form of the Rejection		X	Prohibit any form related restrictions and impose possibility of STP	Maximum (general principles)
<u>g. Direct Debit Transactions – Revocation of the Transaction by the Debtor</u>				
<u>i. General</u>				
- Right to Revocation	X		- Provide that Debtor has right to revoke - Alternatively provide Cancellation and Revocation as one and the same action	Maximum
- Circumstances	X		- Preferably prohibit restrictions on circumstances - Alternatively determine what circumstances do justify	Maximum

- Threshold		X	Not relevant	Not relevant
- Deadlines	X		- Define deadline for submitting Request - Preferably set principles for processing deadlines	- Maximum for submission deadline - Minimum for execution deadline
- Contact point for Revocation		X	Determine with whom Debtor must lodge Request for Revocation	Maximum
- Mandatory content of the Request for Revocation	X		Define mandatory content not leaving room for additions	Maximum
- Form of the Request for Revocation	X		-(i) Prohibit restrictions on form or (ii) define form -STP must be possible	Maximum
<u>ii. Routing of the Request for Revocation</u>	X		Define the Routing	Maximum
<u>iii. Confirmation of the Revocation</u>				
- Confirmation of the Execution of the Revocation		X	Not relevant	Not relevant
- Deadline		X	Not relevant	Not relevant
- Routing of the confirmation of the Revocation		X	Not relevant	Not relevant
- Mandatory content of the Revocation		X	Not relevant	Not relevant
- Form of the confirmation		X	Prohibit any form related restrictions and impose possibility of STP	Maximum (general principles)
<u>h. Revocation of the Mandate by the Debtor</u>				
<u>i. General</u>				
- Right to Revocation	X		- Confirm principle of right to Revocation. - (1) Preferably, prohibit any restrictions in allowed circumstances or (2) determine which circumstances are allowed	Maximum
- Deadlines	X		Determine precise moment of taking effect	Maximum

- Mandatory content of the Request for Revocation	X		Define mandatory content not leaving room for additions	Maximum
- Form of the Request for Revocation	X		(i) Prohibit any restrictions on form or (ii) define form STP must be possible	Maximum
<u>ii. Routing of the Request for Revocation</u>	X		(i) Define party with whom Request should be lodged and define 1 possible subsequent Routing or (ii) allow Request to be lodged either with Creditor or Debtor's Bank or ACH and define 1 possible Routing for each option	Maximum
<u>iii. Confirmation of the Revocation</u>				
- Confirmation of the Revocation	X		Provide that Debtor must receive confirmation - Designate responsible party	- Maximum for obligation to confirm and responsible party - Minimum for modalities
- Deadline		X	Preferably set deadline for confirmation	Minimum
- Routing of the confirmation of the Revocation	X		Define the Routing	Maximum
- Mandatory content of the confirmation		X	Not relevant	Not relevant
- Form of the confirmation		X	Prohibit any form related restrictions and impose possibility of STP	Maximum (general principles)
<u>i. Dispute resolution</u>				
<u>i. Applicable law</u>	X		Determine applicable law	Maximum
<u>ii. Competent jurisdiction</u>	X		Determine competent jurisdiction	Maximum
<u>iii. Alternative dispute resolution</u>	X		- Encourage use of alternative dispute resolution and provide that co-operation must take place - Set forth rule to deal with conflicting competences	Maximum

4. CONCLUSION

As we said before, for the purposes of the present study and in particular in view of determining the possible obstacles, we had to make the assumption that Cross-border Direct Debit would take place on the basis of the different existing national Schemes. Those Schemes would then be sort of linked together through a common interface, hereinafter the “Interface Model”.

We have seen in Part II and here above that although most Schemes share essential features, there are an awful lot of differences as regards both the key elements as the way they are addressed. In the Interface Model, the overwhelming majority of these differences would cause obstacles of a various nature. Some of those obstacles prevent the use of STP, others lead to a lack of transparency, still others are a threat to the rights of the users of the system and some of them would really seriously hinder the operation of the system. Finally, some of the obstacles present several or even all of these negative aspects.

As a consequence, in order for the Interface Model to reach the objective of a Cross-border Direct Debit Scheme with the highest possible degree of efficiency and user-friendliness, the huge majority, if not all, of the detected obstacles would need to be removed.

Moreover the proposals suggested above show that a smooth Cross-border Direct Debit with an acceptable level of user protection necessitates very often a maximum level of harmonisation. Even where differences do not exist today, a maximum harmonisation is sometimes necessary in order to avoid that differences be created in the future or in order to enable STP. The content and modalities of certain information flows often only require minimum harmonisation, but not so where they have an impact on the validity of orders and again, probably not so for the purpose of STP.

In brief, the Interface Model would call for far-reaching, highly detailed and strict legislative measures to be taken at EU level.

The question regarding the need for legislative initiatives gets however a completely different dimension in the hypothesis of a Pan-European Direct Debit scheme, hereinafter the “Pan-European Scheme”. A Pan-European Scheme would have to be created, as it does not yet exist. Per definition such model would be valid in all of the 15 Member States. It would therefore present no obstacles, at least provided that the rules of the Pan-European Scheme would not conflict with existing national legislation regarding Direct Debit and credit transfers in particular and the financial system in general eg. regarding anti money laundering, data protection, etc.

One might even wonder whether a Pan-European Scheme really needs legislative measures. Indeed, Direct Debit seems to function quite well in the various Member States today, although very few of them have regulated the matter by law. In the huge majority of the Schemes, the rules governing the Direct Debit relationship are indeed laid down in interbanking agreements and contracts between the banks and their clients, Debtor or Creditor, and sometimes contracts between the two of them. Nevertheless only a negligible number of problems have been reported and apparently

the industry in the various Member States seems to be happy with the efficiency of their Schemes. Subject to further verification, this could be an indication that legislative initiatives are not a *conditio sine qua non* to have a smooth Direct Debit Scheme in place.

Of course, Cross-border Direct Debit is not the same as Domestic Direct Debit. Moreover, there can be concerns regarding the level of transparency and of user protection to be dealt with. In a Pan-European Scheme, European legislative measures should mainly deal with those concerns as well as with the above-mentioned possible conflicts with other existing national legislation.

EU legislation could in this hypothesis be limited to determine the key elements of Cross-border Direct Debit and provide that they be addressed in legally binding provisions, construed around the structure we created for the purposes of this study, namely the lifecycle of a Direct Debit relationship. EU legislation should set the principles and lay down minimum rules. It is indeed not necessary for EU legislation to provide for all these issues how they should be addressed, although user protection concerns and the objective of STP will sometimes necessitate stricter and more detailed rules.

The proposals above offer plenty of material in this respect.