Alternatively, Article 19 could define a later date of entry into force.

3.9 Article 5(4) – European Parliament and Council should not delegate powers to the Commission

The Commission should not be allowed to adopt delegated acts as we consider the development of business rules and standards to be a responsibility of the market. Furthermore, legislative power should remain the responsibility of the European Parliament and the Council. Otherwise the Commission would end up as the de facto scheme owner. Paragraph 4 should therefore be deleted. Consequently, Articles 12 to 15 should also be deleted.

> ~~*The Commission may amend the Annex in order to take account of technical progress and market developments. Those measures shall be adopted by means of delegated acts in accordance with the procedure laid down in Article 12*~~

3.10 Article 5a new – define continuity of legacy mandates

Starting situation

A crucial condition for the smooth changeover to SEPA is that existing mandates from the payer to the payee for collection of direct debits (called "Einzugsermächtigungen" in Germany) can be used as SEPA direct debit mandates as well. Otherwise on expiry of the migration end-date payees would have to obtain new Regulation-compliant mandates from their customers as payers if there are doubts about whether, in the light of the Regulation, existing mandates are "SEPA-compliant". Since in Germany alone payees today hold an estimated several hundred million mandates, this is not a practicable approach, however.

Solution via German Federal Supreme Court ruling insufficient

In its ruling of 20 July 2010 (XI ZR 236/07), the Federal Supreme Court in Germany outlined how the current national direct debit can be adapted by amending banks' general terms and conditions of business – an approach which allows this direct debit to be put an

equal legal footing with the SEPA core direct debit. Yet the contractual solution it proposed cannot guarantee full migration, as payers are not obligated to accept the amendment agreement. Excluding them from the direct debit scheme per se if they object to the amendment agreement is a policy that would meet with little understanding. The outcome could therefore be an uncontrollable legal gap for payees where they do not know whether or not the existing mandate from the payer is "SEPA-compliant".

Accompanying continuity rule needed in the Regulation

To make the use of national mandates in SEPA practicable for businesses and consumers, action from European lawmakers is needed. National direct debit mandates issued before the entry into force of the Regulation should be recognised as sufficient consent by the payer to SEPA core direct debits. It is worth remembering in this context that, when the euro was launched, the continuity of existing contracts was expressly regulated (see Article 3 of Regulation (EC) No 1103/97 and Article 14 of Regulation (EC) No 974/98). The statutory regulation of final migration to SEPA is comparable with the launch of the euro. In both cases, it is a question of ensuring that previously recognised instruments can continue to be used in the new scenario without the need for any great changeover effort. This approach is also recognised in the SEPA Core Direct Debit Scheme Rulebook (see Section 5.17 on legacy mandates). A continuity rule would ensure legal certainty and prevent legally questionable solutions.

A solution by European lawmakers has the additional benefit of promoting the Internal Market. Payees could then rely on existing mandates not only being legally valid at home but also being recognised across the EU in order to execute direct debits in line with the standard set by the Regulation. Otherwise, for example, a bank in country A would not be able to act as the first collecting bank should the payee in country B wish to draw SEPA core direct debits based on national mandates. The arrangement in the SEPA Direct Debit Scheme Rulebook is inadequate, as it geared solely to migration within a country (see Section 5.17, sentence 1: "… rules relating to mandates which have been issued under a legacy direct debit scheme […] and which the Creditor would like to migrate to SEPA Direct Debit Mandates in line with procedures agreed at a national level.")

The continuity rule could, for example, read as follows:

> *If the payer has authorised the payee prior to the date stated in Article 5 paragraph 2 to collect recurring direct debits, then this authorisation shall be deemed to constitute the payer's consent to the payer's payment service provider to execute the direct debits collected by this payee.*

3.11 Article 6(2)(c) – determine fees based on weighted average costs

Article 6 of the proposed Regulation states that multilateral arrangements should be "strictly cost-based" and may only be applied to transactions which cannot be properly executed ("R-transactions"). We can accept both rules. However, instead of having the actual costs defined by "the most cost-efficient comparable payment service provider", we advocate using the weighted average costs of participating payment service providers. This would better reflect differences in processing costs between providers and Member States.

> *the level of the fees shall not exceed the actual weighted average costs of handling an R-transaction ~~by the most cost-efficient comparable~~ by the payment service providers ~~that is a representative party~~ participating in the multilateral arrangement ~~in terms of volume of transactions and nature of services~~*

3.12 Article 6(2)(e) – delete superfluous rule

Article 6(2)(e) simply repeats current European cartel law and could therefore be deleted.

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