

<b>Question ID</b>	2020_5479
<b>Status</b>	Final Q&A
<b>Legal act</b>	Directive 2015/2366/EU (PSD2)
<b>Topic</b>	Other topics
<b>Article</b>	54 & 64
<b>Paragraph</b>	54(1), 64(1) & 64(2)
<b>Subparagraph</b>	-
<b>COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations</b>	Not applicable
<b>Article/Paragraph</b>	Not applicable
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<b>Disclose name of institution / entity</b>	Yes
<b>Name of institution / submitter</b>	Mastercard Payment Services Denmark A/S
<b>Country of incorporation / residence</b>	Denmark
<b>Type of submitter</b>	Other
<b>Subject matter</b>	Ability of a creditor to change a mandate
<b>Question</b>	Can a creditor introduce changes to a mandate, in accordance to Article 64(2) PSD2, by observing the same procedure as described in Article 54(1), i.e. by informing debtor that the collection of the amount due, as agreed in the mandate, will continue unless debtor indicates the contrary?
<b>Background on the question</b>	Article 54(1) of Directive 2015/2366/EU (PSD2) allows the account servicing payment service provider (ASPSP) - typically a bank - to change the terms and conditions (i.e. the framework contract) for a payment account in a manner that does not require an explicit consent from the account holder. The account holder can express his/her consent implicitly by using the payment account after the changed terms and conditions have taken effect. The implied acceptance entails that the changed terms and conditions of the framework contract are considered to be agreed between the parties. According to article 64 (1), a payment transaction is authorised only if the

payer has given consent to execute the payment transaction. According to article 64 (2) and Q&A\_4664 there are no formal requirements to the debtor consent of a mandate if agreed directly between payer and payee without any involvement of a Payment Services Provider (PSP) being part of the mandate creation i.e. This would entail that transactions initiated on the basis of a changed mandate are regarded as authorised transactions according to article 64 (1), and hence that creditor is able to continue the usual routine without being obliged to obtain a new mandate - however provided that each debtor has been informed with the agreed notice and that each debtor expresses his/her consent implicitly as described in article 54 (1). A creditor, using a direct debit payment service, initiates transactions according to an agreement with each debtor - a mandate. The amount to be collected reflects that specific goods and/or services have been exchanged as agreed and that the balance due is being collected, using the direct debit service in question, as agreed in the mandate. However, the content of a mandate may be subject to changes over time. Such changes could e.g. be in the following situations; 1. In the ordinary course of business, a creditor may decide to sell or otherwise transfer creditor's business or parts thereof to another entity. The new entity, being introduced as a new supplier of the goods/services to debtor, will have the same need to collect the amount due. The new entity will succeed in the role of the previous creditor. And likewise, the debtor will still need to pay for the received goods/services. It may prove practical and convenient for both the creditor and the debtor that the debtor can give his consent implicitly to enable creditor's future initiation of payment transactions based on the mandate, being assigned by the former creditor, together with the agreement related to the goods/services (to which the payment transaction relates) to the new entity. Giving debtor a notice, enables debtor - as an option - to reject the change, before the contemplated change of the mandate enters into force. If debtor disapproves of the new creditor being introduced as new supplier, the mandate would lose its raison d'être if goods/services are not rendered anymore. 2. During the course of an ongoing relationship, the parties may decide to reduce or expand the range of goods and/or services to be delivered. In the latter case - collecting further amounts - the mandate would need to be changed to allow for additional funds to be collected. Rather than repeating the setting up of a mandate, a creditor could inform the debtor of the changes, allowing for the debtor to choose to continue paying as until now using the principle and preconditions in Article 54(1) PSD2.

**Final answer**

The submitter is asking whether a given consent to execute payment transactions could be modified following the procedures foreseen for changes to framework contracts.

Pursuant to Article 64(2)(4) of Directive (EU) 2366/2015 (PSD2), the procedure for giving consent must be agreed between the payer and the relevant payment services provider(s), PSP(s). There are no formal requirements in the PSD2 governing the payer's consent to a direct debit

	<p>mandate including the modification of the mandate.</p> <p>The procedure for the modification of an agreed direct debit mandate can therefore be agreed by the payee and the payer.</p> <p>Any subsequent transaction based on a mandate changed following that procedure would therefore be considered lawfully authorised.</p>
<b>Link</b>	<a href="https://www.eba.europa.eu/single-rule-book-qa/qna/view/publicId/2020_5479">https://www.eba.europa.eu/single-rule-book-qa/qna/view/publicId/2020_5479</a>

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