



COMMISSION OF THE EUROPEAN COMMUNITIES

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**COMMUNICATION FROM THE COMMISSION**

*to the European Parliament, the Council,  
the European Monetary Institute and the Economic and Social Committee*

**BOOSTING CUSTOMERS' CONFIDENCE IN ELECTRONIC MEANS OF  
PAYMENT IN THE SINGLE MARKET**

## INTRODUCTION

Ten years after the Commission's first Communication<sup>1</sup> on payment instruments of January 1987, the use of payment cards is well advanced. They account for a sizeable portion of the market of payment instruments. The use of cashless payment instruments<sup>2</sup> has soared. For instance, the number of payments by card per inhabitant has increased from 7 in 1990 (in the 12-EC Member States) to 14 in 1995, while their share as against the total number of payment transactions has grown from 9% in 1990 (EC-12) to 13.5% in 1995.

Since the 1987 Communication, there has been a progressive introduction of new innovative payment methods:

- *"bank-account-access" products*: instruments that provide for remote access to accounts held at financial institutions, typically banks. This category includes home-banking and phone-banking applications, as well as payment cards;
- *"electronic-money" products*: instruments on which electronic value is stored, whether as magnetic stripe or micro-circuit cards or computer memories (e-money or cyber-money products).

By the end of the next decade, a significant share of retail commerce is expected on the Internet. The more that goods and services are offered by electronic means or at a distance, the more that competitive pressure will mount on providers to offer means of payment in an increasingly easy, safe and efficient way.

## SCOPE AND CONTENT

The link between electronic commerce and new payment instruments is highlighted in the Communication on "A European Initiative in Electronic Commerce"<sup>3</sup>. Electronic commerce will not develop without sound, user-friendly, efficient, and secure electronic payment systems to the benefit of commercial service providers. The Communication also recognises that transparent and secure electronic payment mechanisms will facilitate the changeover to a single currency, in particular throughout the transitional period.

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<sup>1</sup> "Europe could play an ace: the new payment cards": Communication to the Council, COM(86) 754 of 12 January 1987.

<sup>2</sup> Payment Systems in EC Member States, Committee of Governors of the Central Banks of the Member States of the European Economic Community, September 1992. Blue Book on Payment systems in the European Union, European Monetary Institute, April 1996. Addendum to the Blue Book for 1995.

<sup>3</sup> Communication to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, COM(97) 157 of 15 April 1997.

The Communication identifies four main areas where a substantial contribution by public authorities is called for as regards electronic payments:

- (i) *They must define the supervisory framework appropriate for the issuance of electronic money so as to ensure the stability and soundness of issuers;*

Given that electronic money has the potential of being used for a wide range of goods and services, the Commission, the EMI and the Member States are currently considering the appropriate supervisory framework for the issuance of electronic money, with a view to ensuring the stability and soundness of issuers and, thereby ultimately safeguarding customers' interests. In the light of this discussion, the Commission intends to present by the end of 1997 (i.e. the target date for completion of the work) a proposal for a directive setting out requirements to apply to issuers of e-money products.

- (ii) *They must provide guidance for issuers and users, on transparency, liability and redress procedures, in order to ensure the full confidence of users;*

To boost confidence in electronic payment instruments, customers need to rely on clear information, a fair apportionment of responsibilities and access to simple and effective means of redress. These aspects are the subject of the present Communication; they are dealt with more extensively in the following sections.

- (iii) *They must clarify the application of the Community's competition rules so as to achieve an appropriate balance between interoperability and sound and vigorous competition in these markets;*

As is necessary to establish a true Single Market, electronic payment instruments call for "interoperability", i.e. payment instruments issued/accepted by a given institution (or in a given Member State) would gain in customer convenience and in market efficiency if they were usable as widely as possible. Compatibility between electronic payment systems, which is in the interest of both users and business, will mainly rely on agreements among operators. Such agreements must be in conformity with the Community's competition rules. To provide guidance to all interested parties (financial institutions, retailers and customers), the Commission will in the course of 1998 issue a competition notice which will clarify the application of competition rules to electronic payment instruments.

- (iv) *And they must tackle the risks of fraudulent use and counterfeiting, by improving security.*

Payment instruments must afford the necessary guarantees that they may not be used for or in association with illicit activities. As regards security from a technical viewpoint, it is important to reach solutions making electronic payment systems as safe as possible; in particular, in developing appropriate encryption processes, electronic signatures and similar techniques, a task primarily falling on service providers. However, there is another facet to security, i.e. the possibility of increasing it by appropriate legal instruments, notably those pertaining to the area of criminal law. Recognising the relevance of these concerns, the European Council in Amsterdam adopted an Action Plan against Organised Crime, in which it calls on the Council and the Commission to

examine and address, by the end of 1998, the issue of fraud and counterfeiting relating to all payment instruments, including electronic payment instruments. To honour this request, the Commission will assess the need for any initiative in this area.

Finally, as a complement to the areas identified above, the Commission also intends to consider the possibility of modernising and up-dating the earlier 1987 Recommendation<sup>4</sup>, with a view to establishing a clear framework for the relationship between acquirers and acceptors in respect of electronic payment instruments.

The present Communication is therefore the first step in the context of a broader, integrated approach, the ultimate objective of which is to develop sound, user-friendly, efficient, and secure electronic payment systems to the benefit of all parties concerned.

#### **PROVIDING GUIDANCE FOR ISSUERS AND USERS**

The success of new payment instruments depends on customer acceptance and confidence. While confidence depends, first and foremost, on transparent conditions for the use of such instruments, obligations of issuers and users also need to be clearly and fairly apportioned<sup>5</sup>.

The Commission Recommendation<sup>6</sup> of 1988 laid down minimum standards which should govern the relationship between the issuer and the holder of a payment card or other payment device. A review of the 1988 Recommendation is now timely for 2 reasons.

First, concerns have been expressed by interested parties about :

- the extent of the parties' respective liabilities in the event of loss or theft of the payment instrument, and the question of burden of proof in case of disputes;
- the need for more effective coverage of home (phone and computer) banking applications and pre-paid instruments; and
- more generally, the availability of comprehensive customer information on all payment instruments and on effective redress procedures.

Secondly, a completely new generation of products (i.e. electronic money products) has been developed since the 1988 Recommendation was adopted. Given that electronic money is still at a relatively early stage of development, it is important to avoid burdensome administrative requirements being imposed lest they stifle its early growth. To this end, coverage under the up-dated Recommendation is extended only to instruments of the reloadable type which, because of their features namely the possible link to the customer's account, are those for which the need for customer protection is strongest.

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<sup>4</sup> Commission Recommendation 87/598/EEC of 8 December 1987 on a European Code of Conduct relating to electronic payment (relations between financial institutions, traders and service establishments, and consumers), OJ No L 365 of 24 December 1987, page 72.

<sup>5</sup> Commission Communication "Financial services: enhancing consumer confidence", COM(97) 309 final of 26 June 1997 on the follow-up to the Green Paper of May 1996 on "Financial services: meeting consumers' expectations".

<sup>6</sup> Commission Recommendation 88/590/EEC of 17 November 1988 concerning payment systems, and in particular the relationship between card-holder and card issuer, OJ No L 317 of 24 November 1988, page 55.

The Commission has also decided that e-money products would be subject only to those provisions of most direct relevance (notably ex-ante transparency requirements, a limited number of requirements on liability, and provisions regarding redress procedures). However, issuers of e-money products can voluntarily decide to apply the provisions for remote access products, thus achieving an even greater level of customer protection.

#### THE WAY FORWARD

An updated version of the original 1988 Recommendation has been prepared in order to take into account the views expressed by the Commission's advisory committees and of the opinion of the European Monetary Institute.

The new Recommendation, which is attached to the present Communication, modifies and completes the former Recommendation:

- it contains comprehensive requirements for **transparency**, i.e. minimum information that needs to be provided to users in advance (contracts) and a-posteriori (statements);
- it clarifies the parties' respective **obligations and liabilities**, which are intended to support the objective of greater transparency; and
- it calls for the **redress procedures**, to address customer complaints related to the service/product concerned.

With a deadline of 31 December 1998, the Commission calls on

- issuers of electronic payment instruments to act in accordance with the provisions set out in the new Recommendation; and
- Member States to ensure that there are adequate and effective means for setting disputes between a issuer and users, in accordance with the recommendation.

The Commission will monitor progress between its adoption and the end of 1998. It will also undertake a study of its implementation at the end of 1998. If the new Recommendation is not implemented satisfactorily, the Commission will propose a Directive in this domain.

**COMMISSION RECOMMENDATION**

**concerning transactions by electronic payment instruments  
and in particular the relationship between issuer and holder**

## COMMISSION RECOMMENDATION

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THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 155, second indent, thereof,

- (1) Whereas one of the main objectives of the Community is to ensure the full functioning of the internal market of which payment systems are essential parts; whereas transactions made by electronic payment instruments account for an increasing proportion of the volume and the value of domestic and cross-border payments; whereas, given the current context of rapid innovation and technological progress, this trend is expected to accelerate notably as a consequence of the wide array of innovative businesses, markets and trading communities engendered by Electronic Commerce;
- (2) Whereas it is important for individuals and businesses to be able to use electronic payment instruments throughout the Community; whereas this Recommendation seeks to follow up progress made towards the completion of the internal market, notably in the light of the liberalization of capital movements, and will also contribute to the implementation of Economic and Monetary Union;
- (3) Whereas this Recommendation covers transactions effected by electronic payment instruments; whereas, for the purposes of this Recommendation, these include instruments allowing for (remote) access to a customer's account, notably payment cards and phone- and home-banking applications; whereas transactions by means of a payment card shall cover electronic and non-electronic payment by means of a payment card, including processes for which a signature is required and a voucher is produced; whereas, for the purposes of this Recommendation, means of payment instruments also include reloadable electronic money instruments in the form of stored-value cards and electronic tokens stored on network computer memory; whereas reloadable electronic money instruments, because of their features, in particular the possible link to the holder's account, are those for which the need for customer protection is strongest; whereas, as far as electronic money instruments are concerned, coverage under this Recommendation is therefore limited to instruments of the reloadable type;
- (4) Whereas this Recommendation is intended to contribute to the advent of the Information Society and, in particular, Electronic Commerce by promoting customer confidence in and retailer acceptance of these instruments; whereas, to this end, the Commission will also consider the possibility of modernizing and up-dating its Recommendation 87/598/EEC<sup>1</sup>, with a view to establishing a clear framework for the

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<sup>1</sup> OJ No L 365, 24.12.1987, p. 72.

relationship between acquirers and acceptors in respect of electronic payment instruments; whereas, in line with those objectives, this Recommendation sets out minimum information requirements which should be contained in the terms and conditions applied to transactions made by electronic payment instruments, as well as the minimum obligations and liabilities of the parties concerned; whereas such terms and conditions should be set out in writing, including where appropriate by electronic means, and maintain a fair balance between the interests of the parties concerned; whereas, in compliance with Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts<sup>2</sup>, such terms and conditions should in particular be in an understandable and comprehensible form;

- (5) Whereas, with a view to ensuring transparency, this Recommendation sets out the minimum requirements needed to ensure an adequate level of customer information upon conclusion of a contract as well as subsequent to transactions effected by means of a payment instrument, including information on charges, exchange rate and interest rates; whereas, for the purpose of informing the holder of the manner of calculation of the interest rate, reference is to be made to Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit<sup>3</sup>, as amended by Directive 90/88/EEC<sup>4</sup>;
- (6) Whereas this Recommendation sets out minimum requirements concerning the obligations and liabilities of the parties concerned; whereas information to a holder should include a clear statement of the extent of the customer's obligation as holder of an electronic payment instrument enabling him/her to make payments in favour of third persons, as well as to perform certain financial transactions for himself/herself;
- (7) Whereas, to improve customers' access to redress, this Recommendation calls on Member States to ensure that there are adequate and effective means for the settlement of disputes between a holder and an issuer; whereas the Commission published on 14 February 1996 a plan of action on consumer access to justice and the settlement of consumer disputes in the internal market; whereas that plan of action includes specific initiatives to promote out-of-court procedures; whereas objective criteria (Annex II) are suggested to ensure the reliability of those procedures and provision is made for the use of standardized claims forms (Annex III);
- (8) Whereas this Recommendation seeks to ensure a high level of consumer protection in the field of electronic payment instruments;
- (9) Whereas it is essential that transactions effected by means of electronic payment instruments should be the subject of records in order that transactions can be traced and errors can be rectified; whereas the burden of proof to show that a transaction was accurately recorded and entered into the accounts and was not affected by technical breakdown or other deficiency should lie upon the issuer;

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<sup>2</sup> OJ No L 95, 21.4.1993, p. 29.

<sup>3</sup> OJ No L 42, 12.2.1987, p. 48.

<sup>4</sup> OJ No L 61, 10.3.1990, p. 14.



- (10) Whereas, without prejudice to any rights of a holder under national law, payment instructions given by a holder in respect of transactions effected by means of an electronic payment instrument should be irrevocable, except if the amount was not determined when the order was given;
- (11) Whereas rules need to be specified concerning the issuer's liability for non-execution or for defective execution of a holder's payment instructions and for transactions which have not been authorized by him/her, subject always to the holder's own obligations in the case of lost or stolen electronic payment instruments;
- (12) Whereas the Commission will monitor the implementation of this Recommendation and, if it finds the implementation unsatisfactory, it intends to propose the appropriate binding legislation covering the issues dealt with in this Recommendation,

HEREBY RECOMMENDS:

## **SECTION I - Scope and definitions**

### **Article 1 - Scope**

1. This Recommendation applies to the following transactions:
  - (a) transfers of funds, other than those ordered and executed by financial institutions, effected by means of an electronic payment instrument;
  - (b) cash withdrawals by means of an electronic payment instrument and the loading (and unloading) of an electronic money instrument, at devices such as cash dispensing machines and automated teller machines and at the premises of the issuer or an institution who is under contract to accept the payment instrument.
2. By way of derogation from paragraph 1, Article 4(1), Article 5(b), second and third indents, Article 6, Article 7(2)(c), (d) and (e), first indent, Article 8(1), (2) and (3) and Article 9(2) do not apply to transactions effected by means of an electronic money instrument. However, where the electronic money instrument is used to load (and unload) value through remote access to the holder's account, this Recommendation is applicable in its entirety.
3. This Recommendation does not apply to:
  - (a) payments by cheques;
  - (b) the guarantee function of certain cards in relation to payments by cheques.

## Article 2 - Definitions

For the purpose of this Recommendation, the following definitions apply:

- (a) 'Electronic payment instrument' means an instrument enabling its holder to effect transactions of the kind specified in Article 1(1). This covers both remote access payment instruments and electronic money instruments;
- (b) 'Remote access payment instrument' means an instrument enabling a holder to access funds held on his/her account at an institution, whereby payment is allowed to be made to a payee and usually requiring a personal identification code and/or any other similar proof of identity. This includes in particular payment cards (whether credit, debit, deferred debit or charge cards) and phone- and home-banking applications;
- (c) 'Electronic money instrument' means a reloadable payment instrument other than a remote access payment instrument, whether a stored-value card or a computer memory, on which value units are stored electronically, enabling its holder to effect transactions of the kind specified in Article 1(1);
- (d) 'Financial institution' means an institution as defined in Article 4(1) of Council Regulation (EC) No 3604/93<sup>5</sup>;
- (e) 'Issuer' means a person who, in the course of his business, makes available to another person a payment instrument pursuant to a contract concluded with him/her;
- (f) 'Holder' means a person who, pursuant to a contract concluded between him/her and an issuer, holds a payment instrument.

## SECTION II - Transparency of conditions for transactions

### Article 3 - Minimum information contained in the terms and conditions governing the issuing and use of an electronic payment instrument

1. Upon signature of the contract or in any event in good time prior to delivering an electronic payment instrument, the issuer communicates to the holder the contractual terms and conditions (hereinafter referred to as "the terms") governing the issue and use of that electronic payment instrument. The terms indicate the law applicable to the contract.
2. The terms are set out in writing, including where appropriate by electronic means, in easily understandable words and in a readily comprehensible form, and are available at least in the official language or languages of the Member State in which the electronic payment instrument is offered.

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<sup>5</sup> OJ No L 332, 31.12.1993, p. 4.

3. The terms include at least:

- (a) a description of the electronic payment instrument, including where appropriate the technical requirements with respect to the holder's communication equipment authorized for use, and the way in which it can be used, including the financial limits applied, if any;
- (b) a description of the holder's and issuer's respective obligations and liabilities; they include a description of the reasonable steps that the holder must take to keep safe the electronic payment instrument and the means (such as a personal identification number or other code) which enable it to be used;
- (c) where applicable, the normal period within which the holder's account will be debited or credited, including the value date, or, where the holder has no account with the issuer, the normal period within which he/she will be invoiced;
- (d) the nature of any charges payable by the holder. In particular, this includes, where applicable, details of the following charges:
  - the amount of any initial and annual fees,
  - any commission fees and charges payable by the holder to the issuer for particular types of transactions,
  - any interest rate, including the manner of its calculation, which may be applied;
- (e) the period of time during which a given transaction can be contested by the holder and an indication of the redress and complaints procedures available to the holder and the method of gaining access to them.

4. If the electronic payment instrument is usable for transactions abroad (outside the country of issuing/affiliation), the following information is also communicated to the holder:

- (a) an indication of the amount of any fees and charges levied for foreign currency transactions, including where appropriate the rates,
- (b) the reference exchange rate used for converting foreign currency transactions, including the relevant date for determining such a rate.

#### **Article 4 - Information subsequent to a transaction**

1. The issuer supplies the holder with information relating to the transactions effected by means of a electronic payment instrument. This information, set out in writing, including where appropriate by electronic means, and in a readily comprehensible form, includes at least:

- (a) a reference enabling the holder to identify the transaction, including, where appropriate, the information relating to the acceptor at/with which the transaction took place;
- (b) the amount of the transaction debited to the holder in billing currency and, where applicable, the amount in foreign currency;
- (c) the amount of any fees and charges applied for particular types of transactions.

The issuer also provides the holder with the exchange rate used for converting foreign currency transactions.

2. The issuer of an electronic money instrument provides the holder with the possibility of verifying the last five transactions executed with the instrument and the outstanding value stored thereon.

### **SECTION III - Obligations and liabilities of the parties to a contract**

#### **Article 5 - Obligations of the holder**

The holder:

- (a) uses the electronic payment instrument in accordance with the terms governing the issuing and use of a payment instrument; in particular, the holder takes all reasonable steps to keep safe the electronic payment instrument and the means (such as a personal identification number or other code) which enable it to be used;
- (b) notifies the issuer (or the entity specified by the latter) without delay after becoming aware of :
  - the loss or theft of the electronic payment instrument or of the means which enable it to be used,
  - the recording on his/her account of any unauthorized transaction,
  - any error or other irregularity in the maintaining of that account by the issuer;
- (c) does not record his personal identification number or other code in any easily recognizable form, in particular on the electronic payment instrument or on any item which he/she keeps or carries with the electronic payment instrument;
- (d) does not countermand an order which he/she has given by means of his/her electronic payment instrument, except if the amount was not determined when the order was given.

## **Article 6 - Liabilities of the holder**

1. Up to the time of notification, the holder bears the loss sustained in consequence of the loss or theft of the electronic payment instrument up to a limit, which may not exceed ECU 150, except where he/she acted with extreme negligence, in contravention of relevant provisions under Article 5(a), (b) or (c), or fraudulently, in which case such a limit does not apply.
2. As soon as the holder has notified the issuer (or the entity specified by the latter) as required by Article 5(b), except where he/she acted fraudulently, he/she is not thereafter liable for the loss arising in consequence of the loss or theft of his/her electronic payment instrument.
3. By derogation from paragraphs 1 and 2, the holder is not liable if the payment instrument has been used, without physical presentation or electronic identification (of the instrument itself). The use of a confidential code or any other similar proof of identity is not, by itself, sufficient to entail the holder's liability.

## **Article 7 - Obligations of the issuer**

1. The issuer may alter the terms, provided that sufficient notice of the change is given individually to the holder to enable him/her to withdraw if he/she so chooses. A period of not less than one month is specified after which time the holder is deemed to have accepted the terms if he/she has not withdrawn.

However, any significant change to the actual interest rate is not subject to the provisions of the first subparagraph and comes into effect upon the date specified in the publication of such a change. In this event, and without prejudice to the right of the holder to withdraw from the contract, the issuer informs the holder individually thereof as soon as possible.

2. The issuer:
  - (a) does not disclose the holder's personal identification number or other code, except to the holder;
  - (b) does not dispatch an unsolicited electronic payment instrument, except where it is a replacement for an electronic payment instrument already held by the holder;
  - (c) keeps for a sufficient period of time, internal records to enable the transactions referred to in Article 1(1) to be traced and errors to be rectified;
  - (d) ensures that appropriate means are available to enable the holder to make the notification required under Article 5(b). Where notification is made by telephone, the issuer (or the entity specified by the latter) provides the holder with the means of proof that he/she has made such a notification;

(e) proves, in any dispute with the holder concerning a transaction referred to in Article 1(1), and without prejudice to any proof to the contrary that may be produced by the holder, that the transaction:

- was accurately recorded and entered into accounts,
- was not affected by technical breakdown or other deficiency.

### **Article 8 - Liabilities of the issuer**

1. The issuer is liable, subject to Article 5, Article 6 and Article 7(2)(a) and (e):
  - (a) for the non-execution or defective execution of the holder's transactions referred to in Article 1(1), even if a transaction is initiated at devices/terminals or through equipment which are not under the issuer's direct or exclusive control, provided that the transaction is not initiated at devices/terminals or through equipment unauthorized for use by the issuer;
  - (b) for transactions not authorized by the holder, as well as for any error or irregularity attributable to the issuer in the maintaining of the holder's account.
2. Without prejudice to paragraph 3, the amount of the liability indicated in paragraph 1 consists of:
  - (a) the amount of the unexecuted or defectively executed transaction and, if any, interest thereon;
  - (b) the sum required to restore the holder to the position he/she was in before the unauthorized transaction took place.
3. Any further financial consequences, and, in particular, those concerning the extent of the damage for which compensation is to be paid, are borne by the issuer in accordance with the law applicable to the contract concluded between the issuer and the holder.
4. The issuer is liable to the holder of an electronic money instrument for the lost amount of value stored on the instrument and for the defective execution of the holder's transactions, where the loss or defective execution is attributable to a malfunction of the instrument, of the device/terminal or any other equipment authorized for use, provided that the malfunction was not caused by the holder knowingly or in breach of Article 3(3)(a).

## **SECTION IV - Notification, settlement of disputes and final provision**

### **Article 9 - Notification**

1. The issuer (or the entity specified by him) provides means whereby a holder may at any time of day or night notify the loss or theft of his/her electronic payment instrument.

2. The issuer (or the entity specified by him), upon receipt of notification, is under the obligation, even if the holder acted with extreme negligence or fraudulently, to take all reasonable action open to him to stop any further use of the electronic payment instrument.

#### **Article 10 - Settlement of disputes**

Member States are invited to ensure that there are adequate and effective means for the settlement of disputes between a holder and an issuer.

#### **Article 11 - Final provision**

Member States are invited to take the measures necessary to ensure that the issuers of electronic payment instruments conduct their activities in accordance with Articles 1 to 9 by not later than 31 December 1998.

Done at Brussels,

For the Commission

**Mario MONTI**  
Member of the Commission

## BUSINESS IMPACT ASSESSMENT

**Commission Recommendation concerning transactions effected by electronic payment instruments (in particular the relationship between the issuer and holder)**

### **1.a. Taking account of the principle of subsidiarity, why is Community action necessary and what are its main aims?**

In order to reap the full benefits of the single market and Economic and Monetary Union and to encourage the development of Electronic Commerce, it is of paramount importance for individuals and businesses to be able to make payments as rapidly, reliably and cheaply within the Community. The present Recommendation modernises and updates the former Recommendation of 1988<sup>12</sup>. Its purpose is first of all to lay down the minimum requirements needed to ensure an adequate level of customer information. Firstly, this covers information on the contractual terms and conditions for making transactions by means of an electronic payment instrument, which will enable them to make a better informed choice and ultimately contribute to increase competition in this domain. Information also needs to be given in respect of transactions after they have been made. Secondly, to support the objective of transparency, a clear apportionment of the parties' respective obligations and liabilities is called for. Therefore, the present Recommendation also sets out such minimum standards in this respect, as are deemed necessary in view of the above-mentioned fundamental objective. Finally, with a view to facilitating customers' access to simplified means of redress, the Recommendation calls on Member States to ensure that there are adequate and effective means for the settlement of disputes between issuer and customer.

### **1.b. Are there likely to be any wider benefits and disadvantages from the Recommendation?**

The process of implementing these transparency, responsibility and redress standards is expected to require issuers to review their systems for effecting transactions and therefore to bring about greater efficiencies. These factors are likely to contribute to a progressive and significant improvement in the quality of services offered as well as a reduction in their cost, thus contributing to the development of trade, particularly with respect to lower-value and lower-margin intra-EU economic activity.

The likely increase in the use of electronic means of payment may have an impact on the structure and operations of the labour market both within the payment systems industry and the segment of SMEs, although further analysis will be needed to fully assess these changes. Already at this stage, it would seem apparent that new employment potential will principally be in information-based, high-value services. Training and education for these new skills will be needed.

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<sup>12</sup> Commission Recommendation 88/590/EEC of 17 November 1988 concerning payment systems and in particular the relationship between card holder and card issuer, OJ No L 317, 24.11.1988.



2. **Who will be affected by the Recommendation?**

Which sector of business? What are the size classes and what is the total employment?

The Recommendation will be applicable to banks and any other institutions which supply electronic payment means to the public by way of business. In practice, the majority of these will be banks and near-banks, although other service providers including retailers may participate. Very few such institutions are in the lower size-classes.

**Are there any significant features of the business sector, e.g. dominance by a limited number of large firms?**

The sector may still gain from further technical interoperability, which will encourage a further integration of payment systems at European level.

**Are there implications for very small businesses, the craft sector or the self-employed?**

Very small businesses are very unlikely to be offering, on a generalised basis, electronic payment services to the public. However, as beneficiaries of the Recommendation, i.e. as users of such services, they will benefit from the Recommendation. These remarks apply equally to the craft sector and the self-employed.

**Are there particular geographical areas in the Community where these businesses are located?**

No.

3. **What will businesses have to do to comply with the Recommendation?**

**What will be the compliance costs?**

Compliance costs will mainly relate to the production, or up-grading as appropriate, of information material describing the conditions applicable to transactions by means of electronic payment instruments (description of the service offered and of the parties' main obligations and liabilities, indication of the cost elements, specific warnings with regard to certain means of payment, reference to redress procedures available to users). Issuers will also need to review the quality of the systems to ensure that the quality of the services they publicise is effectively matched by the actual quality of service.

The cost of this will probably be partially or even wholly offset by the marketing benefits likely to result, as institutions learn to build a competitive advantage on the qualitative standards of the services they provide, as a way of attracting new or specialised customers.

**Are there other administrative procedures or forms to complete?**

No.

**Are licenses or marketing authorisations required?**

No.

**Will fees be charged?**

No.

**4. What economic effects, costs and benefits is the Recommendation likely to have?****On employment?**

The Recommendation as such is not likely to have a significant impact on employment. The likely increase in the use of electronic means of payment may have an impact on the structure and operations of the labour market both within the payment systems industry and the segment of SMEs, although further analysis will be needed to fully assess these changes. Already at this stage, it would seem apparent that new employment potential will principally be in information-based, high-value services. Training and education for these new skills will be needed.

**On investment and the creation or start up of new businesses?**

The investment effect will no doubt be positive, as institutions may be expected to take the opportunity to upgrade their services.

**On the competitive position of businesses, both in the Community and third countries' markets?**

The efficiency gains and reductions in costs for business within the Community will be extremely positive. There will be no direct effect on third country business, although positive spill-over effects may be anticipated.

**On public authorities for implementation?**

Beyond the purely regulatory/administrative costs of ensuring compliance, implementation costs may be negligible depending on the present situation in the Member State concerned.

**Are there other indirect effects?**

Not other than already stated in paras. 1 and 2.

**What are the costs and benefits of the Recommendation?**

- **costs:** the cost of compliance for issuers is expected to have no exorbitant effect on the publicity budget, since compliance will mainly involve the production, or upgrading as appropriate, of contractual material. As to the necessary review of systems, the scope for cost elimination is expected to outweigh the investment costs that such a review might determine to be necessary.

- **benefits:** Taking account of the most important present and prospective elements (gradual completion of the Internal Market programme, move towards full EMU, advent of the Information Society and development of Electronic Commerce), gross benefits in terms of enhanced customer confidence, wider choice and lower costs for electronic transactions are estimated to be significant.
- **balance:** overwhelmingly positive on the benefit side.

**5. Impact on SMEs. Does the Recommendation contain measures to take account of the specific effect on SMEs - if not, why not? Are reduced or different requirements appropriate?**

Yes. In general, the Recommendation has been elaborated with a view to developing the use of modern electronic payment instruments, as a further incentive to trade to the direct advantage of SMEs.

**Consultation**

**6. Indicate at what stage the consultations were undertaken and the date of publication of the prior notification of an intent to introduce (up-date) legislation?**

The Commission has, over many years, promoted the fullest consultation of all interested parties and earliest disclosure of its line of policy in this area. This has materialised in the following steps:

- Green Paper<sup>13</sup> (consultation paper) of September 1990, calling for comments from all interested parties; annexed to the Green Paper was a decision to set up two consultative groups;
- setting up of two permanent consultative groups on payment systems in March 1991, with intensive frequency of meetings throughout 1991 and early 1992, leading to reports to the Commission (in February 1992) published in March 1992;
- Commission working document of March 1992<sup>14</sup>, based on the detailed reports of these consultative groups, announcing the Commission's proposed policy, including intent to introduce legislation if voluntary compliance was not forth-coming;
- Communication<sup>15</sup> to the European Parliament, the Council of the European Union, the European Monetary Institute and the Economic and Social Committee of November 1994, laying down a further programme of work in the area of payment systems;

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<sup>13</sup> Discussion paper on "Making payments in the Internal Market", COM(90) 447.

<sup>14</sup> "Transparency and performance of cross-border payments"; SEC(93) 1968 of 14 December 1993.

<sup>15</sup> COM(94) 436 final of 18 November 1994: "EU funds transfers, transparency, performance and stability",

- recognising the relevance of "customer relations" in the widest sense, the Green Paper of May 1996<sup>16</sup>, as well as the subsequent communication<sup>17</sup> on a follow-up action plan announcing the Commission's intentions to promote confidence in electronic payments;
- Commission Communication<sup>18</sup> to the European Parliament, the Council of the European Union, the Economic and Social Committee and the Committee of the Regions of April 1997, announcing measures to favour sound, user-friendly, efficient and secure electronic payment systems, as a condition for encouraging the development of electronic commerce.

**List of organisations which have been consulted about the Recommendation and set out in detail their main views, including their concerns and objections to the final proposal. Why is it not possible or desirable to accede their concerns?**

**European credit sector associations** : they generally welcome the work that has intervened in clarifying and modernising the 1988 Recommendation (many of their detailed technical commentaries have been acceded to and are taken into account in the current Recommendation), while lamenting the crowding of initiatives in the run-up to the third stage of EMU.

**Government experts** : Preliminary drafts of the Recommendation have been significantly amended to take account to the fullest extent possible of the views of the EMI.

**SMEs** : strongly in favour of the principles, preferring self-regulation provided that its effects could have been measured in the short term.

**Consumer organisations** : support to Commission's initiative, although would have preferred a binding legislative instrument.

**Were the SME Business Organisations consulted? If not, why not?**

Yes, see immediately above.

## **Monitoring and Review**

**7. Explain how the effects and compliance costs of the Recommendation will be monitored and reviewed. How will complaints be dealt with?**

With a deadline of 31 December 1998, the Commission calls on

- issuers of electronic payment instruments to act in accordance with the provisions set out in the new Recommendation; and
- Member States to ensure that there are adequate and effective means for setting disputes between a issuer and users, in accordance with the recommendation.

<sup>16</sup> COM(96) 209 final of 22 May 1996: "Financial services: meeting consumers' expectations".

<sup>17</sup> COM(97) 309 final of 26 June 1997: "Financial services: enhancing consumer confidence".

<sup>18</sup> COM(97) 157 final of 15 April 1997: "A European Initiative in Electronic Commerce".

The Commission will monitor progress between its adoption and the end of 1998. It will also undertake a study of its implementation at the end of 1998. If the new Recommendation is not implemented satisfactorily, the Commission will propose a Directive in this domain.

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