

# COMMISSION OF THE EUROPEAN COMMUNITIES

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## **EASIER CROSS-BORDER PAYMENTS : BREAKING DOWN THE BARRIERS**

**COMMISSION WORKING DOCUMENT**

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**I. INTRODUCTION**

1. Over 200 million retail cross frontier payments take place within the EC each year. Their number is growing steadily as the completion of the Single Market leads to greater trade flows and movement of people throughout the EC. The programme for Economic and Monetary Union agreed in Maastricht will lead to a further significant increase in cross-frontier payments as the costs associated with changing from one EC currency to another are ended. This underlines the importance of early action to bring the performance of cross-border payments systems up to the standard of the best national systems. The full benefits of the single market and EMU will only be achieved if it is possible for businesses and individuals to transfer money as rapidly, reliably and cheaply from one part of the Community to another as is now the case within most Member States.
2. In September 1990 the Commission published a discussion paper, 'Making Payments in the Internal Market', which focused on the need to improve the operation of Retail Cross Border Payments Systems (RCBPS) and highlighted the high cost and varying quality of existing services. In March 1991, in response to the many useful comments received on this paper, the Commission set up two working groups to advise it on how smaller value cross frontier payments could be improved. The first of these, known as the Payment Systems Technical Development Group (the Technical Group) with members drawn from commercial and central banks; the second known as the Payment Systems users Liaison Group (the Users Group) brought together members drawn from banks, consumers and small businesses. The two working groups met a total of 15 times since last April and have made separate reports to the Commission which are available from the Commission on request. The Commission is grateful for the invaluable work undertaken by these two groups and also for the many contributions received from other interested parties.
3. The Commission has drawn on the groups' work to describe the actions now underway to improve the transparency, speed, reliability and cost of retail cross-border payment systems. This Communication also lays down a programme of action to be set in hand immediately by the Commission to facilitate and encourage the improvements. Our objective must be to ensure that the European Community's payment systems are ready by the end of 1996 to meet the challenge of a single European currency.
4. The Communication and the two reports concentrate on what needs to be done to improve retail cross-border payment systems in advance of EMU. Many of the measures envisaged should also help the improvement of larger value payments systems. In this context an Ad Hoc Working Group on EC Payment Systems has been set up by the Committee of Governors of the EC Central Banks to consider how best to ensure the wider stability of European payment systems structures.

## THE WAY FORWARD

5. The outcome of the working groups confirms the Commission's initial view that significant improvements need to be made to the transparency, speed, reliability and cost of cross-frontier payment systems. A continuing programme of work is needed in a range of areas. Detailed points for follow-up are set out in part IV of this Communication.
6. Immediate action can be taken to improve the transparency of payment systems. Users have a right to receive full information about the various possibilities open to them for sending funds across frontiers. The European credit associations have responded positively to this need by preparing guidelines on customer information (see annex A). These are being circulated to their members with the intention that they will be put into effect by 31 December 1992. Building on these guidelines the Commission is now publishing a 5 point users charter (see annex B) setting out in a clear and usable form the information to which users are entitled.
7. If an unacceptable level of service is provided the customer should have a guaranteed right to redress. The Commission proposes to call a meeting in the course of this year with the relevant Member States representatives to consider how national redress procedures can be extended to include cross-frontier payments and how small businesses could also be covered.
8. It is also important for consumers to receive clear information about the cost of foreign exchange transactions whether through banks or bureaux de change. A uniformly high level of transparency should be provided across the Community in this area; the Commission will take the necessary steps to achieve this.
9. There is a consensus that the development of electronic fund transfers offers the most promising way of improving the quality of cross-frontier remote payments. The encouraging message is that a variety of initiatives are either under way or in preparation in this area. It is clear that effective competition between systems has a central role in improving the efficiency of service and reducing the costs to the consumer.
10. In this context the development of electronic linkages between the various types of automated clearing houses is of paramount importance in assisting smaller banks to offer a significant improvement in cross-frontier service. The Commission strongly supports the work now underway in this area, and will remain in close contact with those involved.
11. For some Member States a precondition for improved cross-frontier service is modernisation of domestic payment systems. The Commission proposes to study in the context of its cohesion objective and the trans-European networks the possible provision of financial and technical assistance for the modernisation of national payment systems in certain Member States.
12. Telecommunications costs represent a significant proportion of banks' cost in cross-frontier payments. The Commission will work closely with the systems providers to ensure that action can be rapidly taken to deal with any difficulties of access encountered by the banks in this area, using the new consultative structure under the Open Network Provision Directive.

13. The Commission is also working to ensure that the remaining national reporting requirements for statistical reasons of cross-frontier payments do not offer an obstacle to the provision of a cheap and rapid service.
14. It is agreed that work should be done to harmonise the technical and operational standards needed to ensure that payment systems can communicate effectively with each other and to prevent excessive fragmentation. There is also a need to harmonize certain legal rules in order to ensure finality of payment and to remove the uncertainty which can exist in net settlement systems. The Commission intends that such harmonisation should be consistent with wider international developments and therefore proposes to draw in particular on the work of UNCITRAL, due to be concluded shortly, in preparing legislation for the necessary minimum Community legal framework.
15. Annex C to this report is a set of competition guidelines designed to assist cross-frontier payments providers in setting up networks compatible with Community competition rules.
16. The importance of providing direct debit services cross-frontier has recently become apparent. This is a growing area of domestic banking and companies doing business across frontiers should be able to benefit from the same direct debit possibilities as they enjoy in their home Member States. The Commission will work closely with service providers and users to encourage steps which are already envisaged in this area.
17. More generally, the Commission's role as a catalyst in encouraging the provision of market based payment systems to complement and complete the Internal Market will continue, building on the spirit of cooperation between service users and providers which has already proven its worth.

## II. THE USER PERSPECTIVE: GREATER TRANSPARENCY AND RIGHT OF REDRESS

18. The Payment Systems Users Liaison Group (PSULG), was composed of representatives of consumers, retailers, small and medium sized enterprises as well as representatives from the three major European Credit Sector Associations (ECSAs). This group concentrated on two main issues:
  - how to improve and make more transparent the information to be provided by banks to customers and
  - what redress procedures should be in place so as to examine complaints by customers.

### Better information to users: Guidelines for the Banks

19. Users are rightly concerned to see a reduction in the cost of cross-border payments, so that these come down towards the level of charges for domestic payments. The steps needed to move in this direction are discussed in Part III of this Communication and in the report of the Technical Group.

- 20. The most effective short term measure to help payment system users is to bring the standard of information available to them concerning all aspects of the service on offer up to a consistently high level. By enabling customers to make a better informed choice, this should in itself both contribute to the overall efficiency of cross-border payment systems and exert a downward pressure on prices. Information also needs to be given in respect of cross-border payments after they have been made, showing, inter alia, how the cost is made up and the exchange rate used.
- 21. The banking industry recognises that there is certainly room for improvement in the quality of information provided to customers. This will be done in two stages.
- 22. The first stage will cover remote payments, these, where the sender and beneficiary are in separate countries, for which the ECSAs have already drawn up guidelines for their members, for implementation by the beginning of 1993. These guidelines are attached to the present Communication (Annex A). They are designed to ensure that every user is provided with information on
  - the full range of payment services available;
  - the main characteristics of each service;
  - the time it will normally take;
  - all charges including the basis of the exchange rate applied;
  - the value dating arrangements;
  - how to obtain more information;
  - warnings about particular methods (where relevant);
  - complaints and redress procedures.

The Commission will monitor their implementation of these guidelines at the end of 1992.

- 23. For the second stage the Commission has invited the ECSAs to review the information given to customers about direct or so called face-to-face payments, in the light of the guidelines in Annex A. The Commission will examine with the ESCAs what improvements may be needed in this information and how these should be put into effect.

**Paying net sums to beneficiaries - the problem of double charges**

- 24. In the case of remote payments, particularly transfers, problems can arise if the originator, who wants to pay in full for the cost of transferring a specified sum, is unable to ensure that the latter will be credited in full to the beneficiary, without additional charges being made at his end. This problem can make it very difficult for small businesses, or those trading by mail order, to compete effectively across frontiers, since they will often not receive the full payment sent to them.
- 25. Banks should at least provide their customers with an estimate of the total charges. Moreover, the Commission has already recommended<sup>(1)</sup> that where the originator has specifically instructed his bank to ensure that

<sup>(1)</sup> Commission Recommendation 90/109/EEC of 14.02.1990 (O.J. L67 of 15.03.1990, page 39, principle 3, section 2).

the beneficiary is credited with the exact amount shown on the transfer order, the bank should apply a method of transfer which will make it possible to achieve this result. However, this has not yet had sufficient practical effect. Part of the problem here is that at present the originating bank does not always have the full information on the charges which may be made by the other banks through whom they route a transaction. However, improvements in the techniques of correspondent banking will facilitate the provision of this kind of information. Moreover, additional charges could if necessary be charged to the sender and not to the beneficiary.

26. A study carried out by the European consumer group - BEUC - in 1988 had cited a range of cases in which, even where an originator had ordered the transfer of a precise sum free of all charges to the beneficiary, the latter's banks had deducted charges. Banks have acknowledged that this practice is wrong and indeed in breach of contract with the originator. The Commission looks to the banking sector to ensure that this abuse is ended by the 31.12.1992. If problems persist the Commission will examine whether other measures are needed to end such double charging.

#### The time taken for a payment

27. The reliability and speed of cross-border payments, in particular of remote payments, are also important to businesses and other users. In the domestic systems of most Member States a payment will rarely take much longer than 3 working days to be credited to the beneficiary after being debited to the originator. For cross-border payments the time taken is often considerably longer; but perhaps at least as important as the actual time taken, cross-border payment systems should run to reliable time schedules.
28. In 1990 the Commission recommended a maximum 2 day execution time for each bank in a transfer chain. Given that most transfers involve 2 banks and few need involve more than 3, the maximum time schedule for transfers ought to be within the range of 4 to 6 working days. It may well be feasible, with greater automation, to achieve faster timing than this in the future. The Commission will be looking to those operating systems to set demanding targets for themselves and to include these in the information they provide to customers. The Commission will review progress in early 1993.

#### Over-the-counter foreign exchange transactions

29. There is considerable competition between banks and also bureaux de change to buy and sell foreign currency. It is important that the customer receives full and clear information as to the exchange rates to be used and in particular as to other flat rate handling charges.
30. The Commission considers that there should be a binding obligation on all banks, bureaux de change and others who offer cash foreign exchange services to display all elements of the transaction (if any) over and above the exchange rate very clearly and prominently so that there are no "surprise" charges. A uniformly high level of transparency would thus be provided across the Community in this area; the Commission will urgently discuss with Member States how this can be achieved.

### Complaints and redress

31. There is a need to provide rapid and flexible arrangements for dealing with complaints involving retail cross-border payments. There are clear benefits for both parties in having available complaints procedures involving neutral "ombudsmen" and similar bodies which can arbitrate on complaints in a simple, inexpensive procedure.
32. The Commission has already recommended<sup>(2)</sup> that such arrangements should apply to transfers; the same arrangements should - as agreed between banks and users in the Users Group - equally apply to all forms of cross-border payments, whether by transfer, payment card, cheque or other means.
33. Business users however are not eligible to use existing procedures in all Member States and as important users of cross-frontier payment systems wish the schemes to be extended to include them. The Commission is attracted by the extension of redress procedures to business users, in particular small or unincorporated businesses. It intends to examine the modalities of doing this with the Member States in the near future.

### III THE INDUSTRY PERSPECTIVE: IMPROVING INFRASTRUCTURE AND REMOVING BARRIERS

34. The Payment Systems Technical Development Group (PSTDG), brought together representatives of providers of payment services, in particular Commercial, Savings and Cooperative Banks, of Postbanks and of the ECU Bankers Association. The Committee of Governors of the EC Central Banks nominated officials from six of the Central Banks to represent the Committee in the Group. While their report seeks to reflect the general consensus arrived at in the Group it does not necessarily commit each member to every conclusion in it<sup>(3)</sup>.

35. The group focused its work on three main areas:

- an assessment of present and future demand for cross border payments services ;
- a review of current developments and projects likely to improve cross-frontier payment and
- an examination of the obstacles that need to be removed and initiatives that should be envisaged to facilitate improved payment systems.

#### (a) Assessment of market developments

#### Volumes

36. There is no accepted definition of "retail" in the context of CBPS, but it does imply a relatively low value, whose upper limit can, for present purposes, be assumed to lie somewhere between 2.500 ecu and 10.000 ecu.

<sup>(2)</sup> In Recommendation 90/109/EEC (see footnote 1).

<sup>(3)</sup> In particular the participation of central banks does not commit specific central banks or the Committee of EC Central Bank Governors in any way.

37. On the basis of a 2.500 ecu threshold about 50% of the estimated 400 million cross-border payments made within the EC are "retail" payments. A large majority of these payments are made "face-to-face" by individuals travelling on business or on holiday or shopping across the border; the remainder are "remote" payments made by and to individuals or businesses in payment for goods and services, remitting salaries or paying pensions.
38. While relatively large in absolute terms, the number of retail cross-border payments is small as a proportion of total domestic payments, e.g. 0.8% in the UK, 4% in Belgium. Cards are the dominant means used in most Member States with credit transfer orders (henceforth transfers) rather than cheques being the main means of remote RCBP.
39. What banks, and others contemplating new investment in retail cross-border payment systems, consider important is the size of the future demand for RCBP. Indeed, banks will have to make their own assessment of the profitability of measures to improve the infrastructures of RCBPS. Demand will be boosted by the rapid growth in EC trade associated with the Single Market. A further stimulus will come from the move towards EMU, including from the reduction in intra-EC currency risk in stage 2 starting in 1994. Finally, the demand for RCBP will also increase as their speed and reliability improve, and their cost comes down.

#### Charges

40. The Technical Group carried out a limited survey of charges for RCBPS. While this was based on a small sample which may not be fully representative, it showed that the minimum charge is likely to be in excess of 10 ecu, of which the component relating to currency conversion is a relatively small part. It is difficult to compare these charges with those made for equivalent domestic payments which also vary considerably from bank to bank and between Member States. Nevertheless, even where a charge is made for a domestic payment this is unlikely to exceed 0,50 ecu in most cases, or 1/20th of the cost of a cross-border payment.

#### Survey of existing techniques and current developments for improving payment systems

##### (i) Transfers

41. Today, most cross-border transfers are effected using the correspondent banking system. Under this system one bank provides payment and other services to another bank; payments, primarily across national boundaries, are often executed through reciprocal accounts of correspondent banks, to which standing credit lines can be attached. Many banks have made major investments in recent years (e.g. replacing manual with automated procedures) and much more is planned in order to improve the efficiency of correspondent banking. The Commission welcomes these developments. Many of the points contained in the action programme should contribute to them.

42. The Technical Group examined in some detail a particularly promising option for improving retail cross-border payment systems through linkages between Automated Clearing Houses (ACHs) which handle almost all internal transfers in most Member States. An ACH is an electronic system in which data on payment orders are exchanged by magnetic media or via a telecommunication network and handled by a single data processing centre or an integrated system. The Commission has offered its active support to the national ACH organisations to link across the borders those ACHs or equivalent systems, which include a vast majority of banks and individual Member States. Banks in several countries, including some from the European Economic Area, as well as the Community, are already examining the feasibility of such a system. ACH linkage offers a structure which should be capable of handling large volumes of small cross-frontier payments quickly and cheaply and may be particularly attractive for smaller banks.
43. Larger banks are seeking to exploit the availability of a single banking licence from end-1992 which creates the possibility of banks increasingly branching into other Member States or to provide direct services there. Where such banks obtain membership in host country domestic payment systems they would then be able to transfer payments "in-house" (i.e. from a branch in one Member State to a branch in another Member State, for subsequent transfer to the ultimate beneficiary).
44. Organisations which operate and manage electronic card networks are also investigating whether these networks can be adapted to carry retail cross-border transfers. The attraction of this option is that a card system with surplus capacity could carry the extra traffic of transfers at a low marginal economic cost. The Commission will continue to encourage developments on these lines.

#### (ii) Direct debiting

45. The technique of 'direct debiting', i.e. the possibility for a creditor to initiate a debit on the debtor's account, based on the prior written agreement of the latter, seems a promising means of improving the efficiency of RCBPS. While not a payment system in itself (this technique can use existing and in particular future linked infrastructures), this is an instrument which could facilitate a large number of future cross-border, and in particular retail recurrent transactions. Many service payments are now made by direct debit, and it is therefore important that this technique should become available for cross-frontier businesses as rapidly as possible. The Commission will work closely with service providers and users to determine what specific further measures may be required in this area.

#### (iii) Payment cards

46. As regards payment cards, which are primarily used for face-to-face payments, the situation is already quite satisfactory; in any case, the Technical Group did not recommend particular studies or improvements. The Commission notes that the interoperability of payment cards is making good progress; very widespread with regard to access to Automated Teller Machines, it should also progress in the area of debit cards used for automated payments at the point of sale. Work on European Standards for machine-readable cards (ic-cards) is underway; in this context, the possibilities offered by the technique of prepaid cards should be kept in mind.

(iv) Cheques

47. The use of paper cheques is unlikely to increase significantly, given that electronic and in particular payment card techniques are more efficient for many transactions. However, the standardisation of the messages contained in paper cheques, allowing for better automated processing of cheques issued in other countries, requires further study and would produce useful savings.

(b) Creating the environment for change

48. It is clear that the development of RCBPS in general will be determined by a combination of market forces - exemplified in the various types of schemes already identified - and Community and national initiatives. In order to ensure that the Community encourages the development of efficient systems work is urgently required in the following key areas. These are:

- standards;
- telecommunications;
- legal issues;
- competition policy;
- supervision;
- membership;
- reporting requirements;
- data protection;
- domestic payment systems.

Standards

49. While competition between different systems is the best way to improve performance, there is a risk that the payment systems as a whole will remain fragmented if systems are operating on competing standards, given that there is a need for these systems to communicate. In certain areas, particularly payment cards, international and European standards have been agreed; it is however important that agreement on further standards which would facilitate the automation of RCBP is reached soon, notably those allowing to identify with precision the account of customers, in particular beneficiaries of transfers, but also more widely those used for credit transfers and direct debiting in general. The main European Banking Federations have set up a Committee on European Banking Standards (CEBS) one of whose objectives will be to secure the necessary degree of agreement in this area. The Commission welcomes this initiative and will offer its full support to the CEBS, in particular when the CEBS comes to request status as an Associated Standardising Body under the rules of the Community standards bodies. The Commission would hope that the Committee will take into consideration existing European and international standards already in use for data transfers, and, where such standards exist, make sure that they receive priority over proprietary standards.

## Telecommunications

50. The cost of telecommunications constitutes a significant part of the underlying cost of effecting an RCBP, for example 10% to 20% of the cost associated with a transfer in some cases, while the time-span of such transfers, including their certainty, partly reflects the efficiency of their telecommunications input. The costs and reliability of telecommunication services vary significantly between Member States, depending on the efficiency of the telecommunications industry in each Member State. The Commission will continue its efforts to improve the latter by pursuing a policy of increased access and competition. This has already been beneficial and it is important that the momentum is maintained in this area and that dominant positions will not stand in the way of market oriented developments. The Commission will pursue its efforts to encourage the public telecommunication operators to offer efficient and economic telecommunication networks and services, required to support Community wide financial transactions on the basis of open standards. The EC Committee of Telecom providers set up by the Directive on Open Network Provision offers a forum in which difficulties encountered by users can be resolved.

## Legal Issues

51. RCBP generally involve the legal systems of at least two countries which may differ in important respects. Such differences may lead to uncertainty as to which laws apply to particular payment operations. The disadvantages and costs associated with such uncertainty can to some extent be overcome in the short-term by contractual arrangements, though this may be expensive. In view of such uncertainty and expense, work should begin now to eliminate some of the key differences that exist. This work would cover as priorities aspects such as the moment of settlement finality and the point of irrevocability (this is of particular importance when one participant of a system fails) as well as aspects of the nature of legal tender. The work on the level of the United Nations (in particular the draft model law on credit transfers presently prepared by UNCITRAL) should be taken into account. The Commission intends to start work on this subject, including relevant aspects of consumer protection, in the second half of 1992. It should be noted additionally that the analysis of the legal aspects of electronic data interchange has already started in the Commission and that coordination in this area will be ensured when this work will become relevant for cross-border payments.

## Competition policy

52. Annex C sets out the relevant principles on competition applying to credit transfer systems. The normal rules of competition policy apply in the field of payment systems. This means that groups of institutions wishing to cooperate to set up a RCBPS would need to notify their arrangements to the Commission. In order to help banks which are seeking to reach such agreements in view of cooperating in a payment system, the Commission has drawn up a set of guidelines which identify those ways of cooperation which are acceptable and those which may need to be examined more closely in the light of competition rules. These specify, inter

alia, that prices and charges to customers must be unrestricted; and that interchange fees in multilateral systems must be maxima, leaving open the possibility of participants agreeing on lower fees on a bilateral basis.

### Supervision

53. One of the key central bank concerns with payment systems is the risk that the failure of one participant in a payment system to meet his required obligations may cause other participants to be unable to meet their obligations when due ('systemic risk'). This risk is much greater for large-value, than for retail payment systems. Systemic risk in general is currently the focus of work by the Ad hoc Working Group on EC Payment Systems set up by the Committee of Governors of the Central Banks of the Member States of the EEC. In principle, RCBPS involve a relatively low degree of systemic risk. However, the Commission invites the Central Banks to give guidance, where appropriate, to those planning to set up new RCBPS as early as possible in their evolution in order to avoid unnecessary costs.

### Membership

54. The integrity of payment systems will have to be guaranteed by their appropriate structure, by their careful and professional operation but also, and perhaps most importantly, by rules governing membership and avoiding participation of institutions not fit and proper for the ensuing responsibility. Aspects of both competition rules and the principles regarding the freedom of establishment or services come in to play in this respect.
55. First, as regards privately managed systems, competition rules imply that, where membership of a particular payment system is an essential precondition for providing money transmission services such membership cannot be confined to a limited group of institutions which would thus obtain a dominant position in a given market. In any event membership criteria for these systems must be objectively justified. More about this aspect is set out in section 1 of the Competition Principles (Annex C).
56. Second, the membership in systems set up under guidance from public authorities or governed directly or indirectly by public statutes are subject to the EC Treaty principles of freedom of establishment and services. Under these principles Member States are required not to discriminate against suitably qualified banks from other Member States which apply for membership in a local payment system. The Commission accepts that supervisors in such cases may impose membership criteria, so that there is no automatic right for all credit institutions in the Community to claim unconditional membership of every payment system in the EC. In applying these membership criteria, central banks or prudential supervisors are entitled to exercise discretionary judgement; however they must do so in a non-discriminatory way. The Commission will seek to clarify with Central Banks and other competent authorities, as the case may be, what action could be taken to achieve convergent membership rules for similar systems.

### Reporting requirements

57. In most Member States there are special reporting requirements primarily for balance of payments statistics in respect of transactions which exceed a certain value threshold and which involve payments to, or from, non-resident accounts. These requirements raise the cost and can increase the delay in making such transactions. Moreover, the nature of the requirements enforced in different Member States often differs.
58. The Commission will work towards a high minimum reporting value threshold, which in its view should be at least 10.000 ecu. Work should be set in hand to streamline the procedures used throughout the Community, preferably on a paperless and automated basis, as soon as possible. The possibility of standardizing the format for reporting transactions above the threshold would also help to simplify these procedures. These improvements would materially help the development of more efficient RCBPS and the Commission will take all the necessary steps with the relevant authorities in the Member States to achieve them.

### Data protection

59. In September 1990 the Commission proposed a Directive concerning the protection of individuals in relation to the processing of personal data. This Directive has now been examined by the European Parliament. The Commission will submit a revised proposal. It is vital for the efficiency of RCBPS that the implied personal data flows are not impeded either by different approaches on national level or by Community provisions raising unnecessary obstacles to the development of more efficient cross-border payment systems. The Commission is examining these criticisms and will make changes to the proposal where these are necessary.

### Domestic payment systems

60. The plans which the Commission outlines in the present Communication focus on cross-border payments. However, cross-border payment systems and linkages will only be as efficient as the national systems at either end. This means that the development of automated (electronic) payment systems in Member States which currently do not possess them is crucial if the benefits of the measures proposed in this Communication are to be maximised.
61. The Community already plays an important role through Regional Fund support in the development of telecommunications infrastructure. Studies to be conducted this year will provide guidance as to the areas in which further assistance might be required. Integrated payment systems between Member States are potential beneficiaries under the Trans-European networks initiative (COM(90)585). The Commission is investigating what further help might be given to encourage infrastructural improvements in payment systems in certain Member States or regions of the Community.

#### IV. CONCLUSIONS AND FOLLOW-UP

62. In the light of what has been described in sections II and III above, the various steps that must be taken in order to increase the speed, transparency, economy and reliability of cross-border payments are as follows:

##### 1. Transparency for Users

###### Information

63. The Commission considers that, with the introduction of the single market in 1993, users of cross-frontier payment systems have a right to clear and accurate information on the services being provided. This must cover in particular:

- the full range of payment services available;
- the main characteristics of each service;
- the normal time taken;
- charges including the basis of any exchange rates applied;
- the value dating arrangements;
- the right to send full value to a recipient;
- access to an effective complaints and redress procedure.

The Commission's Users Charter attached in Annex B sets out the rights to which users should be entitled in consequence.

64. For remote payments, this information is the subject of guidelines attached to the present Communication (Annex A) which are immediately being circulated to the national banking systems. The ECSAs have promised their best endeavours to ensure that implementation can be achieved by the end of 1992. The Commission will monitor this process in co-operation with the Payment Systems Users Liaison Group which will be reconvened to this effect early in 1993. Should these efforts not have led to satisfactory implementation of these rights by then, the Commission will bring forward the necessary legislation to provide a statutory framework for such rights. The Commission will propose as soon as technically feasible individual execution deadlines for banks and a maximum working day transfer period.

65. Similar information should be provided as appropriate to holders of face-to-face cross-border payment instruments, and in particular payment cards and cheques. The Commission intends to seek appropriate ways of achieving this.

###### Transfers of full amounts in specified time periods

66. The Commission will turn to the banks and in particular the ECSAs in the course of 1992 in order to study with them how best to ensure an end to double charging so that all charges can be paid on request by the sender, consistent with the Commission's 1989 Recommendation.

67. Under present conditions the maximum time for execution of transfers should not exceed 2 working days for each bank involved in the transfer and thus the total transfer time should reflect this time limit. The Commission will look to systems operators to set appropriate target times for themselves and to include these in the information provided to customers. These periods will be reviewed before the end of 1994 in order to see whether further reductions can be made in stage 2 of EMU.

#### Foreign exchange transactions

68. The Commission considers that the Member States should ensure that the information displayed by banks and bureaux de change for cash foreign exchange transactions is either set out in all-inclusive exchange rate (including all commissions), or is clearly and prominently displayed showing any charges that will be made. Should this not lead to rapid practical results, the Commission will draft a binding Community instrument.

#### Complaints and redress

69. The Commission will seek immediate implementation of the principle - agreed by banks and users - that complaints and redress procedures should cover all forms of cross-border payment. Additionally the Commission will examine with Member States the modalities of extending redress schemes to businesses, in particular small or unincorporated business users.

#### Monitoring and follow-up

70. The Commission will monitor the implementation of the improvements in information to customers agreed by the ECSAs. A further meeting of the Users Group will be held in early 1993 and thereafter at least once a year to assess progress in all the above areas, and consider whether further Commission action is required. The Group will also review the terms of the users' charter with a view to advising the Commission of developments allowing the Commission to define further the terms of the charter and in particular the time periods and transparency of charges.

## 2. Helping to improve infrastructures

#### ACH linkages

71. The Commission's task is primarily that of a catalyst in encouraging the development by the market of new infrastructures for cross-frontier payments. The Commission will remain closely in contact with providers of payment systems, in order to monitor progress in this area.
72. Various techniques of RCBPS, especially in the field of remote payments, (improved correspondent banking, linkages of ACHs or direct access to foreign ACHs among others) will bring about changes in a competitive market. The Commission welcomes the improvements which are taking place in correspondent banking. During the course of the Technical Group's work and in response to suggestions made by the Commission, work has been set in hand by the banks and ACHs of a number of Member States to examine in

detail the feasibility of building links between ACHs. Such links should be cheaper due, among other things, to the possibility they provide of "bundling together" transfers implying fewer international messages, and foreign currency conversion cost savings. Additionally, ACH linkage should reduce the danger of small banks becoming dependent on large banks with well-developed correspondent relations, thereby increasing the degree of competition in banking in general. The Commission strongly supports those banks that are engaged in investigating this possibility further.

#### Direct debiting

73. The Commission intends to set in hand or support continuing work, in the course of 1992, research into the feasibility (standards, legal aspects) of direct debiting.

#### Standards

74. Agreement among banks on certain key standards used in payment systems - e.g. bank identifier codes should be secured. The CEBS will play a major role in this and should be given every encouragement from the Commission, e.g. when it comes to request status as an Associated Standardising Body.

#### Telecommunications

75. The Commission will pursue its policy of increased deregulation and enforcement of competition rules. It will explore within the EC Committee of Telecom providers under the Open Network Provision Directive how best to resolve any difficulties which users may encounter.

#### Legal issues

76. Work on various legal issues in the field of payments should commence forthwith in view of the long gestation period involved. A Commission working party will be established in the second half of 1992 on the basis in particular of the UNCITRAL conclusions and taking into account relevant aspects of consumer protection in order to undertake this task.

#### Competition policy

77. The guidelines on Community competition policy with regard to systems used for cross-border transfers are set out in Annex C and will be consistently applied.

#### Supervision and Membership

78. The Commission will liaise with Central Banks in charge of supervision of payment systems. It will monitor membership conditions in payment systems both in the context of competition policy or, as the case may be, non-discriminatory conditions in systems under public supervision. It will explore whether convergence of membership conditions in equivalent systems can be promoted.

### **Reporting requirements**

79. The Commission will contact the competent authorities in order to raise the minimum threshold for reporting cross-border payments and to streamline the reporting procedures for such payments in the Community. The Commission considers that this threshold should be at least 10.000 ecu.

### **Data protection**

80. The Commission will amend those features of its proposed Data Protection Directive which have been identified as likely to raise unnecessary obstacles to the development of more efficient RCBPS when it comes to redraft it in the light of its first reading by the European Parliament. The Commission will pay attention, in particular through comitology procedures set up by the directive, to the coherence of the implementation of the principles on data protection in the field of banking systems, in order to ensure the efficiency of RCBPS.

### **Third country dimension**

81. The steps outlined above, and others recommended in this report, should be compatible and where possible synchronised with those taken outside the Community. Continued dialogue, and liaison with key third country "players" and international organisations (e.g. ISO, G10, UNCITRAL) will be necessary for this to come about.

### **National dimension**

82. The development of more efficient domestic payment systems in Member States which currently operate with less automated systems is vital if the benefits of all other steps to improve RCBP are to be maximised. In addition to its current expenditure on telecommunications infrastructure from the Regional Fund, the Commission is exploring the nature of the assistance it can provide to accelerate such developments, through feasibility studies and, as appropriate, through infrastructural assistance from the Community's financial instruments.

### **Monitoring and Follow-up**

83. The Commission will organise further meetings with the Technical Group and interested parties in early 1993 in order to assess whether the proposals recommended here have been acted upon, and if not what further measures are required.



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## **EUROPEAN BANKING INDUSTRY GUIDELINES ON CUSTOMER INFORMATION ON CROSS-BORDER REMOTE PAYMENT**

### **I. INTRODUCTION**

The present guidelines have been prepared by the three European Credit Sector Associations, i.e. the Banking Federation of the EC, the European Savings Banks Group and the Association of Cooperative Banks of the EC - in the light of work carried out by the Commission of the European Communities in relation to examination of payment systems in the internal market. Their purpose is to provide guidance to the Associations' member organisations in issuing recommendations to member banks in relation to the production of brochures and other literature for information for their customers on cross-border remote payment.

Making cross-border remote payments is an activity which many customers undertake infrequently. It is important therefore that information is made available to help them to understand the various transfer methods which they can use and to choose which cross-border remote payment method is best suited to their individual needs.

However, all banks are not active in the cross-border remote payment business; those which are, do not always provide a full range of cross-border services. The list of services mentioned in the following pages (Sections II and V) might therefore be in some cases very rudimentary, by their very nature and not for lack of transparency.

This document sets out the guidelines which should be followed by individual banks in providing their customers with information relating to the normal circumstances under which cross-border remote payments are effected. It is recognised that the nature of cross-border remote payments is such that full information is not always known by the customers' bank or branch, especially given the lack of control which the sending bank may have over the beneficiary's bank abroad.

Nevertheless the emphasis should be on making as much information as possible available to the customer, and where information is not known, this should be made clear to the customer.

The following sections set out the general principles on which the banks should base their information to the customer, the definitions of the terms used, the examples of the types of remote payment which might be covered and how the information could be presented to the customer.

It should be noted that although these guidelines are intended ultimately for European Community banks, many cross-border remote payments do however involve banks outside the Community.

\* \* \*

## II. GUIDELINES

1. The bank should issue for its customers a list of the services the bank offers to effect cross-border remote payments.
2. The bank should also issue for its customers information describing each of these services and indicating their essential characteristics so that these may be evaluated by the customer according to his requirements.
3. For each of these services, this information should at least include:
  - 3.1. a basic description of the service;
  - 3.2. the way in which the service can be used, possibly including details to be provided by the customer in order for the funds to reach the beneficiary and to satisfy any technical, regulatory or other requirements;
  - 3.3. an indication of the time generally needed for the funds to be credited to the account of, or to be available to the beneficiary, under normal circumstances;
  - 3.4. the basis of any commissions and charges payable by the customer to the bank, including the basis of the exchange rate applied to the transactions and foreign exchange commission, if any;
  - 3.5. the value date applied by the bank in debiting the customer's account;
  - 3.6. ways in which the customer may obtain further information, including tariffs and exchange rates in effect. This might consist for example of notices in branches, or an indication of how the relevant person or office could be contacted;
  - 3.7. where applicable, specific warnings with regard to certain means of remote payment.
4. The bank should also include a reference to redress procedures available to the customer and the way to access them.

\* \* \*

### III. DEFINITIONS

A **cross-border remote payment** is defined as a transfer of funds between a customer of a country A institution and an institution in country B, which might or might not be a branch of the originating institution, for the benefit of a beneficiary in country B.

A **customer** is to be clearly defined as **remitter** (the person who issues the transfer order) or **beneficiary** (the party to whom the funds are allocated through the crediting of his account or through the sending of a statement enabling him to receive payment of the funds).

### IV. EXPLANATORY NOTES

The numbers hereafter refer to the corresponding points in the "Guidelines" section (Part II.).

1. How the list of the services which the bank offers for making cross-border remote payments is provided is a matter for the individual bank. For example, as many customers undertake cross-border remote payments only infrequently, some banks may well choose to provide a list in their branches; others may choose to provide a different brochure for each service offered.
2. In providing this information about their services, banks should make every effort to present it in a form which is easy for the customer to understand, in particular in plain language, and in order for the customer to compare.
  - 3.1 The basic description of each of these services should tell the customer fundamentally how the service operates.
  - 3.2 The information should include details on how the customer can have access to the service, for example, whether or not the customer needs to go to his branch to make the transfer.

It should also tell the customer what details he needs to have to make the transfer, such as the name and address of the beneficiary, his bank name, account number and, if available, bank SWIFT/BIC code (BIC: Bank Identification Code).

- 3.3 The sending bank should give its customers such information as is available, including an indication as to how long it would expect the transfer to take in normal circumstances.

It will, however, not always be possible for the bank to know precisely when the transfer will be credited to the beneficiary's account or received by him since this will depend on domestic facilities for funds transfers in either - sending or receiving - country, and on the arrangement between the beneficiary and his bank.

The bank may also want to advise the customer to let the beneficiary know when the bank expects the transfer to be made, in normal circumstances, so that the customer can advise the beneficiary if it is not received in that timescale and the beneficiary can investigate what has happened to it.

It may be particularly difficult to provide information on timetables in some circumstances, for example where the beneficiary's bank does not have a correspondent relationship with the sender's bank and another one or more banks need to be involved. In these circumstances this should be made clear to the customer.

- 3.4. This information may change fairly frequently. It may therefore not be possible to give the customer the precise charges figures in a brochure setting out the bank's services. In these circumstances the information could be provided in another way. The information given shall indicate to the customer where or how he can obtain the precise charges to be levied, for example, from his branch.

This should include an explanation to the remitter of the fact that the beneficiary's bank will sometimes levy charges when the money is received, and to indicate whether the bank allows the customer the option of paying these charges himself. The bank should explain to the customer that it may not know the sums involved even after the transaction has been completed. Such information would entail the sending bank addressing a request for specific details to all the institutions involved in handling the operation. Some remitters will be content for the beneficiary to be levied any charges by his bank.

The beneficiary of a cross-border remote payment may also incur certain charges; their amount will depend on the means of transfer used by the remitter and on the treatment given to the payment operation. The customer may obtain the appropriate additional information from his bank.

\* \* \*

V. ILLUSTRATION OF THE GUIDELINES

I. OPTIONS THAT MIGHT BE AVAILABLE TO CUSTOMERS WHO WISH TO EFFECT A CROSS-BORDER FUNDS TRANSFER

- Cross-border funds transfer
- Express cross-border funds transfer
- Bank foreign draft
- Bank draft/cheque
- Electronic transfer
- Standing order (regular transfers only)
- Cheque remittance
- Eurocheque remittance
- Internal transfer
- Credit card
- Debit card (where applicable)

It should be noted that these options should be considered solely in relation to their cross-border rôle, i.e. where a remitter and a beneficiary are located in different countries. The options may differ from country to country and from bank to bank.

II. EXAMPLE: CROSS-BORDER FUNDS TRANSFER

Basic description :

This is an order from a bank customer to his bank to transfer abroad an amount to a beneficiary.

Main characteristics of the type of remote payment	Sum to be transferred (in local or foreign currency)	Basis of commissions and charges, including foreign exchange commission	Value date applied to the debit of the customer's account	Indicative time for remote payment to the beneficiary
...	...	...	...	...

Details to be provided : Beneficiary's bank SWIFT/BIC code, name and address, bank account number and/or name and address of the beneficiary.

Specific observations : The customer should specify which of the parties - himself (the remitter) or the beneficiary, or both - should pay any bank charges incurred. The normal practice is for the remitter to pay any charges payable to his own bank, and for the foreign beneficiary to pay for any charges payable to his bank.



CROSS-BORDER PAYMENTS: EC USERS CHARTER

For all cross-border payments within the European Community the user should have the right to the best possible service. Specifically :

1. The bank must inform the user of the most appropriate payment services available.
2. The user must be given in advance full information regarding the total cost of a payment.
3. The user must have the option of paying all charges so that the beneficiary receives the full sum sent.
4. Cross-border payments should be accelerated. The objective is to achieve the same time delay and reliability as for domestic payments by Stage Three of EMU.
5. The user should have access to a redress procedure at least equivalent to that existing for domestic payments.

PRINCIPLES ON COMPETITION FOR CREDIT TRANSFER SYSTEMS

The present document concerns situations in which banks and other financial institutions are setting up a system allowing for clearing, netting and/or settlement of cross-border transfer payments between them or linking existing transfer networks with each other. Thus, the document will not directly concern questions regarding cooperation in the area of payment cards or cheques. Institutions setting up or linking transfer systems will wish to do so on the basis of agreements which

- determine the membership in such systems, i.e. in admitting to the cooperation only such institutions which fulfill certain pre-established criteria, regarding especially their financial standing, their orderly management and their technical capacities;
- rely on firmly established principles for technical, legal and operational aspects of the services rendered to the institutions' customers; indeed payment processes inside the system will have to follow pre-established rules and procedures; these can concern, for instance, message formats, security procedures, time spans at which the systems are operational or routing instructions (technical, application and operational standards);
- cover the sharing of the costs of the system between its participants.

The Commission considers that the application of the EEC Treaty competition rules to such agreements should be guided by the principles set out below. This does not imply, however, that the competition rules will be applicable to all such agreements; indeed, agreements without which the provision of payment services is not conceivable might well not fall under the prohibition of Article 85(1) at all.

### 1. Membership in a system

The question of "membership in payment systems" is a wider one, not limited to competition policy. In particular, legal aspects pertaining to the principles of freedom of establishment and services enshrined in the EEC Treaty as well as to the impact of the Second Banking Directive 89/647/EEC in this area will often arise with regard to payment systems. These legal questions will concern systems membership in which is controlled or monitored by public authorities. These aspects of public regulation will be studied separately and are not dealt with in the present paper. The following considerations pertain to the aspects arising with private arrangements among institutions setting up new or linking existing systems.

#### a) Non exclusivity

As a general rule, cooperation agreements which embrace the majority of credit institutions of one country or are likely to process a significant part of payment traffic between different countries either totally or in a given market segment (e.g. automated clearing of retail payments; foreign exchange netting) may be considered to provide an "essential facility" and, therefore, should be open for further membership provided that candidates meet appropriate criteria (cf. (b) below).

Where a limited number of institutions set up a payment system, they may be entitled to choose their partners according to their general business strategy and cannot always be forced to open their particular agreement to further partners, even of equivalent standing. However, such agreements must not contain clauses which have the effect of preventing individual participants from taking part in other systems.

#### b) Criteria

The general requirement of non-exclusivity, described in (a), first sub-paragraph above, is not intended to prevent the application of membership criteria for such schemes which are objectively justified. These can concern, for instance, the financial standing, the orderly management and the technical capacities of participants.

As regards criteria based on volume, it will be legitimate to require that the expected traffic generated by a candidate member should not be negligible. But payment systems should wherever possible permit participation by institutions of varying sizes.

Thus, instead of basing an membership criterion simply on expected volume, it may often be preferable to make the candidates own decision depend on economic considerations (e.g. a high flat rate contribution representing the participation in previous investments by other participants; however, the share of the entrant must not exceed a fair share of the actual cost of past investments).

Where foreign banks apply for membership in a domestic transfer system, their expected volume may be low in the beginning; in such cases the type of business, the experience and the volume of payment transactions in the country of origin of such banks should be taken into account.

Refusal of membership or exclusion should be subject to an independent review procedure.

## 2. Operation of systems

### a) Operational standards

Details about technical, application and operational standards are set out in the Payment Systems Technical Development Group's paper on standards (source document to the Report). Of particular interest in the present context are "operational standards". Such operational standards, for example, include standardised message formats (agreements on eligible hardware should however be avoided), as well as rules on transaction times stipulating, for instance, that value will be received by the beneficiary bank of a credit transfer during the same day if a payment order is received before a given hour of that day, while later orders will be executed on the following business day. However, such arrangements must be limited to interbank relations and must, in particular, not lead to concerted value dating practices vis-à-vis the customers.

The participants can also, where justified, set standards regarding the kind and quality of transactions to be processed by a system, for instance defining minimum or maximum amounts involved or requiring that value must be received before a payment is being made. However, such transaction standards must not lead to any exclusivity arrangement; users must remain free to change banking connections from one partner to the other or to bank with several partners simultaneously.

b) Risk management

Arrangements may also concern minimum security standards and risk management. They will often wish to take into account the principles contained in the "Report of the Committee on Interbank Netting Schemes of the Central Banks of the G-10" (Lamfalussy Report, November 1990, in particular its section III.C), it being understood that these principles may have to be adapted to the particular needs of retail payment systems.

Thus, for instance, participants may be required to "prepay" for the risk of their own default by posting collateral sufficient to cover the exposures which their obligations create for the counterparties. Where systems rely on risk management procedures which consist in limiting their mutual exposures, lower limits can be set for smaller counterparties or for participants of a relatively lesser credit standing. A prearranged sharing of losses from defaults of partners will be possible.

3. Costs and prices

a) Pricing vis-à-vis customers

Here, as in other areas of banking competition, no agreements between participating banks on prices of transactions with their customers can be accepted. The systems should be devised in such a way that binding commitments affecting the interbank relations must leave the partners free to determine the offers which they can make and conditions which they will apply to their customers.

b) Cost of systems and central bodies

The cost incurred by the setting up of a system and those arising out of the operation of a central body (e.g. an ACH), can be shared among systems participants at fixed rates (general charge of a central body, e.g. an ACH tariff valid for all participants or, as the case may be, varying according to volumes or other pre-established conditions).

c) Interchange fees in multilateral systems

Interbank transaction fees other than those charged by a central body can also be the subject of general arrangements between all participants. However, these general arrangements must leave open the possibility for individual participants to agree on lower interchange fees bilaterally. In other words, a generally agreed fee structure can provide for maximum fees only. It must remain possible to negotiate variations from this maximum, either effected directly through bilateral rebates between participants or through a central mechanism, as appropriate. Members of a system with maximum interchange fees are not obliged to offer prices below the maximum. However, the Commission would have to consider individual cases upon their merits, to determine whether the absence of prices below the maximum was the result of anti-competitive behaviour.

## SOURCE DOCUMENTS

The present Communication, while written exclusively under the responsibility of the Commission, has drawn heavily on the work of the PSTDG and the PSULG. Their work is summarized in reports which each group presented to the Commission.

The working results are those of each group generally, without committing any group member individually, or the organization which he represented, to the positions taken in the reports. With this proviso, the Commission will make both reports available to all interested parties.

The reports are accompanied by the following annexes which can also be made available:

- Terminology
- Infrastructures
- Standards
- Legal Issues
- Reporting requirements.

Furthermore, there are two more comprehensive working papers, likewise available to interested parties, which concern :

- Systemic risks and supervision
- Telecom issues.

## ABBREVIATIONS

<b>ACH</b>	<b>:</b>	<b>Automated Clearing House</b>
<b>CEBS</b>	<b>:</b>	<b>Comité on European Banking Standards</b>
<b>ECSAs</b>	<b>:</b>	<b>European Credit Sector Associations</b>
<b>RCBP(S)</b>	<b>:</b>	<b>Retail Cross Border Payment (System)</b>
<b>PSTDG</b>	<b>:</b>	<b>Payment Systems Technical Development Group</b>
<b>PSULG</b>	<b>:</b>	<b>Payment Systems Users Liaison Group</b>
<b>UNCITRAL</b>	<b>:</b>	<b>United Nations Commission on International Trade Law</b>