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(Acts whose publication is not obligatory)

COMMISSION

COMMISSION RECOMMENDATION

of 8 December 1987

on a European Code of Conduct relating to electronic payment
(Relations between financial institutions, traders and service establishments, and consumers)

(87/598/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Whereas in the White Paper on completing the internal market the Commission undertook to formulate proposals with a view to adapting innovations and laws relating to new means of payment to the dimensions of that market;

Whereas on 12 January 1987 the Commission sent to the Council the communication 'Europe could play an ace: the new payment cards' (1),

Whereas, since there is a close link between technological development and the unification of the internal market, electronic payment should contribute to the rapid modernization of banking services, distribution and the telecommunications and information industries;

Whereas consumers are entitled to expect definite advantages from such a development;

Whereas Community action should add to this the benefit of a large market;

Whereas the development of new means of payment is to be seen in the context of the Community's financial and

monetary integration and the extension of a people's Europe;

Whereas the free movement of goods and capital will be fully effective only if it enjoys the technological support provided by the new means of payment;

Whereas such means should be made available to economic partners in comparable circumstances in all Member States, although the Commission is aware that the development of payment cards (that is, payment cards incorporating a magnetic strip and/or a microcircuit) can vary in importance, depending on the Member State concerned, and that alternative forms of payment do exist;

Whereas it is necessary to cooperate in order to arrive at standards and implementing rules which will make it possible, in the interests of users in the Community, for payment systems to be compatible and complementary;

Whereas certain general principles should be established concerning fair practice in relations between financial institutions (i.e. banks and credit institutions), traders and service establishments, and card-holding consumers;

Whereas establishment of such principles will favour rapid and effective application of the new technology;

Whereas the heterogeneous, uncoordinated development of such technology should not diminish the opportunity which the technology itself affords of achieving the desired objective of compatible electronic payment systems within the Community;

(1) COM(86) 754 final.

Whereas compatible cards and interconnected Community networks are essential prerequisites for mutually accessible systems and harmonized rules of use ;

Whereas, although it is for the banks and the other financial institutions concerned to decide to make systems compatible, the Commission is responsible for seeing that progress in this direction does not conflict with free competition within the Community market ;

Whereas it is clear that to try now, at Community level, to produce a rigid, detailed definition of the operation of systems in the midst of change might result in the establishment of rules that would be rapidly overtaken by developments, even constituting obstacles to electronic development ; whereas this in no way prejudices the benefits of laying down the basic principles of consumer protection in this area ;

Whereas, nevertheless, it is appropriate that the Commission should see, at the present stage, that all changes in this sphere take place in accordance with the Treaty's rules and that it should seek, in the Community's interest,

to establish and promote consensus as regards development of such systems ;

Whereas the fact that this new technology is not being developed on a large scale in any of the Member States makes it impossible as yet to determine with any accuracy all the specific problems that are likely to arise in particular as networks are completed and arrangements for the use of the new means of payment are finalized ;

Whereas, for these reasons, an instigative approach such as a code of conduct must be flexible so as to make it easier to adapt to changes in the new technology,

HEREBY RECOMMENDS

that all the economic partners concerned should comply with the provisions of the European Code of Conduct relating to electronic payment, as set out in the following.

EUROPEAN CODE OF CONDUCT RELATING TO ELECTRONIC PAYMENT

I. OBJECTIVE

1. The Code sets out the conditions which should be fulfilled if the new, electronic means of payment are to be developed for the benefit of all economic partners and are to afford :
 - for consumers, security and convenience,
 - for traders and issuers, greater security and productivity,
 - for industry in the Community, a leading market.
2. The principles of fair practice must be observed by all those who bring card payment systems into operation or make use of them.
3. The technological development of electronic means of payment should have an eye to their European dimension : such means must be as widely interoperable as possible, to avoid having isolated systems and, hence, a partitioned market.

II. DEFINITIONS

For the purposes of this Code :

1. 'Electronic payment' means any payment transaction carried out by means of a card incorporating a magnetic strip or microcircuit used at an electronic payment terminal (EPT) or point-of-sale (POS) terminal.

The Code does not cover :

- 'company-specific' cards not covered by the above definition,
 - cards serving purposes other than direct or deferred payment,
 - payments by cheque with bank-card guarantee,
 - payments by card using mechanical processes (invoice slips).
2. 'Issuer' means any banking or credit institution issuing a payment card for electronic use, plus any production or service undertaking which can also issue such a card.
 3. 'Trader' means distributive trading or service establishment.
 4. 'Consumer' means cardholder.
 5. 'Interoperability' means a state of affairs whereby cards issued in one Member State and/or belonging to a given card system can be used in other Member States and/or in the networks installed by other systems. This requires that the cards and readers used in the various systems must be technologically compatible and that systems must be opened up by means of reciprocity agreements.

III. GENERAL PRINCIPLES

1. Contracts

- (a) Contracts concluded by issuers, or their agents, with traders and consumers shall be in writing and must be the result of a prior application. They shall set out in detail the general and specific conditions of the agreement.
- (b) They shall be drawn up in the official language(s) of the Member State in which the contract is concluded.
- (c) Any scale of charges must be determined in a transparent manner, taking account of actual costs and risks and without involving any restriction of competition.
- (d) All conditions, provided they are in conformity with the law, shall be freely negotiable and clearly stipulated in the contract.
- (e) Conditions specific to termination of a contract must be stated and brought to the notice of the parties prior to such contract being concluded.

2. Interoperability

By a given date ⁽¹⁾, interoperability, in the Community at any rate, should be full and complete, so that traders and consumers can join the network(s) or contract with the issuer(s) of their choice, with each terminal being able to process all cards.

3. Equipment

- (a) Electronic payment terminals are required to register, control and transmit payments and may be integrated into a point-of-sale terminal.
- (b) Traders must be able, if they wish, to install a single, multi-card-terminal.
- (c) Traders must be free to choose which point-of-sale terminal they will install. They must be at liberty either to rent or purchase such equipment, provided only that it is certified as satisfying the requirements of the whole payment system and can be used on an interoperable basis.

4. Data protection and security

- (a) Electronic payments are irreversible. An order given by means of a payment card shall be irrevocable and may not be countermanded.
- (b) The information transmitted, at the time of payment, to the trader's bank and subsequently to the issuer must not in any circumstances prejudice the protection of privacy. It shall be strictly limited to that normally laid down for cheques and transfers.
- (c) Any problems whatsoever that arise in connection with the protection of information or with security must be openly acknowledged and cleared up at whatever stage in the contract between the parties.
- (d) Contracts must not restrict trader's freedom of operation or freedom to compete.

5. Fair access to the system

- (a) Irrespective of their economic size, all service establishments concerned must be allowed fair access to the system of electronic payment. A trader may be refused access for a legitimate reason only.
- (b) There must be no unwarranted difference in the remuneration for services concerning transactions within one Member State and the remuneration for the same services concerning transnational transactions with other Community countries, especially in border regions.

IV. SUPPLEMENTARY PROVISIONS

1. Relations between issuers and traders

- (a) To promote mutual access among different card systems, contracts between card issuers and traders must contain no exclusive trading clause requiring the trader to operate only the system with which he has contracted an agreement.
- (b) Contracts with traders must admit effective competition between the various issuers. Compulsory provisions must be limited strictly to technical requirements for ensuring that the system functions properly.

⁽¹⁾ 31 December 1992, i.e. the date by which the internal market must be complete.

2. Relations between issuers and consumers

Cardholders shall take all reasonable precautions to ensure the safety of the card issued and shall observe the special conditions (loss or theft) in the contract which they have signed.

3. Relations between traders and consumers

Traders shall display, in a fully visible manner, the signs of the companies to which they are affiliated; they shall be obliged to accept such cards.

Done at Brussels, 8 December 1987.

For the Commission

COCKFIELD

Vice-President
