

## 10. Conclusion

10.1. There are few new ideas in this opinion. The simplification process does not need new ideas; what it needs is the effective implementation of the ideas which have already been expounded by the Committee itself, by the Commission, by

the Lisbon European Council, by the Molitor Report and by numerous other concerned bodies. While the Committee acknowledges that it is often simple to complicate matters and complicated to simplify them, it would observe that there is no point in talking about commitments if we are not prepared to implement them and it is futile to introduce new commitments when the existing ones are not being met.

Brussels, 29 November 2001.

*The President*  
*of the Economic and Social Committee*  
Göke FRERICHS

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### **Opinion of the Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council on cross-border payments in euro'**

(2002/C 48/29)

On 25 September 2001, the Council decided to consult the Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 12 November 2001. The rapporteur was Mr Burani.

At its 386th plenary session of 28 and 29 November 2001 (meeting of 29 November) the Economic and Social Committee adopted the following opinion by 38 votes to one, with two abstentions.

## 1. Introduction

1.1. The draft regulation is intended to 'reduce bank charges for cross-border payments in euro to a level in line with those applying at national level ... it will at last enable individual European consumers to become active participants in the Internal Market, ensuring that individual consumers are able to benefit from increased price transparency and choice.'

cross-border payments to be unacceptable, and on the other the banks who cited economic, technical and organisational reasons for the differences in price between domestic and international transactions. Although it has adopted measures of various kinds (see points 2.9 to 2.14 below), the banking sector has been unable to respond fully to expectations: hence the draft regulation which the Commission has drawn up to solve the problem definitively.

1.2. The Commission's initiative is the final stage in a dialogue between Commission, banks and consumers begun more than a decade ago: on the one hand the Commission and the consumers who judged — and still judge — the costs of

1.3. The Committee agrees with the aim of the regulation — that transfer costs for sums expressed in a single currency in the countries of the European Union should be reduced to levels which are compatible with a single market without borders.

## 2. General comments

2.1. Payment systems represent an important aspect of economic life, making possible the settlement of the commercial, financial or personal transactions of firms and individuals. Whatever form they assume, their basic requirements are common to all: security, speed and low prices to the consumer.

2.1.1. The Commission has been working for years to achieve these objectives, both through directives, recommendations and communications designed to achieve the maximum degree of systems security and monitoring, and through a range of measures intended to encourage competition among service providers and to protect the consumer. The aim is to reduce the cost of 'European' money transfers, currently regarded as too high and incompatible with the euro monetary area which should have no internal borders.

2.2. The statistics (which are taken from various sources and are based on various approaches, but which all agree in their assessment) show that, in terms of number and volume, cross-border payments represent only a small fraction of domestic payments. The reasons for this are obvious: transactions within a given country, especially those of consumers, occur on an infinitely greater scale than cross-border transactions.

2.3. The above consideration highlights the enormous difference in the relative importance of domestic and cross-border payment systems, and the various existing economies of scale. A second consideration is the size of national markets which is still very great compared with international markets: the difference should diminish with the gradual completion of the single market and, above all, use of the euro.

2.4. It could be said that up to now the banking sector has enjoyed a virtual hegemony, in that, on the one hand, it is the only sector to be allowed to make the settlements managed or controlled by national central banks, and, on the other, the massive investments necessary have prevented other less powerful competitors from entering the field.

2.5. This situation is changing rapidly<sup>(1)</sup>, however, and two groups of new competitors working on the Internet are emerging on the market. They are operating mainly in America, but have already made significant inroads into Europe:

- first, on-line service providers, in the micropayments market;

- second, producers of network access mechanisms and network managers, who are starting to utilise their extended client networks and their wide-ranging market penetration to provide alternative payment options.

2.6. The banking sector is thus likely to see a gradual relative shrinkage in market share — offset by an increase in transaction volumes — and a reduction in operating margins. This is a result of competition, which is well-received by the market and which is also spurring innovation and the search for more rational and less cumbersome solutions.

2.7. The current changes have major implications for companies and consumers. For the first time, clients have access to new alternatives to the traditional retail payment mechanisms offered by banks: a series of new services and options, often offered at attractive prices. Still more important is the fact that increasingly with e-commerce, the client can choose the most convenient mode of payment (credit card, debit card, electronic money, etc.).

2.8. There are however grey areas in the e-commerce picture. The credit card systems are somewhat suspicious of the new commercial sites and often the traditional 'acquirers' refuse to allow them to subscribe. The Committee points out that there is good reason for this, as figures provided by Visa show that Visa transactions via the Internet in 1999, which represented 1 % of all transactions, accounted for 22 % of fraud cases and 50 % of 'charge backs'.

2.8.1. In order to bypass the obstacle presented by the acquirers' refusal, solutions have been provided by non-banking operators. These are expensive however and do not provide the guarantee of security offered by the 'official' card systems (SET — Secure Electronic Transactions, and SSL — Secure Socket Layer). Consumers, meanwhile, are aware of the lack of security offered by systems not based on SET and SSL and are reluctant to give their card details on the Internet.

2.9. The pressure exerted by the Commission over a number of years on the 'traditional' fund transfer systems has alerted the European banking system to the need to provide users with secure and efficient systems at a low cost. Independent institutions or groups of banks have devised no fewer than 22 different systems, together with technical means that differ from the traditional systems (credit transfer and direct debit). All these systems are supposed to meet these requirements, but they do not quite fulfil the objective of making the cost of cross-border transfers equal to that of domestic transfers.

<sup>(1)</sup> These comments are drawn from the Boston Consulting Group study 'Global Payments 2000/1'.

2.9.1. A full picture of the existing systems — for wholesale and retail — is provided in the ECB's 'Blue Book' of June 2001 (pp. 15-54), which shows that cross-border retail payments have not yet reached the service quality level of domestic payments, despite the considerable volumes managed by major banks or banking groups.

2.10. In addition to the differing economies of scale suggested by the volumes mentioned in point 1.2, the banking organisations<sup>(1)</sup> cite the following main obstacles (the list is not exhaustive):

- the absence of a single central structure (apart from that offered by the EBA — European Banking Association) for the transmission and settlement of every transaction;
- the absence of a single standard for every type of transaction;
- the absence of tax harmonisation, especially regarding backup withholding on dividends;
- varying requirements with regard to reporting to national monetary authorities;
- considerable legislative differences in the area of 'black lists';
- differences in national legislation on money laundering;
- the scale of investments in the new system, to be added to the national systems, given the relatively minor importance of cross-border volumes (the banks put the ratio of domestic to cross-border volumes in Euroland at 300 to 1).

2.11. The Commission agrees at least in part with this analysis (see explanatory memorandum, comments on Article 5, first and last paragraphs, and on Article 6, first and second paragraphs). The lack of automation and standardisation, and differences in national legislation, result in 'costly' manual handling and the adoption of differing procedures. The Commission and the banks seem therefore to agree on the technical and legal reasons for the differences. In addition, the banks would add difficulties of an economic nature owing to the scale of investments, which is out of proportion with the current and prospective volumes concerned.

2.12. Despite the difficulties outlined by the banking sector, and in addition to the initiatives mentioned in point 2.9, the pressure exerted by the Commission has nonetheless had one other positive effect. The European banking organisations have

asked the Competition DG to examine a proposal for a European MIF Convention<sup>(2)</sup> concerning a new automated system for cross-border retail transfers in euros. This Convention groups together approximately 9 000 banks and provides for an interbank charge of EUR 3 per transaction. In accordance with competition rules, every bank would then be free to use the terms and conditions of its choice for its customers. The Commission's response to this proposal is not yet known. The MIF Convention would enable the bank of the orderer to know in advance the payment to be made to the bank of the payee (as it would be a single charge).

2.13. A fundamental condition for the establishment of the MIF Convention — if it is approved — is however the generalised adoption of the ISO Standards (IBAN — International Bank Account Number and BIC — Bank Identifier Code), which will provide a single way to identify the account number of every customer in every bank throughout the European Union. The draft regulation rightly makes the adoption of the BIC and IBAN codes compulsory.

2.14. The Commission's draft regulation will impose the principle of equal charges for domestic and cross-border transactions in all the countries of the European Union from 1 January 2002 for electronic payment transactions and from 1 January 2003 for transfers. The banks are opposed to this measure. The European Central Bank (ECB) endorses the Commission's objectives while commenting that in a market economy prices should be set by competition: 'the ECB would like to emphasise its reservations against a regulation influencing prices for services which risks disruption of the working of the market economy<sup>(3)</sup>'. At the same time, the ECB stresses that costs for customers should fall sharply in 2002.

2.14.1. An important point emerges from one of the ECB observations<sup>(4)</sup>: that the current average cost of processing a transfer of funds between banks is 50-80 eurocents, which is very high compared with the equivalent processing of a domestic transaction, which in some cases is less than one eurocent. The Committee notes that the ECB itself is unable to align the cost of processing a cross-border transaction with that of processing a domestic transaction: whereas the official TARGET rates vary from a minimum of EUR 0,80 to a maximum of EUR 1,75 (plus VAT) per transaction, domestic rates (e.g. EUR 0,17 on average per transaction in Belgium) are 5 to 10 times lower.

<sup>(1)</sup> European Banking Federation, European Savings Banks Group, European Association of Cooperative Banks

<sup>(2)</sup> MIF: multilateral default interbank fee.

<sup>(3)</sup> Opinion of the ECB of 26 October 2001 (CON/2001/34).

<sup>(4)</sup> Round Table of the European Parliament's Committee for Economic and Monetary Affairs, 12 July 2001.

2.15. When work began on drawing up this opinion, the Committee would have liked to have hard figures indicating whether the proposal for a regulation could realistically — without prejudice to consumers' interests — require charges on domestic and cross-border payments to be 'the same', as stipulated in Article 3, or whether cross-border charges could be reduced to 'a level in line with those applying at national level', as stated in the third paragraph of the explanatory memorandum.

2.16. An indirect response has in the meantime been provided by the European Banking Federation: in place of the regulation, the banking sector (or at least a major part of it) is prepared to undertake to establish a system whereby in the case of cash withdrawals and transfers the difference in price between domestic and international euro transactions would be gradually reduced so as to achieve alignment by 31 December 2005.

2.17. The awaited clarification has arrived, albeit somewhat late (subject to the Committee's opinion on its feasibility, once the details, which are not yet available, are known): with appropriate arrangements and the necessary investments, charges can be aligned, albeit gradually and allowing the time needed technically to change systems and structures. The Commission, Council and European Parliament will consider whether or not the system of self-regulation proposed by the banking sector is preferable to the regulation.

### 3. Specific comments

3.1. Treaty reference — legal basis. The proposal for a regulation is based on the application of Article 95(1) of the Treaty (measures on establishing the internal market). Within the Council, some Member States have raised doubts about the legal foundation of the Commission's proposal. Among other things it has been noted that the requirement to apply the same price to products that have different costs (see point 2.15.2 above) amounts to imposing prices and restricting the freedom of enterprise guaranteed in Articles 15, 16 and 18 of the Nice Charter.

3.1.1. Other doubts concern the compatibility with Treaty Article 4(1), which establishes the principle of free competition, in so far as the regulation would introduce price distortions that would ultimately reward the more inefficient entities. The Committee does not wish to explore the issue here, but it hopes that the problem will be considered in detail and resolved incontrovertibly before the regulation is definitively approved.

3.2. Article 1 — Subject matter and scope. This article defines the scope of the regulation, which is to ensure that charges for domestic and cross-border payments in euro are the same up to a maximum amount of EUR 50 000. The

Committee feels that this limit is too high: for payments of this size — and even for smaller sums — the TARGET system already exists, specifically for large transfers and with favourable rules and tariffs. Users are fully satisfied with this system. The European Parliament has declared itself to be in favour of a limit of EUR 12 500, partly in view of the fact that the ECB has reduced the reporting threshold for statistics required of banks to that level. The Committee agrees with this limit.

3.2.1. With respect to the scope (the regulation applies to 'cross-border payments in euro ... within the Community'), it seems clear that this also includes payments in euro carried out between non-euro Community countries in favour of accounts in other non-euro countries or euro countries. The regulation therefore embraces the entire internal market, provided that the transfer is made in euro. In the case of non-euro countries, a transfer in euro is not equivalent to a transfer in foreign currency (since the transfer is made from an account denominated in euro). Currency conversion costs and exchange risks therefore do not arise in such situations. The persons or undertakings concerned opt to make their transaction in a currency (euro) other than their national currency.

3.3. Article 2 — Definitions. The Committee agrees with the definitions set out, and would simply recommend that terms be checked in the different language versions: in the Italian version, for example, point c) refers to '*carte di addebito diretto*' ('debit cards') and point d) to '*strumento di pagamento ricaricabile*' ('reloadable payment instrument'), whereas the term '*rechargeable*' ('reloadable') is used in both cases in the French.

3.4. Article 3 — Charges for cross-border payments. The first paragraph fixes the date from which charges levied on cross-border electronic payment transactions must be the same as domestic charges as 1 January 2002. According to the definition in Article 2(a)(ii), such transactions are transfers of funds effected by means of an electronic payment instrument and withdrawals from cash dispensing machines and automated teller machines.

3.4.1. On the same date (1 January 2002), the eurocheque agreement — which has proved effective since 1968 — will expire. This agreement made it possible to withdraw money abroad (but not in the issuing country) at an affordable rate (around 2 %) for the customer. The systems established for international cards (Visa and Eurocard-MasterCard) which generally set higher charges (around 4 % or even more) that vary according to the bank advancing the funds will continue to exist. Technically the higher charges are justified by the fact that the withdrawal is not from the card-holder's account but is an advance on the card-holder's funds. However, as far as



the consumer is concerned, the fact remains that withdrawing money will become more difficult when the eurocheque agreement expires.

3.4.2. Given the time that will be needed to approve the regulation — at best it will be adopted at the end of this year — it is difficult to imagine that there will be time to revise the contracts with thousands of banks (contracts that are often different from each other). Realistically, it will be necessary to choose between extending the deadline or having an uncertain situation that could lead to suspension of services.

3.4.3. The issues raised in the previous point apply to all payment systems: hitherto domestic charges have accrued entirely to the national networks, but the need to make charges on domestic payments the same as those on international payments will require that for the latter an amount is 'deducted' from the charges to the customer in order to pay for the service provided by the foreign bank. In this case too the necessary negotiations, which must be approved by the competition authorities, could be lengthy or at least difficult to complete within the deadlines imposed by the regulation.

3.4.4. Another problem arises with determining the amount of national charges: many banks in most countries actually apply flat rates for holding an account, which often cover withdrawals, domestic electronic transfers and payments with a national debit or stored-value card, without any special charges. One possible solution could be to allow one flat rate to be applied for exclusively domestic transactions and one for national and international transactions.

3.5. The second paragraph of Article 1 sets the deadline for applying the same charges to cross-border credit transfers and cheques as 1 January 2003. As far as credit transfers are concerned, the same comments apply as made in points 2.8 to 2.19. Cheques raise different issues and these should be given some thought.

3.5.1. Statistics from the Commission and from independent studies confirm a phenomenon that anyone can see: cheques have become an obsolete payment instrument that is costly and at odds with the trend towards replacing paper documents with electronic systems. The sole exception is France, where cheques and processing of cheques are by law completely free of charge. This obviously means that this method of payment is always preferred by the consumer (accounting for over 40 % of total payments.) It is not known whether the cost of processing cheques is passed on to the

customer in the form of higher charges on other services ('cross-subsidisation'), but it would be strange if this were not the case.

3.5.2. Automatic processing of cheques does not pose problems at national level, apart from the high costs, but at international level the complete lack of harmonisation (different formats, cards, magnetic codes (CMC7 or E13B), code fields of magnetic strips and their format) presents an insurmountable obstacle. Since harmonisation would be too expensive, processing of foreign cheques can only be performed manually, which is extremely cumbersome.

3.5.3. Another element which should be considered is risk: with the disappearance of the eurocheque agreement, all cheques circulating either in their own country or abroad will cease to be guaranteed. In consequence, they are highly unlikely to be accepted abroad, except for encashment in banks, a procedure which is far more complex and costly than straightforward negotiation.

3.5.4. As regards charges, there is also the problem outlined in point 3.3.4 above: the cost of processing cheques is rarely charged for each individual transaction. It is usually included on a flat-rate basis in the account handling charges. It is therefore difficult to ensure equalisation of charges based on the those levied for transactions within a single country, quite apart from the French system where processing incurs no charge.

3.5.5. In conclusion, given the circumstances and the clear impossibility of equalising domestic and international charges, the risks involved, and the need to avoid anything which might encourage the international use of a system which is now outdated and costly, the Committee proposes that cheques be excluded from the scope of the proposed regulation. This position is shared by the ECB in the opinion mentioned above.

3.6. Article 4 — Transparency of charges. The Committee fully endorses this article, particularly since it is based on general and specific principles which the Commission has long upheld.

3.7. Article 5 — Measures for facilitating cross-border payments. The adoption of 'bank' and 'customer' code numbers is a precondition for automating services. It is therefore logical for this article to specify that banks must inform their customers of the code numbers that concern them, and that the originator of a payment must inform the bank of the beneficiary's code numbers.

3.7.1. The draft regulation has omitted two possibilities: firstly, where the originator is unable to communicate the beneficiary's code numbers, and secondly, where the beneficiary does not have a code number (typical examples would be payments to persons temporarily abroad for study or holidays, or migrants' remittances to spouses who do not have a bank account). In such cases, credit transfers have to be processed manually, but the draft regulation does not indicate whether the charges must be the same as for domestic transactions.

3.8. Article 6 — Obligations of the Member States. In order to facilitate service automation and rationalisation, this article removes the statistical reporting obligation upon Member States with effect from 1 January 2002 for payments up to EUR 12 500 and from 1 January 2004 for payments up to EUR 50 000. In addition, all information concerning beneficiary data which might prevent automation of payment execution is to be abolished.

3.8.1. The Committee agrees in principle with these measures. However, the Member States must assess whether or not these obligations interfere with measures to prevent money laundering or tax evasion. If it is true that statistical instruments are not usually the best means of detecting unlawful transactions, it is hard to see why the information given should include data other than the necessary figures and the motive for the transfer. It is clear that this information is also used for purposes other than purely statistical ones.

#### 4. Conclusions

4.1. As stated earlier, the Committee endorses the aims of the draft regulation. At the same time, it raises the question of how to avoid any rise in domestic charges, which some might seek to justify on the grounds of higher costs for international transactions. In a free pricing system, this possibility must not be ruled out or underestimated.

4.2. Any downgrading of service quality, or withdrawal by banks of services they may consider unprofitable, is to be

avoided. Consumers, the Commission and the ECB will have to keep a close eye on this aspect.

4.3. The Committee is unsure about the last paragraph of the impact assessment form appended to the proposal for a regulation, which states that the members of the FSPG (Financial Services Policy Group, made up of high-level experts appointed by the Member States) 'fully endorse the idea of creating a single-payment area', but that 'a majority consider that the Regulation is premature'. Transparency of procedures should demand that the FSPG's conclusions be made public, or at least communicated to people working in this area, who must be fully aware of all aspects of the problems facing them.

4.4. The Committee would also question the deadlines for implementing the regulation. The time between adoption and entry into force appears by any standard to be short, while the time required for the technical implementation of the various measures must be properly evaluated if payment systems are not to be disrupted, just at the time that the euro is being introduced. It is for the Commission and Council — taking into account the ECB opinion, which has raised the same concerns as the Committee — to judge whether the implementation deadlines are consistent with the need for an orderly change with no harmful effects for consumers.

4.5. In this regard — and also in the light of the opinion of the FSPG referred to in point 4.3 above — the Committee would point to the initiative launched by the banking sector mentioned in point 2.17 above: given that the final outcome of the draft regulation or of the proposed self-regulation is identical, apart from the implementation deadlines, the decision is a purely political one and as such is up to the appropriate decision-makers.

4.6. Lastly, in order to avoid a situation whereby a previously adopted regulation might subsequently be challenged in the Court of Justice — regardless of the merits of the case — the Committee strongly urges that the legal bases of the regulation be carefully checked. The credibility of Community legislation must be incontrovertible.

Brussels, 29 November 2001.

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