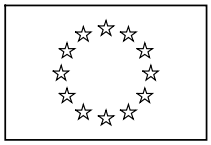

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29.11.2002
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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND TO THE COUNCIL

on the application of Directive 97/5/EC of the European Parliament and of the Council of 27 January 1997 on cross-border credit transfers

SUMMARY

This Commission report on the implementation of the Cross-Border Credit Transfers Directive (97/5/EC), is, as provided for in Art. 12 of this Community text, to be submitted to the European Parliament and the Council.

This report describes the way in which the provisions of the Directive are implemented in the Member States: both, the legal transposition of the Directive into national legislation as well as the actual application of these provisions by the banking industry in the Member States are dealt with.

In general, Directive 97/5 EC has been adequately transposed in all Member States. However, there are some specific cases of concern: e.g. certain Member States have not fully reflected the prior and subsequent information requirements of the Directive, some Member States have also failed to adequately transpose the provisions obliging them to ensure the existence of adequate and effective complaints and redress procedures. All in all, the legal transposition of the Directive into national legislation is, however, quite satisfactory.

As regards the actual situation of cross-border credit transfers in each Member State, the situation is, however, far from satisfactory. Whereas execution times for the transfers are acceptable (this had been a particularly concern addressed in Article 12), the persistent practice of double charging, the lack of customer information and the unwillingness of some credit institutions to compensate for late payments or to refund for lost payments or unlawful deductions is alarming.

The conclusion of this document proposes lines for possible action to be taken in order to further improve the performance of cross-border credit transfers. The principle of non-discrimination between cross-border credit transfers and credit transfers at national level has already been achieved by the Regulation on cross-border payments in euro (2560/2001/EC). This Regulation imposes the equality of charges for cross-border and national payments and should thus lead to a reduction of the charges for cross-border payments and in particular of cross-border credit transfers, which was a major public concern. This report also addresses further necessary improvements in the field of cross-border credit transfers and brings forward proposals for amending the Directive.

However, having in mind the overall objective of "Better Regulation", the report proposes to work towards a more coherent and comprehensive legislation for payments and to integrate the proposals for amending the Directive into a consolidated framework for payments in the Internal Market. Such an initiative would contain all legislative measures regarding retail payments in the Internal Market, thus abandoning the present piece-meal approach and aiming at establishing a single legal act in this field.

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1. INTRODUCTION

Directive 97/5/EC on cross-border credit transfers[1] entered into force on 14 August 1999, two and a half years after its publication in the Official Journal on 14 February 1997 (see Annex 1).

Article 12 of the Directive requests of the Commission to submit a report to the European Parliament and the Council on the application of this Directive, "accompanied, where appropriate, by proposals for its revision". The second paragraph of that Article emphasises in particular to report on execution times for payments [time limit in Article 6(1)].

The Commission thus responds to this obligation and reports whether the provisions of Directive 97/5/EC have been fully transposed into national law by adequate national legislative measures in the 15 Member States. Furthermore, the report also evaluates the actual situation of how the Directive is applied in practice in each Member State. Finally, the report contains several proposals for the revision of Directive 97/5/EC as well as for the further development of legislation in the field of payments in the Internal Market.

A study on the implementation and application of Directive 97/5/EC was undertaken by a consultant in order to substantiate this report[2]. The members of the "Payment Systems Government Expert Group", a group of payments experts from the Member States set up in order to discuss payment issues and to monitor the implementation of the payments legislation, were informed about the results of the study and invited to express their reactions. Several Member States submitted additional comments. The Commission assumed that the consultant's findings, which were not commented on by Member States before 30/9/2001, were correct.

This study had shown that the *legal* transposition of the Directive into national legislation was in general adequate. However, the study also evidenced that the factual application of the Directive in day-to-day operations was far from being satisfactory. The study revealed that – despite the Commission's and Parliament's continuous efforts and warnings towards the banking industry to improve the situation - banking charges for cross-border credit transfers remained at an unacceptably high level.

These alarming study results called for immediate legislative action. On 25 July 2001 the Commission therefore proposed to the European Parliament and to the Council a Regulation on cross-border payments in euro (2560/2001/EC). This Regulation was

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1 OJ L 43, 14/2/1997, p. 25

2 The details of the study can be found on the Commission web-site: http://europa.eu.int/comm/internal_market/en/finances/payment/directives/97-5study.pdf

adopted by the European Parliament and Council on 19 December 2001 and entered into force on 1 January 2002. It aims at reducing charges for cross-border payments in euro, so that by 1/7/2002 (concerning electronic payment transactions), respectively by 1/7/2003 (concerning cross-border credit transfers) charges would be aligned to those for corresponding payments at national level.

2. GENERAL REMARKS ON THE IMPLEMENTATION OF THE DIRECTIVE

2.1. Origin of the Directive

In 1990, the Commission published its first general documents on the operation of the payment systems within the framework of the Single Market: The "Discussion paper – making payments in the Internal Market"[3] already stated that payment systems function rather well inside each Member State, but remained unsatisfactory in a cross-border context. In the same year, the Commission's "Recommendation on the transparency of banking conditions relating to cross-border financial transactions"[4] proposed several principles and measures in order to improve cross-border payments.

Studies, which the Commission launched in 1993 and 1994 (see footnote 4), were aimed at checking whether this Recommendation was being properly applied and at monitoring customer-information practices in the banking sector. It was in the light of the results of these studies, which revealed many shortcomings in the operation of cross-border transfers and of the European Parliament's Resolution of 12 February 1993[5] , that the Commission decided to propose legally binding measures concerning cross-border credit transfers.

In 1994, the Commission published a Communication on the transfers of funds[6] which contained two very important texts: a preliminary draft proposal for a Directive (which became Directive 97/5 under consideration) and a draft Communication on the implementation of the rules of competition with this type of transfer[7].

The Directive was, after very lengthy negotiations, adopted on 27 January 1997. Due to the fact that some Member States considered it very difficult to incorporate the Directive into national legislation, the transposition period for implementation was unusually long, namely 30 months.

The Cross-Border Credit Transfers Directive has now been in force for almost three years, namely since 14 August 1999.

2.2. The Aim of the Directive

The Cross-Border Credit Transfers Directive establishes minimum information and performance requirements for cross-border credit transfers, so as to ensure that funds

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3 COM 90/447 fin of 26/9/1990

4 Recommendation 90/109/EEC, OJ L 67, 15/3/1990, p. 39

5 OJ C 72 of 15/3/1993

6 COM(94) 436 of 18/11/94

7 Which became later the Commission's Notice on the application of the EC competition rules to cross-border transfers (OJ C 251, 27/9/1995, p. 3)

can be transferred cross-border from one part of the Community to another rapidly, reliably and at low cost.

To this end, the Directive contains rules on

- **Transparency**: the Directive provides for information obligations prior and subsequent to the transaction. Armed with such information made available regarding the conditions applicable to cross-border credit transfers, users of payment systems would thus be in a better position to compare the terms available on the market, so that competition between different systems would be reinforced and abnormally high prices would be eliminated.

- **Performance**: the Directive lays down certain principles which apply as standard transfer conditions, namely regarding the execution period, the distribution of costs and the liability of the originator's bank for "lost" transfers. On the whole, these rules should have the effect of ensuring that cross-border credit transfers meet the requirements of a genuine Single Market by introducing standard principles for the entire Community.

- **Redress**: the Directive introduces provisions on complaints procedures. By obliging Member States to provide for adequate and effective redress mechanisms, the customer is given efficient tools to enforce the rights given to him by the Directive.

2.3. The Impact of the Directive

The Directive would have had enormous impact on the functioning of cross-border credit transfers within the European Union, had the Directive's provisions been applied correctly by all banks. Although the execution of cross-border credit transfers has now become much swifter, the goal of rendering these transfers cheaper and more reliable cannot be considered as having been achieved. This failure of banks finally led to the proposal and adoption of the recent Regulation on Cross-Border Payments in euro[8].

2.4. Links with other Community Legislation

The Cross-Border Credit Transfers Directive was the first legally binding instrument at EU-level dealing with payments in general and with credit transfers in particular. Subsequently, the Regulation on Cross-Border Payments in euro further regulates cross-border credit transfers by introducing the principle that i.a. charges for cross-border credit transfers and corresponding credit transfers at national level must be the same.

2.5. Implementation of the Directive under the EEA agreement

The Directive applies to Iceland, Liechtenstein and Norway under the EEA Agreement. The EFTA Surveillance Authority is preparing a report on the implementation of the Directive by these countries.

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[8] Reg. 2560/2001 of 19/12/2001; OJ L 344, 28/12/2001, p.13

3. ARTICLE BY ARTICLE IMPLEMENTATION OF THE DIRECTIVE IN THE MEMBER STATES

3.1. General Situation

In accordance with the long transitional period granted for implementing national measures, namely 30 months, the Directive was only to be transposed by 14 August 1999. However, Member States considered it desirable that the Directive would be implemented before the beginning of Phase III of the Economic and Monetary Union (1 January 1999). For that reason, the Member States entered the following statement into the Council minutes: *"The European Parliament, the Council and the Commission note the determination of the Member States to implement the laws, regulations and administrative provisions required to comply with this Directive by 1 January 1999."* Despite this declaration of intent, no Member State met this political undertaking to implement the Directive by 1 January 1999.

A majority of Member States (11) transposed the Directive into national law within the legal deadline of 14 August 1999 (cf. Annex 3). Several Member States had adopted legislation before the legal deadline (and in the case of The Netherlands, even before the date laid down in the Joint Undertaking), although the date of entry into force was not immediate but only foreseen for later.

Four Member States (Belgium, Greece, Italy, and Portugal) failed to transpose the Directive within the legal deadline. In one case (Greece) an attempt was made to rectify late implementation by providing for retroactive effect to its national legislation.

In conclusion, all Member States have now adopted implementing legislation (cf. annex 2).

3.2. Adequacy of Transposition – General

A limited number of legal concerns, e.g. regarding information requirements or the provisions concerning redress mechanisms, have been identified. Otherwise, the transposition of the Directive into Member State legislation has been in line with Member States' obligations.

This report also identifies a number of differences (as opposed to clear conflicts) between Member States' implementing legislation and the Directive. These differences may in the future, in theory[9], lead to the issue of whether the minimum conditions for the performance of cross-border credit transfers are being met in one or more Member States.

3.3. Article 1 – Scope

Article 1 defines the scope. The Directive applies to cross-border credit transfers of up to € 50,000 (whether effected in the currencies of the Member State or in euros). For the purposes of the Directive a 'cross-border credit transfer' is a transaction carried out on the initiative of an originator via a credit institution in one Member

[9] To date, there has been no case-law in any Member State interpreting the provisions of either Directive 97/5/EC or of national implementing legislation

State, with a view to making funds available to a beneficiary at an institution in another Member State. The originator and the beneficiary may be the same person.

3.3.1. Transposition in Member States

A number of Member States (Finland, Germany and Portugal) used the opportunity to legislate also for national credit transfers and not only for cross-border transactions.

As the Directive is applicable within the EEA, by virtue of the Agreement on the EEA and its related procedures, most Member States expressly stated in their implementing legislation that it would apply also to the territory of the European Economic Area ('EEA'). Danish law went one step further and granted power to extend the implementing legislation to additional countries (provided always that those countries had equivalent rules).

Germany extended its implementing legislation to cover cross-border credit transfers in excess of the Directive's ceiling of €50,000. The German provisions set a ceiling of €75,000.

3.3.2. Practical application of provision in Member States

No problems on the practical application regarding the scope of the Directive have been reported.

3.3.3. Cases of concern

None.

3.4. Article 2 – Definitions

This Article proposes 12 definitions of terms used in the Directive. Defined are the "players" in a cross-border credit transfer ('institution': credit institution, other institution, financial institution, intermediary institution as well as 'customer': originator and beneficiary), and the terms related to a cross-border credit transfer (cross-border credit transfer, cross-border credit transfer order, reference interest rate, date of acceptance).

It is important to stress that the Directive applies to any legal or natural person carrying out cross-border credit transfers by way of business. If in a Member State non-banking or even non-financial establishments are allowed to carry out payment transactions, such establishments are covered by the Directive. Member States may (and many do) reserve transfer transactions for certain categories of institutions, particularly banks.

3.4.1. Transposition in Member States

Legislation in a number of Member States (Austria, Denmark, Germany, Portugal and Sweden) omits a majority of the definitions of Directive 97/5/EC. In practice, the absence of definitions in specific cases is not deemed to give rise to significant legal issues. In the event of a dispute, general provisions of national law would apply, in addition to the general principle of Community law that national measures should be interpreted consistently with corresponding provisions laid down in Community law.

No significant legal issues arising from any single Member State's use of different or additional definitions have been identified.

A limited number of definitional differences give rise to more general issues of principle:

'*credit institution*': implementing legislation of a number of Member States (such as Italy, Sweden) applies not to 'credit institutions' (as appears in the Directive) but to other defined institutions. In Italy, implementing legislation applies to 'banks'. In Sweden, implementing legislation applies to 'banks' and 'other companies'. This is unlikely to have major consequences in practice;

'*financial institution*': this definition is omitted from the implementing legislation of several Member States (Austria, Italy, Portugal, the Netherlands, Germany and Denmark) although it is not considered that this is of legal significance in terms of the rights and obligations of consumers and credit institutions;

'*banking day*': the absence of a definition of banking day from the Directive has been criticised in at least one Member State (Belgium). A number of Member States have inserted a definition of what constitutes a 'banking day' (Belgium), 'banking business day' (Italy), 'banking working day' (Austria), 'bank day' (Sweden) or equivalent, into legislation implementing Directive 97/5/EC. These definitions will take into account specific national requirements or traditions.

'*cross border credit transfer*': in some Member States (Finland, Germany and Portugal), the opportunity presented by implementing the Directive has also been used to legislate for internal or domestic credit transfers. Where this is the case, the definitions appearing in the Directive are supplemented by additional definitions. In Belgium, the term 'money transfer' is used in preference to the term 'credit transfer'. One effect of this difference has been to underline the fact that the terms of the implementing legislation will apply only to transfers initiated by a deposit, or withdrawal from an existing account as e.g. opposed to debit transfers. This is not, however, inconsistent with the position under Directive 97/5/EC;

'*date of acceptance*': in one Member State (Spain) the definition of 'date of acceptance' is supplemented by a presumption that acceptance will be deemed to have occurred within one day of the instructions provided by the customer. In some other Member State, the definition used in the Directive has not been implemented (Portugal, Germany, Denmark and Austria). In the United Kingdom, 'commencement date' is defined as the date upon which a number of different conditions are fulfilled. In addition to those conditions laid down by the Directive, United Kingdom legislation also allows the customer and his institution to agree a different, later date of acceptance. Such a provision is not expressly foreseen by the Directive.

Directive 97/5/EC includes no specific provision identifying the *value date* (i.e. the date on which funds are credited and available on a beneficiary's account). Some Member States do identify the concept of 'value date' (Denmark, Germany, Portugal and the United Kingdom),[10] but practice differs from Member State to Member State.

[10] In Germany, this rule, which provides for greater consumer protection than is laid down by the Directive, is the result of a decision of the Federal High Court, dating from 1997. That decision held that defining the

3.4.2. Practical application of provision in Member States

No problems regarding the definitions of the Directive have been reported in the practical application of the Directive in the Member States, and also not due to Member States' use of different or additional definitions.

This does not, however, exclude that differences could arise in the future between the cross-border credit transfer regimes of different Member States. Although this may appear paradoxical, it is legally perfectly possible for all such Member States to be in compliance with their obligations under Community law. One example of this could be the fact in relation to the execution periods: "banking day" is not defined in the Directive; however, some Member States define "banking day" as an equivalent notion in their transposing laws. Different, i.e. diverging definitions would not be in conflict with the Directive, but still raise difficulties, as the calculation of the execution periods are based on the notion of "banking days".

3.4.3. Cases of concern

The different definition of "date of acceptance" in Spain might give rise to difficulty, since in Spain acceptance is presumed only on the business day 'following' the order, which has consequences for calculating the execution times.

3.5. Article 3 – Prior information on conditions for cross-border credit transfers

Article 3 of Directive 97/5/EC requires the institutions to provide written information "in a readily comprehensible form" to customers before carrying out cross-border credit transfers. This information must at least contain an indication of the execution time, the way fees and commissions are being calculated, the value date applied, the details of the complaint and redress procedure available and as well, if applicable, an indication of the reference exchange rate used.

3.5.1. Transposition in Member States

In some countries, minor issues of interpretation may arise. For example, in Austria, no reference is made to 'readily comprehensible form' (but this would arguably be implied by Austrian administrative law). In the same Member State, no reference is made to the provision of the 'value date' as part of the prior information. Austria has also omitted to refer to complaints and redress schemes.

Certain Member States' implementing legislation (Italy, Austria, United Kingdom, Sweden and France) does not expressly adopt the term 'reference exchange rates used', required by the last indent of Article 3 of Directive 97/5/EC, and, instead, refers to, for example, 'exchange rate used'.

Danish implementing legislation exceeds the information obligations laid down in the Directive, as it requires credit institutions to provide prior information not only in relation to the reference rate of exchange, but also to the date of exchange. Furthermore, Danish implementing legislation requires credit institutions to inform

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value date as the date following the day on which money was made available to the beneficiary's account constituted an infringement of the consumers' rights under the German Act on General Terms and Conditions

customers not only about the redress schemes as such, but also about the customers' right to compensation in the context of such procedures.

3.5.2. Practical application of provision in Member States

Only 16 out of 40 tested credit institutions provided the customer with a brochure/printed material. All the brochures/printed material contained information on the charges to be applied. Information on the other areas was not present in more than six cases, with information on complaints and redress procedures the least prevalent, appearing in only three cases. Only 3 brochures contained all the information asked for in Article 3 of Directive 97/5/EC (2 UK banks and 1 Belgian bank).

As for the quality of the brochures/printed material, only the information on charges was considered between adequate and good. Brochure information on timing, exchange rates and value date was generally poor, and information on complaints and redress procedures was considered nearer useless than poor.

3.5.3. Cases of concern

The Austrian transposing law does not oblige institutions to inform customers about complaints and redress procedures. This has to be considered as an incomplete transposition of Art. 3 of Dir. 97/5/EC.

The other cases of concern do not concern inadequate or incomplete transposition but the lack of correct application of the national laws by the institutions executing cross-border credit transfers. The study undertaken to substantiate this report clearly showed that the prior information obligations laid down by the Directives and the national implementing laws were not complied with by many institutions.

3.6. Article 4 –Information subsequent to a cross-border credit transfer

Subsequent to a cross-border credit transfer, customers must be provided with documentation in writing about various details of the transfer: a reference in order to allow identification of the transfer, the original amount of the transfer, the amount of all charges and fees, the value date and the exchange rate, if applied. In case that the charges are to be wholly or partly born by the beneficiary, the latter should be informed of this by his institution.

3.6.1. Transposition in Member States

Article 4 of the Directive lays down provisions relating to '*clear information in writing including where appropriate by electronic means*'. Some Member States (Austria, Denmark and Ireland) have failed to expressly make the requirement that such information be: (a) clear; and/or (b) in writing; and/or (c) where appropriate by electronic means.

In Ireland there is no positive obligation to supply the requested specified categories of information, but only to 'make it available' in general terms.

Article 4 allows customers to waive their rights to subsequent information. This provision is not always implemented into Member State law. No right to waiver is provided in Germany, Denmark, Spain and France and is only partly granted in

Sweden and Belgium. This lack of transposition may, arguably, be considered as more protective of the customer.

The United Kingdom includes provisions, which more specifically delimit the obligations imposed upon credit institutions to provide information subsequent to a credit transfer. In the UK, a 'long-stop' time period of one-month is imposed upon credit institutions within which information must be supplied. This provision provides greater protection to the consumer than that provided by the Directive. In Denmark, the minimum requirements of Article 4 of Directive 97/5/EC are made absolute requirements (although this is not strictly a provision which 'exceeds' the provisions of the Directive). Danish legislation also imposes an additional condition to the obligation of credit institutions to provide subsequent information - Danish law requires that such information be supplied 'promptly'.

3.6.2. Practical application of provision in Member States

In 97.6% of all transfers executed within the implementation study, the originators of the cross-border credit transfer received information on the transfers either on separate advice slips (82%) or on their bank statements.

The level of information provided to the originator was generally good. Information on the original amount of the transfers and the charges applied was almost always provided. The reference number was provided in 74% of all transfers, but only in half of the cases in Belgium, in Ireland and in the UK and none in Portugal. The value date was provided in 75% of all transfers, but again, not in certain countries (notably in Belgium, where no bank, and in the UK, where only one out of the four banks used provided the value date on the sender's documentation). The exchange rate was provided for 95.1% of transfers overall, with one bank in Germany and one bank in the UK not providing this information.

The level of information provision to receivers was lower than to senders: 86.5% of all beneficiaries received information on advice slips *or* bank statements. The information on the original amount transferred was very poor; this information was missing in more than half of the advice slips/statements provided. The information quality for the other criteria was significantly higher. The reference was quoted in 74% of incoming transfers. The UK and Ireland stand out however, with fewer than 50% of transfers providing this information. Charges to the beneficiary were identified for 87% of the transfers which incurred deductions. When this information is not provided, receivers cannot be sure whether their bank has made a charge, or the sender did not send sufficient funds. The value date was quoted for 77% of transfers.

3.6.3. Cases of concern

The situation concerning the practical application of Article 4 is very similar to what has been said for Article 3; although information provided by the institutions executing cross-border credit transfers subsequent to a transfer is better than the prior information provided, the situation is still far from being satisfactory. The study undertaken to substantiate this report clearly showed that certain information obligations to be fulfilled subsequent to a cross-border credit transfer were not complied with by the institutions.

3.7. Article 5 – Specific undertakings by the institution

Article 5 obliges institutions to make, at a customer's request, a specific offer for a cross-border credit transfer, in particular concerning the execution time and the commission fees and charges. The institution would, of course, not be compelled to enter into a contractual relationship with everyone who so requests; however, if such an undertaking is given with the view of entering into a contractual relationship, the institution would be bound by its offer.

3.7.1. Transposition in Member States

Italy has not fully implemented this provision. The implementing legislation only refers to the liability for failure to execute within a time limit, but does not provide for undertakings in relation to the time taken, the commission fees and charges.

The circumstances in which a credit institution may "refuse to do business with a customer" is an element also reflected in Article 5 of Directive 97/5/EC: this will in general be governed by other (i.e. non-implementing) national legal instruments. In France, for example, consumers have a right to hold a bank account and to receive a basic banking service. In some Member States (Portugal, Austria, France, Italy, Spain and Sweden) this element of Article 5 has not been transposed at all. This is however not deemed to cause a problem of correct transposition.

Austrian implementing legislation goes further than the Directive by providing that credit institutions may not charge fees or commissions for the execution of the credit transfer, when specific undertakings agreed between the parties have not been complied with.

3.7.2. Practical application of provision in Member States

3.7.2.1. Accuracy in relation to execution times quoted:

In the course of the study, institutions were asked by the consultant in advance, how long the transfers would take to arrive. Most institutions indicated a maximum time of five to seven days. The main exceptions were banks in France and Italy which claimed the transfers would only take one day. A more cautious approach was taken by banks in the Netherlands where the two banks indicated 10 and 15 days respectively.

Nearly 90% of the credit transfers arrived within the time indicated by the executing institution. A further 8% arrived within 3 days after the time indicated.

About 50% of the beneficiary banks applied a value date that was earlier than the date on which the transfer was credited to the receiver's account. In total this applied to 12.2% of transfers received. This practice appears to have occurred more frequently with transfers that took longer to arrive than originally indicated. By value dating the incoming transfer to a date within the time period specified by the sender's bank, the banks are trying to meet the Directive's requirement that the receiver should be compensated in the form of lost interest for late transfers.

3.7.2.2. Accuracy in relation to charges quoted:

Based on the information that was provided to the senders, an average overall transfer cost of approximately EUR 20 would have been expected. This is roughly 20% lower than the actual average cost of EUR 24.09.

This divergence between the price offered in advance of the transfer and the actual charges levied is due to the fact that banks did not know the cost of the beneficiary charges in advance or that the institutions quoted only the sender bank element of the transfer costs.

Approximately half of the senders were quoted costs within 20% of the actual amount. In a further quarter of the cases the actual amount was between 20% and 60% higher than quoted. For the remaining senders (approximately 25%) actual costs were more than 60% higher than the amount quoted by their bank, usually because the beneficiary charges had not been included in the quote.

3.7.3. Cases of concern

Italy failed to transpose Article 5 into national legislation. The Decree provides for no specific undertaking from the institution in relation to time, commission fees and charges.

Whilst the institutions' undertakings regarding execution time are quite satisfactory, this is not the case for the banks' (binding) offers concerning charges and fees. This deficiency is indeed linked to the banks' problem of knowing the charges of the receiving bank.

3.8. Article 6 – Obligations regarding time taken

Article 6 deals with the time limit for executing a cross-border credit transfer. Paragraph 1 covers the period of the transfer between the originator's and the beneficiary's "institution", while paragraph 2 concerns the relationship between the beneficiary's institution and the beneficiary. The first sentence of each paragraph emphasises that, as required by the principle of contractual freedom, it is the agreed time limit which counts above all else. Only in the absence of such a time limit, statutory time limits are introduced by default: they are, respectively, 5 days (originator/beneficiary's institution) and 1 day (beneficiary's institution/beneficiary's account).

The originator will have to be compensated by his own institution if the agreed time limit or the five-days period allowed for the first stage of the transfer (originator/beneficiary's institution) is exceeded. On the other hand, the beneficiary must be compensated by his institution, if the delay occurs during the second stage of the transfer (beneficiary's institution/beneficiary's account). Where the originator or the beneficiary has caused the delay, no compensation is payable (Article 6(3)).

Compensation takes the form of interest for late payment. Wider liability, particularly for consequential damage, is neither introduced nor excluded by the Directive; it will depend on the general legislation governing relations between the originator, the beneficiary and their respective institutions (see Article 6(4)). The level of interest for late payment must be calculated according to a "reference interest rate" (Article 2(k)). This rate must be fixed by the Member States at a level

"representing compensation"; in other words, it should be a normal penalty rate, which may be a statutory rate or may be based on the rates charged by banks for emergency funding to cover delayed transfers.

3.8.1. Transposition in Member States

No problems of inadequate or incomplete legal transposition into national legislation of the Member States have been identified.

3.8.2. Practical application of provision in Member States

Transfers took on average 2.97 days. 95.4% of transfers arrived within six working days, which is the default time specified in the Directive. 99.7% of the transfers arrived within 15 working days.

The longest average transfer times were from Sweden (4.61 days), the UK (4.19 days) and Denmark (4.07 days). The shortest were from Ireland (1.67 days), Greece (1.82 days) and France (1.99 days).

When considering the timing commitments made by the banks, 89.8% of transfers arrived on-time and 98.4% within three days of the time specified by the sender's bank.

In most cases the value date credited to the receiver was identical (or one day later) with the booking date on the receiver's bank account; this was, however not always the case. In 12.2% of cases (mainly transfers which took longer to arrive), the value date was several days earlier than the booking date. In these cases, the originating bank underestimated the time it took for money to arrive and the funds were not actually available for the beneficiary on the value date.

In cases where transfers were more than one day late (compared to the *agreed* time limit), the senders contacted their bank to ask why the transfers had arrived late and whether they were entitled to compensation. Banks gave a variety of responses, the most common response being that the receiver should contact his bank, as the sender's bank had no control over the booking/value date at which the receiver's bank was credited. No bank offered the sender compensation for transfers that arrived late.

The matter was taken further with those institutions, where the credit transfers took extremely long. One bank finally paid some compensation “as a gesture of goodwill”. In another case, the sender did not want to contact her bank again “because of the awful way they treated her with her previous follow-up”.

3.8.3. Cases of concern

Apart from singular and very specific cases, where the transfer took extremely long, the situation concerning execution times is quite satisfactory.

However, the institutions’ performance when asked to pay compensation for late payments was very bad: the banks were either ignorant about their obligation to pay compensation or unwilling to do so.

3.9. Article 7 – Obligation to execute the cross-border transfer in accordance with instructions

The originator's institution, any intermediary institution and the beneficiary's institution are obliged to effect the transfer for the full amount (save where the originator has specified that the costs are to be borne wholly or partly by the beneficiary). Thus, the "OUR" option (i.e. all charges borne by the originator) becomes the default rule, while the other transfer options[11] should remain the exception. Accordingly, in general, any other deduction from the amount transferred is illegal and the relevant amounts should be repaid. This provision of Directive 97/5/EC aims at clarifying the distribution of charges between originator and beneficiary and bans the practice of double charging.

3.9.1. Transposition in Member States

No problems of inadequate or incomplete legal transposition into national legislation of the Member States have been identified.

3.9.2. Practical application of provision in Member States

According to the study, 81.7% of all beneficiaries received the full amount of the transferred sum. 16.2% of the beneficiaries received less than the original amount of the ordered transfer, because charges were deducted by the beneficiary bank or an intermediary institution.

2.0% of the beneficiaries received even more than expected. This was generally because the sender's bank sent a higher amount to cover charges levied by the receiver's bank. If the receiver's bank did not levy such charges, then the receiver was actually credited with a higher amount than expected.

The most common reason why receivers were charged was that transfers were not sent as “OUR” transfers. Some banks did not send any transfer in the “OUR”-mode despite the originator’s orders. Some banks informed their customers that they were unable to send “OUR” transfers. Some banks had not sent the transfers in the “OUR” mode by default as specified in the Directive .

In those 239 cases where the beneficiary had been charged, the sender went to his bank to ask whether the transfer had been sent "OUR”. The vast majority of these transfers had not been sent in the "OUR" mode despite the fact that they were obliged to do so in the absence of a different, explicit agreement. Only three banks (representing 37 transfers) agreed to immediately re-credit the receivers’ charges.

16 sender banks (representing 42 transfers) confirmed that the transfers had been sent in the "OUR" mode and suggested the receivers to contact their banks. On further enquiries, the most common receiver bank's response was that the transfer involved had not been sent OUR, contradicting what the originator's bank had told to the sender. Other receiver banks claimed they had not deducted any charges and suggested that an intermediary bank must have made a further charge. Finally, one

[11] Particularly "SHARE", where each party bears his own costs, and “BEN”, where all charges are to be levied from the beneficiary

bank in Germany, one bank in the UK and one bank in Spain re-credited the receivers for all deductions.

3.9.3. Cases of concern

Although the situation concerning double charging has considerably improved, the provisions of the Directive which aim at completely abolishing the practice of levying charges on the beneficiary side (except on the originator's explicit order) are not completely complied with by the banking industry. In analogy to what has already been said under point 1.7.3, this deficiency is linked to the banks' lack of knowledge about what the receiving bank will actually charge.

It is, however, alarming that some institutions ignore or do not comply with the obligations to refund any charges wrongfully deducted, obligations which are laid down both in the Directive and the national implementing legislation.

3.10. Article 8 – Obligations upon institutions to refund in the event of non-execution of transfers

This Article introduces the principle of strict liability of the originator's bank to pay refund in case of a "lost" transfer. This "money-back guarantee" is limited to an amount up to 12.500 euro and cannot be abrogated by contract. This is a "no-fault liability" and, therefore, an obligation not limited to error or illegal behaviour on the part of the banks concerned; it suffices for a credit transfer to fail to reach its destination to trigger this mechanism: the originator is reimbursed by his bank, which may recover the funds from the responsible institution. This mechanism saves the users of payment systems from having to contact a number of banks in a transfer chain in order to establish which one is liable, a procedure for which the banks are much better equipped than their customers.

Wider liability, particularly for consequential damage, is neither introduced nor excluded by the Directive; Art. 8 clearly states that this 'money-back-guarantee' is "without prejudice to any other claim which may be made". Thus, any sum exceeding 12.500 euro as well as other damages resulting from the non-execution of the transfer will have to be claimed through normal court proceedings and will depend on the general legislation governing relations between the originator, the beneficiary and their respective institutions

3.10.1. Transposition in Member States

In the Netherlands there is a different limit on the refund to that in the Directive (€12,500). The money-back-guarantee equals the general scope of the Dutch implementing legislation, i.e. 50.000 euro.

Under Spanish legislation, an intermediary institution is subject to the Article 8 obligation to refund only where it has itself 'received' the credit transfer funds (as opposed to '*accepted the cross-border credit transfer order*' (as is provided by the Directive)). Other national transposing laws refer to cases where the transfer 'did not arrive' (Austria), 'was not executed' (Germany), 'where the payment was not transferred' (Finland) and 'where the funds were not credited' (United Kingdom).

The Directive includes no specific provisions as to the conditions under which the fault of an intermediary credit institution (e.g. in the event of a delay in a credit

transfer) will create liability for the originating credit institution. In some Member States (Germany, United Kingdom) specific provisions exist in that respect. In Germany, for example, the originating credit institution will be liable for the fault of an intermediary credit institution unless the principal cause lies with the intermediary credit institution chosen by the customer.[12]

Among the examples of non-execution of credit transfers set out in the Directive, Article 8 provides in particular that, where a cross-border credit transfer was not completed because of non-execution by an intermediary institution chosen by the originator, that latter institution must 'as far as possible' refund the amount of the transfer. In other words, the Directive does not provide that the intermediary institution is liable *vis-à-vis* the originator. Germany's implementing legislation creates in addition direct liability of the intermediary institution *vis-à-vis* the customer. This exceeds the protection offered to the consumer by Directive 97/5/EC. German law includes similar provisions providing for the direct liability of intermediary institutions *vis-à-vis* originating institutions.

3.10.2. Practical application of provision in Member States

Two out of 1480 transfers executed in the framework of the study for this report never reached their beneficiary.

The "money-back-guarantee" did not work: one of the lost transfers had not been refunded to the beneficiary by the execution more than six months after the refund was requested by the originator; the other lost transfer has been – reluctantly – refunded to the originator.

3.10.3. Cases of concern

Whilst the provision regarding the "money-back-guarantee" has been adequately transposed into national legislation, the results of the study indicate that in all cases of lost transfers the institutions executing these cross-border credit transfers were either ignorant of their obligation to refund lost payments or they were unwilling to do so.

The fact that the Dutch money-back-guarantee has a much higher threshold than in the other Member States might result in a situation the implications of which may need further analysis.

3.11. Article 9 – Situation of force majeure

This article specifies that institutions participating in a transfer transaction are released from their obligations in two cases: first, when there is a suspicion of *money-laundering* and, second, in a situation of *force majeure*.

3.11.1. Transposition in Member States

A number of Member States have implemented the definition of "*force majeure"* in a manner that clearly diverges from the text of the Directive , namely "abnormal and

[12] Save where intentional or grossly negligent action is involved, or for risks specifically accepted by a credit institution

unforeseeable circumstances beyond the control of the person pledging force majeure, the consequences of which would have been unavoidable despite all efforts to the contrary". In countries with diverging provisions (Italy, Portugal and Sweden), the level of protection offered to consumers of cross-border credit transfer services is lower or higher than that envisaged by Community law. In Germany, for instance, an obligation to refund is imposed even where the amount of the credit transfer is no longer available.

Certain Member States (Belgium, Finland, Greece, Ireland, Portugal, Sweden and the United Kingdom) have expressly referred in their implementing legislation to the Money Laundering Directive (Directive 91/308/EEC) or equivalent provisions, when implementing Article 9 of Directive 97/5/EC. In two cases (Finland and the United Kingdom), implementing provisions specifically provide for a limitation in liability where an institution has not complied with the provisions of Directive 97/5/EC because of money laundering concerns. In one Member State (Sweden), institutions may take longer to execute the cross-border transfer.

Other Member States (Austria, Denmark, France, Germany, Italy, Luxembourg, the Netherlands and Spain) make no specific reference to money laundering legislation in their legislation implementing Article 9. In practice, the absence of reference to national money laundering legislation does not give rise to legal issues and is not deemed to constitute inadequate implementation of Directive 97/5/EC.

Directive 91/308/EEC has been fully implemented in the Member States. Notwithstanding the absence of express reference to Directive 91/308/EEC in certain implementing legislation for Directive 97/5/EC, its terms are mandatory and a matter of public policy. Consequently, where a failure to fulfil a duty under Directive 97/5/EC arose because of a legitimate suspicion that a cross-border credit transfer was, in reality, a money laundering transaction, the institution would, most likely, invoke, in its defence, the public policy basis of Directive 91/308/EEC. Whether the defence would succeed would depend on the particular facts, circumstances and national provisions invoked, since compliance with money laundering rules should not become a general pretext for avoiding obligations under Directive 97/5/EC.

3.11.2. Practical application of provision in Member States

No problems regarding the application of Art. 9 of the Directive have been reported in the Member States.

3.11.3. Cases of concern

None.

3.12. Article 10 – Settlement of Disputes

The Directive determines certain requirements for the execution of cross-border credit transfers. If bank customers can enforce these standards only by way of court procedures, the Directive would not improve the situation for them; hardly anybody would go to court for a complaint (e.g. concerning a case of double charging of 20 euro).

Article 10 of Directive 97/5/EC aims to give to customers an efficient tool to claim the rights under this Directive, by obliging Member States to "ensure that there are

adequate and effective complaints and redress procedures for the settlement of disputes" between customers and credit institutions. Existing procedures can be used, where appropriate.

Procedures should be *adequate and effective:* complaining to such an alternative dispute settlement body about cross-border credit transfers should be more expedient and less costly for the customers than to go to court, i.e. the procedure in place should really be an alternative.

3.12.1. Transposition in Member States

Practice differs from Member State to Member State as to the procedures applicable to complaints and redress schemes. These differences concern the access to the complaints and redress scheme (only upon exhaustion of existing remedies or whether and under what conditions direct access is available), the formalities for making a complaint, the impact (if any) on separate legal proceedings, whether the decisions are binding or non-binding, etc. These differences do not, however, cause any problem, as long as the procedures as such are "adequate and effective". The details of the different schemes in the Member States are given in Annex 3.

When implementing Art. 10 of the Directive, Member States have mostly used already existing procedures for banking or financial services in general. They have not established dedicated redress or complaint schemes specific to cross-border credit transfers with the exception of Italy, where a Decree[13] provides for the establishment of particular schemes to deal with the settlement of disputes regarding cross-border credit transfers. The German scheme is also, in part, dedicated specifically to cross-border transfers (as well as covering settlement finality in payment and securities transactions (Directive 98/26/EC)).

Consumers are represented only in a minority of the redress/complaint schemes which have been implemented under Article 10.

France had originally continued to rely on existing schemes set up by the individual banks; this did not, however, cover all institutions executing cross-border credit transfers. France was, therefore, late in implementation. In the meantime, the "loi Murcef"[14] will make mediation obligatory in conflicts between consumers and credit institutions, including cross-border transfer cases.

Austria has not yet established a redress scheme but has only appointed a working group to set up a such scheme. Austria is, therefore, late in implementation.

Portugal has not yet established a banking ombudsman scheme. The implementing legislation allows parties to refer to arbitration, but, in practice, this is often impractical due to the high costs which are likely to be involved. Existing Portuguese ombudsman schemes for financial services have only limited geographical areas of competence and can deal with claims of low value. Portugal is, therefore, late in implementation.

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[13] Ministerial Decree No. 456 of 13 December 2001, implementing into Italian law Art. 10 of Directive 97/5/EC (OJ of 3 January 2002)

[14] Law No. 2001-1168 of 11 December 2001 (OJ of 12 December 2001)

3.12.2. Practical application of provision in Member States

Until December 2001, very few disputes concerning cross-border credit transfers have been brought before the national complaint and redress schemes. This is partly due to the fact that customers appear reluctant to take matters beyond several verbal or written complaints to the bank. In many cases the disputed amount is rather low compared to the administrative time and charges involved; this prevents customers from pursuing further action. Many customers seem also to be afraid to "upset" their banks, or to damage their future banking relationship.

On the other hand, customers very rarely know about the existence of complaint and redress schemes; the institutions' customer information in this respect is virtually non-existent (cf. point 3.5.2).

3.12.3. Cases of concern

The lack of existence of appropriate redress procedures in Austria and Portugal is a matter of major concern.

There is a general lack of information about the existence of complaint and redress schemes: when customers do not know about the possibilities of enforcing their rights given to them by the Directive and the national implementing laws, they do not know how to react in case of any malfunctioning or misapplication of the relevant provisions. Mostly they are unlikely to address their complaints, which are normally low-value disputes, to a court. However, better information about rights and procedures provided for by the Directive should help to enhance competition and to improve the presently unsatisfactory situation.

3.13. Other issues

3.13.1. Sanctions

The Directive contains no specific obligation on Member States to provide for sanctions for failure to comply with the terms of national implementing legislation. It should be noted, however, that the obligation to provide for appropriate sanctions does not need to be included in a EU-legal text. A judgement of the European Court of Justice[15] already established that Member States were obliged to provide for sanctions in their transposing laws, regardless of whether sanctions were explicitly mentioned in the original Directive or not.

Only few Member States, such as Austria, the United Kingdom and Denmark did indeed include a specific reference to sanctions in their legislation. In addition, in relation to specific customer undertakings, Austrian legislation provides another form of "sanction": where specific undertakings requested by the customer are not complied with, Austrian credit institutions may not charge fees/commissions for the execution of the credit transfer.

Another important question (arising from Belgian legislation) is whether sanctions should be imposed for failure to comply with all or only some of the obligations derived from Directive 97/5/EC. In Belgium, by way of illustration, no penalties are

[15] C-354/99 of 18 October 2001

expressly imposed by the implementing legislation on a credit institution's failure to provide information to customers subsequent to a cross-border credit transfer.

Some Member States (e.g. Denmark) make reference to criminal sanctions imposed by other legislation not specific to cross-border credit transfers. For obvious reasons, provisions relating to criminal sanctions may not be found in Community law and do not appear in Directive 97/5/EC.

3.13.2. Right to Cancel or Terminate Transfers

The Directive is silent as to the right of credit institutions to cancel credit transfers that have been properly requested by a customer. In Germany, specific provisions have been included to deal with this eventuality.

German legislation also includes detailed provisions allowing the customer to cancel a requested credit transfer and a right for both the credit institution and the customer to terminate a credit transfer.

4. CONCLUSION

4.1. Assessment of the transposition in Member States

The deadline for transposition of Directive 97/5/EC was August 14, 1999. Most Member States met that deadline and all have implemented the Directive since.

Certain differences exist between national regimes and the regime introduced by Directive 97/5/EC. These have been identified in Section 3 above.

4.1.1. Main differences between national regimes and Directive 97/5/EC

4.1.1.1. Article 2 - definitions

Differences concern the omission of **definitions of Article 2** of the Directive , or the use of definitions different from those in the Directive. Most of these omissions or differences should not result in inadequate implementation. The different definition of 'date of acceptance' in Spain may give rise to difficulties; here acceptance is presumed on the business day 'following' the order, and not on the date when all conditions of the order are fulfilled. The calculation for the execution times thus starts only one day after the time foreseen by the Directive.

4.1.1.2. Article 3 – provision of information prior to a cross-border credit transfer

A number of issues associated with the **provision of information prior to a request for a cross-border credit transfer, under Article 3** of Directive 97/5/EC, were also identified. These concern mainly Austria: Austrian legislation does not oblige to provide information in a 'readily comprehensible form', there is no reference to 'value date' and information regarding complaints and redress schemes (reflecting the absence of such schemes in Austria).

4.1.1.3. Article 4 – Provision of information after a cross-border credit transfer

Subsequent information duties under Article 4 of Directive 97/5/EC have not been fully implemented in Austria, Denmark and Ireland. In each case, there is an omission or limitation of rights which reflects inadequate transposition and which could have a material effect, for instance the partial or inadequate implementation by Austria and Ireland of the information requirement for clear information in writing including where appropriate by electronic means (in the case of Denmark, only the reference to 'where appropriate' has been omitted and is probably *de minimis*).

4.1.1.4. Banks' undertakings in relation to requests for cross-border credit transfers Article 5

Inadequate implementation by Italy: notwithstanding the general obligation under Italian law to provide information prior to transfer, the Italian implementing legislation fails to provide that the institution will be bound by undertakings it gives (if any) in relation to time, commission fees and charges.

4.1.1.5. Article 9 “Force majeure”

With regard to **money laundering**, it should be noted that several Member States have not made specific reference to Directive 91/308/EEC, when implementing the **force majeure** provisions of **Article 9** of Directive 97/5/EC. Institutions caught between fulfilment of duties under national provisions implementing Directive 97/5/EC and national provisions implementing Directive 91/308/EEC are likely to give precedence to money laundering compliance. This would, in turn, provide them with a public-policy orientated defence in the event of a claim under the cross-border credit transfer provisions. This issue is discussed in section 2.6.5 above.

4.1.1.6. Article 10 “Complaints and redress procedures”

Three Member States do not appear to have implemented **Article 10** adequately i.e. by ensuring that there are “adequate and effective **complaints and redress procedures**”, as follows:

- France, which continues with individual schemes. This situation has, however, in the meantime been remedied by the adoption of the “loi Murcef”, which will make mediation obligatory in conflicts between consumers and credit institutions.

- Austria has simply appointed a working group to set up a scheme. This does not constitute adequate implementation.

- Portugal has general arbitration schemes, but, given the difficulties involved in arbitrating disputes which are often for relatively modest sums, in effect has no scheme competent to hear complaints arising from cross-border credit transfers under Directive 97/5/EC. The scheme provisionally notified to deal with complaints stemming from cross-border credit transfers is only competent for arbitration and mediation in Lisbon.

4.2. Assessment of the application of the provisions in the Member States

4.2.1. Provision of information before and after a cross-border transfer:

The institutions' performance concerning the **provision of information** was not satisfactory:

- Only 16 out of the 40 senders were provided with a brochure or some other form of printed **information in advance** of the transfers being carried out. The printed information that was provided gave information on costs, but generally lacked information on timing, exchange rates, value dates and redress procedures, as specified in the Directive.

- The information provided to senders and receivers **subsequent to the transfers** being carried out was generally good. The most frequent omission was that fewer than half of receivers were quoted the original amount of the transfer.

4.2.2. Execution times

The institutions performance concerning **execution times** was on average well within the limits of the Directive: 95.4% of transfers arrived within six working days and 99.7% arrived within 15 working days. Transfers took an average of 2.97 days. This constitutes a significant reduction from prior studies.

4.2.3. Obligations to compensate for late payments

However, the **obligation to compensate** for late payments was generally not met by the institutions: no bank offered the sender compensation for transfers that arrived late. When asked to pay compensation, institutions generally ignored or denied any obligation to compensate for late payments.

4.2.4. Obligation to execute the cross-border transfer in accordance with instructions

The institutions' performance concerning the **distribution of charges** had also improved compared to former studies. However, in 16.2% of the transfers, unexpected receiver deductions, mostly caused by **double charging**, still occurred. The vast majority of these transfers had not been sent in the "OUR-mode" (i.e. all charges to be borne by the originators).

4.2.5. Refund of unlawfully deducted charges

Generally, customers had to insist very hard to receive **refund of unlawfully deducted charges**. Whilst some of the banks involved in double charging rectified the affected transfers by re-crediting the receivers' charges, others did not assist their customers in any way as they are obliged to do. Instead, they claimed that the receiver or intermediary banks had taken the charges. Very often, customers "gave up" following up their case because of the impolite treatment by the institutions.

4.2.6. "Money-back guarantee"

The banks' performance concerning the **"money-back guarantee"** was not satisfactory. The two cases in the study which should have triggered this money back guarantee, have not been handled as envisaged in the Directive. One missing transfer

has never been refunded, the other one was only reluctantly refunded after several months and "as a gesture of good-will".

4.3. Proposals for the revision of the Directive

As already announced by Commissioner Bolkestein vis-à-vis the European Parliament in autumn 2000 (discussion of Peijs report[16] in the Plenary Session), the Commission intends to propose to shorten the default maximum execution time from presently 6 bank working days to a much shorter period. Given the technical possibilities of an improved infrastructure, such shorter delays – which would be more in line with current practices at national level –seem only logical. Taking into account the present average delay of 2.97 days for a cross-border credit transfer, the shortening of delays should not cause too many difficulties to the banking industry.

Furthermore, the Commission promised to raise the threshold of the "money-back guarantee" to €50.000, in order to align it with the general scope of the Directive.

Both measures are destined to further develop the Internal Market for retail payments and to align conditions of national and cross-border payments. The European Parliament already signalled that it will support the Commission on these amendments to the Directive 97/5/EC in the European Parliament Resolution on the Commission's Communication on Retail Payments in the Single Market[17] .

In addition to that, some further concerns have been identified in this report, which need to be addressed.

However, the Commission does not consider it appropriate to propose only a revision of the Directive for the few issues identified in this report. There are several further reasons to review the EU legislation governing payments in the Internal Market in general in order to truly achieve a Single Payment Area within the European Union. Precedence should be given to a wide consultation on a coherent and comprehensive legal framework going beyond some isolated patchwork proposals. The main additional justifications for such an initiative are:

- The adoption of the "Regulation on Cross-Border Payments in euro"[18] has determined an essential element of how payment services (nationally and cross-border) have to be offered to customers: price discriminations are illegal and the Internal Market for payments has to be considered as a "domestic" market. The directive, however, imposes on banks certain requirements for cross-border transfers which do not apply for domestic transfers. An example of this is that the directive establishes "OUR transfers" as the default norm, in cases where no specific instructions are given by the sender; however, in most, if not in all Member States, the "OUR option" is not a frequently used way to make domestic transfers. Therefore, the Commission should further investigate how to reconcile this and to propose a coherent payment option for the internal market.

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16 European Parliament Resolution on the Commission Communication to the Council and the European Parliament on retail Payments in the Single Market of 26 October 2000; COM(2000) 36-C5-0103/2000-2000/2018 (COS)

17 COM(2000) 36 final

18 Reg. 2560/2001 of 19 December 2002 (OJ 344 of 28 December 2001, p.13)

- A study completed in 2001 on the transposition and application of the "Recommendation on Electronic Payment Instruments[19]" concludes that there are serious deficiencies which need to be addressed. The Recommendation states that, if the Commission finds the implementation unsatisfactory, it intends to propose appropriate binding legislation.

- The Commission will come forward with proposals relating to the issue of "refunds" covered in the Recommendation 97/489 and other EU legislative acts.

- Payment instruments and payment systems are to a large extent still subject to diverging national rules. This situation can constitute an obstacle to an efficient Single Payment Area in the Internal Market resulting in inefficiencies or hindering the integration of the necessary infrastructure and further consolidation with a view to lowering the costs of transactions. A strategy to target a wider payment transaction market than the national one could lead to "collaborative sourcing" and "economies of scale". There is also the phenomena of outsourcing and concentration of payment business in so-called "transaction factories". Furthermore new players are looking for access to the payment markets and which – as non-banks – frequently encounter "regulatory obstacles" or "legal uncertainty". These issues need to be analysed.

- The developments in information technology (IT) have an important impact on the development of payment instruments, payment infrastructures and payment markets. The considerable costs of IT for this transaction business require well reasoned strategic decisions which are to be taken when considering the developments of the infrastructure environment (standards, technical platforms etc) and possibilities for co-operation. E-money institutions and the mushrooming of proposals for new electronic payment instruments are phenomena for which the consequences on the legal framework need to be examined.

- Notably as a response to the Regulation on Cross-Border Payments in euro, European banks recently launched a common vision of "Euroland - our Single Payment Area". It calls for joining forces for the benefit of European consumers, industry and banks and includes the request for a commitment by regulators to deliver their part. Their "Blueprint" on the Single European Payment Area (SEPA) is expected to contain a range of legal prerequisites or desirable developments addressed to public authorities, incl. European institutions. The Commission intends to address these ideas in the discussion on this legal framework once they are known.

The Commission's services - in the spirit of the Communication on Better Regulation - have already widely circulated in an informal discussion document in order to collect ideas and suggestions for such a possible framework. On the basis of those contributions the Commission will establish a Consultative Paper which will present its assessment on possible future provisions for a legislative proposal afterwards to the Council and Parliament in 2003.

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[19] Rec. 97/489 of 30 July 1997 (OJ L 208 of 2 August 1997, p. 52)

ANNEX 1 – National Implementing Measures – State of play on 27 September 2002

Table 1: Table of national implementation measures (by title and with additional details as available)

MEMBER STATE	IMPLEMENTING LEGISLATION
Austria	Federal Act on Cross-Border Credit Transfers, N° 123: *Bundesgesetz über grenzüberschreitende Überweisungen*, adopted by Parliament and published on July 22, 1999 (*Überweisungsgesetz – Bundesgesetzblatt*, Part I, page 159).
Belgium	Law on Cross-Border Money Transfers: *Loi relative aux virements d'argent transfrontaliers*, adopted on January 9, 2000, published and supplemented by Royal Decree amending Royal Decree of March 23, 1995 on price indications for homogenous financial services.
Denmark	Act on Cross-Border Credit Transfers, N° 237: *Lov om graenseoverskridende pengeoverforsler* of April 21, 1999.
Finland	Law on Credit Transfers, N° 821/1999: *Tilisiirtolaki*, adopted on July 28, 1999, published on August 4, 1999.
France	Law on savings and financial security, N° 99-532: *Loi relative à l'épargne et à la sécurité financière* (Section 78, Part II, Chapter V), published on June 29, 1999 (*JORF*, page 9507), supplemented by implementing Regulation n°99-09, published on July 27, 1999 (*JORF*, pages 11160-11161), with corrigendum on August 21, 1999 (*JORF*, pages 12559-12560), and codified in the French Monetary and Financial Code as Section L 133-1.
Germany	Act on Bank Transfers: *Überweisungsgesetz*, adopted on July 21, 1999 (*Überweisungsgesetz, BGBI, Teil IS. 1642*).
Greece	Presidential Decree 33/2000, adopted on February 8, 2000 and published on February 16, 2000 (Gazette, N°. 27, Vol. A).
Ireland	Statutory Instrument N°. 231: The European Communities (Cross-Border Credit Transfers) Regulations 1999.
Italy	Legislative Decree N°. 253: *Attuazione della direttiva 97/5/CEE sui bonifici transfrontalieri*, adopted on July 28, 2000, published on September 11, 2000 (*Gazzetta Ufficiale della Repubblica Italiana, Serie General, N° 212*).
Luxembourg	Law adopted on April 29, 1999, amending the law of April 5, 1993 on the financial sector. Publication in the Mémorial of May 12, 1999. Entry into force on May 16, 1999
The Netherlands	Act for Cross Border Transactions: *Wet grensoverschrijdende betaaldiensten*, adopted in October 1998 and published on November 12, 1998 (Gazette 686/1998), implemented by Royal Decree of July 28, 1999 (*Stb*. 1999, 341).
Portugal	Law-Decree 41/2000 of March 17, 2000: *Decreto-Lei nº 41/2000 de 17 de Março*, published on March 17, 2000 (*Diario da republica, Serie A, N° 65*, page 1022).
Spain	Act 9/1999: *Ley 9/1999, de 12 de abril, por la que se regula el régimen jurídico de las transferencias entre estados miembros de la unión Europea*, adopted on April 12, 1999 and published on April 13, 1999 (Gazette N°. 88, page 13653), supplemented by Ministerial Order of November 16, 2000: *Orden de 16 de noviembre de desarrollo de la Ley 9/1999, de 12 de abril por la que se regula el régimen jurídico de las transferencias entre Estados Miembros de la Unión Europea así como otras disposiciones en materia de gestión de transferencias en general*.

MEMBER STATE	IMPLEMENTING LEGISLATION
Sweden	Law SFS No. 1999:268 on credit transfers within the European Union: *Lag om betalningsöverföringar inom Europeiska ekonomiska samarbetsområdet*, adopted on May 12, 1999 and published on June 1, 1999.
United Kingdom	Statutory Instrument N°. 1876: The Cross-Border Credit Transfers Regulations 1999, made on June 30, 1999.

Table 2: Implementing Legislation (by date of implementation):

MEMBER STATE	DATE OF IMPLEMENTATION	LEGAL DEADLINE (14 AUGUST 1999)	POLITICAL UNDERTAKING (1 JANUARY 1999)
Austria	August 13, 1999	Yes	No
Belgium	February 9, 2000	No[20]	No
Denmark	April 21, 1999	Yes	No
Finland	August 14, 1999	Yes	No
France	August 14, 1999	Yes	No
Germany	August 14, 1999	Yes	No
Greece	February 8, 2000[21]	No	No
Ireland	August 14, 1999	Yes	No
Italy	September 26, 2000[22]	No	No

[20] Although it is worth noting that prior to the entry into force of Belgian implementing legislation, the Belgian Association of Banks issued advice to its members that they should apply the provisions of Directive 97/5/EC, in advance of a formal, legally binding obligation

[21] The situation in Greece is more complicated than in other Member States. Greek implementing legislation was adopted on February 8, 2000, but is expressly stated to have retroactive effect, and to 'have entered into force' on August 14, 1999. Viewed correctly, this remains a failure by Greece to comply with its obligation to implement Directive 97/5/EC by the statutory deadline of August 14, 1999

[22] This is the date of entry into force for the main body of Italian implementing legislation. Certain exceptions exist to this date of implementation (see further at Section 9 of Part II of this Report). These include, for example, the date of entry into force of provisions introducing obligations upon credit institutions to provide information to consumers of cross-border credit transfer services. The date of entry into force of these provisions is the later date of October 12, 2000

MEMBER STATE	DATE OF IMPLEMENTATION	LEGAL DEADLINE (14 AUGUST 1999)	POLITICAL UNDERTAKING (1 JANUARY 1999)
Luxembourg	May 16, 1999	Yes	No
The Netherlands	August 14, 1999	Yes	No
Portugal	March 23, 2000	No	No
Spain	May 3, 1999	Yes	No
Sweden	August 14, 1999	Yes	No
United Kingdom	August 14, 1999	Yes	No

ANNEX 2 - National complaints and redress schemes – Updated on 27 September 2002

Austria:

Arbeitskreis "Ombudsstellen der österreichischen Kreditwirtschaft"
Wirtschaftskammer Österreich
Wiedner Haupstrase 63
A-1045 Wien
Tel. +43.1.501.05.31.32
Fax. +43.1.501.05.272
e-mail: BSBV@WKOESK.WK.OR.AT

Belgium:

Association Belge des Banques (ABB)
Square de Meêus 35
B – 1040 Bruxelles
Tel. +32.2.507.68.11
Fax +32.2.507.69.79
email: ombudsman@abb.bvb.be

Médiateur auprès de la Poste
Dienst Ombudsman De Post
W.T.C. Tour II
Chaussée d'Anvers/Antwerpsesteenweg 59
B - 1000 Bruxelles/Brussel
Tel. +32.2.204.81.00 (FR)
Tel. +32.2.204.82.00 (NL)
Tel. +32.2.204.83.00 (DE)
Fax +32.2.204.84.00

Denmark:

Pengeinstitutankenævnet
Østerbrogade 64, 4
DK - 2100 København Ø
Tel. +45.35.43.63.33
Fax +45.35.43.71.04

Finland:

Advisory office for Bank Consumers
Museokatu 8 A 7
FIN - 00100 Helsinki
Tel. +358.9.4056.1230
Fax +358.9.4056.1235
e-mail: pankkialan.asiakasneuvonta@rahoitusalankl.fi

Consumer Complaint Board
Box 306
Kaikukatu 3
FIN - 00531 Helsinki
Tel. +358.9.7726.7900
Fax +358.9.753.4880
e-mail: kirjaamo@kuluttajavl.fi

France:

Normally Mediators are set up by individual banks – the French Banking Association can help to identify the right scheme.

Association Française des Banques
18 rue La Fayette
75009 Paris
Tel: +33.1.48.00.52.52
Fax: +33.1.42.46.76.40

Germany:

Deutsche Bundesbank
Schlichtungsstelle
Postfach 10 06 02
D - 60006 Frankfurt am Main
Tel. +49.69.9566-40.50
Fax +49.69.9566-40.56
email: schlichtung@bundesbank.de

Bundesverband Deutscher Banken
Ombudsmann
Postfach 040307
D - 10062 Berlin
Tel: +49 30 16633161 (or 62)
Fax: +49 30 16633169
email: ombudsmann@bdb.de

Bundesverband Öffentlicher Banken
Ombudsmannsystem für den grenzüberschreitenden Überweisungsverkher
Postfach 110272
D - 10832 Berlin
Tel: +49 30 81920
Fax: +49 30 8192222
email: Postmaster@voeb.de

Greece:

Commission for Consumer's Protection of Public Enterprises and Organisations
Presided by the Secretary General of Commerce
20, Caningos Str.
GR - 101 81 Athens
Tel: + 301 383.79.82
Tel. + 301 384.17.73
Fax: + 301 382.96.40

Hellenic Banking Ombudsman
12-14 Karagiorgi Servias Street
GR - 105 52 Athens
Tel. +30.1.33.76.700
Fax +30.1.32.38.821
e-mail: contact@bank-omb.gr

Ireland:

The Ombudsman for the Credit Institutions
8 Adelaide Court
IRL - Dublin 8
Tel. +353.1.478.37.55
Fax +353.1.478.01.57

Italy:

Ombudsman Bancario
Via delle Botteghe Oscure 46
I - 00186 Roma
Tel. +39.06.67.67.353
Fax +39.06.67.67.400
e-mail: abi@abi.it

Luxembourg:

Commission de Surveillance du Secteur Financier (CSSF)
110, Route d'Arlon
L - 2991 Luxembourg
Tel. +352.26.251.203
Fax: +352.26.251.601
e-mail: banques@cssf.lu , direction@cssf.lu

Netherlands:

Stichting Geschillencommissie Bankzaken
Surinamstraat 24
NL - 2585 GJ 's Gravenhage
Tel. +31.70.310.53.10
Fax +31.70.365.88.14

Portugal:

A special Banking Ombudsman will be created.
Until then, complaints could be addressed to:
Centro de Arbitragem de Conflitos de Consumo
Mercado Chão de Loureiro (1st floor)
Largo do Chão do Loureiro
P - 1100 Lisboa
Tel. +351.1.888.36.23
Fax +351.1.888.37.67
e-mail: lis-arbitragem@ip.pt

Spain:

Banco de España
Servicio Jurídico / Sevicio de Reclamaciones
Alcalá, 50
E - 28014 Madrid
Tel. +34.91.338.57.58
Fax +34.91.338.65.22

Sweden:

The National Board for Consumer Complaints
P.O. Box 174
S - 101 23 Stockholm
Tel. +46.8.783.17.00
Fax +46.8.783.17.01
e-mail: staffan.lind@arn.se

United Kingdom

Financial Ombudsman Service
South Quay Plaza
183, Marsh Wall
London E14 9SR
Tel. +44.207.942.0942
Fax +44.207.942.0943
e-mail: enquiries@financial-ombudsman.org.uk

EFTA-countries

Iceland:

Customer Complaint Committee
c/o Financial Supervisory Authority
Suðurlandsbraut 32
IS-108 Reykjavík
Tel.: (354) 525-2700
Fax: (354) 525-2727
e-mail: urskfjarm@fme.is

Norway:

The Norwegian Banking Complaints Board
Universitetsgaten 8
Post Box 6855, St. Olavs Plass
N - 0130 OSLO
Tel. +47.22.20.30.14
Fax +47.22.20.31.90
e-mail: per.fiskerud@bankklagenemnda.no

Liechtenstein:

Financial Services Authority
Herrengasse 8
FL-9490 Vaduz
Principality of Liechtenstein
Tel.:+423.236.62.21
Fax: +423.236.62.24
e-mail: isolde.sigmeth@afd.llv.li