Comments from CLCV (Consumer, Housing and Lifestyle Federation) on the Communication from the Commission on a new legal framework for payments in the internal market.

CLCV is a French federation of consumer associations, involving more than 400 local associations. It has been very active on banking and financial issues for many years. CLCV is a member of the consultative committee of the *Conseil National du Crédit et du Titre* (National Credit and Securities Council), and also a member of the *Observatoire de la sécurité des cartes de paiement* (Payment cards security observatory). At European level, it represents consumers in a group of experts for fraud prevention, established by the Internal Market Directorate General. CLCV conducts annual enquiries on pricing for banking services, and through offices run by its local structures and its Consumers SOS service, it deals with many complaints from consumers regarding financial services.

In this document we respond to the various questions raised by the Commission in the Annexes to its Communication, regarding the areas that we deal with.

The right to provide payment services to the public

In this field we are opposed to the principle of mutual recognition if measures have not first been taken to harmonise the level of requirements for licensing of issuers of payment services. The Single Payment Area must be secure and it is essential for consumer confidence that consumers be assured that the payment services offered to them have the same guarantees, regardless of the Member State in which the providers of the services are established.

From this point of view, we are concerned about there being several types of licensing; in any case, it is essential, whatever system is chosen, that the requirements established for any payment system provide a high level of security for consumers, from both a legal and technical point of view.

Information requirements

If we want consumers to be able to take out financial services in a Member State other than their own in complete confidence, it is essential that they have reliable, comprehensive information enabling them to make comparisons; harmonisation of information, as has been done by many other services in the single market (e-commerce, distance financial services, etc.), is essential for promoting the development of a single market. In order to ensure this basic uniformity in information given to consumers, restrictive rules need to be established; a code of conduct would not provide sufficient guarantees, in particular in terms of respecting execution.

With regard to the draft provisions applicable to all payment services:

Point 3 states that once the consumer has been notified of a modification to the contractual conditions, it is deemed to be accepted if he/she has not responded. We consider that only an explicit positive response from the consumer should result in the new conditions being accepted.

Value Dates

We are opposed to a pricing system based on value dates, as we consider that this system is in no way transparent for consumers and is detrimental to their capacity to compare the prices offered by the different service providers and therefore to competition. French case law has provided a clearer framework for the application of value dates by French banking establishments, but this system nevertheless causes problems insofar as case law is not the law and can be subject to change. The opening up of the payment market, without a framework for the system of value dates, would result in even greater uncertainty for French consumers and could even be a step backwards, as they could be dealing with value dates that are not justified by technical evidence, with no means of opposing them.
We do not consider it to be sufficient to regulate transparency in the use of value dates, because that would amount to accepting the very principle of value dates and the fact that they can be different from execution or accounting dates, which results in a lack of clarity in terms of pricing. We are of course in favour of the principles of contractual freedom and pricing freedom, but they should be exercised in a context in which the consumer can compare offers and evaluate the costs they will have to pay. A legal framework for value dates would help to ensure that comparability and transparency in pricing. We are therefore very much in favour of the text proposed by the Commission.

Customer mobility

Conditions that permit customer mobility are an essential element for the competitive development of a market. Currently, some establishments have considerable barriers, in the form of account closing fees, in order to dissuade their customers from choosing another provider. We note the Commission's proposal to force establishments to provide information on these costs when the account is opened; however, we do not feel that this is the most appropriate solution insofar as, given the freedom to change prices, the fees could change considerably between the time that the account is opened and the time that the customer wishes to close it. Insofar as consumers cannot therefore find out in advance what fees they will have to pay if they wish to leave the bank, and insofar as those fees are a genuine obstacle to competition, we think that the practice must be banned. A recent survey conducted by our association in the French banking market showed that a large number of regional banks in mutual networks charged fees of sometimes up to 60 or even 80 euros. In our view, such practices are genuine obstacles to competition and must be removed. Another curb on customer mobility is that often, when a property loan is taken out, the customer is obliged to deposit his income with the same establishment; these two transactions should be dealt with separately. Measures should therefore be taken to enable debit orders to be transferred.

Alternative dispute resolution

We have always supported the establishment of alternative resolution systems for disputes as long as they respect the principles laid down in Recommendation 98/257/EC; however, in view of the way the principles in the Recommendation have been implemented – often defectively - in the different Member States of the Union, we now wish the principles to become regulatory; this is the only way that consumer confidence in the different systems can be ensured.

Revocability of a payment order

As we indicated in response to the Commission consultation on the working document on this subject, we think that it is essential that the existing principles in the different Member States of the Union regarding revocability of a payment order be harmonised in order to ensure legal security for consumers in cross-border transactions and thus to enable the internal market to develop.

With regard to the revocability of payment orders given directly to payment service providers (credit transfers), we think that the two intermediary solutions proposed by the Commission, i.e. the payment being revocable “until the money transfer has been initiated” or “until the payment order has been executed”, would not ensure sufficient legal security either for the originator or for the beneficiary. These two wordings allow for interpretations as to the exact moment when revocability is no longer possible. Is the payment order considered to be executed when the originator’s account is debited or when the beneficiary’s account is credited? We therefore think that the first and fourth wordings proposed are better for ensuring legal security and equal treatment for all, and we prefer the fourth proposal, which states that the payment order is revocable “until the amount to transfer has been credited to the beneficiary's account”; in our view this is the one that provides the best protection for consumers.
With regard to payment orders given via the beneficiary (card payments), while we understand the need for the principle of irrevocability, we feel it is very important that a specific right to revoke a payment order be maintained, as the Commission proposes, where the amount was not determined when the payment order was given. Consumers are very frequently asked to leave an “imprint” of their bank card as a guarantee, and the only security that consumers can have in these practices is the assurance that the payment order may be revoked if it is abused.

The role of the payment service provider in the case of a customer/merchant dispute in distance commerce

The principle of joint liability of the payment service provider in the case of a customer/merchant dispute, and therefore of the customer being reimbursed by the payment service provider, is applied in many countries, in North America but also in Europe. We therefore think that it could be applied across the European Union. Establishing this type of system would undoubtedly be a determining factor in the expansion of on-line commerce. As we see every day in our offices, the vast majority of disputes regarding transactions on the Internet are due to failure to deliver and, in many cases, it is very difficult, if not impossible for the consumer to obtain an answer from the supplier, who sometimes cannot even be contacted. The assurance that they could be reimbursed in the event of failure to deliver would therefore be a very significant security factor for consumers wishing to buy on-line.
We think it is essential that this principle be quickly established for transactions carried out using a payment instrument with a credit function. With regard to transactions using debit cards, we think that there should be very careful consideration of whether the principle should be applied, with the payment means providers being responsible for providing concrete evidence that such a measure is feasible. Choosing not to apply this measure to transactions carried out using debit cards would, however, be damaging, because it would go against the principle of neutrality between different payment means.

Non-execution or defective execution

We are very much in favour of establishing a single, harmonised legal framework establishing the liability of the payment means provider in the case of non-execution or defective execution of the payment, placing the burden of proof on the provider. This type of measure establishing similar rules in all the Member States of the Union, based on maximum consumer protection, can only help to develop consumer confidence.

Obligations and liabilities of the contractual parties related to unauthorised transactions

We support the Commission’s initiative aimed at ensuring greater legal certainty for consumers in the case of fraudulent use of payment means that they are provided with.

Measures have been adopted in France with the same aim, following consultation through the *Conseil National de la Consommation* (National Consumer Council) and a report on bank cards that we drew up; assurance for consumers that they can be reimbursed in the event of fraudulent use of their payment means is essential if we want distance selling and, in particular, e-commerce to be able to develop. The fight against hacking and fraud and network protection measures are not sufficiently effective to guarantee absolute security for consumers; their payment means can therefore be used without their knowledge until they are informed of the payment.
Given this situation, the initiative proposed by the Commission is necessary in order to unify consumer protection across the European Union; however, we think it is quite impossible to place the burden of proof on the consumer, as proposed in paragraph 5 of the Article on the contractual obligations of the parties. In the vast majority of cases, a consumer cannot provide any proof that he did not make the payment, unless the payment order was physically made from a place and he can prove that he was not there; this is not possible in the case of a fraudulent transaction carried out on-line, for example. If such a measure were adopted, it would largely reduce the benefits of the measure proposed by the Commission; also, the first hyphen of paragraph 1(b) of that Article establishes the obligation to inform the payment service provider without delay of the misappropriation of the payment means; most of the time, as pointed out above, consumers do not find out that their payment means has been misappropriated until they receive the record of their transactions; this comment of course has bearings on paragraph 5 of the Article on liabilities between the contractual parties. Insofar as it is more often than not impossible for consumers to notify that their payment means has been misappropriated, it would be unfair to make them bear the financial consequences of this.
Finally, we think that a period needs to be set for reimbursing the amounts affected by the fraudulent transaction to consumers; in France the period is thirty days, which we think is reasonable for all parties.

Execution times for credit transfers

We are very much in favour of reducing the execution time for cross-border credit transfers in the euro zone from six to three days. Several surveys conducted at European level have shown that this period was applied by many banks, therefore proving that it is feasible. With regard to the choice of rules in preference to self-regulation measures, we can only support this, especially given that past experience has shown that restrictive measures were necessary in order to change practices.

Direct debiting

Although direct debiting is an increasingly popular payment means at national level, it will only be able to develop at cross-border level if legal protection for users is harmonised; first of all it needs to be ensured that the concept of direct debit covers the same reality in all countries, particularly with regard to the person to whom the mandate is given. Also, as the Commission proposes, it is essential that users be able to easily reject a debit; they also need to be able to cancel a debit authorisation free of charge and at any time.

Data protection issues

The protection of personal data is a very important issue for consumers, and it is essential that the principles established in this field at European and national level be strictly respected; nevertheless, we are conscious of the challenges associated with fraud and counterfeiting, which also directly affect consumers, so we think that we need to seek tailored solutions so that banking confidentiality can be lifted in certain cases and the principles governing the

release of files can be adapted. In all of these cases, these adaptations should only be made at European level, in order to ensure that the measures taken are harmonised.

Electronic signatures

In this area, we consider it to be essential that systems be compatible across Europe and we think that a system of maximum legal and technical harmonisation must be applied. In our view, these are the only ways to ensure that the single market is effective in this field.

Security of the networks

As we have pointed out on several occasions, consumers have an objective interest in maximum security of the networks being achieved and in the level of security being the same in all the Member States of the Union. As the Commission states, it is essential that consumers should not have to bear the financial consequences of system security breaches; this is why we support the Commission's proposals, in particular regarding unauthorised transactions.

Breakdown of a payment network

In this area, we think that payment service providers should have an obligation to achieve a result and that consumers should not have to bear the consequences of a breakdown of services that have been provided for them and over which they have no control. Thus, in the case of the breakdown of an online banking service, we think that it is the responsibility of the payment service provider to bear any consequences of the user being unable to use the service that it had promised to provide.