



European Commission
Directorate General Internal Market
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February 10, 2004

Re: Consultation by the European Commission on the Communication concerning a new legal framework for payments in the internal market

Dear Sirs,

The call by the Commission in 2002 for suggestions to feed the discussions on a possible legal framework for the single payment area in the internal market was very much welcomed by the Euro Banking Association (the "EBA"), and suggestions were communicated to the Commission on the consultation launched in 2002.

When dealing with matters relating to payment systems and arrangements, the EBA acts for certain matters in co-operation with EBA Clearing, a company incorporated as a *société par actions simplifiée* in France, which is entrusted with the operation and management of payment systems and arrangements. EBA Clearing currently operates and manages the pan-european payment systems EURO1, STEP1 and STEP2. EURO1 and STEP1 are pan-european payment systems for same day single payments. STEP2 is a truly pan-european ACH-type payment system which was launched in 2001 and which was developed throughout 2002. STEP2 started operations on 28 April 2003 and is designed to cater for the processing of retail payments denominated in euro sent by and/or to any bank located in the EU at very low transaction costs.

In connection with the text of the Consultation, the EBA wishes to stress a number of points on issues which were equally covered by the first consultation by the Commission in 2002. Secondly, the EBA wishes to convey a number of key messages on the subject matters of those Annexes to the Consultation which are of crucial importance from the viewpoint of an operator of truly pan-european payment infrastructures, and these concern Annexes 1, 20 and 21.

Please kindly note that the observations below reflect the position of EBA and EBA Clearing on those matters only which are of particular interest to the handling of interbank payments and the operation and participation in payment infrastructures. Observations representing the position of the individual members of the EBA and/or participants in one of the systems

operated by EBA Clearing on the broad range of issues covered by the Consultation fall outside of the scope of the present response.

In connection with the text of the Consultation, the EBA wishes to reiterate the following key principles which should be respected when elaborating a proposal for a new legal framework for payments in the internal market:

- 1) In order to achieve a single euro payment area ("SEPA"), the new legal framework for payments in the internal market should focus on the definition of the characteristics and effects of commonly used payment instruments throughout the single currency zone. A common EU-wide set of rules should be created to the effect that a retail payment or payment instrument travelling from one Member State to another Member State remains the "same payment or payment instrument", in particular as regards its effects for the debtor and the creditor of the payment.
- 2) The most stringent need today is for a common definition and uniform scheme for direct debits, and priority for a legal framework for a direct debit scheme would be very much welcomed.
- 3) No additional EU legislation or regulation is needed in the field of interbank and wholesale payments nor in the field of interbank payment systems. These can continue to be organised on the basis of self-regulation under the oversight from the relevant regulatory bodies.
- 4) The new legal framework for payments in the SEPA should only cover those areas where legislation is required to remove differences in national legislations that constitute a hindrance to the possibility to handle the same type of instrument in a uniform manner (e.g. direct debits). It is thereby very important that any legislative initiative should be limited to setting minimum standards, thereby leaving sufficient room for competition among the relevant market players, and for the development of new solutions for current and new needs. Otherwise, common rules for the handling of payments and payment instruments in the SEPA should primarily be the result of self-regulation by the market.
- 5) The Commission's position on the applicability of EU competition rules to agreements or other co-operation arrangements among participants in payment infrastructures has been noted. However, the EBA wishes to reiterate that it is of crucial importance that the policy as will be adopted from a competition law point of view should allow for agreements among all or part of the relevant market players on similar conditions in regard to the use of pan-european infrastructures for the handling of payments. It is essential that, from a policy point of view, these infrastructures are approached as utilities which are to minimise costs and maximise efficiency.

In connection with the subject matter of Annexes 1, 20 and 21, the EBA wishes to stress the following principles which should guide the policy for setting the boundaries of the new legal framework for payments:

- 1) The provision of fund transfer services should be reserved to entities which are operating in an appropriately controlled framework, and each entity providing fund transfer services must be subject to a common set of supervisory rules.
- 2) The proposal for a new legal framework should take into account the existence of pan-european initiatives with no clear domestic base.
- 3) Payment infrastructures should continue to operate under the oversight of the European Central Bank and the other relevant regulatory authorities. Specific legislation on licensing requirements should not interfere with the well elaborated oversight regime for payment systems and arrangements. Oversight is essential but sufficient to achieve and ensure the well functioning of payment infrastructures in the EU.
- 4) Save for clear rules on fraud prevention and sanctions against fraud, safety and efficiency of payment processing should not be legislated. As regards the security of payment networks, oversight by the relevant regulatory bodies is essential but sufficient to achieve the required degree of operational and technical reliability and security within a controlled environment, allowing at the same time for further technological and other developments. In this context, reference is made in particular to the regulatory framework applying to payment systems, including the Core Principles for Systemically Important Payment Systems which are now adopted to apply to retail payment systems and arrangements in the context of the new oversight regime covering the retail payment sector.
- 5) Legal responsibility in the case of breakdowns or disruptions of a payment network should be and remain a matter of the (contractually) agreed rules governing the relevant interbank payment network. There is no need for a legislative initiative in this field. In the case that the execution of a payment is delayed or hindered as a result of a disruption of the payment network used for making the payment, it will be the responsibility of each individual payment service provider to take appropriate measures for the execution of the instructions of the customer and for debiting or crediting the customer's account with the appropriate value. It is very important that a clear distinction is made and maintained between (i) the payment network and the rights and obligations of the provider of the network and the financial institutions using the network on the one hand, and (ii) the relationship between an individual payment service provider and its customers on the other hand.

We are at your disposal to discuss the above principles in more detail at your convenience, and remain, in the meantime,

Sincerely Yours,

Euro Banking Association
By: Gilbert Lichter