

EURO COOP Comments to the European Commission Communication concerning a New Legal Framework for Payments in the Internal Market¹

In removing barriers to the free movement of good and services, the Internal Market can improve choice, price transparency and quality for consumers.

As stated by the Commission in the above Communication, this free movement of goods and services can only function properly if consumers have access to cheap, efficient and secure payment services.

A high, common level of consumer protection is critical to encouraging consumers to shop across the Internal Market and stimulating competition between providers of goods and services. The reality is however otherwise: cross-border business-to-consumer sales have stagnated in the EU since 1991 simply because consumers are not confident enough to take advantage of the Internal Market by shopping cross-border².

EURO COOP therefore welcomes both the Communication itself and the opportunity it provides to all stakeholders to contribute to the discussion of how to modernise and simplify the regulatory framework applying to retail payment services in a way that will enhance competition and so lead to cheaper, more efficient and more secure payment services across the Internal Market while also providing a high, common level of consumer protection.

General Observations

Payment Services and Internal Market

EURO COOP acknowledges that the Regulation³ on cross-border payments in euro in particular has contributed to reducing the price of many – albeit not all⁴ – cross-border payments within the Internal Market. However, EURO COOP is concerned by reports that some banks are not complying correctly with the Regulation. EURO COOP therefore takes this opportunity to remind the Commission of its obligations to submit a report on the application of the Regulation no later than 1 July 2004

The earlier 1997 Directive on cross-border credit transfers also helped reduce the time taken for cross-border credit transfers and improve redress. However, much more needs to be done if the remaining “border effects” are to be completely removed so that consumers can benefit fully from the Internal Market.

Guiding Principles for a Future Proposal for a New Legal Framework for Payments in the Internal Market

EURO COOP agrees in general with the Guiding Principles as set-out in the Communication.

In particular, we support the principle of a **high, common level of consumer protection** on the basis that it is an overriding Treaty objective⁵. The new legal framework should be consistent with the European Consumer Policy Strategy⁶ which sets the achievement of this “high, common level of consumer protection” as a key objective.

While recognising the importance of developing a new Legal Framework that will ensure competition between cheap, efficient and secure payment services and their providers across the Internal Market while also providing a high, common level of consumer protection, EURO COOP believes that the Commission should not lose sight of the fact that the overwhelming majority of non-cash payments

¹ COM (2003) 718 final of 2.12.2003

² Extract from a speech of European Commissioner for Health and Consumer Protection David Byrne of June 2003.

³ OJ L 344 of 28.12.2001.

⁴ The Regulation applies only to payments in euro and Swedish Kroner within the Internal Market.

⁵ Article 153 of the Treaty.

⁶ COM (2002) 208 final of 7.5.2002.

remain – and are likely to remain – national. The improvement of cross-border payment systems should not therefore carry any negative consequences for existing, efficient national payment systems.

In general, we also support the principle of **binding legislation via a Regulation** so as to provide clarity, legal certainty and a level playing field for payment services providers, while at the same time ensuring that consumer rights are fully protected.

A recent EURO COOP Conference “Maximum Harmonisation : Consumer Detriment or Consumer Benefit?⁷” found that **maximum harmonisation** can in principle benefit consumers by establishing common rules that allow them to benefit fully from the Internal Market. However, this is only true if maximum harmonisation is set at the highest level of consumer protection and empowerment, as Member States that apply higher levels of consumer protection cannot continue to do so.

From another point of view, maximum harmonisation may present problems for consumers if the economic and social conditions concerning payment services continue to change (m-payments, etc.) and if the maximum rules prove insufficient to maintain a high standard of protection. One way of overcoming the problem of the new Legal Framework becoming obsolete would be to include a revision clause.

Moreover, if Maximum harmonisation fails to take into account the specific conditions and use of payment services in each Member State, it may result in loopholes in certain areas and/or payment services.

For these reasons, EURO COOP supports maximum harmonisation as long as it assures the highest standard of consumer protection and empowerment. The Communication is, in the view of EURO COOP, positive, but there are provisions that should be strengthened in order to guarantee a high common level of consumer protection (e.g., those relating to unauthorised transactions).

If this cannot be achieved, EURO COOP would prefer a high, minimum level of harmonisation that would allow Member States to establish individually higher standards of protection.

While welcoming enhanced **efficiency** as an guiding principle, EURO COOP believes that the Communication should not lose sight of the fact that consumer preferences vary both between and within Member States. Efficiency should be reciprocal and also respect the valid expectations of different consumers who, lest we forget, are paying for the payment services they use. For example, older or visually-impaired consumers may not agree that having to withdraw cash at exposed ATMs using payment cards with randomly-generated PIN⁸s represents “efficiency”.

Scope of Payments covered by the New Legal Framework for Payments

EURO COOP agrees that the new legal framework should in principle apply to all domestic retail payment instruments which are important for the Single Payment Area, particularly credit transfers, direct debits, card-based payments and e-payments made both face-to-face and at a distance.

Detailed Observations on the Annexes

Annex 1: Right to provide Payment Service to the Public

EURO COOP agrees with the Commission assessment that modern payment services are increasingly diverse and in turn, being offered by an ever-wider range of providers.

EURO COOP agrees with the four principles proposed by the Commission. In particular, EURO COOP supports the principle that all payment services should be covered by consumer protection rules; these should however be at a “high, common level” rather than merely “appropriate”. Consumers will only be encouraged to choose between competing payment services in different Member States if they can be assured of a high, common level of protection. Moreover, harmonising consumer protection rules would also ensure a level playing field for payment service providers.

Annex 2: Information Requirements

EURO COOP concurs with the Commission that accurate and clear information is a crucial element of consumer protection. EURO COOP has consistently defended the right of european consumers to be able to access the necessary information in order to allow them make informed choices.

⁷“Maximum Harmonisation: Consumer Detriment or Consumer Benefit?”

www.eurocoop.org/publications/en/press/conference03.asp

⁸ Personal Identification Number.

Consumers should have access to the same high, common level of essential information wherever they buy or use payment services across the Internal Market.

Consumers are nowadays increasingly subject to information overload; EURO COOP therefore supports the proposal to determine a list of essential information requirements. In addition to providing transparency and legal certainty to both consumers and providers, such a list should also encourage the provision of the essential information in a clear, concise manner easily understood by consumers. EURO COOP agrees that such an approach should not prevent an individual payment service provider from providing additional information if requested by consumers.

EURO COOP shares the Commission scepticism about self-regulation being the appropriate way forward in order to harmonise information requirements and especially given the wide range and large numbers of players involved in payment services across the Internal Market. EURO COOP therefore agrees with the Commission that binding rules at EU-level via a directly applicable instrument such as a Regulation would be more suitable to realising a Single Payment Area while also guaranteeing the same level of essential consumer information across the many Member States.

Annex 3: Non-Resident Accounts

EURO COOP does not see any reason for discrimination between account holders on the basis of their residence; indeed, such a discrimination would seem to contradict the stated objective of the Communication and New Legal Framework of completely removing remaining "border effects" so that consumers can benefit fully from the Internal Market. However, differences between resident and non-resident accounts continue to exist, particularly with regard to the opening, running and making of payments.

For example, some providers of bank accounts still restrict access to their services to "resident" consumers.

Those providers which do offer services to "non-residents", sometimes refuse to offer them the same range of services available to "residents", such as internet-banking (although internet-banking is probably the service best-adapted to non-residents).

Some providers of payment cards, while not explicitly restricting access to their card products to "residents", nonetheless only offer cards to those consumers who can set-up direct debits on bank accounts located in the Member State of the payment card provider. If a consumer resident in another Member State cannot open and operate a bank account in the Member State of the provider (see earlier example above), then s/he effectively cannot take advantage of perhaps more competitive terms and conditions offered by that payment card provider.

Annex 4: Value Dates

EURO COOP agrees that value dates represent a complex pricing tool and lack transparency for consumers.

In order therefore to ensure maximum transparency for consumers, EURO COOP supports the proposal to regulate at the European level transparency in the use of value dates for payments. Given the differences between Member States and payment instruments, the use of value dates should be backed-up by a system of self-regulation – including sanctions - under the auspices of the Commission, who should carry-out regular monitoring exercises. If the results of such regular monitoring warrant them, more binding measures should be considered.

Annex 5: Portability of Bank Account Numbers

EURO COOP agrees that the current BIC⁹ and IBAN¹⁰ numbering system is complicated and needs to be simplified. An average IBAN and BIC can together contain a seemingly random mixture of more than 30 numbers and letters. Not only are they therefore not user-friendly, but they are also difficult to remember, with the result that consumers are obliged to keep note of them, thereby potentially compromising their security. Moreover, all it takes is for the consumer to misplace one BIC or IBAN character and his/her cross-border credit transfer is no longer covered by the terms of the Regulation¹¹

⁹ Bank Identifier Code.

¹⁰ International Bank Account Number.

¹¹ OJ L 344 of 28.12.2001.

on cross-border payments in euro, i.e., it cannot be "straight-through-processed" and is as a result processed "manually" at a much higher cost¹².

Annex 6: Customer Mobility

EURO COOP finds there is no reason why consumers should not be able to compare, and if they so wish, to choose between different payment services and providers as easily as for other services (e.g., telecoms). The reality however is otherwise: consumers are generally not mobile because of the paperwork and costs involved. This lack of mobility also acts as a barrier to providers of cheaper, more efficient payment services.

EURO COOP agrees that in addition to the paperwork often involved in opening a new account (official ID, letter from employer, proof of address, residency papers, etc.) one of the major blocks to customer mobility is the information which needs to be given to debtors and creditors when changing accounts.

Account number portability would be one way of reducing, if not entirely eliminating the need for consumers to contact all their debtors and creditors. However, if account number portability is deemed to be neither "useful" nor "practical", then as a minimum, service providers should accept responsibility for transmitting such information; merely passing the work and responsibility back to the consumer should not be acceptable. Indeed, EURO COOP does not agree that such important matters as transfer and continued correct processing of salaries, social welfare and other receipts, and payment of electricity, gas, water and other such bills should be left to self-regulation. Rather, there should be binding rules obliging service providers to ensure that the transfer of receipts and payments takes place in an orderly, timely and cost-efficient manner.

EURO COOP finds that excessive "account closing fees" represent an additional hurdle to customer mobility and seem designed to penalise consumers for exercising their Internal Market rights to compare and choose between competing providers. EURO COOP agrees with the Commission assessment that account closing is a normal event in the lifecycle of an account (change of residence, death, etc.) EURO COOP therefore fully supports the Commission proposal that as a minimum, providers should ensure full *ex ante* transparency on all account fees to consumers. Indeed, EURO COOP would suggest that closing fees be disallowed, and that instead, any "administrative" costs related to the lifecycle of the account be clearly indicated and chargeable at the opening of the account. Such a move may also encourage providers to seek out new customers to open accounts, thereby increasing competition and improving consumer choice.

Annex 7: Evaluation of Security of Payment Instruments and Components

Public confidence in the security of payment services is essential. EURO COOP agrees that currently it is difficult for consumers to know to what extent one payment service is more secure than another. As a result, consumers are unable to fully compare the security of competing payment services.

EURO COOP does not agree that this is acceptable: service providers do have statistics at their disposal indicating the relative security of different payment instruments (card theft figures, etc.). These should be made publicly available in order to assist consumers and other stakeholders decide for themselves on the appropriateness – in security terms – of one payment method over another.

Any "mutual recognition of security evaluations of payment instruments and components in the Internal Markets" should be preceded by the establishment of essential requirements that all providers must meet. These requirements should *inter alia* provide for a high, common level of protection for consumers so as to ensure consumer confidence in the security of the different payment services concerned.

Annex 9: Alternative Dispute Resolution (ADR)

The settlement of disputes between consumers and providers of goods and services is an important issue for consumer co-operatives. The cost, complexity and time that traditional judicial procedures usually imply are a major obstacle to the exercise of consumer rights, with the costs arising from formal dispute settlement processes often outweighing the value of the transaction. This is particularly so in the case of payments, with the average non-cash payment in the EU apparently amounting to little more than €1.00¹³ in 2001.

EURO COOP therefore strongly supports the further development of Alternative Dispute Resolution (ADR) schemes. However, differences in cultural and judicial traditions between Member States have resulted

¹²A European Commission survey in 2001 found that a €100 cross-border credit transfer cost on average €24.

¹³Based on figures in the Communication FAQ for average non-cash payments per EU citizen and their total value.

in an uneven introduction and acceptance of out-of-court settlement procedures across Europe. There is in particular a gap between northern Europe (e.g., Denmark and Finland) where results are positive, and southern Europe (e.g., Spain and Portugal) where there has been greater resistances to ADR.

EURO COOP therefore supports the 1998 Commission Recommendation¹⁴ regarding the common principles that should be respected by ADR mechanisms: independence, efficiency and respect for the Law. EURO COOP also supports the subsequent 2002 Commission Green Paper on ADR in civil and commercial law¹⁵. EURO COOP regrets however, that although almost two years have passed since the publication of the Green Paper, the Commission has yet to deliver any follow-up. This is all the more disappointing given that there is much to be done to "mainstream" ADR across Europe.

EURO COOP favours a binding, Community-wide approach to ADR, including clear rules for ADR procedures, their functioning and independence. A Community-wide approach should also include ways to encourage more widespread awareness and use of ADR. Moreover, it is fundamental that ADR be voluntary and should not replace or exclude the right of consumers or suppliers of goods and services to have recourse to the "traditional" judicial system.

EURO COOP therefore welcomes the concept of extending ADR to all categories of payments, both national and cross-border. The ADR elements of the new Legal Framework should be consistent with the follow-up to the earlier Commission Green Paper on ADR.

Annex 10: Revocability of a Payment Order

EURO COOP agrees with the Commission assessment that diverging national rules determining the revocability of payment orders within the EU represent an obstacle to a well-functioning Internal Market. EURO COOP therefore favours harmonised revocability rules in order to provide more transparency. However, we believe that the finality of payment should intervene at as late a stage as possible in order to instil maximum confidence among consumers, i.e., "until the amount to transfer has been credited to the beneficiary's account" in the case of credit transfers for example. If it is legally and technically feasible to do so in some Member States, then the rules should be harmonised so that it is feasible in all.

We believe that on the grounds of consistency, the same principle should also apply to card payments. Indeed, we find the Communication proposed rules on revocability of card payments overly-restrictive and in effect, anti-consumer. There is no reason why in some Member States a credit transfer (for example) may be revoked until the beneficiary has been credited, but not a credit or other payment card. The reality is that the service provider is unlikely to credit the beneficiary immediately (and usually not for at least a few days); consumers should therefore be allowed to revoke the card – and other such payments – until the beneficiary has been credited.

On the other hand, we fully endorse the Commission proposal to provide a specific right to revoke a payment order if the amount was not determined by the originator when the order was given (e.g., car rental guarantees). Such orders imply the highest levels of consumer trust in the supplier of the good or service (s/he is in effect giving away a "blank cheque"); in return, consumers warrant the highest levels of protection.

Annex 11: Role of the Service Provider in case of Consumer-Merchant Dispute in Distance Commerce

«Despite large divergences in retail prices of consumer goods between Member States, cross-border business-to-consumer sales have stagnated in the EU since 1991. Consumers are unwilling to take advantage of the potential benefits of the Internal Market as long as they are not confident enough to shop cross-border.» So said European Commissioner for Health and Consumer Protection David Byrne in June 2003.

Clearly, one way of improving consumer confidence in distance commerce would be to provide for "chargebacks" (refunds). While EURO COOP recognises the distinction between the purchase contract on the one hand, and the execution of the payment on the other, the reality is that the success of distance selling is heavily dependent on the use of payment instruments (especially credit cards) with the payment service provider playing a crucial role in the fulfilment of the contract. Indeed, evidence from the United States, where card companies advertise "zero liability limits" for both credit and debit cards, points to high levels of consumer protection being a factor for the growth in e-commerce there.

¹⁴ 98/257/EC

¹⁵ COM(2002) 196 final of 19 April 2002.

EURO COOP therefore believes that the responsibility of the provider should be strengthened in cases of dispute between the consumer and retailer in order to improve consumer confidence when dealing with merchants they have never met, that may be operating at the other end of Europe, via another language and/or in a different time zone. We therefore support the concept of joint liability between the payment service provider and the merchant in case of non-delivery or non-conformity of the good or service.

It is nowadays far more likely for consumers to carry-out transactions in other Member States "virtually" than in person or using other forms of distance selling. EURO COOP therefore believes that the recent rapid rise of e-commerce as a means of cross-border trading across the Internal Market (and beyond) merits specific mention in the new Legal Framework as many of the "traditional" difficulties encountered by consumers in cross-border transactions can be exacerbated when transacting electronically. This was borne out by the recent European Consumer Centre survey of cross-border e-commerce which found that on average, 34% of all cross-border e-commerce orders are not delivered. Of even more concern to consumers was the finding that 8% of ordered products are not delivered even if they are pre-paid. Payment is often instantly withdrawn from consumers' credit cards when orders are placed which of course causes problems when paid goods are not delivered.

As part of the survey, some goods were returned, but only 37% resulted in a reimbursement including the delivery fee, although, according to the 1997 Distance Selling Directive¹⁶, the consumer has the right to withdraw from a distance contract without reason within a specified number of days without justification. Nevertheless, 24% of the surveyed webtraders who received returned goods requested justification.¹⁷

EURO COOP therefore supports specific revocability rules for payments made in e-commerce – and in particular providing that remote payments in the context of e-commerce are revocable until the merchant provides evidence to the payment service provider that s/he has delivered.

Annex 12: Non- or Defective Execution

EURO COOP agrees with the Commission that harmonised rules covering the obligations and liabilities of the concerned parties in the case of non- or defective execution would facilitate the establishment of a level playing field between providers across the Internal Market. They should also guarantee a high, common level of consumer protection so that consumers can be confident irrespective of where they buy or use payment services.

EURO COOP agrees that a payment service provider should be responsible for the accurate execution of a payment order and have the burden of proof that the transaction was accurately recorded, executed and entered into the accounts.

EURO COOP therefore supports a mandatory strict liability rule for the payment service provider that would save the consumer from having to contact a number of payment service providers in the payment chain in order to establish whose fault it was. EURO COOP would also support one general rule applying to all payment instruments that would guarantee a high, common level of consumer protection.

EURO COOP believes that the new Legal Framework should allow for consequential damage. Consumers suffer damage when payment service providers do not or defectively execute payments. For example, gas, electricity or other utilities may be disconnected if a payment is missed; the payment service provider itself may even levy penalties if payments for its own services are not received (e.g., credit cards, loans, etc.).

Annex 13: Obligations and Liabilities in Unauthorised Transactions

EURO COOP supports the Commission proposal to have one set of general rules that would apply to all non-cash payment services. This would ensure both a level playing field for providers, while also providing what should be a high, common level of consumer protection.

However, EURO COOP does not support the proposed wording of paragraph 2.4, as it ultimately places the burden on the consumer to prove to the provider that s/he did not authorise a payment. Moreover, it would seem to contravene the terms of the "Code of Best Practice of the European Banking Industry on Card-based Payment Systems" which places the burden of proof with the service provider¹⁸.

¹⁶ Directive 97/7/EC of 20 May 1997.

¹⁷ http://www.konsumenteuropa.se/Documents/Engelska/EEC_e-commerce_report.pdf

¹⁸ Article 9 of the Code stipulates « If the cardholder denies that his card, and if applicable, his PIN or other code have been used to make a transaction or alleged that such a transaction has been incorrectly executed, the issuer shall show,

On a related point, EURO COOP would also support the development of a standard, multilingual, pan-european freephone number to facilitate notification of lost or stolen payment instruments. This – and other means of notification – should also allow the consumer to prove that s/he has notified the loss or theft of the instrument.

The holder should have limited liability before notification, and none afterwards. If the instrument has been used fraudulently, without necessarily having being lost or stolen, the holder should not be held liable and the monies involved should be rapidly refunded to the holder.

We also believe that the term “gross negligence” needs to be clarified. Some providers are apparently prepared to consider the storing of the instrument and any related card, pin or code in the same bag or even garment to be “gross negligence” (at least when the bag or garment concerned is lost or stolen and the instrument used for unauthorised transactions).

The provider should also be liable for any consequential damage as a result of the unauthorised transaction, provided the holder has acted in accordance with the terms and conditions of the contract governing use of the payment instrument concerned (e.g., if the holder is prevented from paying gas, electricity or other utilities as a result of shortage of account funds due to the unauthorised transaction).

Annex 14: The use of “OUR”, “BEN”, “SHARE”

EURO COOP agrees with the Commission proposal that the “full amount” principle be established in the New Legal Framework for all payments so that the full amount transferred by the originator is credited to the beneficiary’s account. EURO COOP also agrees that this principle be extended to all payments. Such a move should result in greater clarity and certainty for consumers of the costs involved in effecting cross-border credit transfers, be they in euro or national currencies.

EURO COOP also believes that the application of the Regulation¹⁹ on cross-border payments in euro to cross-border payments between €12,500 and €50,000 should be brought forward. With the completion of the Internal Market, consumers are increasingly purchasing items in other Member States that exceed the current threshold of €12,500 (e.g., cars).

Annex 15: Execution Times for Credit Transfers

EURO COOP would welcome a Commission proposal to shorten the default maximum execution time for cross-border credit transfers from the current six working days to a maximum of three working days in order to reflect the reality that average execution times are now less than three days.

EURO COOP also agrees with the Commission assertion that there should not be major differences between “cross-border” and “national” payments, especially given that the vast majority of non-cash payments are nowadays processed electronically. EURO COOP would also support binding legal provisions applicable to all credit transfers in the Internal Market rather than self-regulation. This would be important to guarantee legal certainty to all parties involved; it would also reflect the reality that self-regulation has not always been entirely successful in this area in the past.

Annex 16: Cross-border Direct Debiting

EURO COOP notes that direct debits, although widely-used in several Member States to pay regularly recurring bills (utilities, loans, etc.), are nearly non-existent on a cross-border basis. This may be caused by legal differences between existing national schemes and lack of interoperability; EURO COOP believes that lack of demand may also be a causative factor.

This is however likely to change: for example, the new Electricity Directive²⁰ will allow consumers to choose their electricity suppliers from 1 July 2007, with the result that consumers in one Member State may opt to purchase electricity from producers in other Member States. Consumers will therefore need to be able to set-up cross-border direct debits to pay their new suppliers.

For consumers, it would be very important that these cross-border direct debits be easy to set-up, provide full *ex ante* transparency, and be covered by the terms of the Regulation on cross-border payments in euro, i.e., such cross-border direct debits should cost the same as national ones; otherwise,

by providing an abstract of it’s own internal records, that the operation was accurately recorded and entered into accounts, and was not effected by a technical breakdown or other deficiency.»

¹⁹ OJ L 344 of 28.12.2001.

²⁰ 2003/54/EC

consumers will be unlikely to take advantage of the liberalised electricity market (and other liberalised markets requiring cross-border direct debits).

Revocability of unjustified or unauthorised direct debits in a cross-border context would be a contributing factor to consumer confidence in newly liberalised markets: it must be remembered that consumers may be dealing with providers they have never encountered before, that may be operating at the other end of Europe, via another language and/or in a different time zone.

Annex 21: Payment Network Breakdown

Payment service providers sign contracts with users to provide them with payment services; indeed, providers charge users for the provision of such services.

EURO COOP therefore believes that payment service providers should be liable to users that could not issue or receive valid payments because of system breakdown, particularly if damage is suffered as a result (e.g., penalties for delayed payment, lost sales, etc.).

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