

Translation of letter

To: Commission, Internal Market DG

From: the Cabinet Office, Stockholm

Dated: 13 February 2004

Observations on the Communication concerning a new legal framework for payments in the internal market (COM (2003) 718 final)

Summary appraisal

The Cabinet Office perceives a number of advantages in the Commission's initiative for a new legal framework for payments in the internal market. The guiding principles and proposals provide a basis for a continuous constructive and fruitful dialogue with a view to establishing a payment area within which reasonable, efficient and secure payment services are provided.

In this consultation procedure, the Cabinet Office will focus on certain important issues that are indicated in the various annexes.

Annex 2: Information requirements

The current rules on information requirements relating to payment services are difficult to apply, for example, because they originate in different EU provisions and to some extent overlap. It is therefore most important that they should be reviewed and given a uniform content.

The Cabinet Office supports the Commission's approach, i.e. harmonised and binding legislation containing basic (necessary and sufficient) information requirements irrespective of where in the internal market payment services are bought or used. The watchword should therefore be quality rather than quantity.

However, it is important, regarding the provisions on information, to take account of the outcome of the work carried out on Directive 2002/65/EC concerning the distance marketing of consumer financial services, Directive 97/7/EC on the protection of consumers in respect of distance contracts and Directive 2000/31/EC on certain legal aspects of information society services. Those directives contain comprehensive and detailed information requirements that businesses must observe in relations with consumers in distance sales of financial services, which include payment services. The provisions currently proposed should therefore be in line with those directives.

Annex 7: The evaluation of the security of payment instruments and components

The Cabinet Office's view is that the EU's possibilities of ensuring that the sector, in conjunction with the supervisory authorities, proceeds by self-regulation and jointly fixes requirements for payment instruments and components should be examined. ISO 15408 forms an appropriate basis for certification. It should be possible for certification to be

carried out by certification bodies that are accredited under European certification arrangements. Some form of outline policy set out by the EU, perhaps as a recommendation, should be sufficient to bring this cooperation into being. The Commission should monitor development in this area and draw up a report.

Annex 10: Revocability of a payment order

According to the Commission, the main issue is the divergent rules in the Member States determining the relevant time when a payment can be revoked. It proposes that the rules should be harmonised and produces for this a number of alternative proposals regarding the times that must be considered decisive (from debiting of the debtor's account up to the time when the payment is credited to the recipient).

The Cabinet Office is not opposed to harmonising the times for revocation of payments. However, a payment is often one of a large number of payments (mass payments) made between two banks. The transfer may be bilateral but can also be made through a payment system. Approval of payment systems is governed by special rules within the EU in the form of the Settlement Finality Directive (Directive 98/26/EC). In the Cabinet Office's view, the rules on revocation of payments in the present context must be fully in line with the rules governing payment systems in the directive. However, the issue requires further study in order to assess the effects of this.

Annex 11: The role of the payment service provider in the case of a customer/merchant-dispute in distance commerce

The Cabinet Office can see the difficulty with the proposed solutions in relation to assigning liability between customers, merchants and payment service providers. One problem is whether it is reasonable to render the payment service provider jointly and severally liable with the seller if the goods are not delivered or fail to meet the contractual requirements. One risk in this context is that the objective of having technically neutral rules for payment cannot be attained if special rules are introduced on the revocation of payments in electronic trade.

The issue requires further study and the consequences of the new rules should be investigated.

Annex 13: Obligations and liabilities of the contractual parties related to unauthorised transactions

As is indicated in the proposal, it is important in the present context to take account of the outcome of work carried out on Directive 2002/65/EC concerning the distance marketing of consumer financial services and Directive 97/7/EC on the protection of consumers in respect of distance contracts. In addition regard should also be had for the on-going work on a new consumer credit directive (COM(2002) 443 final). Those provisions have a bearing on a number of parts of the proposal, for example, the processing of payment instruments, codes, etc. Sweden already has legislation, the Consumer Credit Act (SFS 1992:830), which regulates areas covered in the proposal. The Swedish Act was passed to implement Directive 87/102/EEC concerning consumer credit, which is also relevant in this context.

Annex 15: Execution times for credit transfers

General

Facilities for settling credits and debts form an important component in a well-functioning modern economy. It is therefore important for private individuals and SMEs to be able to make quick payment transfers from one part of the EU and the EEA to another.

The Cabinet Office therefore welcomes the Commission's approach, i.e. introducing binding rules covering all payment transfers in the internal market, whether or not they take place within a Member State or between Member States, and the proposal to reduce the permitted execution time.

What currencies should be covered?

The Cabinet Office's view is that the new rules should extend to credit transfers of currencies other than the euro. Member States that have not introduced the euro also form part of the internal market. From the consumer standpoint, there is no justification for placing consumers in non-euro countries on a worse footing than those in countries in the euro zone.

Cross-border payments in currencies other than euros can be made quickly, an example being credit transfers made by Swedish banks to recipients in the EEA. According to the report by the Swedish supervisory authorities (the Financial Affairs Inspectorate) "From account to account V: a study of payment transfers, ATM withdrawals and purchases by card made in Swedish kronor and euros" (2003:4), such transfers take an average of 1.6 days to execute.

Execution times

Regarding the article on execution time for payment proposed by the Commission, we would point out that it does not regulate the apportionment of the permitted execution time between the originating bank and the receiving bank. That is to say, it does not state that a credit transfer must take 2+1 days or 3+1 days to execute. The article should therefore be clarified in this respect.

In the context of that clarification, the Cabinet Office considers that the Commission's proposal of three banking days should mean the total time for transfer from the originating customer's account to the receiving customer's account, i.e. 2+1 days. As the Commission points out in the annex, a recent study shows average execution times of 2.97 days. In those circumstances, the legislation should encourage institutions to execute transfers more quickly.

Domestic transfers

As indicated above, the Cabinet Office is in fact supporting the introduction of provisions covering all payment transfers within the internal market, whether inside a Member State or between different Member States. However, domestic payment transfers currently take less than three days. In Sweden such transfers are often completed in one day. In those circumstances, the introduction of binding rules allowing three days to execute payments, on the one hand, could mean that we take several steps back regarding payments and, on the other, could give the wrong signals to users of the payment system, whether it influences payments or not. In view of this, rules covering domestic credit transfers should allow individual Member States to introduce more stringent national rules on such transfers if they wish.

Annex 20: Security of the networks

This annex focuses on external breaches and threats. It is at least as important to clarify network-security problems that occur as a result of the system's complexity, errors, accidents, defective procedures, etc. Most deliberate attempts to breach IT systems are initiated by persons within a given organisation itself.

The Commission is discussing the various measures that need to be taken, for example, to prevent unauthorised access to personal data. One of the alternatives put forward was to refrain from introducing new legislation while ensuring that the European Network and Information Security Agency is given a major role in the various matters concerned.

The Cabinet Office feels that the Agency should not be assigned such an important task; it has only an advisory role, its mandate is for five years and it has very restricted resources at its disposal.