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UK RESPONSE TO THE COMMUNICATION FROM THE EUROPEAN COMMISSION CONCERNING A NEW LEGAL FRAMEWORK FOR PAYMENTS IN THE INTERNAL MARKET

Executive Summary

The UK is pleased to submit this paper in response to the important issues raised by the Commission's Communication concerning a New Legal Framework for Payments in the Internal Market.

The development of an efficient EU-wide payments area is of fundamental importance to the growth and development of the European economy, and is an endeavour that demands support from all stakeholders. The UK looks forward to being actively involved in the debate surrounding the realisation of this objective, and hopes to contribute substantially to the development of the New Legal Framework.

The UK is committed to the creation of a coherent framework for payments in the EU. In the UK's view, the key to creating and adapting European payments infrastructure is by achieving an effective balance of market interests.

Legislation should be employed to remove legal barriers only where they are proven to exist and shown to be inappropriate, and to under-pin efforts made by industry to build an efficient cross-border payments infrastructure. Over-



regulation would be to the detriment of increased competition between payment service providers, consumer choice, technical development and market access.

This response has been drafted with five key principles in mind –

- improving transparency;
- increasing competition;
- ensuring proportionality;
- promoting technical neutrality; and
- allowing the payments industry to operate in an environment that encourages growth and innovation.

These principles are interdependent – the development of an efficient and dynamic payments market is reliant on creating the right conditions to promote each of them.

Improving transparency is essential when assessing the issues dealt with in the annexes to the Communication – indeed, the UK considers it could be a solution to many of the problems identified in it. Ensuring consumers have access to comprehensive and understandable information will create an informed consumer base, which in turn will improve competition between different payment providers and instruments as the demand for improved services increases.

Reinforcing competition should be a core objective of the New Legal Framework. Creating the conditions in which payment service providers can operate and grow without being hindered by unnecessary regulation and increased compliance costs is vital. The creation of a level playing field in the provision of payment services can only be achieved by minimising regulatory burdens and by allowing industry to develop solutions that meet the needs of consumers. Industry is the key driver in the development of the European Payments Area,

and it is essential that legislation is neutral, targeted and proportionate to the risks. As outlined in a recent paper by the Irish, Dutch, Luxembourg and UK Presidencies of the EU, due consideration should be given to the use of alternatives to regulation, such as the pro-active use of competition policy, wherever possible, in the area of the Single Market.¹ This issue was also recognised in a paper by the French, German and UK Governments:

“Inappropriate, uncertain or excessively burdensome regulation can act to deter enterprise and to inhibit the development and growth of new business ideas.”²

The Communication raises the question of the most appropriate instrument for new legislation. For some of the issues explored in the Communication, the UK believes that improving transparency and allowing consumers and industry in the market to determine detailed standards is the best approach.

In particular, legislation specifying technical issues is liable to create scope for misinterpretation and could have the effect of entrenching old technologies in law. It could also create a situation of moral hazard – relying on inadequate or out of date law. For other issues, the most appropriate instrument for any legislation would be through a directive. For example, the new regulatory regime for payment service providers proposed in Annex 1 would be better delivered through a directive than a regulation. Finally, for some issues, a regulation would be the best approach, for example, the implementation of FATF Special Recommendation VII, explored in Annex 8.

The UK welcomes the Commission’s commitment to provide definitions of the terms employed in the New Legal Framework at the next Payment Systems Government Experts Group later this month. Understanding the scope of any legislation is crucial in reaching a proper understanding of its implications for consumers and the industry, as well as comparing its costs and benefits.

¹ Joint Initiative on Regulatory Reform: An initiative of the Irish, Dutch, Luxembourg and UK Presidencies of the European Union, 26 January 2004.

² Towards An Enterprising Europe: A paper by the French, German and UK Government, 26 January 2004.

The UK hopes the Commission finds this response helpful in taking forward the issues covered in the Communication.

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Annex 1 – Right to provide a payment service to the public

The UK welcomes the Commission's commitment to developing an efficient cross-border payments area. Ensuring that a single market in payment services functions effectively is an important part of this. Allowing providers of payment services to operate across the EU without inappropriate legal and regulatory barriers will improve competition and the choice and level of services available to consumers.

In looking to address any undesirable legal and regulatory barriers it is important that the both the Commission and Member States have a common understanding of the existing framework. In particular it is important that the scope of the E-Money Directive is properly understood.

The Communication states that the E-Money Directive only covers payment systems where “the monetary value issued circulates as a real bearer instrument from holder A to holder B to holder C and so forth.” The Communication also suggests that the Commission considers that virtual account based products such as PayPal and mobile operator accounts are not covered by the directive. However, the UK believes that this does not fit with the interpretation of the directive in most Member States. Nor does this interpretation fit with the work of the GTIAD group, endorsed by the Banking Advisory Committee, to find a common interpretation and application of the E-Money Directive.

The E-Money Directive's definition of e-money is broad and covers all monetary value represented by a claim on the issuers which is pre-paid, stored on an electronic device and accepted as payment by undertakings other than the issuer. Accordingly many Member States and European e-money policy experts consider that e-money includes not only bearer card based schemes but also account-based schemes. For example, most regulated ELMIs in the UK offer

account-based products. In addition, the GTIAD group has given careful consideration to the services offered by mobile network operators and the emerging conclusions from this group are that pre-paid payment services they offer in relation to third party services do constitute e-money.

Only once a common understanding of the E-Money Directive is reached will it be possible to identify which payment services are not already subject to a common approach at EU level, either under the E-Money Directive or other existing directives, in particular those relating to banking. The UK would welcome clarification from the Commission about which payment services it considers not to be covered by those directives.

The Communication itself suggests two kinds of payment categories need to be considered – “money remittance services and "special" purpose payment services, such as pre-paid and post-paid small value accounts used for third party payment services.” However, as noted above, it is clear that the widely accepted interpretation of the E-Money Directive is that it covers pre-paid small value accounts used for third party payment services. On that basis, there is no need for additional regulation for these products. This leaves just money remittance services and post-paid products.

The Communication notes that the Commission considers it important to analyse what would be the right legal framework for these services and that this analysis should be based on the prudential risks involved. The UK considers it important that the payment services in question, and the risks they pose, are analysed in detail.

The UK agrees with the Communication that the requirements of any legislation regulating these services must be proportionate to the risks involved. While appropriate and consistent prudential and consumer protection rules can help to

foster market confidence and provide protection for consumers, over-regulation stifles competition and innovation, leading to inefficient markets that don't serve consumers well. It is also crucially important that any legislation regulating these services is flexible and easily adaptable to reflect changes in the market.

Payments are an area where great innovation is taking place. The systems and services available in the future may be very different from those available now. It is important that any regulatory regime recognises the dynamism of this market and the benefits that innovation brings to consumers.

Looking specifically at the payment service categories noted in the Communication, while money remittance services are subject to FATF Special Recommendation VI, this does not require prudential or consumer protection regulation. Rather it requires that they be licensed or registered and subject to all the FATF Recommendations that apply to banks and non-bank financial institutions.

To comply with the FATF recommendations, the UK has implemented a registration system for money transmitters overseen by HM Customs and Excise. This system fulfils a specific purpose, namely to register and supervise remittance providers as the risk of money laundering comes from non-established players who would perhaps not otherwise apply for a license.

Post-paid products are clearly very different from pre-paid products. By definition the consumer only provides the funds for a payment service once the transaction has been completed. The risks involved in the services the Commission are proposing to regulate therefore appear to be minimal. As noted above, it is therefore very important that these services are analysed in detail before legislation is worked up.

The Communication suggests three possible ways forward – mutual recognition, a third specific category of licensing for payment service providers or an adaptation of the E-Money Directive.

As noted in the UK's response to the Commission's Working Document on payments³, the UK considers that mutual recognition should allow payment service providers to provide services across borders within the EU. The UK does, though, recognise the Commission's concern that applying the mutual recognition principle without establishing harmonised minimum requirements for payment services risks disputes before the European Court of Justice.

If this problem is to be overcome by the establishment of a EU-Passport regime for payment services based on minimum licensing or registration requirements, the UK would prefer a third category of licensing to be introduced rather than the E-Money Directive being adapted.

As noted above, the UK believes that the risks involved in the services the Commission are looking to regulate need careful examination, but appear to be minimal. A third category of licensing would allow for minimum requirements to be set at a level reflecting the low level of risks involved. It is clearly important any licensing regime should not lead to disproportionate regulation, which would raise the barrier to entering the market and hamper its efficiency and the benefits it delivers to consumers.

The UK is against adapting the E-Money Directive to cover the payment services identified by the Communication. Instead the UK considers it more appropriate that the review of the directive in 2005 should consider possible amendments to it. This review will clearly have to be done with the work on the New Legal Framework in mind. The E-Money Directive has only recently been implemented

³ The UK response to the Working Document on the New Legal Framework can be found at: http://www.europa.eu.int/comm/internal_market/payments/framework/archive_en.htm

and the market is still coming to terms with its existence. The UK's Financial Services Authority has so far issued 5 e-money certificates (including two to banks) and 14 small e-money certificates. To change the E-Money Directive radically so soon after implementation will lead to confusion and place unnecessary costs on those firms who are issuing e-money or who are planning to do so.

If further examination of the issues shows legislation is necessary, the legal instrument employed in the creation of any new regulatory regime is important. As outlined in the Executive Summary, the UK believes that – with the exception of the implementation of FATF Special Recommendation VII – regulation of the payment services market is best achieved through the flexibility offered by a directive. Using a directive to regulate a third category of payment service provider also fits with the regulation of the 'first' and 'second' categories of regulation of credit institutions and e-money institutions.

Annex 2 – Information requirements

The UK welcomes the Commission's commitment to increasing consumer awareness in the area of payments. For competition to work effectively in the market for payment services, consumers must have access to clear information about the services available. To this end, the UK agrees with the Commission that the providers of payment services should provide the necessary information to consumers in a timely and comprehensible manner.

However, the UK has two concerns with the Commission's suggested way forward.

Firstly, the UK is concerned about the Commission's proposal that legislation should set out an exhaustive list of essential information requirements. It is important that consumers have the information necessary to make informed choices, but in the UK's view this means good quality and comprehensible information about the important elements of the service rather than information about every aspect of the payment service. Indeed, too much information could make informed decisions as difficult as too little. In addition, specifying an exhaustive list of essential information requirements in legislation would not allow a flexible response to changes in the market for payment services.

The UK therefore believes that information requirements should be based on high-level general principles rather than specific and detailed rules.

The UK's second concern is with the Commission's proposal that binding rules at an EU level should be used to deliver information requirements, perhaps even via a regulation. The UK would prefer any legislation on information requirements to require Member States to ensure that consumers are provided with all the information necessary to make informed choices. Member States could then

implement this in the way best suited to their cultural and legal environment. Some Member States may choose legislation while in others self-regulation may be more appropriate.

Annex 3 – Non-resident accounts

The UK is supportive of the work the Commission is doing in this area and welcomes their commitment to further analysis.

There are no reporting requirements on payments to and from non-resident accounts in the UK.

Annex 4 – Value dates

The UK agrees with the Commission that the cost of a payment should be transparent and allow comparability between services. It is clear that, as the Communication notes, value dates are used as a complex pricing tool. Transparency in the use of value dates is therefore an important part of ensuring consumers are informed about the services available.

However, there is not a strong case for legislation to harmonise value dates. Different payment service providers should be free to compete for consumers by offering different value dates for different payment services. With sufficient transparency, consumers are then free to choose which service best suits their needs. Harmonisation by law would reduce the choice of services available to consumers. It would also reduce the flexibility of providers to offer different services in the future.

The UK therefore supports the first of the two possible ways forward identified by the Commission – regulation of transparency in the use of value dates rather than their harmonisation through law.

The UK is concerned that there is some confusion over the relationship between different dates in the clearing process and the terms used to describe them. The Communication talks of the ‘value date’ being the ‘reference date for the calculation of positive or negative interest’ and that it ‘determines...indirectly, the effective availability of the funds.’

The UK considers that the reference date for the calculation of interest and the date that funds are available for use can be two entirely separate dates. In the UK, the former is referred to as ‘cleared for value’ and the later as ‘cleared for

fate'. Although these dates often coincide in practice, it is entirely possible that a payment can be cleared for value at a different date than it is cleared for fate.

Given the above, the UK considers that it is important that any legislation in this area uses terms that are clearly defined so as to avoid any potential confusion.

The UK also takes the view that any legislation should be technologically neutral. For example, the legislation should not assume that an 'account' exists.

Annex 5 – Portability of bank account numbers

The UK welcomes the Commission's decision not to introduce legal provisions to create portability of bank account numbers.

Annex 6 – Customer Mobility

Ensuring that consumers can change bank accounts with minimum inconvenience and cost is important in delivering effective competition in the market.

The UK welcomes the Commission's focus on this issue and is very supportive of their proposed approach in relation to 'administrative issues' such as sending information regarding a client's standing orders to the new bank. As the Communication sets out, improvements in customer mobility in relation to administrative issues can best be introduced by the industry through self-regulation.

Self-regulation has worked well in the UK, where The Banking Code provides that banks should provide the information necessary to facilitate an account transfer within 3 days.

The UK Banking Code states:

"If you decide to move your current account to another financial institution, we will provide them with information on your standing orders and direct debits within five working days (reducing to three working days from 1 August 2003) of receiving their request to do this. Also, we will close your current account when you ask us to do so.

If you want to transfer your current account to us, we will tell you:

- how the process for transferring your account will work and who is responsible for each step in the process;
- what information your old financial institution will pass to us;
- what features you will be offered with the new account so that you can compare your new account with features on your old account;

- and how long the transfer is likely to take.”

Annex 7 – The Evaluation of the Security of Payment Instruments and Components

The UK is of the view that work on standardised security requirements should be left to market participants. The UK supports the idea that any such requirements should not be included in the new legislation.

It is essential to maintain the principle of neutrality in this field. The UK believes that due to the pace of technical developments in this area, legislation could prevent the market from adapting quickly and offering the most appropriate level of security – thus market participants are far better suited to drive developments in this area.

Annex 8 – Information on the Originator of a Payment (SRVII of FATF)

The UK is committed to implementing all the Special Recommendations made by FATF on combating terrorist financing.

The UK believes that ensuring consistency in the implementation of Special Recommendation VII is essential if FATF is to fulfil its objectives. For this reason, the UK supports implementing SRVII with a regulation. However, the UK does not support the approach to implementation outlined in the Communication, which differs from what was agreed at by the FATF in February 2003.

The UK believes that, as agreed by the FATF, the EU should be treated as multiple jurisdictions, with cross-border payments treated as international transfers.

The objective of SRVII is to make originator information quickly and easily available to investigators, eliminating the need to back-trace it through different jurisdictions. While not applying full information requirements to transfers between Member States would lead to some reduction in costs for payment providers, the lack of immediately available information on the originator of a payment would compromise the ability of authorities to combat terrorist financing. Treating intra-EU payments as domestic, even with relatively high levels of cooperation between Member States, significantly undermines the objective of avoiding back tracing across borders.

Treating the EU as a single jurisdiction would also undermine the FATF agreement and could set a precedent for other countries, who might also choose to apply a minimum information regime to cross-border payments. FATF would therefore likely regard this reclassification of jurisdiction as bad faith and could, along with the IMF, find the EU non-compliant with SRVII.

The UK is also opposed to the Commission's intention to apply the full information regime to batch transfers between the EU and other jurisdictions. The FATF Interpretive Note explicitly states: "Cross-border wire transfers that are contained within batch transfers, except for those sent by money remitters, will be treated as domestic wire transfers". To treat batch transfers otherwise is inconsistent with the FATF agreement.

Batch transfers are low risk payments, and making them carry full originator information lacks proportionality and would put European industry at a competitive disadvantage. It would cause particular problems in the UK, where batch payments are used more frequently than in the rest of the EU, notably in sending benefits to UK pensioners who live abroad. Batch transfers are currently an inexpensive and convenient method of making payments. Imposing a full information requirement on every transfer order in the batch would significantly increase the cost of sending these transfers. Set against this increase in cost, as the FATF agreement recognised, applying full originator information to batch transfers would not significantly aid the prevention of terrorist financing.

The UK believes that a de-minimis threshold needs to be carefully considered. Such a threshold is likely to add to the cost of monitoring compliance with SRVII. In addition, given the relatively small amounts of money needed to launch terrorist attacks, and the risk of "smurfing" – deliberately avoiding controls by making a number of transactions under the threshold instead of one larger transaction – the UK believes that having one system for overseeing transfers is more suitable and effective. The FATF Interpretive Note allowed for continued use of a de-minimis threshold for a one-year period. The threshold is currently reviewed with the expectation that FATF will consider a draft report at its June plenary. The UK believes that the Commission should await the outcome of the FATF review before finalising its proposed legislative approach.

In addition, the UK is concerned about the relationship between a de-minimis threshold and data protection legislation. Making the inclusion of information optional rather than necessary under law could create legal uncertainty for any firms which wish to operate a system which sends full information for every payment, including those which fall below the threshold. This issue needs to be considered carefully.

While the UK supports implementing SRVII through EU legislation, we are concerned about the timing of this legislation. The deadline for implementation of the Special Recommendations by the FATF was February 2005. If the legislation to implement SRVII in the EU is included as part of wider legislation to establish a New Legal Framework for Payments, it is very likely that this deadline will be missed.

Finally, Crown Dependencies (the Channel Isles and the Isle of Man) are not part of the UK, and as such EC Treaties do not on the whole apply to them. However for the purposes of payments, they are in monetary union with the UK - they share the UK currency and payment system. On the basis of the draft article, it would be an offence to transmit money from the UK to the Crown Dependencies without full originator information. However this is at odds with the system of treating payments from the UK to the Crown Dependencies or vice versa, as 'domestic'.

To comply with the proposal, UK banks would be prevented from using the domestic payment system BACS to effect a credit transfer as it does not have the capability to carry full originator information. As such, all transfers to the Crown Dependencies would have to be routed through CHAPS or SWIFT. This would be problematic on several grounds. CHAPS is used for large value, same day transfers, and while it is possible to use SWIFT to send sterling payments it is not common. The cost to the originator of using CHAPS or SWIFT would be

considerably greater. This would be to the detriment of consumers and industry in the UK and the Crown Dependencies.

The objective of FATF SRVII is to allow law enforcement authorities obtain full originator information within three days of a transfer being made. Due to structures of co-operation already in place, UK authorities are in a position to secure originator information from the Crown Dependencies within the three-day time frame. The rationale behind domestic transfers being exempted from carrying full originator details was that national authorities could guarantee the retrieval of this information within their jurisdiction. The UK believes the same principle should apply here.

Therefore the UK believes that for the purposes of the SRVII obligation, the UK and the Crown Dependencies should be treated as a single Member State.

Annex 9 – Alternative Dispute Resolution

The UK believes that alternative dispute resolution can provide consumers with a reliable and consistent mechanism of redress, and as such can be an important instrument in increasing consumer confidence. These mechanisms can also benefit industry by providing an alternative to the courts. In the UK such schemes are administered effectively, and in line with the terms set out in Recommendation 98/257/EC.

The UK is therefore supportive of the proposal made in the Communication that Member States should ensure that adequate and effective out-of-court complaints and redress procedures exist for the settlement of disputes between the provider of payment services and the consumer.

Annex 10 – Revocability

The UK believes that the point at which a payment order made by a consumer ceases to be revocable is an important element of the payment service they are provided. It is therefore clearly important that the relevant point in time should be transparent to consumers. Such transparency allows consumers to compare different payment services and different providers and to make informed choices.

However, the UK is opposed to the harmonisation by law of the point at which a payment order made by a consumer ceases to be revocable in payment systems. The UK believes that different payment providers should be free to offer their customers the dates for revocability that they consider best meet their customer's needs and are most appropriate to the service being provided.

Harmonisation of the date of irrevocability by law would reduce the choice of services available to consumers. Revocability is determined according to the particular characteristics of the payment instrument involved. As the Communication highlights, there are very significant differences between payment instruments and hence on what revocability arrangements might be appropriate.

Currently in the UK there is considerable difference in the timing of revocability for different payment instruments:

- For card payments, the transfer is irrevocable once the originator (purchaser) authorises the transaction by means of signature, PIN input or another authorisation process.
- The opportunity to revoke a payment doesn't exist for E-money schemes as the payment is often immediate

- Rules vary for credit transfers as transactions process at different speeds, some immediate and some taking several days.
- Processing of Internet transactions frequently takes place immediately upon customer initiation.

These differences currently allow consumers maximum choice in selecting the payment means most suitable to their needs. Harmonisation would lead to reduction in the variety of options available through different payment products and in turn, a reduction in consumer choice.

The UK could therefore support legislation aimed at ensure that consumers are properly informed about the date at which payments are irrevocable but does not support the legal harmonisation of the dates themselves.

Annex 11 - The role of the Payment Service Provider in the case of a customer/ merchant dispute in distance commerce

The UK supports the three guiding principles for a balanced approach to this issue set out in the Communication. It is clearly important that any approach to this issue should be understandable to the consumer, neutral and proportionate to the problem.

With these guiding principles in mind, the UK does not believe that it is appropriate either for payment providers to be made jointly liable with the merchant or for specific revocability rules for payments to be introduced in relation to e-commerce.

The UK believes that any benefits of either of these approaches would be considerably outweighed by the costs. The transfer of risk would impose significant cost burdens on the providers of payment services. If payment providers were legally obliged to bear liabilities that relate to the fulfilment of the merchant's contract, they would be likely to restrict the services they supplied to certain merchants and consumers, in order to indemnify themselves from risk.

Far from contributing to the growth of e-commerce, this would create a constraint on its development. The additional costs involved in identifying high-risk merchants, and the question of establishing the burden of proof in determining the delivery and quality of products, make establishing joint liability unfeasible.

If extended to all payment instruments, joint liability could also conceivably have the effect of restricting access to the market. The additional costs of the obligation to bear liability irrespective of its compatibility with the nature of the payment instrument could prevent newcomers from establishing. Thus joint liability could disproportionately impact upon smaller payment providers who

frequently drive the development of new payment services. This is not in the interests of the consumer or the expansion of e-commerce.

Annex 12 – Non-execution or defective execution

The UK agrees with the Commission that the provider of a payment service should be responsible for executing a payment order according to the mandate given by a consumer, and bear the burden of proof that the transaction was accurately executed. We believe this is currently the case in the UK – and that in the event of not carrying out the consumer's orders correctly, the Payment Service Provider would accept liability.

The UK recognises that a common approach to this issue would ensure that consumers receive the right level of protection in all Member States.

The UK considers that the best approach to ensure this is for any legislation at the EU level to set out general high-level principles. The detailed arrangements could then be given effect by each provider of a payment service through the contract established with their consumers.

Although in general the text proposed by the Commission reflects this approach, the definitions of 'Payment Service Provider' and 'Payment Service User' need to be made clear before the full implications of the text can be known.

Although it supports the general approach, the UK is concerned that placing obligations on Payment Service Providers even in the event of the payment order being initiated at devices not under the Payment Service Providers direct or exclusive control places an unfair burden on them. For example, a Payment Service Provider should not be held accountable if, during an Internet banking transaction, a consumer's home computer fails leading to a non-executed transaction. This example demonstrates the possible negative consequences that could flow from this approach – payment service providers might choose not

to offer internet banking or to require special security arrangements at the consumer's cost.

The Commission notes that there may be a need to introduce a provision relating to 'force majeure'. The UK would support such a provision.

Finally, the UK welcomes the Commission's decision not to raise the question of consequential damage. If Payment Service Providers had to accept consequential loss, it could lead to a reduction in competition and increased costs to consumers.

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

The UK supports the New Legal Framework outlining the general principles that should be applicable in situations related to unauthorised transactions and welcomes moves to make the responsibilities of both parties transparent. We believe that any legislation should establish a basic framework for dealing with fraudulent usage of payment instruments, while leaving the prescriptive elements of the obligations and liabilities to the contract between the provider of payment services and the consumer.

In the UK, the terms and conditions related to unauthorised transactions are explicitly outlined in the contract signed by the consumer and payment provider. Relevant provisions are also made in the UK Banking Code. This approach allows providers of payment services the flexibility to include details related to the particular characteristics of their product in the contract.

The UK is concerned that the Commission text is not technologically neutral and is drafted with current payments mechanisms in mind. Careful consideration needs to be given to the impact this could have on the future development of new payment systems.

The UK is also concerned with the draft text suggested in the Communication which limits the liability where a consumer fails to report a loss to €150. There is clearly a possibility that this could distort incentives and might lead to an increase in both first party fraud, and in third party fraud, as consumers are not as concerned about reporting an instrument lost or stolen.

Annex 14 – The use of ‘OUR’, ‘BEN’, ‘SHARE’

The UK supports the principle outlined in the Communication that the beneficiary should receive the sum in full, without prejudice to explicit agreements between the beneficiary and their payment service provider.

It is important that any legislation allows for explicit agreements between beneficiaries and their own payment service providers, which result in the beneficiary receiving less than the sum of the payment in full, as is proposed in the Communication.

The UK therefore supports the proposed approach.

Annex 15 – Execution Times for Credit Transfers

The UK recognises that consumers benefit from being able to make credit transfers that reach their beneficiary in good time. We also recognise that legislation establishing a maximum execution time for credit transfers would help to deliver this benefit to consumers.

We welcome the Commission's recognition that an exception for non-euro cross border credit transfers needs to be considered. The UK considers such an exception to be essential. As the Communication notes, credit transfers across borders which require one currency to be exchanged for another, are in many cases not technically ready to be put on the same level of equivalence with credit transfers executed in euros.

Currently most non-euro cross border payments are made through correspondent banking relationships. In some cases the payment originator's bank and the payment recipient's bank have a direct correspondent relationship. In other cases, the banks concerned will not have a direct relationship. The payment may therefore need to be sent to an appropriate corresponding bank in the Member State of the originator before being sent across the border, and / or sent from a correspondent bank to the recipient's bank when it arrives in the Member State of the recipient.

Given the nature of these payments, a maximum 3-day execution time for non-euro cross border credit transfers is not feasible.

Annex 16 – Direct Debits

As the Communication sets out, the European Payments Council Consumer Requirements Working Group has been tasked with developing a pan-European Direct Debit. The UK welcomes the Commission's commitment to await the conclusion of the EPC's work before giving consideration to introducing legal provisions in this area.

The UK welcomes the Commission's recognition that any future legislative proposals must not affect the efficient functioning of national direct debit schemes.

Annex 17 – Removing Barriers to Professional Cash Circulation

The UK welcomes the Commission's work in this area and the creation of a working group with industry to examine the issue. We look forward to receiving more details of the conclusions of this work.

Annex 18 – Data Protection

The UK share the Commission's view that efficient information exchange is vital in strengthening fraud preventative measures and welcomes efforts to identify inconsistencies in implementing fraud prevention activities across the EU.

The UK welcomes the Commission's proposal to find a means of facilitating a common understanding and application of data protection legislation in its application to this problem. The UK does not believe that the Data Protection Act 1998, which gives effect in the UK to Directive 95/46/EC, is an impediment to the sharing of personal data for fraud prevention purposes. Personal data may be shared either consistently with the data protection principles, which give effect to Article 6 of Directive 95/46/EC, or if an exemption from the restrictions on disclosure which those principles create applies. One of the exemptions in the 1998 Act covers the prevention and detection of crime and the apprehension or prosecution of offenders. The exemption, which is made pursuant to Article 13 of Directive 95/46/EC, is available in both the public and private sectors.

Annex 19 - Digital Signatures

As the issue of digital signatures has implications in many areas other than payments, and the Commission has yet to publish its report concerning the recent consultation on the implementation of the Electronic Signatures Directive, the UK is against using the New Legal Framework to introduce new legislation in this area.

Annex 20 - Security of the Networks

The UK is not convinced of the case for further legislation aimed at regulating networks and/or merchant security systems to ensure their security.

The UK considers that introducing additional provisions into the New Legal Framework complementing those of the existing Data Protection Directive would not significantly enhance the security of payment networks. Central banks who oversee systemically important payment systems already require assurances of high degrees of security and reliability. Also, security of networks is based on ensuring confidentiality, integrity and authenticity – of which the Data Protection Directive supports only the first.

The UK is however, supportive of the second option put forward by the Commission – to refrain from further legislation. The UK believes industry is best placed to develop effective security. Providing a safe and reliable service is fundamental to gaining consumer and merchant confidence. Industry is able to respond to market demands and new developments far quicker than any legislative framework can be changed to take account of such factors.

The UK also supports allowing the European Network and Information Security Agency (ENISA), once established, to play an important role in this area. However we would not agree with any recommendations that would make ENSIA a surrogate information security policing authority with the capability to impose financial penalties. The agency has specific terms of reference as a facilitator and promoter of best practice – it doesn't have a regulatory role.

Annex 21 – Breakdown of a Payment Network

Regular breakdowns and service disruptions of a system would place the providers of that system and its users at a huge competitive disadvantage to other networks that offer more reliable services. Providing safe and reliable networks is therefore at the forefront of industry's considerations, as is developing an appropriate response in the event of a network failure.

The UK believes that legal responsibility in case of a breakdown of a payment network should be a matter of contract law. The providers of payment systems and networks have their own rules, binding on them under their contracts with users of the systems and networks, that establish the service levels and contingency plans in case of breakdown. Defining liability in legislation would be likely to increase burdens and reduce flexibility while doing little to increase the security or reliability of payments networks.

In addition, payment systems in the Eurozone are subject to oversight by the Eurosystem while payment systems in non-Eurozone Member States are overseen by their central banks. On issues of security and operational reliability, central bank overseers of payment systems already require assurances of high degrees of security and operational reliability, at least for systemically important payment systems. Ultimately responsibility for these issues lies with the payment system/provider. The UK believes existing arrangements for oversight in this area are adequate.

The UK also considers a 'force majeure' provision may be necessary as payment networks have so many externalities and as noted in the Communication, are susceptible to system breakdowns in other institutions.

If the Commission has specific concerns about the security of payment networks, the UK would welcome discussion on the issue.