EURO-ASSOCIATIONS
OF CORPORATE TREASURERS

Commission Européenne Direction Générale Marché Intérieur
C107 01 / 04
B-1049 Bruxelles

Paris, 13 February 2004

Dear Sirs,

The EACT [1](*Euro Associations of Corporate Treasurers*) brings together the (9) associations of corporate treasurers from 8 Euroland countries (Germany, Belgium, Spain, France, Ireland, Italy, Luxembourg and The Netherlands) that represent over 3800 members from 2500 companies. Our members are primarily corporate treasurers from the leading industrial, commercial and service companies and also include, as associate members, many banks, advisers, software providers and academics.

The national associations have read with great interest the communication entitled the "New legal framework for payments in the internal market" which was made public in December 2003 and addresses subjects which are particularly relevant for corporate treasurers.
After extensive consultations with its member associations, EACT has prepared a response to your communication.

Our document is divided in two parts:

- General observations focusing in particular on the first part of your document
- Our position on some of the 21 annexes with additional comments and suggestions

Finally, we would have liked to have been involved at a far earlier stage in the consultation on means of payments and payments systems, since these questions are clearly of particular interest for companies. However, the document was made public in December 2003 and interested parties were invited to submit their comments by February 15 2004, which leaves insufficient time to study fully all the proposals and in particular their consequences for companies. That is also the reason why we wish to be a party to the subsequent reflections, work and writing on these topics.

Please do not hesitate to contact us in this regard.

Yours faithfully,

Francois Masquelier
Chairman

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EURO-ASSOCIATIONS
OF CORPORATE TREASURERS

PRESS RELEASE

Euro Associations of Corporate Treasurers (EACT)

After several years of regular informal meetings and discussions on Finance and Treasury topics of common interest, seven Corporate Treasurers Associations from the Euro area – who bring together around 3000 members representing 2400 companies - have decided to formalise their co-operation and create the "Euro Associations of Corporate Treasurers" (EACT).

EACT's purpose is:
- to develop and strengthen relations with European authorities and institutions
- to share experiences, express common points of views, undertake joint actions on financial and treasury matters as well as relationships with financial partners
- to carry out and publish common surveys and working papers

All the associations of corporate treasurers and financiers from the Euro area sharing this purpose - some of which already attend our working meetings - are welcomed to join the EACT.

Topics already addressed by EACT include: European Securities Regulations, international accounting standards on financial instruments, cross-border payments, harmonisation of business rules of conduct, Basle regulations on banking supervision,...

The Board of Directors is as follows:
François Masquelier, EACT Chairman and representative from ATEL (Luxemburg)
Jochen Stich, EACT Deputy Chairman and representative from VDT (Germany)
Jimmy Doyle, EACT Treasurer and representative from IACT (Ireland)
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For further details, please contact the EACT delegate, Pierre Poncet at the above mentioned addresses or any member of the Board of Directors

First Part

General observations

Overall we agree with your description of the current situation and the principles which have guided you in drafting the consultation document.

We are undeniably still a long way from the SEPA, in particular because of the legal and regulatory differences existing between European Union countries for the same means of payment. Moreover, banking chains between two European Union countries are still often badly co-ordinated for retail payments, which increases the time and cost of payments and also facilitates possible frauds.

In our view, in order to achieve the desired objective, it will undoubtedly be quicker to develop standardised European means of payment (formats, legal aspects, security, etc.), adapted to commerce in the European Union (credit transfers, direct debits, card payments) than to try and impose a convergence of regulations on all means of payments, which would take longer since it would have to overcome notably the problems of deeply entrenched practices which vary from one country to the next. Even if it is difficult to anticipate innovations in the area of means of payment, it seems to us important to encourage and/or prohibit certain means of payment, in particular those which are more vulnerable to fraud. In this regard, we welcome the fact that you exclude cheques from your scope of analysis, on the grounds that the use of this means of payment should decline very strongly in time. EACT and the national associations have been advocating this to the different parties involved in their countries and recommend limiting the use of cheques, in particular for foreign payments which are the subject of numerous frauds. In this context it is necessary, above all for private individuals, to develop card payments or credit transfers and to make card payments more secure. For companies, efforts should be stepped-up to promote the use of BIC and IBAN. On the other hand, we regret that you exclude from your analysis means of payment by dematerialised bills of exchange, which facilitate access for the beneficiary to bank credit; this means of payment is in widespread use in certain countries and is unlikely, in our view, to disappear in the near future. In these conditions, it would in our view be prejudicial for groups which are considering centralising their payment procedures, not to envisage the development of a means of payment such as dematerialised credit transfers with a forward maturity date.

The security of means of payment and payment systems is a crucial factor for the development of STP (Straight Through Processing) means of payment and the reduction in paper means of payment. In this regard, it seems to us necessary to devise rapidly a system which, at European Union level, would co-ordinate the different national systems to combat fraud and would centralise information (for example, a common file of fraudsters, electronic procedures for lodging complaints); it would also be necessary to harmonise the legal system relative to these types of fraud. To limit international fraud, an effective strategy would be to prohibit payments between countries (in particular sending cheques by post); it would be necessary in this regard to ensure that alternative means of payment are available and to promote their use, in particular by ensuring that they are attractively priced. Finally, we propose that, for any card payments outside the cardholder's country, the agreement of the holder's bank should be sought systematically at the time of payment.

Finally, in our view, it is essential to leave as much room as possible for the contractual relations between PSU and PSP; the legal framework must be general (principles, minimum security levels and obligations of the parties). In particular the possibilities of

resolving disputes outside the legal framework, through the use of codes of good practice, including the use of "Arbitration Boards", should be encouraged.

Your document does not tackle the "pricing" of payment services, which does not surprise us as it is a real part of contractual relations between the PSU and the PSP; we simply wish to highlight that the development of dematerialised payment systems, a token of increased efficiency, should be linked with a relative decrease of the global cost of payment services.

Second Part

Answers and Comments on the Annexes

ANNEX 1 RIGHT TO PROVIDE PAYMENT SERVICES TO THE PUBLIC

The E-Money Directive, in his present formulation, has limited applicability and does not cover a number of payment services.

Solution 2, "Issuing a new Directive" for payment types not covered by the other two and creating a third category of licensing would generate confusion and incongruities.
It is much better to rethink the E-Money Directive and enlarge its scope **to include all non-traditional "bank-account based" payment services.**
Payment-services-only (e-money schemes or traditional money remittance services) would be included in the same Directive.

Solution 1," Establishing Mutual Recognition " without establishing harmonised minimum requirements for payment services would be very dangerous adding to the confusion and leading to
many legal disputes .
The preferred solution then, in our view, is **to adapt The E- Money Directive to market changes**
(SOLUTION 3)

Suggestions for the Directive

The Directive should make the relevant distinctions between different categories of payment schemes, according to the "proportionality of risk" principle.
For instance, we could differentiate between payment schemes that provide "one-by-one payments only" against cash/coins/bank debit, those that collect " deposits" (like prepaid cards or any scheme where the user is Investing upfront legal tender money), " store value" (like credits points earned through purchases redeemable in goods) lend "credit" (like credit cards or phone bill debiting) .
A "sub-class" may refer to schemes that could be said to create "new money", a situation where value is not represented by the legal tender paid up or transferred into the Purchasing/Payment system but by "tokens" or "credits" , created by the "scheme manager" and earned from purchases or other types of interchange .
In so far as these systems contain "stored value" and affect transfer of monetary values they should be regulated to protect SP users both re. The safety of the individual payment and the safety of the stored value.
The monetary amounts involved in the schemes should be considered. Limits could be imposed on certain schemes …

PSPs could be banks and non-banks , subject to the same regulation

Requirements for PSPs should be different based on the categories of payment defined

Regulation should

- Define the different categories of payment services that would require different regulation
- Set some general requirements characteristics of the organisation running the scheme
- Require Registration/licensing of the organisations offering/managing these schemes
- Define a model contract scheme for the PSP which clearly describes the service the security features ,responsibilities of the participants and conditions (as it is done with prospectus for investment…)
- Require that the actual service contracts and prospectus be approved by a national Authority before the service can be offered
- Allocate to this Authority (NCB?) powers of e task of surveillance and punishment

Given the nature and risk of these payment services, PSPs need not have all the requisites of Banks or a banking license but whoever engages in payment areas and/or activities that will put in their hands money values of their clients or consumers should be subject to some kind of regulation and surveillance.

Provided regulation governing these type of activities is in place, the nature of providers (banks or non banks) should not be relevant.
By the same token, the **Authority should have jurisdiction over banks and non-banks when they engage in these activities.**
Today, NCBs already have the responsibility to watch over banks and payments …I would extend to them control also over non-banks when they engage in this area.

Timing

In our view, the Commission should not wait until review of the E-Money Directive in 2005 to start working on the new "Payments Institutions Directive".
Given the scope and complexity of the Directive which encompasses all types of payments, the time is needed to draft a comprehensive, coherent and effective Directive which would require extensive consultation.
Having time until 2005, rather than a Directive, if possible, we would suggest considering a Regulation**,** a much more complex document to draw up but immediately effective and leaving no margin for national interpretations.

ANNEX 2 INFORMATION REQUIREMENTS

A 3-month advance notice is desirable for changes that require adaptation of internal systems and procedures (like IBAN, BIC)
Obviously, changes in bank conditions do not fall in this category.
However, we urge that all banks give a reasonable prior notice of these changes and communicate them to corporates in electronic form to permit automatic update of their treasury systems.

An interesting issue. …When talking of information requirements of payments, one focuses only , as it is done here, on information to the payer and never on information to the beneficiary …
The Annex should also cover "Information to be supplied by the beneficiary's bank" to his client to
Allow him to verify execution time and respect of pre-defined value date

Banks' and clearing systems should be able to carry end-to-end **date of order/transaction** and
pre-defined value date
This information is present in some message formats, like CBI in Italy but few banks fill the field, as it has not been made compulsory.
The same dates should be rendered to the payer who could verify any delay in the bank executing his order but cannot see when the transfer arrived and what value date the beneficiary was assigned.

Regarding Batch payments, we would also mention the rules for confirmations/rejects/returns and the information to be provided the payer

ANNEX 3 NON RESIDENT ACCOUNTS

If the distinction between resident and non-resident accounts could not be abolished where a difference is established by a specific EU regulation (like the one on interest and withholding tax), there should be no differentiation in terms of charges, prices, bank services and reporting requirements.
As for Central Bank Reporting for balance of payment purposes, we would recommend to
1) **Eliminate current reporting requirements** (for residents and non-residents) on payments of any amount (today the obligation exists for payment intra-EU in euro over 12.500 Eur) and also.
for extra EU and intra-EU payments in currencies other than the Euro.
Information necessary for Balance of Payment Statistics could be gathered in different ways without requiring bank clients to report on transactions.
Some EU states do not require BP reporting from banking clients and still manage to produce their statistics. Some do it in a statistical way.
This shows that either other ways are possible (e.g. statistical ways) or that current statistics are wrong …

2) Should information on bank transactions still be needed, choose among the different systems used by EU countries the least burdensome for bank and their clients, i.e. one which can better accommodate Straight Through Processing (STP)

ANNEX 4 VALUE DATE

Our position is that there should be an harmonisation of rules for applying value dates to transactions (Option 2) and not just more "transparency" of the differences (Option 1) .

As a general rule , we agree that *the payer's value date* should be the transaction or the interbank clearing date and that bank float should be eliminated in favour of commissions
(fixed per transaction, not "ad valorem").

We also think we should be very clear on the practices , present in some countries ,of **predefining beneficiary value date , predefining own debit date ,** practices that normally entail some **forward** or **back dating** that do not reflect transaction/clearing dates **.**

A different issue is that of banks accepting forward-dated orders to be executed at maturity (as in the case of VCOM LCR and in France ,RIBAs in Italy or RECIBOs in Spain)

In our opinion , there is a considerable confusion on " date definition" , how they apply to different instruments in different situations (a "book transfer" is different from one going through a local clearing or through Target…), and the impact of a decision on banks and corporates internal operations and costs .
Before establishing EU-wide rules on value dates (and other dates…) it is essential that corporates , banks and regulators (the EU Commission in this case …) have a clear understanding of how payment transactions flow from a client order to a debit/credit on the bank accounts of the participants .

Here are dates affecting payments

Value Date is one of the "dates" attached to a transaction :
- Order Date (when order is transmitted to the bank)
- Transaction date (sometime used to indicate order date, sometime execution date)
- Execution date (when the bank starts processing the order..sends transaction to the
    - Inter-bank clearing or to correspondent bank via SWIFT)
- Processing Date (time marked by systems processing transaction)
- Clearing or Compensation date in inter-bank clearing systems
- Book date (when bank of issuers books the client's account …)
- Value Date (date from which interest starts running or ,in the ISO definition ,…date when funds are put at the disposal of the beneficiary) On a specific credit trasfer, it splits in a Debit date (Payer) and a Credit date (Beneficiary) . The

delta between the two is either "bank float"(if banks involved can put the funds to use ..) or " execution time " (no one earns interest …)
- Beneficiary date (value date of credit to beneficiary's account ,as indicated by initiator)

Other type of dates

- Liquidity Date (date from which amount of transaction is available on account …e.g checks clearing date .)
- Advise date (when the beneficiary is informed of credit from his bank …)
- Receipt date of file (the banks acknowledges receipt of file/instruction message)
- Confirmation date (banks confirms acceptance of bank order ..start of execution)
- Time Stamp /Certification Date (time certified by Trusted Third Parties like Certification Authorities, for digital signature and certificates applied to electronic transactions)
- Maturity date (in commercial trade the maturity/contractual date of payment /collection of the instruments used ,e.g. trade receivables/invoices … .
- Limit dates (minimum /maximum maturity dates of payments/collections and latest dates specified by banks for accepting receivables
- CUT- OFF dates (time limit for systems to accept transactions to be processed on that day)

Three important things about value dates …

1) **the payer,** when he initiates the transaction., should know the value date will be debited and the value date applied to his beneficiary

2) **the payee** is advised of value date and other information as soon as the bank has confirmed the payment to the payer (remittance advice or credit advises could be used ,sent by the payer or by the bank ,depending on agreements ..)

3) **both payer and payee should be able to check** the proper execution of the transaction, i.e. that the transaction was executed within standard times Payer (order /confirmation date/ booking/value date of debit

ANNEX 5 PORTABILITY OF BANK ACCOUNT NUMBERS

As stated in our reply ,we think that this is not high priority as other issues and that some remedies could be found quickly to reduce the cost of switching accounts (Annex 6) .

All the efforts should be concentrated on expanding the use of IBAN and BIC and solving the problems that corporates and banks still encounter in its adoption and correct use.

In this respect, we urge that all banks , national clearing and electronic banking systems (Etebac, CBI , Multicash, etc.) accept and process IBAN for domestic transactions ,rather than BBAN (national bank coordinates) .
This would greatly help corporates that now are obliged to "code"differently in thier ERPs domestic and UE clients /suppliers .

Having said this , we think that the issue of portability will crop again in the more general requirement of a supra- national unique classification/numbering scheme of bank accounts, legal entities , bank transaction codes etc. . Standard setting organisations , supra-national regulators , system houses etc., are already groping with this problem and some proposal are being made .
The portability issue has not only been raised (and solved …nationally) by telecoms for mobile Phones .
Portability of bank account number is being strongly promoted by US CHIPS that has implemented a very simple scheme to ensure **portability and confidentiality** of bank accounts, called UID (Universal Identification Number).
In UID ,a bank account , wherever it is , is represented by a unique reference which is used in all public exchanges (like a payment instruction or a bank statement) requiring the bank coordinates and the account number .
By selecting a new unique world-wide numbering system we would surmount the problem of the different national numbering systems which can not be easily standardised (IBAN is the most courageous effort so far…) .
Also, the problem of number portability does not only relate to the "bank cost" of closing an account.
An account change has a very important impact on administrative procedures with the need to update bank coordinates in ERPs and communicate the change to suppliers/customers.
We agree with the Commission's position not to introduce legal measures in this area but propose that the issue of account portability as well as the more general one of universal classification/referencing schemes should subjected to a thorough analysis by a working group to and be ready to make proposal at later date .

ANNEX 6 CUSTOMER MOBILITY

No additional comments

ANNEX 7 THE EVALUATION OF THE SECURITY OF PAYMENT INSTRUMENTS AND COMPONENTS

We acknowledge the importance of the issues presented and agree with the desirability to have uniform procedures for evaluating payment instruments and component but , as treasurers , cannot express specific proposals in a little known and very technical area.
However, there is an issue linked to security of transactions , Electronic Signature , where we think the EU could play a more active role (Annex 19) .

ANNEX 8 INFORMATION ON THE ORIGINATOR OF A PAYMENT (SRVII OF FATF)

We make two comments

1) It is very difficult to make the FATF- GAFI information and reporting regime work according to the strict rules of the treaty
2) It may be possible to use the FATF GAFI identifier to unequivocally identify a payment originator/beneficiary worldwide (more precisely in those countries that have accepted

FATF

Financial criminals and terrorist are reality which , un fortunately , will stay with us for quite some time .
Mounting an effective warning system and a rapid-response information system on transactions and payment subjects entails changes in banks systems and organisation .
There may be an opportunity to kill two birds with one stone and improve/simplify the information system to help also regular bank-corporate communication .
We suggest that a task force look into this .

ANNEX 9 ALTERNATIVE DISPUTE RESOLUTION

We tend to agree with the Commission that Alternative Dispute Resolution (ADR) is a reasonable solution for all disputes arising out of payment services (and ,possibly, other bank services) .
We have not answered the question because corporates do not know enough about the effectiveness of present arrangements and the independence of national authorities administering ADR procedures .
Is it primarily used for "consumer" disputes ?
Is there a track history of these Authorities that can be examined ?
Aren't these authorities an expression of the banking world only ? Are corporates and consumers represented ? Are they really independent ?
How does it work when the subject involved belong to different EU countries ?

ANNEX 10 REVOCABILITY OF A PAYMENT ORDER

We agree that credit transfer should be revocable till the date of "execution" .
This date , in turn, depends on the means of payment and the payment circuit .
The problem is that there is no common understanding of what a payment or execution or booking date is and how they relate to each other for different payment instruments in different countries and for instruments other than credit transfer and direct debit .

From the banks' responses we have seen, it seems clear that they think EU legislation on this issue is not the right solution , since payments types and situations are different and the point of non- revocation cannot correctly be defined in each case by an article of law .
They are in favour of self-regulation ,after an extensive study of the issues . We may agree with them ,provided of course that self-regulation includes consultations with corporates and results in complete transparency of the conditions for revocability.

Common definitions and transparency of conditions , should be a prerequisite for establishing rules on dates , revocability period and information to be provided for all payment instruments.
The exercise should be done also for local payment products (like LCR , RIBA, Recibos) that will still be used by "resident" and "non- resident" EU subjects for many years to come

In the end , we suggest that the issue of revocability, together with that of value and other dates be the object of a thorough analysis concerning all payment instruments

domestic and cross-border . The analysis should be conducted under the EU responsibility and involve representatives of banks and corporates.

In addition to the general comments above , we would like to add some more specific comments

Credit transfer

The Commission proposes 4 revocation alternatives linked to four different events/points in time .
Two events, debiting the originator account or crediting the beneficiary's account have the advantage of being easy to ascertain but the disadvantage that that can be done only "ex post" , when the payment has already been executed (we assume that, in general, the payment is debited to the originator's account after execution)
Considering that, in the vast majority of cases , revocations are due to errors, payments, if executed , will originate a lot of back office work at both banks and corporates .
Consider also that the originator has a special relationship and can make requests of service only to his bank.
When the payment has reached the beneficiary's bank ,the payment is , so to speak , out or reach ,as the originator does not have the possibility and the right to instruct the beneficiary's bank .
Another aspect to consider is that the two banks must protect the interests of their respective clients .

The ideal solution then is to stop the payment before it leaves the payer 's bank , i.e. , one of the other two alternatives given **…**"until the money transfer was initiated" or "until the payment order is executed " .

Of course , there are some difficulties in applying either of these criteria .

First of all, the "event" should be clearly defined .
Depending on the "type" of money transfer the moment of truth may be different (book transfers, directly posted on correspondent Banks accounts, sent to local or international clearings.
The second definition " until the order is executed " may refer to the sending of message/files to a clearing (and his acknowledgement ..) , to the inter-bank settlement or to finality of payment.

Secondly, the originator should be advised by his bank of standard cut-off times for the revocability of a payment

Thirdly , the bank should have a way of tracking in real time the processing of payments and be able to intervene in real time on a revocation request .Best of all, the tracking functionality could be at the disposal of the client who can check for himself .

Fourthly , to avoid disputes after the fact (or when on line tracking is not available) ,there should be a time stamp for the event in question

A last remark . Revocability is partly a problem of standard definitions, common rules and legal rights and for the rest a problem of competition, with some banks being able to provide a better service to their customers because of better systems , organisation and service strategy .
So, in general, a "one-size-fits all" is not the solution for the users .
It is o.k. to clarify the issues , define the rules ,inform everybody but then ….let banks compete.

Corporations are ready to sit down with banks to analyse the practical problems and define the rules . EACT and corporate treasurers are ready to coordinate the debate for the corporate side and promote the knowledge of the new rules within the business community

ANNEX 11 THE ROLE OF THE PAYMENT SERVICE PROVIDER IN THE CASE OF A CUSTOMER /MERCHANT DISPUTE IN DISTANCE COMMERCE

No comments

ANNEX 12 NON EXECUTION OR DEFECTIVE EXECUTION

We agree with the proposed legal provisions that should apply to all kinds of payments .
The principle could be the same but different payment media may require specific technical definitions of the "events" indicated in the principle .
Once the rules and conditions governing the payment are clearly set out (see issues of value dates, execution time ,bank charges ,information ,transparency .) a defective execution is undisputable based on the record of transaction booked and reported by the banks to their clients .

A first question is if in case of "defective execution" ,there should be "automatic redress" by banks **or** only when the transaction is contested by the beneficiary or the originator ..

- Banks correcting defective executions

  To our knowledge ,today *clearing systems and beneficiary banks do not take into account the* originator's ***original order or booking date*** *or the correct* ***beneficiary credit date .***

  A first possibility is that banks correct automatically defective executions.
  To do this, they would have to handle those two dates through the payment process and settle among themselves the differences

- Clients detecting defective executions

  Corporates detect non-execution or defective execution by applying a daily (periodic …) automatic reconciliation procedure and asking the banks for adjustments.
  To permit detection , **beneficiary's bank information must include the payer's order date .**

The first situation (banks acting on their own initiative) is obviously preferable because it avoids the generation of disputes and lot of back-office work

- *Non* execution *of payment*

  Discovery of non execution, may not be easy for the beneficiary since only a minority of payments are pre-advised by the payer (or the payer's bank) .
  On the other hand, the originator has been debited by his bank that initiated the payment in the inter-bank circuit but cannot have confirmation from the beneficiary or the beneficiary's bank
  (this would be too cumbersome …By default , one assumes that all payments debited have gone well) .
  Most non-executions are due to ***errors in the bank /account/beneficiary coordinates*** .
  In this case, it is up to the bank to inform the originator as soon as possible that the payment has not reached the intended beneficiary .
  This, too, is an area which needs some regulation/standardisation.

A second question is if there must be a **deadline** for discovering and redressing defective payments.
A general rule in most countries is that booked transactions are accepted by the client if he does not contest them within a certain date (month, three months…) .
A general rule should be established , may be different from current practice.

Penalties for non execution or defective execution
The liabilities indicated in Paragraph 3 of proposed legislation are the obvious ones ,i.e. correction of error (re-establishing the right value date, interest , correcting charges etc.) but do not stop there.
Paragraph 4 .."further financial compensation …." Refers to service contract signed by the clients with their banks . This is the area of *consequential damage* (see remarks on specific issue and Annex) .
The important thing is to regulate the matter ,at least in terms of principles , definitions of events and type of penalties and , why not , a general contract scheme ,covering all the areas of responsibilities and major classes of triggering events..
Individual contracts should follow the legal contract scheme , providing a clear definition of the events and the liabilities in each chapter and clearly indicating where they depart from the scheme
(more favourable terms for the client but in no way reneging the general principles)

It may be a good idea that the Bank contract be approved by a National authority.

Assessing the penalties

Assessing responsibilities ,type and amount of penalties could be left to a mutually accepted legal process of "Alternative Dispute Resolution " (see Issue 9) .
The originator's banks (or payment service provider) is the only subject held responsible for non or faulty execution that can be sued for damages by either the originator or the beneficiary or both .
He is responsible for the chain of subjects that intervene in the payment process , including the beneficiary's bank .

It will be up to him , in a separate legal action, to reclaim damages from other banking subjects.

“Force Majeur”

Obviously, this class of events should be clearly defined and limited and not be a comfortable excuse to cover all kinds of inefficiencies and short-sighted decisions by the banks

For instance, a prolonged electricity black out is not a valid reason because the back-up generators should have worked and, if they did not work , because it was too hot and the ventilators fried ,again this is no force majeur .

Besides , Banks can self insure or buy insurance for must of the risks labelled “force majeur “.

ANNEX 13 OBLIGATIONS AND LIABILITIES OF THE CONTRACTUAL PARTIES RELATED TO UN AUTHORISED TRANSACTIONS

Unauthorised transactions (most of them … “frauds”) could happen with all types of payment media

- paper/fax orders
- electronic initiation
- card payments
- internet payments

Each media may require specific measures and procedures to ensure a reasonable level of security

(see also Issue 9 on security of payment instruments) .

Most of the frauds occurred with paper/fax/hand signatures could have been avoided had the client and the bank followed simple security procedures.

The provisions set forward only concern credit card and internet payment .

For these media they are acceptable as general principles .

The ideal would be to provide a “legal contract scheme” for each type of payment/media .

This scheme could be approved at EU level and actual contracts reviewed and approved by a National Authority .

This way, end users of payment systems ,not all of them able to understand the complexities of these contracts, would feel more protected .

As a general principle, *the first responsibility for an unauthorised transaction rests with the payment service provider of the originator /card holder* , regardless of where the fraud was committed .On him rests the burden of proof (see annex on the Burden of Proof) that the transaction was authorised by his client or that the client has any responsibility in the

un-authorised transaction .

The dispute between client and service provider could be settled out of courts by a process of Alternative Dispute Resolution (see Issue 9) .

When this dispute Is settled, the service provider could claim damages from other subjects of the payment chain.

Alternative Dispute Resolution would hardly apply in the case of complex frauds .

ANNEX 14 THE USE OF "OUR","BEN",SHARE

The way the banks apply the three conditions is a bit confusing to corporates…
Corporates generally think that ,by stating OUR in their order , the beneficiary will receive the full amount and will be charged no expenses by his bank .
But there are exceptions …CREDEURO has a standard condition SHA but beneficiary receives the full amount and pays no expenses.
On the other hand ,US Banks do not care much what the sender's bank says in its message (e.g OUR) and tends to charge the beneficiary .

Regarding the Commission's specific questions..…

We would favour *applying immediately the same condition to Cross-Border Payments in Euro over 12.500, without any upper limit (no 50.000 Eur limit)*

As for non-euro and non-krona payments , "Our" should be the default principle but experience shows that ,even when this condition is explicitly stated by the originator and his bank ,it is often disowned by correspondent banks ,especially US banks .

The problem seems to be that the originator's bank does not know exactly beforehand what correspondent banks charges will on that transaction and cannot charge them all to the originator.
If the originator's bank does not accept charges from other banks , it will be the beneficiary bank to charge them to her client account …regardless of the original "Our" condition.

Often, additional not-to-be foreseen bank charges are due to "repairs" and use of non-STP formats
by the originator .
When it is clearly the originator's fault ,it is acceptable that an additional charge be levied by the originator bank ,beyond the standard payment charge.
In all cases (also for the originator's debit) , bank charges should be posted as separate items with a unique reference to the original transaction (URI)

One solution would be that the originator bank cumulates all bank charges and then debits the total as a separate item **after** the original amount .has been debited.

A second solution is that an **all-inclusive standard charge** be applied by the originator bank according to the SLA of the payment service offered (may vary by country and execution time) .
The banks will then settle/absorb differences among themselves and no charge should affect the beneficiary .

Only **extra-charges for errors attributable to the originator could be debited (as a separate item)**
This would be in line with the principle of *transparency* that the *originator should know beforehand the cost of the payment* .

The main responsibility for detecting errors and correcting them (with or without the help of the originator) rests with the originator's bank , who should send a correct message in the inter-bank circuit.

ANNEX 15 EXECUTION TIMES FOR CREDIT TRANSFER

Banks are against regulating this aspect of payments and favour self-regulation .
In reality, they do not like regulation that imposes reimbursement if execution times are not respected and fear the extension of regulation to all types and aspects of payments (price , execution times ,penalties etc.) .
We are willing to accept that execution time be one of the conditions agreed between. client and bank but still think there should be a max. time for execution .

We notice that the CREDEURO convention and the Commission proposed article mention "acceptance of credit transfer order" as a point of departure for calculating execution time . Is it clear what this date is ?

ANNEX 16 DIRECT DEBITING

There is little to agree to in the Annex .
EPC is going to propose P€DD (Pan European Direct Debit) ,initially for cross-border EU direct debits to be used ,eventually, also domestically alongside (or superseding) local forms of direct debit .
When the P€DD proposal is published and available for comments by corporates ,we will express our comments .

ANNEX 17 REMOVING BARRIERS TO PROFESSIONAL CASH CIRCULATION

No Comments…It's an internal problem of banks

ANNEX 18 DATA PROTECTION ISSUES

Further to our reply we would add that options 3 or 4 (direct intervention of EU Commission) seem more desirable since options 1 and 2 (general guidelines and asking member states to amend their legislation) would not lead to real harmonisation of rules in the EU and would require too much time

ANNEX 19 DIGITAL SIGNATURE

Corporates are worried that , years after the EU Directive , digital signatures and certificates issued in one country are still not accepted in another .
The "lack of interoperability" between national Certification Authorities (CAs) and the lack of uniformity in technical solutions adopted in each country hamper the growth of e-commerce and e-payments .

Part of the problem may be technical , linked to standards and materials but ,as always, the major difficult is organisation and coordination of efforts .
In each EU country , central and local governments and various public and private organisations are promoting the use of electronic signature in many a different areas ,such as health cards, citizen cards etc. .

Banks have introduced electronic signatures in payment services at the domestic level and are struggling with the problem of interoperability when, as is common , more than one CA are
issuing the certificates.
If the market ,left to itself ,does not produce a workable solution ,we think the EU Commission should evaluate the situation and decide what to do.

ANNEX 20 SECURITY OF THE NETWORKS

No comments . It's a technical issue

ANNEX 21 BREAKDOWN OF A PAYMENT NETWORK

No comments . It's a technical issue