

EURIM Briefing No 4

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EURIM Working Party Paper on EC DRAFT DIRECTIVE ON THE TRANSPARENCY AND PERFORMANCE OF REMOTE CROSS-BORDER PAYMENTS

In 1993 the European Commission issued a draft Directive on the Transparency and Performance of Remote Cross-Border Payments. The draft Directive was recently the subject of a EURIM Working Party Review. It found that companies and other users of banking services agree broadly that cross-border payments within the European Union are too slow and too expensive. The Working Party added that formal action is required by the Commission to improve the situation. These key conclusions come from a digest of responses received from EURIM Members, advisors and other organisations approached for their comments, after a special EURIM survey on the issue of inter-EU payments.

Significantly, the majority of respondents to the survey believe that the Commission should use the full force of a Directive, rather than rely on voluntary codes through a banking Charter approach to improve EU payments.

The purpose of this Briefing is to bring our findings on the key issues involved to the attention of parliamentarians and organisations which will be impacted by the original draft Directive proposed by the Commission. There is still an opportunity to influence the final drafting of the Directive. Indeed, those organisations, such as major banking bodies, which are likely to be impacted to a more significant degree are keeping an ongoing dialogue with the Commission.

Because significant additional costs are linked to the cross-border transfer of funds compared with domestic transfers, the Commission issued in 1990 a Green Paper by Sir Leon Brittan, Commissioner with responsibility for competition, focusing on the cost and varying quality of existing services and the need to improve the operation of retail cross-border payment facilities.

The Commission set up two advisory committees to report on the problems involved. The first consisted of members from central and commercial banks, with the second formed from representatives from banks, consumers and small businesses.

It then published a document outlining what it considered is needed in order to develop a pan-European system catering for the single market and a future single currency. Overall, the Commission aimed to assist the private sector to provide better facilities, and enable customers to insist on an improved service.

The reaction from the European banking community has been mixed. It was argued that the volume of cross-border transactions is only 1% of domestic traffic, and the cost of improvements would be significant. The response from consumer groups was that volumes would grow with improved facilities and lower costs. It is pertinent to mention that Commission research shows the UK Banks to be the most efficient in handling cross-border payments, but also one of the most expensive.

The Commission has undertaken two surveys covering the performance and charges for cross-border payments. The first, conducted in 1993, gave some cause for concern. The results from the second survey have now been issued, and show that little has been achieved during the intervening 12 months.

The Commission has since issued a press release expressing its disappointment with the lack of progress. It had been hoped that the use of a Charter with self-regulation would produce improvements, but as this has not been the case the Commission considers it is left with little choice but to proceed with a Directive.

SURVEY RESULTS

The main results from our survey of consumers of cross-border payments in Europe are:

◆ **Directive v Charter**

In addition to the draft Directive issued by DG XV, an informal document in the form of a Charter was issued by The Cabinet of Consumer Policy Services. The Commission should not be developing both Directive and Charter, particularly as there is divergence in content between the two. The Working Party believes that legislation is necessary and supports the statement by the Commission to this effect.

User education is very important, in enabling competition to lead to improvements. National legislation should be aimed at ensuring that the Directive is interpreted to help the market place to implement the recommendations. In view of the Commission's decision to proceed with the Directive, and not the Charter, the EURIM comments regarding the content of the Charter are not included in the main part of the Briefing, but in the detailed papers.

◆ **Scope**

More than 75% of respondents wanted the Directive to cover all cross-border payments, from large corporate transfers down to smaller personal banking sums. It is the Working Party's view that there is no need to differentiate between large and small payments. If there is to be differentiation the trigger point should be at least ECU 10,000.

◆ **Timescale**

There is an agreed need for a specific timescale for execution of credit transfers. The maximum six days for a transfer quoted by the draft Directive is considered excessive by users, but reasonable by the financial institutions. Many users felt a two-day standard was appropriate, given the need for speed in modern business transactions. The Working Party agrees a 2-day standard is achievable for non-paper transactions.

◆ **Charges**

Current charging is often excessive. Charges should not be ad valorem, but on a restricted sliding scale, to ensure that small payments do not incur prohibitive charges and large payments are not excessively charged. This is not sufficiently covered by the draft Directive. In addition, charges should be taken only once, normally from the originator, and the current practice of intermediary or recipient banks taking further charges should not be permitted - again, something that should be included in the final Directive. The recent press release from the Commission states that 'double charging will be outlawed', which is in line with this view.

◆ **Market forces**

There is some support for the harnessing of market forces to improve efficiencies, rather than issuing a Directive, despite this not having been achieved to date. This should be encouraged by the EU in the form of loans and grants to help financial institutions invest in cross-border payments improvements. In particular, there was support by some, without any dissenters, for the establishment of a pan-European Automated Clearing House to facilitate the rapid movement of funds transfers. The Working Party, however, believes that market forces alone cannot change the current situation.

◆ **Information supplied**

There was general agreement that there is a need to improve the level and quality of information supplied both before and subsequent to payments. The draft Directive was considered to cover this point to an acceptable level.

EURIM CONCLUSIONS

1. There is a need for a Directive if a step change is to be obtained in procedures for transacting cross-border payments.
2. Payments would be effected more rapidly if the chain of banks involved in transactions could be reduced. Equally, improvements would be achieved if all banks in the chain were linked to the same electronic network, for example through a pan-European Automated Clearing House.
3. The remitting bank is in contract with the remitter to effect the payment to the beneficiary within a given timescale and at an agreed cost. It is agreed therefore that late delivery is the remitting bank's responsibility.
4. EURIM has concerns that remitting banks may consider setting up contracts with remitters to avoid their responsibilities under the Directive. In the UK, the Unfair Contracts Act can be expected to give protection to private individuals against abuse of the Directive, but the position applying to small corporate organisations (SMEs) is less clear.

APPENDIX A

Requests for views and comments on the draft Directive were sent to a range of companies and organisations. The selection was based on ensuring that a wide representation of views was achieved.

Not all of those approached provided responses. Many considered that the Directive would have limited effect on them, and they felt unable to comment. Whilst comments were received from several Financial Institutions, most banks referred the Working Party to APACS. Regrettably, however, APACS declined to contribute, preferring to deal solely with Brussels.

Organisations which responded are listed in the detailed papers. These companies have a combined sales turnover in excess of £200 billion and employ over 750,000 people. Responses were also received from many other organisations who either preferred anonymity or had no comments as they had little involvement with cross-border payments.