

## I

*(Information)*

## COUNCIL

## COMMON POSITION (EC) No 41/2001

adopted by the Council on 7 December 2001

**with a view to adopting Regulation (EC) No .../2001 of the European Parliament and of the Council of ... on cross-border payments in euro**

(2001/C 363/01)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF  
THE EUROPEAN UNION,

Having regard to the Treaty establishing the European  
Community, and in particular Article 95(1) thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

Having regard to the opinion of the Economic and Social  
Committee <sup>(2)</sup>,

Having regard to the opinion of the European Central Bank <sup>(3)</sup>,

Acting in accordance with the procedure laid down in Article  
251 of the Treaty <sup>(4)</sup>,

Whereas:

(1) Directive 97/5/EC of the European Parliament and of the Council of 27 January 1997 on cross-border credit transfers <sup>(5)</sup> sought to improve cross-border credit transfer services and notably their efficiency. The aim was to enable, in particular consumers and small and medium-sized enterprises to make credit transfers rapidly, reliably and cheaply from one part of the Community to another. Such credit transfers and cross-border payments in general are still extremely expensive compared to payments at national level. It emerges from the findings of a study undertaken by the Commission and released on 20 September 2001 that consumers are given insufficient or no information on the cost of transfers, and that the average cost of cross-border credit transfers has hardly changed since 1993 when a comparable study was carried out.

<sup>(1)</sup> OJ C 270 E, 25.9.2001, p. 270.

<sup>(2)</sup> Opinion delivered on ... (not yet published in the Official Journal).

<sup>(3)</sup> OJ C 308, 1.11.2001, p. 17.

<sup>(4)</sup> Opinion of the European Parliament of 15 November 2001 (not yet published in the Official Journal), Council Common Position of 7 December 2001 and Decision of the European Parliament of ... (not yet published in the Official Journal).

<sup>(5)</sup> OJ L 43, 14.2.1997, p. 25.

(2) The Commission's communication to the European Parliament and to the Council of 31 January 2000 on retail payments in the internal market, together with the European Parliament Resolutions of 26 October 2000 on the Commission Communication and of 4 July 2001 on means to assist economic actors in switching to the euro, and the reports of the European Central Bank of September 1999 and September 2000 on improving cross-border payment services have each underlined the urgent need for effective improvements in this field.

(3) The Commission's communication to the European Parliament, the Council, the Economic and Social Committee, the Committee of the Regions and the European Central Bank of 3 April 2001 on the preparations for the introduction of euro notes and coins announced that the Commission would consider using all the instruments at its disposal and would take all the steps necessary to ensure that the costs of cross-border transactions were brought more closely into line with the costs of domestic transactions, thus making the concept of the euro zone as a 'domestic payment area' tangible and transparently clear to citizens.

(4) Compared with the objective that was reaffirmed when euro book money was introduced, namely to achieve, if not uniform, at least similar charge structures for the euro, there have been no significant results in terms of reducing the cost of cross-border payments compared to internal payments.

(5) The volume of cross-border payments is growing steadily as completion of the internal market takes place. In this area without borders, payments have been further facilitated by the introduction of the euro.

(6) The fact that the level of charges for cross-border payments continues to remain higher than the level of charges for internal payments is hampering cross-border trade and therefore constitutes an obstacle to the proper functioning of the internal market. This is also likely to affect confidence in the euro. Therefore, in order to facilitate the functioning of the internal market, it is necessary to ensure that charges for cross-border payments in euro are the same as charges for payments made in euro within a Member State, which will also bolster confidence in the euro.

- (7) For cross-border electronic payment transactions in euro, the principle of equal charges should apply, taking account of the adjustment periods and the institutions' extra workload relating to the transition to the euro, as from 1 July 2002. In order to allow the implementation of the necessary infrastructure and conditions, a transitional period for cross-border credit transfers should apply until 1 July 2003.
- (8) At present, it is not advisable to apply the principle of uniform charges for paper cheques as by nature they cannot be processed as efficiently as the other means of payment, in particular electronic payments. However, the principle of transparent charges should also apply to cheques.
- (9) In order to allow a customer to assess the cost of a cross-border payment, it is necessary that he be informed of the charges applied and any modification to them. The same holds for the case where a currency other than the euro is involved in the cross-border euro-payment transaction.
- (10) This Regulation does not affect the possibility for institutions of offering an all-inclusive fee for different payment services, provided that this does not discriminate between cross-border and national payments.
- (11) It is also important to provide for improvements to facilitate the execution of cross-border payments by payment institutions. In this respect, standardisation should be promoted as regards, in particular, the use of the international bank account number (IBAN) <sup>(1)</sup> and the bank identifier code (BIC) <sup>(2)</sup> necessary for automated processing of cross-border credit transfers. The widest use of these codes is considered to be essential. In addition, other measures which entail extra costs should be removed in order to lower the charges to customers for cross-border payments.
- (12) To lighten the burden on institutions that carry out cross-border payments, it is necessary to gradually remove the obligations concerning regular national declarations for the purposes of balance-of-payments statistics.
- (13) In order to ensure that this Regulation is observed, the Member States should ensure that there are adequate and effective procedures for lodging complaints or appeals for settling any disputes between the originator and his institution or between the beneficiary and his institution, where applicable using existing procedures.
- (14) It is desirable that as of July 2004 the Commission should present a report on the implementation of this Regulation.
- (15) Provision should be made for a procedure whereby this Regulation can also be applied to cross-border payments made in a currency of another Member State where that Member State so decides,

HAVE ADOPTED THIS REGULATION:

#### Article 1

##### Subject matter and scope

This Regulation lays down rules on cross-border payments in euro in order to ensure that charges for those payments are the same as those for payments in euro within a Member State.

It shall apply to cross-border payments in euro up to EUR 50 000 within the Community.

This Regulation shall not apply to cross-border payments made between institutions for their own account.

#### Article 2

##### Definitions

For the purposes of this Regulation, the following definitions shall apply:

(a) 'cross-border payments' means:

(i) 'cross-border credit transfers' being transactions carried out on the initiative of an originator via an institution or its branch in one Member State, with a view to making an amount of money available to a beneficiary at an institution or its branch in another Member State; the originator and the beneficiary may be one and the same person;

(ii) 'cross-border electronic payment transactions' being:

— the cross-border transfers of funds effected by means of an electronic payment instrument, other than those ordered and executed by institutions,

— cross-border cash withdrawals by means of an electronic payment instrument and the loading (and unloading) of an electronic money instrument at cash dispensing machines and automated teller machines at the premises of the issuer or an institution under contract to accept the payment instrument;

(iii) 'cross-border cheques' being those paper cheques defined in the Geneva Convention of 19 March 1931 providing uniform laws for cheques drawn on an institution located within the Community and used for cross-border transactions within the Community;

<sup>(1)</sup> ISO standard No 13613.

<sup>(2)</sup> ISO standard No 9362.

- (b) 'electronic payment instrument', means a remote access payment instrument and electronic money instrument that enables its holder to effect one or more electronic payment transactions;
- (c) 'remote-access payment instrument', means an instrument enabling a holder to access funds held on his/her account at an institution, whereby payment may be made to a payee and normally requires a personal identification code and/or any other similar proof of identity. The remote access payment instrument includes in particular payment cards (whether credit, debit, deferred debit or charge cards) and cards having phone- and home-banking applications. This definition does not include cross-border credit transfers;
- (d) 'electronic money instrument', means a reloadable payment instrument, whether a stored-value card or a computer memory, on which value units are stored electronically;
- (e) 'institution', means any natural or legal person which, by way of business, executes cross-border payments;
- (f) 'charges levied', means any charge levied by an institution and directly linked to a cross-border payment transaction in euro.

#### Article 3

#### Charges for cross-border electronic payment transactions and credit transfers

1. With effect from 1 July 2002, charges levied by an institution in respect of cross-border electronic payment transactions in euro up to EUR 12 500 shall be the same as the charges levied by the same institution in respect of corresponding payments in euro transacted within the Member State in which the establishment of that institution executing the cross-border electronic payment transaction is located.
2. With effect from 1 July 2003 at the latest, charges levied by an institution in respect of cross-border credit transfers in euro up to EUR 12 500 shall be the same as the charges levied by the same institution in respect of corresponding credit transfers in euro transacted within the Member State in which the establishment of that institution executing the cross-border transfer is located.
3. With effect from 1 January 2006 the amount EUR 12 500 shall be raised to EUR 50 000.

#### Article 4

#### Transparency of charges

1. An institution shall make available to its customers in a readily comprehensible form, in writing, including, where appropriate, in accordance with national rules, by electronic means, prior information on the charges levied for cross-border payments and for payments effected within the Member State in which its establishment is located.

Member States may stipulate that a statement warning consumers of the charges relating to the cross-border use of cheques must appear on cheque books.

2. Any modification of the charges shall be communicated in the same way as indicated in paragraph 1 in advance of the date of application.
3. Where institutions levy charges for exchanging currencies into and from euro, institutions shall provide their customers with:
  - (a) prior information on all the exchange charges which they propose to apply; and
  - (b) specific information on the various exchange charges which have been applied.

#### Article 5

#### Measures for facilitating cross-border transfers

1. An institution shall, where applicable, communicate to each customer upon request his international bank account number (IBAN) and that institution's bank identifier code (BIC).
2. The customer shall, upon request, communicate to the institution carrying out the transfer the IBAN of the beneficiary and the BIC of the beneficiary's institution. If the customer does not communicate the above information, additional charges may be levied on him by the institution. In this case, the institution must provide customers with information on the additional charges in accordance with Article 4.
3. With effect from 1 July 2003, institutions shall indicate on statements of account of each customer, or in an annex thereto, his IBAN and the institution's BIC.
4. For all cross-border invoicing of goods and services in the Community, a supplier who accepts payment by transfer shall communicate his IBAN and the BIC of his institution to his customers.

#### Article 6

#### Obligations of the Member States

1. Member States shall remove with effect from 1 July 2002 at the latest any national reporting obligations for cross-border payments up to EUR 12 500 for balance-of-payment statistics.
2. Member States shall remove with effect from 1 July 2002 at the latest any national obligations as to the minimum information to be provided concerning the beneficiary which prevent automation of payment execution.

*Article 7***Compliance with this Regulation**

Compliance with this Regulation shall be guaranteed by effective, proportionate and deterrent sanctions.

*Article 8***Review clause**

Not later than 1 July 2004, the Commission shall submit to the European Parliament and to the Council a report on the application of this Regulation, in particular on:

- changes in cross-border payment system infrastructures,
- the advisability of improving consumer services by strengthening the conditions of competition in the provision of cross-border payment services,
- the impact of the application of this Regulation on charges levied for payments made within a Member State,

- the advisability of increasing the amount provided for in Article 6(1) to EUR 50 000 as from 1 January 2006, taking into account any consequences for undertakings.

This report shall be accompanied, where appropriate, by proposals for amendments.

*Article 9***Entry into force**

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Communities*.

This Regulation shall also apply to cross-border payments made in the currency of another Member State when the latter notifies the Commission of its decision to extend the Regulation's application to its currency. The notification shall be published in the Official Journal by the Commission. The extension shall take effect 14 days after the said publication.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at . . .

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

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## STATEMENT OF THE COUNCIL'S REASONS

### I. INTRODUCTION

1. On 13 August 2001, the Commission submitted to the Council the abovementioned proposal for a regulation of the European Parliament and of the Council <sup>(1)</sup>, based on Article 95 of the Treaty.
2. The European Parliament delivered its opinion on 15 November 200 <sup>(2)</sup>.
3. The Economic and Social Committee delivered its opinion on 29 November 2001 <sup>(3)</sup>.
4. On 7 December 2001, the Council adopted its Common Position in accordance with Article 251 of the Treaty.

### II. OBJECTIVE

The aim of the proposal is to reduce bank charges for cross-border payments in euro to bring them into line with those applying at national level, at the same time as the introduction of euro notes and coins on 1 January 2002.

Delivering on a long-standing policy of the European Commission, which has been examining the operation of payments in the European internal market since the end of the 1980s, this text will enable European consumers to participate actively in the internal market by ensuring that they are able to benefit from increased price transparency and choice. The Regulation responds to the concerns expressed by citizens in particular, and by the European Parliament, and is also intended to bolster confidence in the euro.

### III. ANALYSIS OF THE COMMON POSITION

#### A. General remarks

In general, the Council has followed most of the European Parliament's amendments, accepting them in whole or in substance.

Like the European Parliament, the Council considered that the deadline of 1 January 2002 for electronic payment transactions should be put back to avoid possible interference with the introduction of euro notes and coins. In view of the adjustment periods and extra workload relating to the period during which two currencies are in circulation, the Council considered it appropriate to put the deadline back to 1 July 2002.

The deadline for cross-border credit transfers was put back to 1 July 2003, in order to allow the implementation of the necessary infrastructure and conditions (see recital 7).

#### B. Main innovations introduced by the Council of the European Union

The main innovations introduced by the Council are the following:

##### (a) *Taking account of other currencies*

In response to the concerns of certain Member States, which were anxious to ensure the proper functioning of the internal market, provision was made for the Member States that so wished to extend the application of the Regulation to cross-border payments made in the currency of another Member State (Article 9, third paragraph).

##### (b) *Increased transparency*

Article 4 has been strengthened to ensure better information for consumers, particularly in relation to the cross-border use of cheques.

##### (c) *Amounts*

In view of the fact that the great majority of cross-border payments of less than EUR 50 000 are also less than EUR 12 500, and that the latter also serves as a reference amount for the purposes of balance-of-payments statistics, the Council considered that only transactions of less than EUR 12 500 should be covered initially. Provision was made for raising the threshold to EUR 50 000 on 1 January 2006 as regards Article 3.

##### (d) *Review clause*

To respond to the concerns expressed by certain Member States, the points to which Commission will need to pay special attention in the report provided for in Article 8 have been stipulated. These points are changes in infrastructures for cross-border payment systems, the advisability of improving consumer services by strengthening the conditions of competition in the provision of cross-border payment services, and the advisability of removing the obligation for a national declaration for amounts up to EUR 50 000, taking the possible consequences for companies into account. Moreover, the essence of the idea underlying European Parliament amendment 4 was reflected

<sup>(1)</sup> OJ C 270 E, 25.9.2001, p. 270.

<sup>(2)</sup> Not yet published in the Official Journal. See 13713/010 CONSOM 104 MI 183 EF 119 ECOFIN 351 CODEC 1231.

<sup>(3)</sup> Not yet published in the Official Journal.

in the indent on the impact of the application of the Regulation on charges levied for payments made within a Member State.

An in-depth study of these questions should enable the Commission to accompany the report, where appropriate, by proposals for amendments.

#### IV. **CONCLUSIONS**

The Council considers that the Common Position responds to a large extent to the wishes and concerns expressed by the European Parliament and other interested parties, and achieves a good balance between the prerequisites for the proper functioning of the single market and consumer protection/information.

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