

EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 26 October 2001

at the request of the Council of the European Union on a proposal for a regulation of the European Parliament and of the Council on cross-border payments in euro

(CON/2001/34)

(2001/C 308/15)

1. On 26 September 2001, the European Central Bank (ECB) received a request from the Council of the European Union for an opinion on a proposal for a regulation of the European Parliament and of the Council on cross-border payments in euro (hereinafter referred to as the 'draft regulation'). Its main intention is the establishment of the principle that charges levied by an institution in respect of cross-border payments in euro will be the same as the charges levied by the same institution for corresponding domestic payments.

mutual obligation on institutions and customers to communicate to each other the relevant International Bank Account Number (IBAN) and the Bank Identifier Code (BIC) upon request. The draft regulation also establishes a reporting threshold for balance-of-payment statistics of EUR 12 500 from 1 January 2002, and increases it to EUR 50 000, as from 1 January 2004.
2. The ECB's competence to deliver an opinion is based on the first indent of Article 105(4) of the Treaty establishing the European Community (hereinafter referred to as the 'Treaty'), and Article 3.1, Article 4(a) and Article 5 of the Statute of the European System of Central Banks and of the European Central Bank, as the draft regulation contains provisions concerning the smooth operation of payment systems and the collection of balance-of-payment statistics. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, this opinion has been adopted by the Governing Council of the ECB.
3. The draft regulation provides that charges levied by an institution in respect of cross-border payments in euro up to EUR 50 000 shall be the same as the charges applied by the same institution in respect of corresponding payments within the Member State in which the establishment of that institution executing the cross-border payment is located. The draft regulation is envisaged to apply from 1 January 2002 to cross-border electronic payment transactions, that is in principle to card payments and cash withdrawals at cash dispensing machines, and from 1 January 2003 to cross-border credit transfers and cross-border cheques. The draft regulation also contains provisions obliging institutions to provide their customers with prior information on charges in the interests of transparency. In addition, it contains measures facilitating automated straight-through-processing of cross-border payments by imposing a
4. The draft regulation is based on Article 95(1) of the Treaty, according to which the Council shall 'adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market'. With regard to the choice of legal basis, the ECB would welcome an assessment by the Council of compatibility of the draft regulation with the principle of an open market economy with free competition as laid down by Article 4(1) of the Treaty, with the right of property and with the principle of proportionality.
5. Articles 1 to 3 of the draft regulation provide for the alignment of charges for cross-border and domestic payments in order to establish a single payment area for the euro. In that sense, the objective of the draft regulation is fully in line with the policy pursued by the Eurosystem since the publication of its 1999 report on 'Improving cross-border retail payment services: the Eurosystem's view', i.e. the creation of a single payment area for the euro. In this respect, the ECB shares the view that the notion of 'border' should not be in itself a factor that justifies differences between payments in the euro area. The ECB has always promoted an integrated payment area for the euro where the differences in cost and convenience of making domestic and cross-border payments should reduce substantially and eventually disappear. Furthermore, in line with the tasks entrusted to it by the Treaty, the ECB also shares the view stated in the explanatory memorandum according to which the creation of a single payment area for the euro is desirable

to enhance the confidence of the public in the single currency. The ECB remains therefore firmly committed to the ultimate purpose of a fully integrated single payment area for the euro. However, while sharing the objective of the draft regulation, the ECB would like to emphasise its reservations against a regulation influencing prices for services which risks disruption of the working of the market economy. Whilst understanding the underlying considerations for the draft regulation, the ECB would favour addressing the economic issue by allowing banks a longer, albeit definite, time limit to adjust their prices progressively in line with the progressive decrease of their cost base. Indeed, the proposed pricing laid down in the draft regulation will not remedy the existing fragmentation of payment channels and costly interbank processing of cross-border payments — which are some of the main reasons for the high charges. In this perspective, the draft regulation addresses only the consequences of the underlying inefficiencies and not their causes.

6. In this respect, the following general comment addresses the timing of entry into force of the draft regulation. The ECB has been working intensively with the banking sector since 1999 as a catalyst for change. Since then, progress has been made and obstacles that were identified as hampering cross-border payments have been removed. Therefore, the ECB expects that — as a result of implementation of measures — a substantial fee reduction for cross-border payments should already take place from 1 January 2002. A fully integrated single payment area, necessary for full equalisation of prices on a sound cost and production basis, should follow in a second step within a timeframe as short as realistically possible allowing for necessary structural adjustments. However, at least for credit transfers, banks need additional time, for example until 2005, to put in place the necessary infrastructure and logistics to allow for an economically viable equalisation of prices between domestic and cross-border transfers. It should be considered that while consolidation of the payment systems infrastructure following the introduction of the euro has already occurred for the large-value transfer systems, a pan-European infrastructure for retail payments is not yet in place. Consolidation in this field is expected to start after the final changeover to the euro.
7. Furthermore, the ECB is of the opinion that aligning charges for domestic and cross-border payments at a premature point in time may eventually trigger some counterproductive reactions from institutions, such as a decreasing supply of cross-border payment services or an increase of domestic fees or of the fees charged for other services. Moreover, in some countries domestic credit transfers are free of charge or at low charges,

while in others charges are quite high. An undesirable effect of the draft regulation could be a prolongation of the current disparities between countries and persistence of price differences for cross-border payments across different euro area countries.

8. In addition, the ECB notes that at present, practices concerning who is actually charged for domestic credit transfers, sender, beneficiary or both, may differ amongst Member States. Therefore, transposition of this domestic practice to cross-border payments between countries with a different practice is not straightforward. It is also not clear whether the draft regulation leaves any freedom to agree between sender and receiver on who bears the cost of the transfer. Moreover, further consideration should be paid to the relationship between the draft regulation and Directive 97/5/EC of the European Parliament and of the Council of 27 January 1997 on cross-border credit transfers⁽¹⁾. In this respect. More generally, a standardisation of practices regarding charges could prove to be appropriate and should be investigated.
9. The ECB agrees that the creation of a single euro payment area calls for improved procedures for cash withdrawal, card payments and credit transfers. However, Article 3 includes also cheques in the scope of the draft regulation. Whilst the ECB recognises that cheques still play an important role in a few national markets, it is of the view that any measures which could foster the cross-border use of this payment instrument should be avoided. In view of its statutory mandate to ensure the smooth functioning of payment systems, the ECB would instead discourage the cross-border and domestic use of cheques in favour of more secure and efficient means of payment, one reason being that cheques are paper-based and cannot be processed as efficiently as electronic payment instruments. Also, introducing cheques in the scope of the draft regulation would force banks to invest in infrastructure to handle cross-border cheques, while the banks must at the same time invest heavily in improving the processing of cross-border credit transfers.
10. The ECB welcomes the initiative in Article 4 of the draft regulation to foster the transparency of fees levied on cross-border payments and payments effected within the Member State in which an institution is established. This Article will enhance competition, contribute to the establishment of a single payment area and improve the advantages for consumers in the internal market.

⁽¹⁾ OJ L 43, 14.2.1997, p. 25.

11. Article 5 of the draft regulation imposes a mutual obligation on institutions and customers to communicate their international bank account number (IBAN) and the bank identifier code (BIC) to each other upon request. The ECB has always promoted standards as a means of facilitating the execution of cross-border payments. It has initiated discussions and worked intensively with the banking sector in order to introduce standards such as the IBAN. Therefore, the ECB shares the objective of Article 5 of the draft regulation to accelerate and facilitate the implementation of defined standards. However, the ECB suggests that sufficient flexibility should be provided for future developments of technical standards to ensure the efficiency of payment systems in the long-term. Finally, it is noted that the draft regulation does not allow time for the institutions and their customers to comply with Articles 4 and 5. The Council may wish to consider whether this will be feasible in practice.
12. According to Article 6(1) of the draft regulation, Member States shall by 1 January 2002 remove any national reporting obligations for cross-border payments up to EUR 12 500 for balance-of-payment statistics. The threshold will be increased to EUR 50 000 from 1 January 2004. The Committee on Monetary, Financial and Balance of Payments Statistics (CMFB) agreed in June 2000 on a common exemption threshold of EUR 12 500 from 1 January 2002 for those Member States making use of settlement-based reporting by banks on behalf of their customers. The amount was chosen to relieve almost all retail cross-border and around two-thirds of all transactions from balance-of-payments statistical reporting. With the EUR 12 500 threshold, consumer cross-border payments are in practice exempt from any reporting burden. The ECB is of the opinion that a premature increase of the threshold to EUR 50 000 would not increase substantially the proportion of cross-border transactions exempted but would have a severe impact on the quality of statistics through the loss of information concerning some balance of payments items, mainly services, income and transfers. Accurate balance-of-payments data are required for decision-making. In addition, a deterioration in national balance-of-payments data would reduce the quality of national account aggregates, notably gross domestic product and gross national income. A radical reform of the data collection systems in some Member States to maintain data quality would take time and probably add directly to the reporting burden on small and medium-sized enterprises in particular. A two-threshold system, with separate thresholds for payments within and outside the EU — an approach which could limit the impact on balance-of-payments statistics of the euro area as a whole — might be cumbersome and add to banks' reporting costs. For these reasons, the ECB strongly recommends postponing the increase in the threshold to EUR 50 000 to 2006 to allow sufficient time for the development of alternative sources. The draft regulation should also make clear that the threshold applies to reporting by banks of cross-border payments initiated by their customers, and is without prejudice to the obligation to meet the statistical requirements set out in the ESA95 Regulation. The ECB also suggests postponing until 2004 the removal of obligations as to the minimum information concerning the data of the beneficiary which prevent automation of payment execution contained in Article 6(2) of the draft regulation, as this may in particular entail consultation of various parties at the national level.
13. Regarding the application of the draft regulation in the three countries not participating in economic and monetary union, there appears to be a need for further clarification. As the euro will remain a foreign currency in these countries, it might be difficult to determine the adequate reference to an equivalent domestic payment, i.e. whether, for instance, the comparator would be either a transfer in the domestic currency or a transfer in euro within the same non-participating country. Similarly, it is unclear what will be the reference charge for a cash withdrawal in one of these countries.
14. This opinion shall be published in the *Official Journal of the European Communities*.

Done at Frankfurt am Main, 26 October 2001.

The President of the ECB

Willem F. DUISENBERG