

# EC-Directive on cross-border credit transfers

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## **EC-DIRECTIVE ON CROSS-BORDER CREDIT TRANSFERS**

Jac Rinkes

### Introduction

On 27 January 1997, the European Parliament and the (EC) Council adopted Directive 97/5/EC on cross-border credit transfers<sup>1</sup>. The Directive has a history of some seven years. The purpose of this Directive is to improve the efficiency, transparency and performance of cross-border credit transfers. Consumers and SMEs (small and medium sized enterprises) often encounter difficulties when making cross-border credit transfers. These problems comprise opaque conditions, double charging, inefficiency, high costs and unreliable indications of the (maximum) time needed for effecting a cross-border transfer order, as well as problems regarding liability of banks in the event of a failure to successfully complete a credit transfer. Furthermore, customers quite often find it difficult to obtain adequate information regarding such transfers<sup>2</sup>, and complaints handling schemes may be lacking.

Against this background, the Directive should enable individuals and businesses to make credit transfers rapidly, reliably and cheaply from one part of the Community to another. The ensuing greater competition in the market for cross-border credit transfers should lead to improved services and reduced prices. The purpose of this article is to examine the problems underlying the Directive, the history of the Directive<sup>3</sup> and the key-issues dealt with in the Directive.

### Cross-border credit transfers

Problems regarding cross-border payments have been identified by consumer organisations as one of the principal obstacles to bringing into effect the European Single Market. Although statistical data regarding the amount and value of cross-border payments are not available in full detail, the relative

importance of cashless payment instruments has been increasing substantially since the eighties<sup>4</sup>. Consumers and SMEs use a variety of instruments for their cross-border payments: face-to-face payments, remote payment by cheques or giro transfers through banking channels and 'practical' solutions (sending a cheque, opening an account abroad).

From the European perspective, this situation can be detrimental to the creation of the Single Market - consumers will hesitate to buy insurance, goods, services etc, abroad as long as simple things such as paying may be difficult. In order to alleviate the problems faced by consumers in cross-border payments the Commission published in 1990 a Recommendation<sup>5</sup> on the transparency of banking conditions relating to cross-border financial transactions. Despite the firm commitments the Commission made in this Recommendation, consumer organisations found little improvement regarding cross-border payments in the EU. As a result, European regulation of cross-border payments came - again - up for discussion in Brussels. This resulted in the present Directive, to be implemented before 14 August 1999. And despite opposition from the banking industry, legislation will make it easier, cheaper and quicker for consumers and SMEs to transfer money across borders.

#### Recommendation 90/109/EEC

The objectives of the 1990 Recommendation on the transparency of banking conditions relating to cross-border financial transactions were set out in its recitals: the removal of economic barriers within the Community and the progress achieved in the field of banking cooperation fostered by the directives adopted under the Single European Act should logically lead to an increase in purchases of goods and services in other Member States and to greater mobility for individuals, particularly workers, tourists and pensioners. This free movement of individuals and products will increase the number of cross-border financial transactions and the number of operators carrying out such transactions. The way in which international transfer systems operate is much more complex than the system of national transfers (more intermediaries, different clearing systems, different currencies and exchange aspects). Those undertaking such transactions should be clearly informed in advance of the cost and time needed.

The Commission (in 1990) invited the Payment Systems Technical Development Group (PSTDG) and the Payment Systems Users Liason Group (PSULG) to implement the Recommendation. The PSULG succeeded in introducing guidelines for client information regarding cross-border payments (which came into force on 1

January 1993). The Commission decided to survey the results of these guidelines, and thus the effects of the Recommendation<sup>6</sup>.

The results of this study<sup>7</sup> revealed quite disappointing data<sup>8</sup>. Reacting to these results, consumer organizations urged the Commission to take further steps; representatives of trade and industry were positive about possible improvements, but doubted the need for a directive. Representatives of the banking sector stated that the survey was not representative. Also, the study was considered premature because banks had only been bound by the Code of Conduct since January 1993, and the study was made in the first six months of 1993. The European Banking Federation, the European Savings Banks Group and the Association of Cooperative Banks of the EC were firm in their opposition<sup>9</sup>.

The Commission then promised a second study. This second study on cross-border payments in the European Union<sup>10</sup> again revealed 'generally disappointing' results<sup>11</sup>, despite certain improvements since the 1993 survey<sup>12</sup>: as to time of operation, the average period for the transfer was 4.79 days. A few transfers took a very long time; some never arrived<sup>13</sup>. The average cost of a 100 ecu payment amounts to 25.41 ecus with some sharp differences between countries. Banks earn money on exchange rates. Even when the principal clearly specified that he wanted to pay all costs, 36 per cent of the transfers were double charged<sup>14</sup>. As to consumer information and transparency, France, Ireland and the UK provided information in an accessible way. Results were less satisfactory in Greece, Portugal and Spain. The quality of the information supplied was highest in Denmark, the Netherlands and the UK, and most disappointing in Greece, Portugal and Luxembourg.

#### Legal Framework Working Group

Apart from the problems, recognised in the second survey, an interim-report of the Commission's Working Group on the legal framework for cross-border payments in the Community<sup>15</sup> revealed other problem areas and bottle-necks with respect to cross border payments. These concern:

- (1) recognition and enforcement of payment netting agreements<sup>16</sup>;
- (2) settlement finality, insolvency and the zero-hour-rule<sup>17</sup>;
- (3) consequences of revocation (sender finality) of a transfer (to be solved by better information about legal rules and through self-regulation);
- (4) receiver finality (how and when completion of a transfer occurs, and whether and when a debt is extinguished by a

- credit transfer (discharge of liability);
- (5) responsibility between banks;
- (6) responsibility to customers;
- (7) right of refund ('money-back guarantee');
- (8) the time taken for the transfer; and
- (9) the problem of 'double charging'.

The Commission representatives made no secret of the fact that for the Commission the main thrust of the work in this area is to provide the framework for a better, more efficient service to customers. Work on the inter-bank aspects may be seen as the necessary foundation for such improvements. In the Commission's view it would be undesirable and indeed unrealistic to provide customers with legal rights in respect of the performance of cross-border transfers by their banks without giving those same banks enforceable rights against other banks acting in the transaction (eg intermediaries and correspondents in other Member States). The findings of the Legal Framework Working Group coincide with the conclusions of a G-10 Working Group on international banking relations (1992).

#### The Commission Action Plan

Following up on the results of the second survey on cross-border payments, the European Commission proposed further initiatives (opposed by the banks<sup>18</sup>). In this respect, the Commission stressed the need for quick and efficient systems for cross-border payments as a major condition for full integration of the European Market for goods and services. The Commission's view is that customers should be able to transfer money across borders without any problems, quickly and cheaply. Basically, cross-border payments should be as easy as national payments<sup>19</sup>. The Commission envisaged a directive laying down the general principles securing banks' obligations to their commitments towards their customers for cross-border payments, including avoidance of double charging and the time for the transfer. A draft directive was based on a first draft, which was prepared in 1993<sup>20</sup>.

Accordingly, the Commission presented a package of measures to the Council, the European Parliament, the ECOSOC and the European Monetary Institute (EMI)<sup>21</sup>. Furthermore the Commission proposed a work programme, including discussions with the PSTDG and the PSULG, alleviating procedures for reporting cross-border transfers from balance of payment statistics (in order to reduce costs for banks), continuing discussions with all concerned on the legal framework for credit transfers (especially settlement finality<sup>22</sup>), and maintaining contact

with interested parties on the establishment of linkages between national automatic clearing houses.

Obviously, these measures implied full cooperation by the banks. However, the EU Banking Federation reaffirmed its hostility to a directive, stating that the operations in question only represent a small percentage of cross-border transfers in Europe<sup>23</sup>, and that a directive would be incompatible with the desire to reduce costs and the principle of subsidiarity. Banks doubted whether consumers would benefit at all.

The necessity of a directive on cross-border payments

The volume of cross-border payments by consumers and SMEs is perhaps not impressive. A substantive increase of such payments would reveal the success of the internal market, and the proposed measures could very well minimise the risk that the realisation of the internal market is hampered by suppliers of (cross-border) financial services. However, most problems revealed in this area have quite practical characteristics. One could appreciate the Commission's determination to keep the banks to their contractual obligations; arguably, this position could be extended to many areas and reveals the boundaries set by the absence of a European legal framework for private law. Basically, for small-value, cross-border payments, free competition on the internal market should have offered solutions but failed to do so.

Then, action should be taken. Banks still wrestle with small-value, cross-border transfers. The main reasons for this - according to the banks - is the absence of an adequate infrastructure for small-value, cross-border payments, different structures of financial markets in the Member States and the functioning of Central Banks. Perhaps the 'European Central Bank' and the introduction of a single currency will alleviate these problems. Furthermore, the banks have argued that the absence of a separate circuit - distinct from commercial payment systems - for small-value, cross-border payments may be of influence. Inter-company agreements, a European Bank-giro institution and further cooperation between banks, automatic clearing-houses and networks could be helpful to solve the problems described. Cross-border consumer transactions have been identified as an area of European Policy since the three-year action plan 1990-1992, and has acquired much attention by the Commission. In 1993 the Commission agreed on an action plan for cross-border payments; the problems still exist<sup>24</sup>.

## Directive on cross-border credit transfers

### Procedure

Further surveys by the Commission indicated the need for a directive, especially because self-regulation by the banks proved to be unsuccessful. In the end, this resulted in the 1993 draft directive. An amended proposal was put forward in 1995<sup>25</sup>. The European Parliament gave its opinion (first reading) on 19 May 1995<sup>26</sup>. On 18 September 1995 the Ecofin-Council agreed on a common position regarding the draft directive<sup>27</sup>. In a Notice<sup>28</sup>, the Commission laid down the competition aspects of the draft directive. Then followed a second reading and a decision of the European Parliament<sup>29</sup> and decisions of the Council (19 December 1996) and the European Parliament (16 January 1997, co-decision procedure under Article 189b of the Treaty).

### Purpose of the Directive

According to the recitals of the Directive, the volume of cross-border payments is growing steadily now the internal market is in full progress, with ensuing greater trade and movement of people within the Community<sup>30</sup>. Cross-border credit transfers account for a substantial part of the volume and value of cross-border payments. It is essential for individuals and businesses (especially SMEs) to be able to make credit transfers rapidly, reliably and cheaply from one part of the Community to another. Competition in the market for cross-border credit transfers should be enhanced, leading to improved services and reduced prices. The Directive seeks to follow up the progress made towards completion of the internal market, in particular towards liberalisation of capital movements and the EMU. The provisions of the Directive are applicable to credit transfers in the currencies of the Member States and in ecus.

The Directive lays down rules in the area of transparency and performance of cross-border payments; the issues covered by this Directive must be dealt with separately from other 'systemic' issues, particularly the problems of settlement finality, under consideration within the Commission. The purpose of the Directive is to improve cross-border credit transfer services and thus assist the EMI in its task of promoting the efficiency of cross-border payments with a view to the preparation of the third stage of economic and monetary union. With a view to ensuring transparency, the Directive lays down the minimum requirements needed to ensure an adequate level of customer information both before and after the execution of a cross-border credit transfer. Furthermore, it should contribute to reducing the maximum time taken to

execute a cross-border transfer (encouraging those financial institutions which already take a very short time to do so, and to maintain that practice). Within two years of implementation of the Directive, the Commission will examine the time-limit to be applied in the absence of a time-limit being agreed between the customer and the financial institution executing the payment. The Commission will submit its report to the European Parliament and the Council.

#### Contents of the Directive

The provisions of the Directive are applicable to cross-border credit transfers in the currencies of the Member States and the ecu up to the equivalent of 50.000 ecu executed by credit institutions (as defined in the Directive) on the order of persons other than those institutions (Article 1). The terms 'credit institution', 'other institution' and 'financial institution' are defined in Article 2 of the Directive (with reference to existing EC-legislation<sup>31</sup>); the expression 'institution' means a credit institution or other institutions. For the purpose of Articles 6, 7 and 8 of the Directive (dealing with time requirements, execution and refund in the event of non-execution), branches of one credit institution situated in different Member States participating in the credit transfer shall be regarded as separate institutions. An 'intermediary institution' means an institution which participates independently of the parties in the execution of the cross-border credit transfer.

A cross-border credit transfer is defined (Article 2f) as a transaction carried out on the initiative of an 'originator' via an institution or its branch in one Member State, with a view to making available an amount of money 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. An 'originator' is the natural or legal person that orders (an order is an unconditional instruction in any form) the making of a cross-border credit transfer to a beneficiary (the final recipient). The term 'customer' means the originator or the beneficiary, as the context may require. Furthermore, the terms 'reference interest rate' and 'date of acceptance' are defined (Article 2k and l).

The Directive lays down explicitly the transparency of conditions for cross-border credit transfers, especially regarding prior and subsequent information (Articles 3 and 4). Prior to the transfer, this information - in writing or any other appropriate means, and in readily comprehensible form - shall include at least an indication of the time needed for the subsequent stages of the transfer, the manner of



calculation of any commissions, fees, charges and rates payable, the value date, if any, complaints and redress procedures, and indication of the reference exchange rates used. Subsequent to a cross-border credit transfer, information should be provided - unless customers expressly forgo this - regarding at least references enabling identification of the transfer, the original amount, the amount of all charges and commission fees payable and the value date, if any. In case of a non-franco payment, the beneficiary shall be informed of this by his own institution. Exchange rates used (if any) shall be notified.

The minimum obligations of institutions in respect of cross-border credit transfers are laid down in Articles 5-10 of the Directive. Article 5 states that for a cross-border credit transfer with stated specifications, an institution must - unless it does not wish to do business with the customer - at the request of the latter 'give an undertaking' concerning the time needed for execution of the transfer and the costs thereof (excluding exchange rates).

The originator's institution shall execute the cross-border credit transfer in question within the limit agreed with the originator (Article 6). The institution shall compensate the originator when the agreed time limit is not complied with (or, in the absence thereof, when the funds have not been credited to the beneficiary's institution at the end of the fifth banking business day following the date of acceptance of the order). Compensation comprises the payment of interest (calculated by applying the reference rate of interest) for the period of extension of the agreed or applicable time limit. In case the non-execution within the time limits set is attributable to an intermediary institution, that institution shall be required to compensate the originator's institution. The beneficiary's institution shall make the funds available to him within the agreed time limit, with similar provisions for compensation in case of delays.

The institutions concerned are obliged to execute the transfer for the full amount thereof unless specified otherwise by the originator (Article 7). The beneficiary's institution may levy charges relating to the administration of his account; such charges may not be used to avoid the obligations laid down in Articles 5-10 of the Directive. In the event of double charging, the institutions are liable to credit the amount (wrongly) deducted to the customer, fully and at their own costs.

In the event of non-execution of transfers the institutions

are liable up to 12.500 ecu<sup>32</sup> plus interest and charges (Article 8). This obligation rests on the originator's institution, as well as intermediary institutions; the amount is payable to the originator or the beneficiary, depending on the circumstances. If the cross-border credit transfer was not completed because of an error or omission in the instructions given by the originator, or, as the case may be, the beneficiary, to his institution, or because of non-execution by an intermediary institution expressly chosen by the originator, the obligation to refund the amount is not applicable<sup>33</sup>. However, institutions shall then endeavour as far as possible to refund the amount of the transfer (deducting charges, interest and costs in the event).

Among the circumstances with which institutions involved in the execution of a cross-border credit transfer may be confronted, are those relating to insolvency and to force majeure. For that purpose the definition of force majeure is based on the definition thereof in the Package Travel Directive<sup>34</sup>. Institutions participating in the transfer shall be released from their obligations in case of force majeure, as defined (Article 9), without prejudice to Directive 91/308/EEC<sup>35</sup>.

Adequate and effective dispute settlement should be secured by the Member States (Article 10)<sup>36</sup>.

An adequate solution to the problems of small-value, cross-border payments?

The Directive clearly does not deal with all problems identified in the area of small-value, cross-border credit transfers. In addition to this, if one examines existing measures and action plans put forward, the Directive contains little that is new (if one disregards the limitation of liability, for that matter). Even in the areas explicitly regulated by the Directive, consumers engaging in cross-border credit transfers may still be disappointed. The Directive contains many provisions excluding liability of participating institutions, notably in case the customer fails to provide adequate instructions (or chooses the wrong intermediary institution). For credit transfers between 12.500 and 50.000 ecu, national laws will determine whether customers can get a full refund. Time limits should be agreed upon explicitly; otherwise, a period of five banking business days is applicable before compensation can be obtained (and even then, compensation is limited, as mentioned above). Of course, institutions should provide adequate information regarding applicable time limits. But customers can easily be induced to

agree upon extended time limits, for instance by costs aspects. The Directive clearly focuses on the 'informed consumer'<sup>37</sup>.

Consumer information as a panacea

The Directive - as with other recent Directives in the area of consumer protection - aims at improving the legal protection of the European consumer, primarily through improved information<sup>38</sup>.

The effectiveness of a duty of disclosure could be measured in basically two ways: (1) has the behaviour of consumers been modified by the disclosure, (2) have characteristics of the market changed in measurable ways. Effectiveness can have a third meaning when considering required disclosures: (3) is the disclosure made in a way that it is understandable to consumers. Studies in this field<sup>39</sup> all follow the 'buyer-behaviour-model approach', in the sense that information disclosures should have a hierarchy of effects:

- (a) first, improved awareness and comprehension, which leads to
- (b) improved consumer attitudes, which, in turn, lead to
- (c) changes in consumer behaviour.

Uniformity in the method of describing the product or the service and its price undoubtedly contributes to effectiveness, but usually consumer decisions are mainly related to income.

In contrast to evidence of increased awareness of costs, a majority of consumers will not automatically 'shop' extensively on the Single Market: other circumstances may prevent this. Disclosure requirements are likely to have the greatest effect when they are readily accessible, easily comprehensible, and useful for making direct comparisons. Only then, will information in the consumers' possession lead to more rational and informed decision making with, consequently, improvements in market efficiency. However, this is likely to occur with financially aware consumers; it may not be true of other categories of consumers or, indeed, of consumers as a whole. If this is correct, there may be a need to review the scope of the original consumer policy objective or to consider other, supplementary, measures to boost consumer utilization of the available information or even, to consider a different approach not aiming on the informed consumer but at consumer protection itself.

In EU-law, measures seemingly focus quite often on disclosure duties in order to strengthen the position of the consumer. The well-informed consumer should be able to use the information disclosed, by-passing the need for substantive rules protecting the interests of the consumer. The function of national private law in that respect is mostly disregarded. It could be held that the European legal systems tend to develop towards a position where statutory rules should only provide protection in case the social and economic position of the parties is imbalanced in such a way that the autonomy of the parties is under pressure. From this position, any significant improvement of the information available to consumers could make protective legislative measures less desirable. Although concepts such as 'good faith', 'Treu und Glauben', 'bonne foi' and 'rules of reasonableness and fairness' can serve to rebalance the position of consumers and suppliers in specific cases, a shift in the position of the European legislators in this respect could only be supported from the consumer perspective provided the effectiveness of disclosures is firmly established, and backed by a high level of substantive legal protection. Consumers as a group have very different characteristics; not every consumer is financially aware and 'globalisation and depersonalisation' of consumer interests could have an adverse effect on the level of protection<sup>40</sup>. Furthermore, the lack of participation by consumers and their representatives in the EU-decision making process could be seen as one of the weaknesses of the development of European consumer law.

#### Equality of bargaining positions

Traditionally, the continental law of obligations has focused on the non-professional, providing special rules for commerçants or Kaufleute. The common law systems have originated from the commercial perspective<sup>41</sup>. The common law tends, now, to protect non-professionals by counterbalancing their bargaining position. It seems that the common law holds that the position of the non-professional is in principle unequal to that of the professional counter-party, and needs some redressing now consumers have developed as a new interest group. Civil law legislators tend to modify their legal rules systematically, introducing very detailed protective statutory measures. The EU freely navigates between these different positions, not hampered by any elaborate framework for the development of private law on the Single Market.

Bargaining positions on the market are mainly determined by power, knowledge and experience. Consumer bargaining power is not yet established to the extent that one can say that

further protective measures are unnecessary. Knowledge depends heavily on adequate and efficient information about legal rules and the subject matter of transactions on the Single Market; this issue is momentarily a focal point of European legislation. Consumer experience in the area of cross-border transactions is lacking. Consumers are usually unaware of their own legal rules, and knowledge on foreign law cannot be expected. Although reliable statistical data is not available, the number of cross-border consumer complaints is not impressive<sup>42</sup>. Obviously, the Single Market will rapidly change this situation.

Consumers feel insecure as to whether they can pursue their rights in other countries (unawareness of procedures, information, rules, possible language barriers). Differences in national laws inhibit full use of the Single Market. Cost aspects of complaints and litigation and varying legal protection can invalidate any price advantages of cross-border shopping.

In the area of consumer protection, both the common law and civil law systems (and, for that matter, also the EU) tend to elaborate rules that (further) differentiate the law of obligations. In this respect, one could appreciate that the inequality of the market parties in the field of knowledge will be redressed by effective information systems. This could be especially useful for services. However, from a consumer perspective, the next step should be to uniform and standardise the justified expectations of consumers in specific legal relationships.

#### Concluding remarks

The 1997 Directive on cross-border credit transfers presents a powerful political and legal signal to the banks that the internal market is a reality. One could doubt the effectiveness of the substantive rules of the Directive, or even question the necessity of regulation of this area of financial practice. However, if financial institutions desire to benefit from the advantages of the internal market, they can hardly oppose any improvement in information and transparency, even on (qua volume) 'minor' issues. The Financial Times editorial (20 October, 1994) stated that Europe's banks have lost their struggle against legislation, but given the substantial costs of small transfers and the uncertainty over how long a payment will take, it is hard to feel much sympathy for them. Perhaps one should, because smaller banks will probably lose business once new rules are imposed. On the other hand, costs for money transfers have increased substan

tially over the last decade, and banks were unable to come up with effective voluntary measures. The Commission shall report on the application of the Directive within two years after the date of its implementation (cf. Article 12).

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1. [1997] OJ L 43/25-51, 14.2.1997. The Commission has announced its intention to lay down regulation for electronic payments through other institutions than banks (including Internet). Implementation procedures regarding the 1997 Directive are pending, see e.g. for the Netherlands Staatscourant (NL. O.J.) 1997, 155.
2. Cf. Green Paper on Financial Services, COM(96)209 def.; see also the Green Paper on Commerce, p. 9.
3. Cf. R.F.H. Mertens and J.G.J. Rinkes, Cross-border Payments and Consumer Protection, International Banking and Financial Law 1994, p. 72-74, J.G.J. Rinkes, EC Directive on cross-border credit transfers, IBFL 1997, p. 141-144.
4. Cf. Payment Systems Volume and Values in the Group of Ten Countries, Payment Systems Worldwide, Spring 1994.
5. 90/109/EEC [1990] OJ L 67.
6. Sec (92) 621 final.
7. Sec (93) 1968/5, [1993] OJ 1181.
8. On transparency: 68 per cent of the banks surveyed failed to hand out written information; only 4 per cent possessed information in accordance with the Code of Conduct; as to double charging: when asked to effect 'franco' payments (the principal pays all costs), 43 per cent of the amounts received were reduced due to double charging; the longest payment took 70 working days and average time was 4.6 days (the Recommendation laid down two days for every bank involved); and generally, banks did not assume liability for the transfer and clients were directed to other banks involved in the transfer.

9. Europe 1993, 6080: 'the European Commission should not threaten regulatory legislation at the present time (...)  
The banks state that if the Commission "wields too much of a heavy-handed regulatory stick - rather than the carrot of encouragement", a number of banks may be forced out to the cross-border transfer rates, defeating totally the object of the exercise'.
10. Europe - Documents 1994, Nr. 1901.
11. Europe 1994 No. 6323.
12. Europe No. 6331.
13. Banks offer the possibility of 'urgent' payments, supposedly more rapid. Surprisingly, the survey revealed that on 1,048 urgent payments made, 132 non-urgent payments were sent and arrived faster, costing less than the urgent ones.
14. Banks promised to decrease the amount of transfers which were double charged; the Commission had set a ceiling at 10 per cent of all transfers in December 1993.
15. WHB/lds C4, 1993.
16. Agreements between banks to set-off aggregated individual positions and obligations.
17. In some Member States, a court order of bankruptcy or winding-up has retro-active effect on the day the order was made. Transactions made with the debtor earlier that day fall within the period of insolvency.
18. Europe 1994 No. 6339.
19. Cf. Europe Environment 441, 1994. Discipline in the matter of payment in commercial transactions has attracted the Commission's attention: see Recommendation 95/198/EC on payment periods, [1995] OJ L 127.
20. Sec (93) 1968/5. This draft was governed by three principles: transparency of information on the conditions for cross-border payments, financial institutions should effect the transfer within a reasonable time and in accordance with the order, and, in case an order is failed, the money paid should be refunded.
21. Europe No. 6341. The draft Directive contained time limits (specific agreement with the customer, otherwise six working days in all), penalties (interest), making double charging illegal (risk for the principal bank), money back guarantees, transparency rules and information requirements. The Commission promised to deal with competition aspects in a (draft) Notice (including the exchange of inter-bank pricing information).
22. See M. Balz, Richtlinienvorentwurf zur Endgültigkeit von Abrechnungen in EU-Zahlungssystemen, [1995] ZIP, p. 1639-1540.
23. 1.27 per cent; low-value cross-border transfers represent only 0.3 per cent of the total volume of payments, 100

million operations out of a 31 billion.

24. Cf. [1993] OJ C 333/19, and see (eg) I. Meunier, *Les paiements transfrontières de petits montants*, INC-Hebdo 1994, p. 15-21. See also INC Hebdo 1997, p. 9-12.
25. [1995] OJ C 199/16.
26. [1995] OJ C 151/370.
27. [1995] OJ C 353/52 - note that the terminology of the directive has not been consistent: cross-border financial transactions (1990 Recommendation), cross-border credit payments (1993 draft directive), cross-border credit transfers (1997 directive). The text of the 1997 Directive poses certain linguistic difficulties, especially if one reads the official translations in other languages.
28. [1994] OJ C 322/7, [1995] OJ C 251/13, ECOSOC opinion [1995] OJ C 236/1.
29. [1996] OJ C 96/74.
30. See recitals of the Directive, [1997] OJ L 43/25-26.
31. Directive 77/780/EEC [1977] OJ L 322/30, last amended by Directive 95/26/EC [1995] OJ L 168/7, and Council Regulation 3604/93 [1993] OJ L 332/4.
32. This limitation is based on the fact that the obligation to refund imposes a contingent liability on the financial institutions which might, in the absence of any limit, have a prejudicial effect on solvency requirements.
33. The limitation does not affect the general provisions of national law whereby an institution has responsibility towards its customer when a cross-border credit transfer has not been completed because of an error committed by that institution.
34. [1990] OJ L 150/59, see S. Storm, *Harmonisation of the Legislation of EC Member States on Consumer Protection regarding Package Holidays* (ECLJ) 1992-189, *ibid.*, CL [1993] 33, J.G.J. Rinkes, *Air travel and package holidays: no birds flying overhead*, in: *Enhancing the legal position of the European Consumer*, BIICL, London & Institute for European Law (Birmingham): *European Law Series*, 1996, ed. J. Lonbay, p. 203-226.
35. Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering [1990] OJ L 67/39.
36. Existing procedures may be used where appropriate.
37. Cf. S. Weatherill, CL [1994] p. 49-69.
38. The perspective of EU-consumer law seems to be shifting from the *homo oeconomicus passivus* (not acting for economic or professional purposes) to a well-balanced approach to market integration in general where informed consumers have sufficient bargaining power to ensure their rights, cf. Weatherill, *op.cit.*



39. See OECD, Consumer information about financial services, Paris 1992.
40. The issue of effectiveness of disclosures on transaction costs will not be addressed here.
41. See G.H. Samuel & J.G.J. Rinkes, Law of obligations and legal remedies, Cavendish 1996, p. 197.
42. Cf. (eg) the Dossier des plaintes des consommateurs en matière de garantie et services après-vente, UFC/BEUC/123/94, May 1994. A survey of the Verbraucherberatung (Euregio) Enschede/Gronau revealed in 1991 that 44 % of the Netherlands and 37 % of the German respondents enter in a cross-border transaction more than twice a month; 13, respectively 20 % of the respondents did not expect to be able to solve legal problems themselves. 55 % of the respondents were in favour of consumer information on cross-border transactions. More recently, the Commission announced that in order to facilitate consumer access to justice, the consumers should first of all be informed about their rights. The Commission has set up ten cross-border information centres, and aims at doubling this number by 1997 (additionally, a 'Consumer Guide' was published in 1994 by CPS, containing a whole series of useful information on many different subjects linked to consumption within the Single Market), Europe No. 6332, 8 October 1994 (available through the Official Publication Offices, ISBN 92-826-8701-5). According to the Eurobarometer 39.0, published in INFO-C November 1993, 50 % of the consumers expect the EU institutions to be the most capable for solving cross-border problems. One out of three respondents held national institutions to be capable also (oddly, one in four respondents was unable to answer the question on capability).