COMMISSION OF THE EUROPEAN COMMUNITIES

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OPINION OF THE COMMISSION
pursuant to Article 189 b (2) (d) of the EC Treaty,
on the European Parliament's amendments
to the Council's common position regarding the

proposal for a
EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

ON CROSS-BORDER CREDIT TRANSFERS

AMENDING THE PROPOSAL OF THE COMMISSION
pursuant to Article 189 a (2) of the EC Treaty

OPINION OF THE COMMISSION

pursuant to Article 189(b)(2)(d) of the EC Treaty, on the European Parliament's amendments to the Council's common position regarding the

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EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE
ON CROSS-BORDER CREDIT TRANSFERS

I. STAGE REACHED IN THE PROCEDURE

(a) On 18 November 1994, the Commission adopted a proposal for a European Parliament and Council Directive[1] on cross-border credit transfers. This was sent to the Council by letter dated 18 November 1994. The Council subsequently forwarded this text to the European Parliament, to the European Monetary Institute and the Economic and Social Committee. In January 1995, it began its own examination of the proposal.

(b) The European Monetary Institute (EMI) rendered its opinion on the Commission proposal on 20 March 1995.

The Economic and Social Committee adopted its opinion at its sitting on 1st June 1995[2].

(c) The European Parliament adopted the legislative resolution embodying its opinion on the Commission proposal at its sitting on 19 May 1995[3].

(d) On 6 June 1995, the Commission adopted an amended proposal[4] in the light of the consultations of Parliament, the European Monetary Institute and the Economic and Social Committee. It was sent to Council by letter of 7 June 1995.

(e) On 4 December 1995 the Council adopted the common position[5]. It introduced a number of amendments to the Commission's amended proposal; in particular it rejected 3 out of the 19 amendments inserted in the amended proposal.

(f) In the plenary session of 14 December 1995, the President of the Parliament announced receipt of the Common Position.

(g) On 13 March 1996, the European Parliament adopted unanimously 14 amendments to the Common Position[6].

In accordance with the procedure described in Article 189g(2)(d) of the EC Treaty, the Commission has to deliver an opinion on these amendments.

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1 OJ No C 360, 17.12.1994, p.13.
2 OJ No C 236, 11.09.1995, p.1.
3 OJ No C 151, 19.06.1995, p. 370.
4 OJ No C 199, 03.08.1995, p. 16.
5 OJ No C 353, 30.12.1995, p. 52.
6 Text not yet published in the Official Journal.

II. POSITION TAKEN BY THE COMMISSION REPRESENTATIVE AT THE PLENARY SITTING

The European Parliament proposed 14 amendments to the text of the Common Position of the Council. The Commission representative accepted amendments 1, 2, 3, 4, 5, 6, 7, 8, 9, 11 and 14 practically as they stand. Furthermore, the Commission accepted amendments 10 and 12 partially or subject to modifications. The Commission representative did not accept one amendment, i.e. amendment n° 13.

III. THE COMMISSION OPINION ON AMENDMENT N° 13 VOTED BY THE EUROPEAN PARLIAMENT

Amendment n°13, introducing a new paragraph 2 to Article 10 of the Common Position of the Council

The purpose of the amendment is twofold :

- to state that access to redress and complaints procedures shall occur where a complaint has not been remedied or a decision has not been taken on it by the institution concerned within four weeks after the first complaint;

- to ensure that a list of addresses be available at all institutions carrying out cross-border credit transfers.

As to the first, the Commission considers that a harmonised maximum deadline would not suit customers' needs for rapid redress under the different articles and might also be in conflict with similar deadlines contained in other provisions of the Directive, e.g. that in Article 8. As to the second, it is already satisfied by a similar requirement under the penultimate indent of Article 3.

For the reasons outlined, the Commission cannot accept this amendment.

Common Position of the Council	**Amendment by Parliament**
(Amendment 13) Article 10(2) (new)	
	2. If a complaint has not been remedied or a decision has not been taken on it within four weeks after the first complaint, complainants may approach one of the complaint and redress offices to be set up for this purpose, or may use existing procedures where available. A list of addresses of such offices shall be available at all institutions carrying out cross-border credit transfers under this Directive.

Amended proposal for a

EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE ON CROSS-BORDER CREDIT TRANSFERS

(presented by the Commission pursuant to Article 189a(2) of the EC Treaty

Amended proposal for a

EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE ON CROSS-BORDER CREDIT TRANSFERS

1. Amendment n°1 concerning Recital n°2 of the Common Position

The amendment aims to insert a specific reference to the definitive Commission Notice on the application of the EC competition rules to cross-border credit transfer systems[7], a draft of which had been issued alongside the Commission's initial proposal for a European Parliament and Council Directive on cross-border credit transfers.

The insertion aims to highlight the fact that, in conformity with the Commission's Notice, greater competition in the market for cross-border credit transfers should lead to improved services and reduced prices. Therefore, the Commission accepts this amendment.

Common Position of the Council	**Amendment by Parliament**
(Amendment 1) Recital 2	
(2) Whereas it is of paramount importance for individuals and businesses, especially small and medium-sized enterprises, to be able to make credit transfers rapidly, reliably and cheaply from one part of the Community to another; whereas greater competition in the market for cross-border credit transfers should lead to improved services and reduced prices;	(2) Whereas it is essential for individuals and businesses, especially small and medium-sized enterprises, to be able to make credit transfers rapidly, reliably and cheaply from one part of the Community to another; whereas, in conformity with the Commission Notice on the application of the EC competition rules to cross-border credit transfers, greater competition in the market for cross-border credit transfers should lead to improved services and reduced prices;

7 OJ No C 251, 27.09.1995, p. 3.

2. Amendment n°2 to Recital n° 7 of the Common Position of the Council

Recital n°7 relates to the scope of application of the Directive. Therefore, this amendment needs to be considered in conjunction with amendment n°5 to Article 1 of the Common Position.

As such, it points to an enlargement of the Directive's application, by establishing that transfers of an amount less than ECU 50.000 are covered. This amendment is in keeping with the Commission's fundamental conviction that as high a threshold would better serve the objective of creating a fully functioning Internal Market for cross-border credit transfer services. Therefore, the Commission accepts this amendment.

Common Position of the Council	**Amendment by Parliament**
(Amendment 2) Recital 7	
(7) Whereas, in line with the objectives set out in the second recital, this Directive should apply to any credit transfer of an amount less than ECU 25.000; whereas that amount should be increased to ECU 30.000 two years after the final implementation date for this Directive;	(7) Whereas, in line with the objectives set out in recital 2, this Directive should apply to any credit transfer of an amount of less than ECU 50.000; whereas institutions should be under an obligation to refund in the case of a non-completed transfer;

3. Amendment n° 3 concerning Recital n° 11 of the Common Position of the Council

This recital relates to Article 8 of the Common Position on the refund of non-completed cross-border credit transfers and must therefore be read in conjunction therewith (and amendments n° 8 and 9 thereto).

It aims to increase the minimum level of the refund to the amount of ECU 20.000, thus improving the customer's situation; the increase is however deemed not to have a prejudicial effect on solvency requirements. Therefore the Commission accepts this amendment.

Common Position of the Council	**Amendment by Parliament**
(Amendment 3) Recital 11	
(11) Whereas there should be an obligation upon institutions to refund in the event of non-execution of a credit transfer; whereas the obligation to refund imposes a contingent liability on institutions which might, in the absence of a limit, have a prejudicial effect on the solvency requirement; whereas that obligation to refund should therefore be applicable to ECU 10.000;	(11) Whereas there should be an obligation upon institutions to refund in the event of a failure to successfully complete a credit transfer; whereas the obligation to refund imposes a contingent liability on institutions which might, in the absence of any limit, have a prejudicial effect on solvency requirements; whereas that obligation to refund should therefore be applicable to ECU 20.000;

4. Amendment n° 4 concerning Recital n° 14a (new) of the Common Position of the Council

This new recital relates to Article 10 on the settlement of disputes and, being intended as a match to the proposed amendment n° 12 to that Article, should be read in conjunction therewith.

It aims to clarify in more detail the scope of Member States' responsibility to ensure that adequate and appropriate procedures exist to deal with customer's complaints relating to areas covered by the Directive. Therefore, the Commission accepts this amendment.

Common Position of the Council	**Amendment by Parliament**
	(Amendment 4) Recital 14a (new)
	(14a) Whereas adequate and appropriate complaints and redress procedures relating to the areas covered by this Directive should be available to afford the customer better protection, using existing procedures where available,

5. Amendment n° 5 to Article 1 of the Common Position of the Council

Amendment n° 5 relates to the scope of application of the Directive. It points to an enlargement of the Directive's application, by establishing that transfers of an amount less than ECU 50.000 are covered.

This amendment is in keeping with the Commission's fundamental conviction that as high a threshold would better serve the objective of creating a fully functioning Internal Market for cross-border credit transfer services. Therefore, the Commission accepts this amendment.

Common Position of the Council	**Amendment by Parliament**
(Amendment 5) Article 1	
1. The provisions of this Directive shall apply to cross-border credit transfers ordered by persons other than those covered by Article 2(a), (b) and (c) and executed by credit institutions and other institutions.	1. The provisions of this Directive shall apply to cross-border credit transfers in the currencies of the Member States and the ECU up to the equivalent of ECU 50.000 ordered by persons other than those referred to in Article 2(a), (b) and (c) and executed by credit institutions and other institutions.
2. Until two years after the date of implementation of this Directive, this Directive shall apply to cross-border credit transfers in the currencies of the Member States and in ECUs of amounts less than ECU 25.000. After that date, this Directive shall apply to cross-border credit transfers in the currencies of the Member States and in ECUs of amounts less than ECU 30.000.	Deleted.

6. Amendment n° 6 to Article 3 of the Common Position of the Council

This amendment relates to Article 3 on prior information on conditions for cross-border credit transfers.

While most articles of the Directive refer to obligations falling directly on institutions, Article 3 lays down obligations on Member States. Coherently with the Commission's initial and amended proposals, the amendment aims to streamline the text of the Common Position, by setting out that the transparency requirements of Article 3 fall directly on institutions. Therefore, the Commission accepts this amendment.

Common Position of the Council	**Amendment by Parliament**
	(Amendment 6) Article 3, introduction
Member States shall ensure that institutions make available to their actual and prospective customers in writing, including where appropriate by electronic means, and in a readily comprehensible form, information on conditions for cross-border credit transfers. This information shall include at least :	The institution shall make available to their actual and prospective customers in writing, including where appropriate by electronic means, and in a readily comprehensible form, information on conditions for cross-border credit transfers. This information shall include at least :

7. Amendment n° 7 to Article 4 of the Common Position of the Council

This amendment relates to Article 4 on information subsequent to a cross-border credit transfer

While most articles of the Directive refer to obligations falling directly on institutions, Article 4 lays down obligations on Member States. Coherently with the Commission's initial and amended proposals, the amendment aims to streamline the text of the Common Position, by setting out that the transparency requirements of Article 4 fall directly on institutions. Therefore, the Commission accepts this amendment.

Common Position of the Council	**Amendment by Parliament**
	(Amendment 7) Article 4, introduction
Member States shall ensure that institutions supply their customers, unless the latter expressly forgo this, subsequent to the execution or receipt of a cross-border credit transfer, with clear information in writing, including where appropriate by electronic means, and in a readily comprehensive form. This information shall include at least :	The institution shall supply their customers, unless the latter expressly forgo this, subsequent to the execution or receipt of a cross-border credit transfer, with clear information in writing, including where appropriate by electronic means, and in a readily comprehensive form. This information shall include at least :

8. Amendment n° 8 to Article 8(1), first sub-paragraph of the Common Position of the Council

Amendment n° 8 relates to Article 8(1) of the Common Position on the refund of non-completed cross-border credit transfers.

It aims to increase the minimum level of the refund to the amount of ECU 20.000, thus improving the customer's situation; the increase is however deemed not to have a prejudicial effect on solvency requirements. Therefore the Commission accepts this amendment.

Common Position of the Council	**Amendment by Parliament**
(Amendment 8) Article 8(1), first subparagraph, introduction	
1. If, after a cross-border credit transfer order has been accepted by the originator's institution, the relevant amounts are not credited to the account of the beneficiary's institution, without prejudice to any other claim which may be made, the originator's institution shall credit the originator up to ECU 10.000, with the amount of the cross-border credit transfer plus :	1. If, after a cross-border credit transfer order has been accepted by the originator's institution, the relevant amounts are not, for any reason, credited to the account of the beneficiary's institution, without prejudice to any other claim which may be made, the originator's institution shall credit the originator up to ECU 20.000, with the amount of the cross-border credit transfer plus :

9. Amendment n° 9 to Article 8(2) of the Common Position of the Council

Amendment n° 9 relates to Article 8(2) of the Common Position on the refund of non-completed cross-border credit transfers because of non-execution by an intermediary institution chosen by the beneficiary's institution.

In coherence with amendment n° 8, its aim is to set the minimum level of the refund at ECU 20.000. In the absence of this amendment, Article 8(2) would not contemplate any explicit limitation on the level of the refund. Therefore, the Commission accepts this amendment.

Common Position of the Council	**Amendment by Parliament**
	(Amendment 9) Article 8(2)
2. By way of derogation from paragraph 1, if the cross-border credit transfer was not completed because of its non-execution by an intermediary institution chosen by the beneficiary's institution, the latter institution shall be obliged to make the funds corresponding to the amount of the transfer available to the beneficiary.	2. By way of derogation from paragraph 1, if the cross-border credit transfer was not completed because of its non-execution by an intermediary institution chosen by the beneficiary's institution, the latter institution shall be obliged to make available to the beneficiary the funds up to ECU 20.000.

10. Amendment n° 10 to Article 8(3), second sub-paragraph of the Common Position of the Council

Amendment n° 10 relates to Article 8(3) which deals with situations where the inability to successfully execute a transfer is attributable to defective customer information or to a mistake by an intermediary institution chosen explicitly by the originator.

The amendment aims to specify that when the institution succeeds in recovering the funds and thereby in refunding the originator, it is not obliged to refund the charges and interest accruing and may deduct the costs arising from the recovery if proved. Save for the terms "if proved", the amendment is in line with both the text of the Common Position and the Commission's thinking, according to which the originator's institution should not be held responsible for its customers' mistakes. On the other hand, the terms "if proved" would require the institution concerned to justify deducting costs for the recovery of funds.

Therefore, **except for and subject to the elimination of the terms "if proved"**, the Commission accepts this amendment.

Common Position of the Council	**Amendment by Parliament**
(Amendment 10) Article 8(3), second subparagraph	
Where the amount has been recovered by the originator's institution, it shall credit it to the originator subject to any deduction of costs arising from the recovery.	Where the amount has been recovered by the originator's institution, it shall credit it to the originator. The institutions are not obliged in this case to refund the charges and interests accruing, and can deduct the costs arising from the recovery if proved.
	Text of Parliament's amendment as modified
	Where the amount has been recovered by the originator's institution, it shall credit it to the originator. The institutions are not obliged in this case to refund the charges and interests accruing, and can deduct the costs arising from the recovery.

11. Amendment n° 11, introducing a new Article 8(3a) to the Common Position of the Council

Amendment n° 11 aims to lay down explicitly an option for Member States and/or institutions to provide for a refund for amounts exceeding the minimum level set out in Article 8, paragraphs 1 and 2.

The Commission is of the opinion that this amendment provides useful clarification as to the extent of Member States' and institutions' rights under the Directive. Therefore, the Commission accepts this amendment.

Common Position of the Council	***Amendment by Parliament***
	(Amendment 11) Article 8(3a) (new)
	3a. Without prejudice to paragraphs 1 and 2, Member States and/or institutions which participate in the execution of cross-border transfers may provide that refunds be made of a non-completed cross-border credit transfer, where the amount exceeds ECU 20.000.

12. Amendment n° 12 to Article 10 of the Common Position of the Council

This amendment aims to better qualify the scope of Member States' responsibility to ensure that adequate and appropriate procedures exist to deal with customers' complaints relating to the areas covered by the Directive. On the other hand, the Commission is of the opinion that drafting adjustments to the text of the amendment may be necessary, to ensure consistency with the terminology of the Common Position. The amendment may be redrafted as indicated below:

Therefore, subject to such modification, the Commission accepts this amendment.

Common Position of the Council	**Amendment by Parliament**
(Amendment 12) Article 10	
Member States shall ensure that there are adequate and effective means for the settlement of possible disputes between an originator and his institution or between a beneficiary and his institution.	1. Member States shall ensure that there are adequate and appropriate complaints and redress procedures relating to the areas covered by this Directive available to afford the customer better protection, using existing procedures where available.

Text of Parliament's amendment as modified

"Member States shall ensure that there are adequate and effective means for the settlement of disputes between a customer and its institution, using existing procedures where appropriate."

14. Amendment n° 14 relating to Article 11, first sub-paragraph of the Common Position of the Council

Amendment n° 14 aims to reduce the deadline for implementation of the Directive to 18 months after the date the Directive enters into force.

This amendment is in keeping with the Commission's objective of ensuring that the Directive is implemented within a reasonably short time. Therefore, the Commission accepts this amendment.

Common Position of the Council	**Amendment by Parliament**
	(Amendment 14) Article 11(1), first subparagraph
1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ...* at the latest. They shall forthwith inform the Commission thereof.	1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ...* at the latest. They shall forthwith inform the Commission thereof.
* Thirty months after the date this Directive enters into force.	* Eighteen months after the date this Directive enters into force.

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