II

(Preparatory Acts)

COMMISSION

Amended proposal for a European Parliament and Council Directive on EU credit transfers (1)

(95/C 199/07)

COM(95) 264 final — 94/0242(COD)

(Submitted by the Commission pursuant to Article 189a (2) of the EC Treaty on 7 June 1995)

(1) OJ No C 360, 17. 12. 1994, p. 13.

ORIGINAL TEXT	AMENDED TEXT
Proposal for a European Parliament and Council Directive on cross-border credit transfers	**Modified Proposal for a European Parliament and Council Directive on EU credit transfers**
THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty establishing the European Community, and in particular Article 100a thereof,	(unchanged)
Having regard to the proposal from the Commission,	
Having regard to the opinion of the Economic and Social Committee,	
Having regard to the opinion of the European Monetary Institute,	
In accordance with the procedure laid down in Article 189b of the Treaty,	
Whereas the volume of remote cross-border payments is growing steadily as the completion of the internal market and the progressive move towards full economic and monetary union lead to greater trade flows and movement of people throughout the Community; whereas cross-border credit transfers account for a substantial part of the volume and the value of remote cross-border payments;	Whereas the volume of remote cross-border payments is growing steadily as the completion of the internal market and the progressive move towards full economic and monetary union lead to greater trade flows and movement of people throughout the Community; whereas EU credit transfers account for a substantial part of the volume and the value of remote cross-border payments;

ORIGINAL TEXT	AMENDED TEXT
Whereas it is of paramount importance for individuals and businesses to be able to make credit transfers rapidly, reliably, and cheaply from one part of the Community to another; whereas a market in which there is competition for cross-border credit transfers should lead to improved services and reduced prices;	Whereas it is of paramount importance for individuals and businesses to be able to make credit transfers rapidly, reliably, and cheaply from one part of the Community to another; whereas a market in which there is competition for EU credit transfers should lead to improved services and reduced prices;
Whereas this Directive intends to follow up the progress towards the liberalization of capital movements reached during stage one of economic and monetary union; whereas it takes account of the purpose of facilitating the use of the ecu set out in the Treaty; whereas it is conceived as a step towards the progressive implementation of economic and monetary union, whereas its provisions should apply to credit transfers in any currency, including the ecu;	Whereas this Directive intends to follow up the progress towards the liberalization of capital movements reached during stages one and two of Economic and Monetary Union; whereas it takes account of the purpose of facilitating the use of the ecu; whereas it is conceived as a step towards the progressive implementation of Economic and Monetary Union, whereas its provisions should apply to credit transfers in the currencies of the Member States and the ecu;
Whereas this Directive is intended to implement one aspect of the programme of work drawn up by the Commission following its Green Paper 'Making payments in the internal market';	(unchanged)
Whereas the Commission has recommended to Member States that the threshold below which cross-border payments should not have to be reported should be fixed at not less than ECU 10 000;	
Whereas the Committee of Governors of the central banks of the Member States recommended that payment systems in all Member States should have a sound legal basis; whereas the Commission has set up a working group on the legal framework for cross-border payments, which consists of legal experts of governments and of the EMI; whereas this group has advised the Commission that the issues covered by this Directive may be dealt with separately from the systemic issues which remain under consideration; whereas it may be necessary to make a further proposal to cover these systemic issues, principally settlement finality;	
Whereas the purpose of this Directive is to improve cross-broder 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;	Whereas the purpose of this Directive is to improve EU 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;

ORIGINAL TEXT	AMENDED TEXT
Whereas, having regard to the third paragraph of Article 3b of the Treaty, this Directive lays down the minimum requirements needed to ensure an adequate level of customer information; whereas greater transparency is ultimately dependent on institutions' adherence to minimum performance requirements; whereas this Directive lays down the minimum performance requirements which institutions offering cross-border credit transfer services should adhere to; whereas this Directive fulfils the first, second, third, fourth and fifth principles set out in Commission recommendation 90/109/EEC (1); whereas it is without prejudice to Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering(2).	Whereas, having regard to the third paragraph of Article 3b of the Treaty, this Directive lays down the minimum requirements needed to ensure an adequate level of customer information; whereas greater transparency is ultimately dependent on institutions' adherence to minimum performance requirements; whereas this Directive lays down the minimum performance requirements which institutions offering EU credit transfer services should adhere to; whereas this Directive fulfils the principles set out in Commission recommendation 90/109/EEC (1); whereas it is without prejudice to Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering(2);
Whereas the nature of cross-border credit transfers, being a series of operations involving institutions in different Member States, is such that a coordinated approach at Community level is appropriate and necessary, whereas a self-regulatory approach has been attempted by the Commission by its recommendation 90/190/EEC; whereas this voluntary approach has not achieved the desired results; whereas a binding measure is therefore appropriate;	Whereas the nature of EU credit transfers, being a series of operations involving institutions in different Member States, is such that a coordinated approach at Community level is appropriate and necessary, whereas a self-regulatory approach has been attempted by the Commission by its recommendation 90/109/EEC; whereas this voluntary approach has not achieved the desired results; whereas a binding measure is therefore appropriate;
Whereas this Directive should apply to credit transfers for any amount; whereas institutions should be under an obligation to refund in the case of a non-completed transfer; whereas the obligation to refund imposes a contingent liability on institutions which might, if the possibility were not given to exclude high-value transfers, have a prudential effect on the solvency requirement; whereas the possibility of derogation (by Member States and, if so exercised, by institutions) from this obligation should be provided only in the case of high-value payments of more than ECU 10 000; whereas this threshold does not apply to any other Article of this Directive;	Whereas this Directive should apply to EU credit transfers for any amount; whereas institutions should be under an obligation to refund in the case of a non-completed transfer;
	Whereas an independent complaints and redress procedure relating to the areas covered by the present Directive should be available to afford the customer better protection; whereas such procedure should be established at Member State level, with the minimum cost, using existing procedures where available.
(1) OJ No L 67, 15. 3. 1990, p. 39. (2) OJ No L 166, 28. 6. 1991, p. 77.	(1) OJ No L 67, 15. 3. 1990, p. 39. (2) OJ No L 166, 28. 6. 1991, p. 77.

ORIGINAL TEXT	AMENDED TEXT
Whereas the European Parliament, in its resolution of 12 February 1993, called for a Council Directive to lay down rules in the area of transparency and performance of cross-border payments;	(unchanged)
Whereas the Economic and Social Committee, in its opinion of 6 July 1994, stated a preference for a code of good conduct; whereas the Commission has previously pursued this approach; whereas the Economic and Social Committee advised that, if a Directive were to be proposed, it should be limited to setting out a general framework; whereas this Directive follows this model, by allowing a large measure of freedom of contract;	
HAVE ADOPTED THIS DIRECTIVE:	
SECTION I	SECTION I
Scope and definitions	**Scope and definitions**
Article 1	*Article 1*
Scope	**Scope**
1. Member States shall apply the requirements of this Directive to credit institutions and to other institutions which supply credit transfer services to the public as part of their business.	1. Member States shall apply the requirements of this Directive to credit institutions and to other institutions which supply EU credit transfer services to the public as part of their business
2. This Directive shall apply to credit transfers in any currency, including the ecu, and for any amount save where the derogation in Article 7 (3) has been exercised.	2. This Directive shall apply to EU credit transfers in the currencies of the Member States and the ecu, and for any amount.
Article 2	*Article 2*
Definitions	**Definitions**
For the purpose of this Directive:	(unchanged)
(a) 'credit institution' shall mean an institution as defined in Article 1 of Council Directive 77/780/EEC [1], for the purposes of this Directive, branches of credit insitutions in different Member States are deemed to be separate institutions;	
(b) 'other institution' shall mean any legal person other than a credit institution, that supplies to the public, by way of business, credit transfer services;	(b) 'other insitution' shall mean any legal person other than a credit institution, that supplies to the public, by way of business, EU credit transfer services;
[1] OJ No L 322, 17. 12. 1977, p. 30.	[1] OJ No L 322, 17. 12. 1977, p. 30.

ORIGINAL TEXT	AMENDED TEXT
(c) 'institution' shall mean a credit institution or other institution;	(unchanged)
(d) 'person' shall mean either a legal or a natural person, as the context may require;	
(e) 'payment' shall mean the transfer by an originator of a monetary claim on a party acceptable to the beneficiary, including cases where the originator and the beneficiary are the same person;	
(f) 'cross-border payment' shall mean a payment by an originator whose account, from which the payment is made, is held by an institution or its branch in one Member State, to be made available to a beneficiary at an institution or its branch in another Member State;	
(g) 'originator' shall mean a person that authorizes the making of a credit transfer to a beneficiary;	(g) 'originator' shall mean a person that authorizes the making of a EU credit transfer to a beneficiary;
(h) 'beneficiary' shall mean the final recipient of a credit transfer;	(h) 'beneficiary' shall mean the final recipient of a EU credit transfer;
(i) 'customer' shall mean the originator or the beneficiary, as the context may require, and may be one and the same person;	(unchanged)
(j) 'payment order' shall mean an instruction in any form, given direct to an institution, to place at the disposal of a beneficiary a fixed or determinable amount of money;	
(k) 'credit transfer' shall mean a cross-border payment, consisting of a series of operations beginning with the originator's payment order. The term includes any payment order issued by the originator's institution or any intermediary institution intended to carry out the originator's payment order;	(k) 'EU credit transfer' shall mean a cross border payment, consisting of a series of operations beginning with the originator's payment order. The term includes any payment order issued by the originator's institution or any intermediary institution intended to carry out the originator's payment order;
(l) '*force majeure*' shall not include the insolvency of an intermediary institution but shall otherwise have the meaning ascribed to it in indent (ii) of the second subparagraph of Article 4 (6) of Council Directive 90/314/EEC [1];	(l) '*force majeure*' shall mean unusual and unforeseable circumstances beyond the control of the party by whom it is pleaded, the consequences of which could not have been avoided even if all due care has been exercised (indent (ii) of the second subparagraph of Article 4 (6) of Council Directive 90/314/EEC [1]

[1] OJ No L 158, 23. 6. 1990, p. 59.

[1] OJ No L 158, 23. 6. 1990, p. 59.

ORIGINAL TEXT	AMENDED TEXT
(m) 'interest' shall mean the inter-bank offered rate, increased by two percentage points, in the relevant market for deposits in the currency of any given payment, calculated for the period of the delay;	(m) 'interest' shall mean the rate which the institution would apply to its customer's account, for the relevant period, if that customer's account were then overdrawn;
(n) 'value date' shall mean the date on which the customer's account is debited (for originators) or credited (for beneficiaries) such date being that applied by the institution of the customer for the purpose of calculating interest (if any) on the account or assessing the availability of funds, where interest is not an appropriate criterion;	(unchanged)
(o) 'acceptance' shall mean the acceptance by an institution of a payment order, upon fulfilment of the institution's conditions as to the availability of financial cover and the identification of the parties named in the payment order and any other pre-conditions agreed by the parties;	
(p) 'completion' of a credit transfer shall mean acceptance by the beneficiary's institution;	(p) 'completion' of a EU credit transfer shall mean acceptance by the beneficiary's institution;
(q) 'intermediary institution' shall mean an institution which is neither that of the originator nor that of the beneficiary;	(q) 'intermediary institution' shall mean an institution which is neither that of the originator nor that of the beneficiary and which participates in the execution of an EU credit transfer;
(r) 'business day' in relation to any particular institution shall mean a day, or part of a day, on which that institution is open for the processing of credit transfers.	(r) 'business day' in relation to any particular institution shall mean a day, or part of a day, on which that institution is open for the processing of EU credit transfers.
SECTION II	SECTION II
Transparency of conditions for credit transfers	**Transparency of conditions for EU credit transfers**
Article 3	*Article 3*
Information prior to a credit transfer (made or received)	**Information prior to a EU credit transfer (made or received)**
The institution shall supply its customers with clear written information about the services it provides to effect or receive credit transfers. This information shall include:	The institution shall supply its customers with clear and readily comprehensible written information including, where appropriate by electronic means, about the services it provides to effect or receive EU credit transfers. This information shall at least include:
— an indication of the time needed for the funds to be credited to the account of the beneficiary's institution or to the beneficiary, as appropriate,	(unchanged)

ORIGINAL TEXT	AMENDED TEXT
— the basis of the calculation of any commissions and charges payable by the customer to the institution,	— the basis of the calculation, including the rates, of any commission fees and charges payable by the customer to the institution, including any taxes applied,
	— an indication of the exchange rate references used,
— the value date, if any, applicable by the institution,	(unchanged)
— a reference to the redress procedures available to the customer and the method of gaining access to them.	— a reference to the redress and complaints procedures available to the customer and the method of gaining access to them.
Article 4	*Article 4*
Information subsequent to a credit transfer (made or received)	**Information subsequent to a EU credit transfer (made or received)**
The institution shall supply its customers with clear written information subsequent to their making or receiving a credit transfer. This information shall at least include:	The institution shall supply its customers with clear and readily comprehensible written information, including, where appropriate, by electronic means, subsequent to their making or receiving a EU credit transfer. This information shall at least include:
— a reference enabling its customer to identify the payment,	(unchanged)
— the amount of any charges payable by its customer. Where the originator has authorized a deduction from the amount of a credit transfer, this fact and the original amount of the credit transfer should be stated by the beneficiary's bank to the beneficiary,	— the commission fees and charges payable by its customer. Where the originator has authorized a deduction from the amount of a EU credit transfer, this fact and the original amount of the EU credit transfer should be stated by the beneficiary's bank to the beneficiary,
— the value date, if any, applied by the institution.	(unchanged)
SECTION III	SECTION III
Minimum obligations of institutions in respect of credit transfers	**Minimum obligations of institutions in respect of EU credit transfes**
Article 5	*Article 5*
Obligation to execute in good time	**Obligation to execute in good time**
1. Each institution having accepted a payment order shall execute the related credit transfer within the time scale agreed with the customer (or institution) making the payment order. In the absence of a specific agreement as to the time scale, the institution shall act soon enough to enable its published clear time scale to be achieved. Where there is neither a specific agreement nor an applicable published time scale, the following obligations shall apply:	1. Each institution having accepted a payment order shall execute the related EU credit transfer within the time scale agreed with the customer (or institution) making the payment order. In the absence of a specific agreement, each institution shall act as fast as possible and, in that event, the following obligations shall apply:

ORIGINAL TEXT	AMENDED TEXT
— the institution of the originator shall be responsible to the originator for ensuring that the credit transfer is completed no later than the end of the fifth business day following acceptance by it of the payment order from the originator, and	— the institution of the originator shall be responsible to the originator for ensuring that the EU credit transfer is completed no later than the end of the fifth business day following acceptance by it of the payment order from the originator, and
— the institution of the beneficiary shall be obliged to place the amount of the credit transfer at the disposal of the beneficiary, at the latest by the end of the business day following completion of the credit transfer.	— the institution of the beneficiary shall be obliged to place the amount of the EU credit transfer at the disposal of the beneficiary, at the latest by the end of the business day following completion of the EU credit transfer.
2. The originator's institution shall compensate the originator by the payment of interest on the amount of the credit transfer where it is completed late, but shall not be liable for consequential losses under this Directive. No compensation shall be payable where the originator's bank can establish that the delay was attributable to the originator.	2. The originator's institution shall compensate the originator by the payment of interest on the amount of the EU credit transfer where it is completed late, but shall not be liable for consequential losses under this Directive. Where the originator's institution is not responsible for the delay, it may claim from the institution that caused the delay the amount it was required to pay out as interest. No compensation shall be payable where the originator's bank can establish that the delay was attributable to the originator.
3. In addition to the obligation of execution in paragraph 1, the beneficiary's institution shall compensate the beneficiary by the payment of interest on the amount of the credit transfer where it is late in being placed at the benefiary's disposal.	3. In addition to the obligation of execution in paragraph 1, the beneficiary's institution shall compensate the beneficiary by the payment of interest on the amount of the EU credit transfer where it is late in placing such amount at the beneficiary's disposal.
Article 6	*Article 6*
Obligation to execute in accordance with the instructions contained in the payment order	**Obligation to execute in accordance with the instructions contained in the payment order**
1. The originator's institution, any intermediary institution and the beneficiary's institution, once they have accepted the payment order, shall each be obliged to execute the related credit transfer for the full amount thereof unless authorized to make a deduction therefrom. Without prejudice to the duty not to deduct, the beneficiary's institution may, where appropriate, levy an additional charge on the beneficiary relating to the administration of his account. However, any such additional administrative charge shall not exceed the charge that would be made for a domestic credit transfer.	1. The originator's institution, any intermediary institution and the beneficiary's institution, once they have accepted the payment order, shall each be obliged to execute the related EU credit transfer for the full amount thereof unless authorized by the originator to make a deduction therefrom. Without prejudice to the duty not to deduct, the beneficiary's institution may, where appropriate, levy an additional charge on the beneficiary relating to the administration of this account. However, any such additional administrative charge shall not exceed the charge that would be made for a domestic credit transfer.

ORIGINAL TEXT	AMENDED TEXT
2. Where a breach of the duty to execute in accordance with the payment order as described in paragraph 1 has been caused by any institution other than the beneficiary's institution, and without prejudice to any other claim which might be made, the institution of the originator shall be liable to credit to the originator any sum wrongly deducted by any institution, at its own cost. Alternatively, if required to do so by the originator it shall transfer such amount to the credit of the beneficiary, free of all deductions, at its own cost. Any intermediary institution making a deduction in breach of the duty in paragraph 1 shall be liable to credit the sum so deducted to the institution of the originator. Alternatively, if required by the institution of the originator, it shall transfer such amount, free of all deductions, to the credit of the beneficiary, at its own cost.	2. Where a breach of the duty to execute in accordance with the payment order as described in paragraph 1 has been caused by any institution other than the beneficiary's institution, and without prejudice to any other claim which might be made, the institution of the originator shall be liable to credit to the beneficiary any sum wrongly deducted by any institution, at its own cost. Alternatively, if requested to do so by the originator it shall transfer such amount to his credit, free of all deductions, at its own cost. Any intermediary institution making a deduction in breach of the duty in paragraph 1 shall be liable to credit the sum so deducted to the institution of the beneficiary. Alternatively, if requested by the institution of the originator, it shall transfer such amount, free of all deductions, to the originator's institution, at its own cost.
3. Where a breach of the duty to execute in accordance with the payment order has been caused by the beneficiary's institution, and without prejudice to any other claim which may be made, the beneficiary's institution shall be liable to credit to the beneficiary, at its own cost, any sum wrongly deducted.	(unchanged)
Article 7	*Article 7*
Obligation of institutions to refund in case of non-completed credit transfers	**Obligation of institutions to refund in case of non-completed EU credit transfers**
1. If, after a payment order has been accepted by the originator's institution, the related credit transfer is not for any reason completed, and without prejudice to any other claim which may be made, the originator is entitled to have his account credited on demand with the full amount of the credit transfer plus interest and the amount of the charges for the non-completed credit transfer, such demand to be made not earlier than 20 business days after the date on which the credit transfer should have been completed. Each intermediary institution which has accepted the payment order likewise owes an obligation to refund at its own cost the amount of the credit transfer to the institution which instructed it.	1. If, after a payment order has been accepted by the originator's institution, the related EU credit transfer is not completed, and without prejudice to any other claim which may be made, the originator is entitled to have his account credited at his request with the full amount of the EU credit transfer up to ECU 10 000, plus interest and the amount of the charges for the non-completed EU credit transfer, 15 business days after such request. This request may not be introduced before the expiry of the time scale set out in Article 5, paragraph 1. Each intermediary institution which has accepted the payment order likewise owes an obligation to refund at its own cost the amount of the EU credit transfer to the institution which instructed it.
2. If the non-completion of the credit transfer was caused by defective instructions given by the originator to this institution, the originator's institution and the other institutions involved shall use their best endeavours to make the refund referred to in paragraph 1.	2. If the non-completion of the EU credit transfer was caused by defective instructions given by the originator to his institution, the originator's institution and the other institutions involved shall use their best endeavours to make the refund referred to in paragraph 1. The institutions are not obliged in this case to refund the interest accruing.

ORIGINAL TEXT	AMENDED TEXT
3. Member States may allow institutions to derogate by contract from the obligation to refund, as described in paragraph 1, in the following cases:	3. Paragraph 1 is without prejudice to the possibility for Member States to provide for an obligation to refund non-completed EU credit transfers, for amounts exceeding ECU 10 000.
— where the non-completion of the credit transfer is due to *force majeur*, or	
— for payments above ECU 10 000.	
	Article 7a
	Institutions may be exempted from the provisions of the present Directive to the extent that they can invoke reasons of *force majeure* pertinent to such provisions.
	Article 7b
	1. Any institution involved in a EU credit transfer shall take a decision without delay on complaints by its customers.
	2. If a complaint has not been remedied or a decision has not been taken on it within four weeks, complainants may approach one of the independent complaints offices to be set up for this purpose by the Member States.
	3. A list of addresses of such offices shall be available at all institutions carrying out EU credit transfers.
SECTION IV	SECTION IV
Final Provisions	**Final Provisions**
Article 8	*Article 8*
Implementation	**Implementation**
1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 31 December 1996 at the latest. They shall forthwith inform the Commission thereof.	(unchanged)
When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.	

ORIGINAL TEXT	AMENDED TEXT
2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field governed by this Directive. In this communication Member States shall provide a table of correspondence showing the national provisions which exist or are introduced in respect of each article of this Directive.	
Article 9	*Article 9*
Report to the European Parliament and the Council	**Report to the European Parliament and the Council**
No later than 31 December 1999, the Commission shall present a report to the European Parliament and the Council on the application of this Directive, accompanied where appropriate by proposals for its revision.	(unchanged)
Article 10	*Article 10*
Entry into force	**Entry into force**
This Directive shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Communities.*	(unchanged)
Article 11	*Article 11*
Addressees	**Addressees**
This Directive is addressed to the Member States.	(unchanged)