DIRECTIVE 97/5/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 27 January 1997

on cross-border credit transfers

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,

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the Economic and Social Committee [2],

Having regard to the opinion of the European Monetary Institute,

Acting in accordance with the procedure laid down in Article 189b of the Treaty [3] in the light of the joint text approved on 22 November 1996 by the Conciliation Committee,

(1) Whereas the volume of cross-border payments is growing steadily as completion of the internal market and progress towards full economic and monetary union lead to greater trade and movement of people within the Community; whereas cross-border credit transfers account for a substantial part of the volume and value of cross-border payments;

(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 [4], greater competition in the market for cross-border credit transfers should lead to improved services and reduced prices;

(3) Whereas this Directive seeks to follow up the progress made towards completion of the internal market, in particular towards liberalization of capital movements, with a view to the implementation of economic and monetary union; whereas its provisions must apply to credit transfers in the currencies of the Member States and in ecus;

(4) Whereas the European Parliament, in its resolution of 12 February 1993 [5], called for a Council Directive to lay down rules in the area of transparency and performance of cross-border payments;

(5) Whereas the issues covered by this Directive must be dealt with separately from the systemic issues which remain under consideration within the Commission; whereas it may become necessary to make a further proposal to cover these systemic issues, particularly the problem of settlement finality;

(6) Whereas the purpose of this Directive is to improve cross-border credit transfer services and thus assist the European Monetary Institute (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;

(7) Whereas, in line with the objectives set out in the second recital, this Directive should apply to any credit transfer of an amount of less than ECU 50 000;

(8) Whereas, having regard to the third paragraph of Article 3b of the Treaty, and with a view to ensuring transparency, this 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; whereas these requirements include indication of the complaints and redress procedures offered to customers, together with the arrangements for access thereto; whereas this Directive lays down minimum execution requirements, in particular in terms of performance, which institutions offering cross-border credit transfer services should adhere to, including the obligation to execute a cross-border credit transfer in accordance with the customer's instructions; whereas this Directive fulfils the conditions deriving from the principles set out in Commission Recommendation 90/109/EEC of 14 February 1990

[1] OJ No C 360, 17. 12. 1994, p. 13, and OJ No C 199, 3. 8. 1995, p. 16.
[2] OJ No C 236, 11. 9. 1995, p. 1.
[3] Opinion of the European Parliament of 19 May 1995 (OJ No C 151, 19. 6. 1995, p. 370), Council common position of 4 December 1995 (OJ No C 353, 30. 12. 1995, p. 52) and Decision of the European Parliament of 13 March 1996 (OJ No C 96, 1. 4. 1996, p. 74). Decision of the Council of 19 December 1996 and Decision of the European Parliament of 16 January 1997.
[4] OJ No C 251, 27. 9. 1995, p. 3.
[5] OJ No C 72, 15. 3. 1993, p. 158.

on the transparency of banking conditions relating to cross-border financial transactions [1]; whereas this Directive 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];

(9) Whereas this Directive should contribute to reducing the maximum time taken to execute a cross-border credit transfer and encourage those institutions which already take a very short time to do so to maintain that practice;

(10) Whereas the Commission, in the report it will submit to the European Parliament and the Council within two years of implementation of this Directive, should particularly examine the time-limit to be applied in the absence of a time-limit agreed between the originator and his institution, taking into account both technical developments and the situation existing in each Member State;

(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 up to ECU 12 500;

(12) Whereas Article 8 does not affect the general provisions of national law whereby an institution has responsibility towards the originator when a cross-border credit transfer has not been completed because of an error committed by that institution;

(13) Whereas it is necessary to distinguish, among the circumstances with which institutions involved in the execution of a cross-border credit transfer may be confronted, including circumstances relating to insolvency, those caused by *force majeure;* whereas for that purpose the definition of *force majeure* given in Article 4 (6) of Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours [3] should be taken as a basis;

(14) Whereas there need to be adequate and effective complaints and redress procedures in the Member States for the settlement of possible disputes between customers and institutions, using existing procedures where appropriate,

HAVE ADOPTED THIS DIRECTIVE:

SECTION I

SCOPE AND DEFINITIONS

Article 1

Scope

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 or other institutions.

Article 2

Definitions

For the purposes of this Directive:

(a) 'credit institution' means an institution as defined in Article 1 of Council Directive 77/780/EEC [4], and includes branches, within the meaning of the third indent of that Article and located in the Community, of credit institutions which have their head offices outside the Community and which by way of business execute cross-border credit transfers;

(b) 'other institution' means any natural or legal person, other than a credit institution, that by way of business executes cross-border credit transfers;

(c) 'financial institution' means an institution as defined in Article 4 (1) of Council Regulation (EC) No 3604/93 of 13 December 1993 specifying definitions for the application of the prohibition of privileged access referred to in Article 104a of the Treaty [5];

(d) 'institution' means a credit institution or other institution; for the purposes of Articles 6, 7 and 8, branches of one credit institution situated in different Member States which participate in the execution of a cross-border credit transfer shall be regarded as separate institutions;

(e) 'intermediary institution' means an institution which is neither that of the originator nor that of the beneficiary and which participates in the execution of a cross-border credit transfer;

[1] OJ No L 67, 15. 3. 1990, p. 39.
[2] OJ No L 166, 28. 6. 1991, p. 77.
[3] OJ No L 158, 23. 6. 1990, p. 59.
[4] OJ No L 322, 17. 12. 1977, p. 30. Directive as last amended by Directive 95/26/EC (OJ No L 168, 18. 7. 1995, p. 7).
[5] OJ No L 332, 31. 12. 1993, p. 4.

(f) 'cross-border credit transfer' means 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;

(g) 'cross-border credit transfer order' means an unconditional instruction in any form, given directly by an originator to an institution to execute a cross-border credit transfer;

(h) 'originator' means a natural or legal person that orders the making of a cross-border credit transfer to a beneficiary;

(i) 'beneficiary' means the final recipient of a cross-border credit transfer for whom the corresponding funds are made available in an account to which he has access;

(j) 'customer' means the originator or the beneficiary, as the context may require;

(k) 'reference interest rate' means an interest rate representing compensation and established in accordance with the rules laid down by the Member State in which the establishment which must pay the compensation to the customer is situated;

(l) 'date of acceptance' means the date of fulfilment of all the conditions required by the institution as to the execution of the cross-border credit transfer order and relating to the availability of adequate financial cover and the information required to execute that order.

SECTION II

TRANSPARENCY OF CONDITIONS FOR CROSS-BORDER CREDIT TRANSFERS

Article 3

Prior information on conditions for cross-border credit transfers

The institutions 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:

— indication of the time needed, when a cross-border credit transfer order given to the institution is executed, for the funds to be credited to the account of the beneficiary's institution; the start of that period must be clearly indicated,

— indication of the time needed, upon receipt of a cross-border credit transfer, for the funds credited to the account of the institution to be credited to the beneficiary's account,

— the manner of calculation of any commission fees and charges payable by the customer to the institution, including where appropriate the rates,

— the value date, if any, applied by the institution,

— details of the complaint and redress procedures available to the customer and arrangements for access to them,

— indication of the reference exchange rates used.

Article 4

Information subsequent to a cross-border credit transfer

The institutions 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 comprehensible form. This information shall include at least:

— a reference enabling the customer to identify the cross-border credit transfer,

— the original amount of the cross-border credit transfer,

— the amount of all charges and commission fees payable by the customer,

— the value date, if any, applied by the institution.

Where the originator has specified that the charges for the cross-border credit transfer are to be wholly or partly borne by the beneficiary, the latter shall be informed thereof by his own institution.

Where any amount has been converted, the institution which converted it shall inform its customer of the exchange rate used.

SECTION III

MINIMUM OBLIGATIONS OF INSTITUTIONS IN RESPECT OF CROSS-BORDER CREDIT TRANSFERS

Article 5

Specific undertakings by the institution

Unless it does not wish to do business with that customer, an institution must at a customer's request, for a cross-border credit transfer with stated specifications, give an undertaking concerning the time needed for execution of the transfer and the commission fees and charges payable, apart from those relating to the exchange rate used.