

A NEW LEGAL FRAMEWORK FOR PAYMENTS IN THE INTERNAL MARKET

INTRODUCTION

The European Commission has published a [Consultative Document](#) (the "**Communication**") seeking views on a whole range of issues relating to payment services within the European Union as a step towards creating a 'Single Euro Payment Area'. It includes some preliminary suggestions for future EU legislation, referred to as the 'New Legal Framework', which will replace existing law. Responses are invited by 15 February 2004.

This briefing provides an outline of the key proposals: a fuller client note is on our website and can be found by clicking [here](#).

KEY PROPOSALS

Market efficiency and competition

The Communication sets out proposals for changes to the regulatory regime including:

- (a) the introduction of some form of 'mutual recognition' (or passporting) between Member States for all payment activities;
- (b) the introduction of a third (either licensing or prudential) regime for payment institutions (such as money transmission agents) to complement the existing regimes for credit and e-money institutions, possibly with exemptions for limited purpose payments; and
- (c) the potential introduction of new products:
 - (i) a pan-European direct debit scheme;
 - (ii) a single pan-European phone number for reporting lost or stolen credit cards; and
 - (iii) bank account portability - the possibility of being able to retain bank account numbers when switching banks (although the Communication dismisses this as impracticable).

Consumer protection

It also sets out, subject to further consultation, a number of proposals aimed at improving and clarifying rights for service users. These include:

- (a) minimum content requirements for the terms and conditions between a payment service provider and its customer, together with disclosure requirements - these include:
 - (i) provisions for strict liability on the part of the payment service provider for all transactions not authorised by the user or not executed or incorrectly executed by the provider, and (possibly) in the event of product non-delivery by a

merchant (in the case of distance contracts) or of a breakdown of a payment network (for loss of access, delayed payment etc);

- (ii) a limit of €150 on the user's liability in the event of card loss;
 - (iii) a requirement for the terms and conditions to be provided on paper or in another durable medium;
- (b) harmonisation of various market practices and conventions within the payment industry, notably as regards value dates, revocability of payment instructions, allocation of charges (the principle proposed is for the beneficiary's account to be credited with the full amount transferred) and execution times (a reduction in the default maximum from, effectively, six to three working days is proposed); and
- (c) with regard to freedom of movement for consumers, proposals limiting pricing differentials for resident and non-resident accounts, seeking to reduce administrative burdens when changing banks, and improving the transparency of account closing costs (upfront disclosure is suggested).

Payment security and protection against fraud

Issues raised under this heading include:

- (d) proposals for standardisation of security requirements, to be co-ordinated by market participants in the first stage;
- (e) consideration of how to increase the use of PKI digital certificates, including by reviewing the implementation of the [Electronic Signatures Directive](#) and creating technical standards;
- (f) increased obligations on providers with regards to security, including an obligation to inform customers when there is a security breach, and ensuring that the customer does not suffer financial loss as a result of such breach;
- (g) proposals to reform data protection legislation to improve the exchange of information for fraud prevention purposes, particularly in the payment card industry; and
- (h) implementing the FATF's [Special Recommendation VII: Wire Transfers](#) to help combat money laundering.

FURTHER INFORMATION

Please contact [Paul Anning](#) or any member of the [Lovells Financial Services Group](#) if you require further information or assistance.

Lovells
Atlantic House
Holborn Viaduct
London EC1A 2FG
Tel: +44 (0) 20 7296 2000
28 January 2004

DATA PROTECTION NOTICE

Please note that your email address and other information supplied by you may be stored on a database which is accessible by all our offices, including offices outside the European Economic Area where the level of protection for personal data may not be as comprehensive. This data may be used to send you other material which we believe may interest you. We will not disclose any of your information to third parties unconnected with Lovells other than our data processors. This briefing is a commercial communication from Lovells, Atlantic House, Holborn Viaduct, London EC1A 2FG. Lovells is regulated by the Law Society of England and Wales. VAT number GB 243651765. If you no longer wish to receive briefings from us (or, if this briefing has been forwarded to you, if you want to go on our mailing list) please email [Abigail McDonald](mailto:Abigail.McDonald@lovells.com).

Lovells © 2004