

TACD

TRANS ATLANTIC CONSUMER DIALOGUE DIALOGUE TRANSATLANTIQUE DES CONSOMMATEURS

February 16, 2004

To: European Commission
Directorate General Internal Market
C 107 01/04,
B-1049 Brussels
e-mail: markt-f4@cec.eu.int

Re: New Legal Framework For the Single Payment Area in the Internal Market — Consultative Document from the European Commission to the Council and the European Parliament

Comments from the TransAtlantic Consumer Dialogue

TACD is a coalition of 65 consumer organizations from the United States and European Union countries organized to express consumer views to the TransAtlantic Economic Partnership (TEP). The Internet Working Group of TACD is working to improve consumer confidence in cross-border electronic commerce through consumer protection, redress mechanisms, and information disclosure. TACD very much appreciates the opportunity to comment upon the proposed framework, and these comments follow.

The Commission's Communication on a New Legal Framework for Payments in the Internal Market is an opportunity for the EU to achieve an efficient, secure, and convenient payment system domestically and cross-border. The Communication fails to fully address refunds/chargebacks, a key protection for purchases made via payment cards.

Ecom-23-01 – TACD resolution on payment card redress and protections

In May 2001 TACD adopted a resolution to the European Commission and US Government on payment card redress and protections¹ which has a direct bearing on issues raised by the New Legal Framework for the Single Payment Area in the Internal Market. The resolution noted that consumer confidence in making purchases online depends in part on payment card liability limits and redress mechanisms, and that

¹ TACD "Payment Card Redress and Protections," Document reference Ecom-23-01, issued May 2001, www.tacd.org/docs/?id=95

consumers in countries with extensive payment card protections are more likely to complete purchases online. The resolution urged the EU and the US to strengthen and harmonize payment card protections through adoption of laws or regulations, not through self-regulation which has, to date, failed to widely deliver these rights to consumers. TACD called on the EU and US to adopt payment card protections that are consistent across card types, including credit cards, debit cards, stored value cards, and other forms of electronic payment.

TACD also urged the EU to set liability limits for lost or stolen payment cards, to provide for correction of billing errors, and late delivery or non-delivery of goods and services purchased with payment cards. In addition, consumer organizations on both sides of the Atlantic support enacting a framework for consumers to assert claims and defenses when purchases made using payment cards are unsatisfactory. This redress function through the payment intermediary is called a “chargeback” or refund right and should apply to both domestic and cross-border transactions.

In addition to substantive protections, TACD recommended conspicuous disclosure to consumers of their payment card rights and the procedures to be used in disputing any payment card transaction and noted US law requiring at least an annual disclosure on how to dispute credit card billing errors.

Most of these consumer protections and rights are a matter of law in the United States, including a \$50 liability limit for unauthorized credit card use prior to notification of the card issuer, clearly disclosed rights to dispute erroneous billing, and refund rights for undelivered or unsatisfactory purchases under some limits. In the US, card companies voluntarily advertise “zero liability limits” for both credit and debit cards to foster confidence in card use online. It is widely believed that one reason for the growth in electronic commerce in the US is the protection consumers have as a matter of law when payment is made by credit cards, and, to a lesser extent, through debit cards.

Annex sections 11 and 13 of the proposed framework

The Communication Annex sections 11 and 13 deal specifically with protections and rights important to consumer confidence in payment cards and addressed by the TACD resolution.

Annex 11 covers refund or chargeback rights for disputes between consumers and merchants. EU consumers should have legislative backing for a refund system that restores money debited from the consumer’s account if problems occur and permits credit card users to dispute charges prior to payment. This refund system should apply to disputes about the quality of the product or service between the consumer and the merchant, problems with the payment itself, and the failure to deliver the product or service. This form of redress is particularly important in distance selling situations.

Refunds or “chargebacks” on credit cards are taken for granted by US consumers, have worked reasonably well for many years, and foster consumer willingness to make

purchases at great distances from unknown merchants for products bought sight unseen. Financial intermediaries play an important role in policing the market by withdrawing payment card rights from merchants that generate an unacceptable level of chargebacks. By shifting the economic risk of insecure payments and unreliable or fraudulent merchants to financial institutions, consumers' chargeback rights have provided an incentive to upgrade website security and safeguards against unauthorized use of cards. The result is beneficial to all, including small and medium enterprises who don't have well known brand names.

Because chargeback rights are a matter of law for all providers, the cost is spread over the entire industry and has not priced consumers out of the market for credit cards.

The EU should bring its protections for payment card users in line with the protections provided by the same international card companies in other countries. Other countries are doing so. In 2001, Canadian Ministers developed a template providing credit card charge-backs in the context of electronic consumer sales where vendors fail to disclose information required by regulation. Alberta and Manitoba introduced regulations based on the template, and the Ontario government is currently consulting on its draft regulations which would extend the chargeback provision to non-electronic sales. Payment card redress is the law in the United States and is being adopted in Canada. EU consumers should have a threshold level of payment card protections and rights.

Annex 13 deals with unauthorized transactions. In countries where payments are usually made by debit cards rather than credit, protection against unauthorized transactions is most important. Consumers are in much weaker position in trying to get funds restored that have been withdrawn from accounts for unauthorized transactions than they are when an unauthorized charge is made to a credit card. In the first instance, a consumer must try to recover money no longer available in his or her bank account. In the later, a consumer can dispute payment for a credit card bill ahead of making a payment.

Establishing a legal standard for unauthorized payment card use is particularly important as theft of identity becomes an international problem. Theft of identity is a leading cause of consumer complaints to the Federal Trade Commission in the US. Through fraud and theft, unauthorized transactions can be made even when the card has not been lost or stolen.

TACD calls on the EU to improve consumer rights and protections for payment methods in the single market. A legal framework setting threshold protections will inspire consumer confidence in cross border commerce, lower the cost and risk of shopping online, and bring to European consumers the same or better protections international card companies provide in other countries.

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On behalf of the TACD Internet Working Group