II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 19 December 1988

relating to a proceeding unde Article 85 of the EEC Treaty (IV/31.291, Uniform Eurocheques)

(Only the English and French texts are authentic)

(89/95/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation No 17 of 6 February 1962 First Regulation implementing Articles 85 and 86 of the Treaty (1), as last amended by the Act of Accession of Spain and Portugal, and in particular Articles 6 and 8 thereof,

Having regard to the notification submitted on 19 July 1984 pursuant to Article 4 of Regulation No 17 by the Secretary-General of Eurocheque International sc on behalf of the national bank organizations which make up the Eurocheque Assembly, concerning the guidelines for the production of the uniform Eurocheque, for the production of the uniform Eurocheque card and for the finishing of the uniform Eurocheque and uniform Eurocheque card,

Having regard to the summary of the agreements (2) published pursuant to Article 19 (3) of Regulation No 17, which drew no observations from interested third parties,

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas :

I. THE FACTS

(1) This proceeding concerns the agreements, known as 'guidelines', within the Eurocheque Community, relating to the production and finishing of Eurocheques and Eurocheque cards and in particular the selection and prior approval of firms authorized to take part.

(2) On 29 June 1984, the Commission received a complaint from SA Arjomari-Prioux under Article 3 of Regulation No 17 concerning, in particular, the agreements and the way they were applied.

(3) On 19 July 1984, the Secretary-General of Eurocheque International submitted, on behalf of the national organizations making up the Eurocheque Assembly, a notification and application for negative clearance concerning the guidelines for the production of the uniform Eurocheque, the guidelines for the production of the uniform Eurocheque card and the guidelines for the finishing of the uniform Eurocheque and the uniform Eurocheque card, all these guidelines having been approved by the Eurocheque Assembly at its meetings on 19 and 20 May 1983.

Following discussions between Eurocheque International and the Commission, the Eurocheque Assembly adopted amended versions of the guidelines which from the subject of this Decision at its session on 4 and 5 June 1987.

The Eurocheque system

(4) The Eurocheque organization was created in 1968 on the private initiative of European financial bodies. Its aim is to meet the need for international

(1) OJ No 13, 21. 2. 1962, p. 204/62.
(2) OJ No C 156, 15. 6. 1988, p. 2.

payment systems resulting from the growth of tourism and business travel within Europe, by making available a means of payment which customers may use both in their country of origin and in other countries.

(5) The Eurocheque system is open to all European banks (1) It is based on two instruments: the Eurocheque and the Eurocheque card. The drawee bank guarantees any payee bank reimbursement of a Eurocheque presented with the corresponding card, up to a predetermined maximum amount.

(6) Eurocheque International estimates that some 9 000 banks issued 32 milion Eurocheque cards to their customers in 1987 in 20 countries, including all the Member States except Greece.

A total of 900 million Eurocheques have been drawn, of which some 46 million were drawn abroad. The customers of many banks which issue Eurocheque cards receive Eurocheques for payments both in their country of residence and when travelling abroad.

(7) Some 15 000 banks and other financial institutions cash uniform Eurocheques at their countries in 40 European and Mediterranean countries. Uniform Eurocheques are also accepted in payment by traders in 28 of those countries. Total annual payments by Eurocheque in both the country of residence and abroad represent some ECU 100 000 milion.

(8) The agreement concluded on 31 October 1980 within the Eurocheque system on Eurocheques drawn abroad in the local currency was granted an exemption pursuant to Article 85 (3) of the EEC Treaty by Commission Decision 85/77/EEC (2).

(9) Within the Eurocheque system, the 'issuing' financial institutions supply their customers with cheques and cards which may be used within the Eurocheque system and cash cheques at their counters, whereas 'accepting' institutions cash guaranteed cheques at their counters made out by customers of 'issuing' banks but do not issue their customers with cards or cheques which may be used within the system.

(10) Of the cheques and cards which may be used in the Eurocheque system, approximately 80 % are uniform Eurocheques and cards, the format and technical characteristics of which are defined in the notified agreements.

(1) In this Decision 'bank' embraces all credit institutions which are members of the Eurocheque system.
(2) OJ No L 35, 7. 2. 1985, p. 43.

The Eurocheque Community

(11) One of the main objectives of the Eurocheque Community which brings together the issuing institutions, is to encourage credit institutions to issue uniform cheques and cheque cards rather than the other, non-uniform instruments that may be used in the sytem, in order to encourage widespread recognition and acceptance of Eurocheques by traders in a large number of countries.

(12) The issuing institutions of each country are grouped together, within the Eurocheque system, in national associations or organizations, to which this Decision is addressed for their information.

(13) Member banks undertake to issue the payment instruments as defined in the guidelines.

(14) The Eurocheque Assembly ('Assembly') is the decision-making, managing and monitoring body of the Eurocheque Community. Its decisions are binding on all members provided they are not contrary to national laws or regulations. The Assembly appoints a Secretary-General who is responsible for the day-to-day running of the Eurocheque Community (Article 20). He manages the permanent secretariat of the organization in Brussels — Eurocheque International.

Security in the Eurocheque system

(15) Because of the guarantee given by the bank, a Eurocheque accompanied by a Eurocheque card is equivalent to a banknote, with a maximum value currently fixed at the equivalent in local currency of approximately ECU 190, provided that certain conditions are fulfilled when the cheque is made out, e.g. the cheque must correspond to the cheque card.

(16) Consequently, the cheque and the card must incorporate certain features and be of uniform quality to protect them from counterfeiting and forgery. As stated in the notification 'the risk inherent in the system is ... fundamentally tied to the production quality of the payment instruments'.

The manufacturers authorized to participate in the production of Eurocheque instruments must therefore be able to offer a high-quality product. They must also comply with stringent security requirements designed to prevent both the theft of finished or semi-finished products and the equipment or materials used in their production, and the misuse of such equipment.

(17) The security measures usually taken to protect the transport of banknotes are also applied to each production stage and to the transport of cheques and cards.

The products

(18) The agreements concern the production and finishing of Eurocheques and Eurocheque cards. These processes are made up of several operations : production of the special paper for the cheques and cards, printing, lamination of the cards and incorporation of the technical devices and, lastly, personalization of the cheques and cards.

(19) Eurocheque paper belongs to a category of products known as security paper, the chief characteristic of which is to make counterfeiting both difficult and expensive. This can be achieved by several methods, e.g. watermarks, the quality or the 'feel' of the paper itself, or other devices that are difficult to reproduce or imitate. Other security devices can also be incorporated at the manufacturing stage, their main purpose being to make forgery more difficult, e.g. attempts to alter data on documents made from such paper, such as a signature or a figure.

(20) Producers of cheques and cheque cards use highly sophisticated printing techniques. Here too, the object is to prevent counterfeiting, e.g. by including extremely detailed and complex patterns in the design, using a wide range of colours and incorporating devices to prevent forgeries.

Whilst finishing may involve less sophisticated techniques, the security requirements are identical.

(21) In 1983 and 1984, the annual quantity of Eurocheque paper supplied by authorized manufacturers was [...] (1) tonnes, representing a total value of approximately ECU [...]. The value of the printed cheques supplied to customers in 1983 was of the order of ECU [...], to which may be added the value of the 26 million cards issued, estimated at ECU [...]. Estimates based on the steady increase in the number of Eurocheques and cards issued between 1984 and 1988 indicate a [...] % increase on the figures given above in the period 1984 to 1988.

The Commission does not have any accurate data on the annual value of finsihing work. This may, however, be estimated, on the basis of the number of cheques used, at ECU [...], plus a smaller amount for the finishing of cards. The finishing of Eurocheque instruments represented only a very small part of similarly technical work carried out by the printing sector. If one looks at just the work carried out in security conditions similar to these required by the agreements, the market is much larger than simply the finishing of Eurocheque instruments. Firms in this sector are also involved in producing other security documents such as bank cheques, travellers' cheques, identity documents, lottery tickets and securities.

The notified agreements

Guidelines for the production of the uniform Eurocheque

(22) According to the guidelines, the production of Eurocheques may be assigned only to firms (paper mills and printing plants) that have experience in the production of high-security printed instruments (such as banknotes, travellers' cheques, etc.), the necessary technical equipment and effective security and control facilities (Article 2.1).

(23) Applications for authorization must be addressed to Eurocheque International ; authorization is granted by the Eurocheque Assembly. The authorization expires if no orders are executed during a period of two years (Article 2 (8)) (three years for Eurocheque cards).

(24) The informations and key materials required for the production of the paper and the printing of the Eurocheques are supplied exclusively by Eurocheque International on receipt of proof of an order. Only these materials may be used (Articles 4, 6 (2) and 7 (2)). The detailed specifications are then communicated immediately, followed by the key materials after an appropriate period for production and delivery, which Eurocheque International envisages will not exceed four weeks save in exceptional circumstances.

In the event of failure to comply with the guidelines, Eurocheque International may demand the surrender of the materials supplied and any means of production deriving from them, as well as any finished or semi-finished products, against reimbursement of the costs (Article 2 (7)).

(1) In the published version of the Decision, some information has hereinafter been omitted, pursuant to the provisions of Article 21 of Regulation No 17 concerning non-disclosure of business secrets.

(25) Authorization is subject to a prior inspection by representatives of Eurocheque International (Article 2 (3)) Paper manufacturers and printing shops are required, prior to the first production, to submit samples for inspection and approval to Eurocheque International or its representatives (Articles 6 (3) and 7 (4)) Eurocheque International is prepared to come to a decision within a period of two weeks.

(26) Producers (paper mills and printing plants) authorized to produce, store and dispatch Eurocheques and cards must have effective security systems and Eurocheque control measures in order to rule out any improper use or theft of materials, paper or finished or semi-finished products. The measures are detailed in a memorandum annexed to the guidelines.

(27) Eurocheque International or its representatives have the right to inspect at any time the production facilities as well as the books and records in order to ensure that the guidelines are being effectively observed (Article 8 (2)).

(28) Orders for Eurocheques may be accepted by approved printers only if given by institutions whose right to place an order has been confirmed in writing to the printer by the national liaison office of the institution which placed the order (Article 3). A printer's customer is a bank which is a member of the Eurocheque Community. The production of paper may be effected only by order of authorized printers, the names of which have been given to the paper manufacturers by Eurocheque International (Article 6).

Guidelines for the production of the uniforme Eurocheque card

(29) These guidelines concern the production and printing of the special paper and the production of special security features involved in the manufacture of the Eurocheque card. Apart from the difference referred to in point 23, the layout and wording of these guidelines are very similar, *mutatis mutandis*, to those of the guidelines for the production of cheques.

Guidelines for the finishing of the uniform Eurocheque and the uniform Eurocheque card

(30) Finishing involves the insertion of the bank's name, the personalization and encoding of cheques and cards, lamination of cards, attachment of the signature panel on the cards and other special features, such as the hologram.

(31) Eurocheque instruments can be finished either by member financial institutions or by specialized firms. Authorization is granted under similar conditions to those governing the approval of paper manufacturers and printers: the finishing firms must have the necessary equipment and effective security facilities.

(32) However, applications for authorization must be addressed to the Eurocheque asssociation of the country of the applicant. Where a country has no financial institution which issues uniform Eurocheques (this applies only to Greece among the Member States), the application is addressed to the association of a country which does have such a financial institution. Authorization for the finishing of Eurocheques is given by the national association whereas authorization for the production of instruments is granted by the Eurocheque Assembly and Eurocheque International. Eurocheque International is informed by the national associations of all authorizations granted by them.

(33) Authorization is limited to finishing operations in respect of which the firm fulfils the appropriate requirements. There are at present (...) firms authorized to carry out one or more finishing operations, in 12 countries, of which seven are EEC Member States.

II. LEGAL ASSESSMENT

A. Article 85 (1)

(34) The guidelines are agreements within the meaning of Article 85 (1) of the EEC Treaty. The agreements between the national associations must be regarded as agreements between undertakings as these agreements determine the conduct of the undertakings which the associations represent.

(35) According to the guidelines, and the agreements concluded between Eurocheque International or the national associations with authorized undertakings, the banks obtain cheques and cards from authorized printers exclusively, and they in turn may only obtain Eurocheque paper exclusively from authorized paper producers. Similarly, banks may only obtain finishing services from untertakings authorized for finishing work.

Conversely, authorized undertakings may only supply Eurocheque instruments, Eurocheque paper or finishing services to member banks or authorized printers, as appropriate.

(36) The Eurocheque system is an international payment system set up by a large number of European credit institutions. It is of the utmost importance to the smooth running of the system and to retain the confidence of customers, whether consumers, traders or member banks, that a high level of

security be maintained. That means that the quality of the instruments must not only be high, but also uniform. For these reasons the prior vetting of firms wishing to produce Eurocheque instruments is essential. The selection criteria are objective and qualitative. However, as regards the security of premises in particular, the criteria allow for a fairly wide margin of discretion. It would, for example, be counter-productive for the guidelines to specify electronic protection devices or even to standardize them in any way. Nevertheless the application of these criteria and the processing of applications for authorization by the central bodies of the Eurocheque Community offer certain guarantees as to the uniform application of the guidelines to paper manufacturers and printers.

(37) The Commission considers that both the prior authorization of paper manufacturers and printers and the qualitative criteria applied are justified by the nature of the products or services to be provided, and by the security which is indispensable for the proper operation of the Eurocheque system. The authorization scheme ensures that those undertakings which fulfil the necessary conditions will be authorized if they so request. Banks and printers do not therefore have any legitimate interest in resorting to non-authorized undertakings. Accordingly, the Commission considers that the obligation imposed on banks and on printers to obtain Eurocheque instruments and paper exclusively from authorized printers and paper producers does not amount to a restriction of competition within the meaning of Article 85 (1).

(38) By virtue of the principles governing subcontracting, the obligation imposed on paper producers and printers to supply Eurocheque paper or instruments only to designated purchasers does not amount to a restriction of competition within the meaning of Article 85 (1).

(39) It is necessary to restrict the distribution of technical specifications and materials used in the production of Eurocheque instruments or which could facilitate forgeries by giving them only to firms able to show proof of an order. This measure is not a significant barrier to the access of new firms to the production of Eurocheque instruments, as the firms can make provision in their forecasts for the delays such a measure involves.

(40) all finishing firms are required to address an application for authorization to one national association as stated in point 32. The authorization determines whether the firm is able to provide finishing services not only to the banks in the country where it is given but also to those in all countries of the Eurocheque Community.

(41) When a finishing firm is authorized the national association concerned bears the costs of examining the application and of carrying out the obligatory regular on-the-spot inspections. Furthermore, the association could incur liability in connection with the examination of applications and the obligation to carry out regular checks in the event of a finishing firm failing to comply with security requirements. The Commission's investigations in this case found that national associations regard the above factors as important. These associations are extremely diverse in terms of their financial and human resources and in their likely assessment of the risks and costs which they are ready to bear. There is no doubt that differences will arise in the application of the criteria which involve complex assessments of risk, and that these differences are likely to be significant.

(42) In the light of these considerations, the Commission considers that the obligation on banks to obtain finishing services only from authorized firms amounts to a restriction of competition within the meaning of Article 85 (1), for the authorization scheme does not assure the elaboration of a uniform standard and the authorization of all firms which would meet that standard and wish to provide Eurocheque finishing services. On the contrary, taken as a whole, the prior approval system for finishing firms is inherently liable to lead to discrimination between firms. As a consequence, banks will be unable to obtain finishing services from certain firms which should qualify for authorization.

Effect on trade between Member States

(43) Any lack of uniformity in the application of the system of authorizing finishing firms is inherently liable to affect trade between Member States since the authorization granted by the national Eurocheque association determines the market access of finishing services throughout the member countries of the Eurocheque Community, which currently includes all the Community countries except Greece.

(44) The finishers of Eurocheque instruments can receive orders from banks in other countries, even if the cost of providing security transport means that trade has to be limited chiefly to transactions with neighbouring countries.

B. Article 85 (3)

(45) While the prohibition on obtaining finishing services from non-authorized firms falls within the scope of the prohibition in Article 85 (1), the guidelines on finishing may be exempted under Article 85 (3).

The prior authorization of finishing firms does promote economic progress in that it contributes to the security of the Eurocheque system as a means of international payment. Security is an essential factor in the development of the system and in retaining user confidence, which is indispensable in payment systems.

(46) The users of the Eurocheque system obtain a fair share of the resulting benefit since a high level of security reduces the risk of the heavy costs which may result both directly and indirectly from counterfeiting and forgery in payment systems. In addition, Eurocheque bearers benefit from the widespread acceptance of Eurocheques by banks and traders in European and Mediterranean countries which is fostered by the security of the system. Banks, for their part, are free to give finishing work to any authorized firm. They may also carry out the finishing work themselves if they consider it is more advantageous.

(47) The agreement does not impose any restrictions that are not essential in securing the advantages resulting from the agreement. Although implementation of the agreement by the national associations entails a risk of distortion of competition in the application of the authorization criteria, the structure is justifiable. The potential number of finishing firms is far greater than in the case of paper manufacturers and printers. Often these firms operate more on a regional than an international basis. The national associations are therefore in a better position to know and control them, and such decentralized control is also easier and less expensive.

(48) Lastly, the agreement does not afford the parties concerned the possibility of eliminating competition in respect of a substantial part of the products in question. The agreement does not govern trade relations between authorized firms and the member banks that are their customers. Both are entitled to submit or invite tenders in all the member countries. In addition, the finishing of Eurocheque instruments constitutes only a small part of the services that can be provided by firms which may be authorized to finish Eurocheque instruments.

C. Regulation No 17

(49) Pursuant to Article 6 (1) of Regulation No 17, the date on which this Decision shall take effect is set at 5 June 1987, the date of adoption of the modified guidelines. In accordance with Article 8 (1), the duration of the exemption resulting from this Decision shall be 15 years,

HAS ADOPTED THIS DECISION:

Article 1

On the basis of the information at its disposal, there are no grounds for the Commission to intervene under Article 85 (1) of the EEC Treaty with regard to the guidelines for the production of the uniform Eurocheque and the guidelines for the production of the uniform Eurocheque card, adopted by the Eurocheque Assembly at its session on 4 and 5 June 1987.

Article 2

In accordance with Article 85 (3) of the Treaty establishing the European Economic Community, the provisions of Article 85 (1) are hereby declared inapplicable for the period from 5 June 1987 to 4 June 2002 to the guidelines for the finishing of the uniform Eurocheque and the uniform Eurocheque card as approved by the Eurocheque Assembly at its session on 4 and 5 June 1987.

Article 3

This Decision is addressed to:

1. Eurocheque International sc,
   Avenue Louise 327, Boîte 1,
   B-1050 Bruxelles;

2. Agrupacion Española Eurocheque,
   Los Madrazo 28,
   E-28014 Madrid;

3. Association for Payment Clearing Services,
   Mercury House
   Triton Court,
   14 Finsbury Square,
   UK-London EC21 1BR;

4. Associazione Bancaria Italiana,
   Piazza del Gesù,
   I-00186 Roma;

5. Bundesverband Deutscher Banken eV,
   Mohrenstraße 35/41,
   Postfach 100246,
   D-5000 Köln 1;

6. Communauté Luxembourgeoise Eurocheque,
   Boulevard F. D. Roosevelt 14,
   L-2450 Luxembourg;

7. Comunidade Portuguesa Eurocheque,
   Rua de S. Nicolau 71-5°-dt°,
   P-1100 Lisboa;

8. Eurocheque Belgium,
Avenue Louise 327, Boîte 6,
B-1050 Bruxelles;

9. Groupement des cartes bancaires,
29 rue de Lisbonne,
F-75008 Paris;

10. Irish Banks' Standing Committee,
Nassau House,
Nassau Street,
IRL-Dublin 2;

11. Pengeinstitutternes Betalingssystemer A/S,
Postboks 500,
Lautrupbjerg 10,
DK-2750 Ballerup;

12. Stichting Bevordering
Chequeverkeer,
Postbus 9120,
NL-1006 CB Amsterdam;

13. Agrupacio Andorrana Eurocheque,
Boîte Postale 60,
Correus Francesos,
AND-Andorra la Vella;

14. Association Suisse des Banquiers,
Aeschenplatz 7,
CH-Bâle;

15. Den Norske Bankforening,
Dronning Maudsgt. 15,
N-0116 Oslo 1;

16. Bank of Cyprus (Holdings) Ltd,
4 Diagoras Street,
Nicosia,
(Cyprus);

17. The Association of Yugoslav Banks,
Masarikova 5/IX,
Yu-11000 Beograd;

18. The Finnish Bankers' Association,
Annankatu 32 A,
SF-00100 Helsinki;

19. Svenska Bankföreningen,
Box 7603,
S-103 94 Stockholm;

20. Verband Osterreichischer Banken und Bankiers,
Börsegasse 11,
Postfach 132,
A-1013 Wien.

Done at Brussels, 19 December 1988.

For the Commission

Peter SUTHERLAND

Member of the Commission