



EUROPEAN UNION

THE EUROPEAN PARLIAMENT

THE COUNCIL

Strasbourg, 16 September 2009
(OR. en)

2008/0194 (COD)
LEX 1078

PE-CONS 3665/1/09
REV 1

EF 77
ECOFIN 400
CONSOM 124
CODEC 767

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
ON CROSS-BORDER PAYMENTS IN THE COMMUNITY
AND REPEALING REGULATION (EC) No 2560/2001**

REGULATION (EC) No .../2009
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 16 September 2009

on cross-border payments in the Community
and repealing Regulation (EC) No 2560/2001

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95(1) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the European Central Bank²,

Acting in accordance with the procedure laid down in Article 251 of the Treaty³,

¹ Opinion of 24 March 2009 (not yet published in the Official Journal).

² OJ C 21, 28.1.2009, p. 1.

³ Opinion of the European Parliament of 24 April 2009 (not yet published in the Official Journal) and Council Decision of 27 July 2009.

Whereas:

- (1) For the proper functioning of the internal market and in order to facilitate cross-border trade within the Community it is essential that the charges for cross-border payments in euro are the same as for corresponding payments within a Member State. That principle of equality of charges is established by Regulation (EC) No 2560/2001 of the European Parliament and of the Council of 19 December 2001 on cross-border payments in euro¹, which applies to cross-border payments in euro and in Swedish kronor up to EUR 50 000, or equivalent.
- (2) The report of the Commission of 11 February 2008 on the application of Regulation (EC) No 2560/2001 on cross-border payments in euro, confirmed that the application of that Regulation has effectively brought down the charges for cross-border payment transactions in euro to the level of national charges and that the Regulation has encouraged the European payments industry to make the necessary efforts to build a Community-wide infrastructure for payments.
- (3) The Commission's report examined the practical problems encountered in relation to the implementation of Regulation (EC) No 2560/2001. In conclusion, a number of amendments to that Regulation were proposed in order to address the problems identified during the review process. Those problems concern the disruption of the internal market in payments caused by divergent statistical reporting obligations, the enforcement of Regulation (EC) No 2560/2001 due to a lack of identified national competent authorities, the absence of out-of-court redress bodies for disputes related to that Regulation, and the fact that the Regulation does not cover direct debits.

¹ OJ L 344, 28.12.2001, p. 13.

- (4) Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market¹ provides a modern legal foundation for the creation of a Community-wide internal market for payments. In order to ensure legal consistency between both legal acts, it is advisable to amend the relevant provisions of Regulation (EC) No 2560/2001, in particular the definitions.
- (5) Regulation (EC) No 2560/2001 covers cross-border credit transfers and cross-border electronic payment transactions. In conformity with the objective of Directive 2007/64/EC, which is to make cross-border direct debits possible, it is advisable to extend the scope of Regulation (EC) No 2560/2001. It is still not advisable to apply the principle of equality of charges for payment instruments which are mainly or exclusively paper-based, such as cheques, since, by their very nature, they cannot be processed as efficiently as electronic payments.
- (6) The principle of equality of charges should apply to payments initiated or terminated on paper or in cash, which are processed electronically in the course of the payment execution chain, excluding cheques, and to all charges linked directly or indirectly to a payment transaction, including charges linked to a contract but excluding currency conversion charges. Indirect charges include charges for setting up a permanent payment order, or fees for using a payment card, or debit or credit card, which should be the same for national and cross-border payment transactions within the Community.

¹ OJ L 319, 5.12.2007, p. 1.

- (7) In order to prevent the fragmentation of payment markets, it is appropriate to apply the principle of equality of charges. For that purpose, a national payment having the same characteristics as, or very similar characteristics to, the cross-border payment should be identified for each category of cross-border payment transaction. It should be possible, inter alia, to use the following criteria to identify the national payment corresponding to a cross-border payment: the channel used to initiate, execute and terminate the payment, the degree of automation, any payment guarantee, customer status and relationship with the payment service provider, or the payment instrument used, as defined in Article 4(23) of Directive 2007/64/EC. Those criteria should not be considered to be exhaustive.
- (8) Competent authorities should issue guidelines to identify corresponding payments where they consider it necessary. The Commission, assisted, where appropriate, by the Payments Committee, should provide adequate guidance and assist the competent authorities.
- (9) It is important to facilitate the execution of cross-border payments by payment service providers. In that respect, standardisation should be promoted as regards, in particular, the use of the International Bank Account Number (IBAN) and the Bank Identifier Code (BIC). It is therefore appropriate that payment service providers provide payment service users with the IBAN and the BIC for the account in question.

- (10) Diverging balance-of-payments statistical reporting obligations, which apply exclusively to cross-border payment transactions, hinder the development of an integrated market in payments, in particular in the framework of the Single Euro Payments Area (SEPA). It is advisable, in a SEPA context, to reassess, by 31 October 2011, the appropriateness of removing those reporting obligations based on bank settlements. In order to guarantee the continuous, timely and efficient provision of balance-of-payments statistics, it is also desirable to ensure that it remains possible to collect readily available payments data such as the IBAN, the BIC and the amount of the transaction or basic, aggregated payments data for different payment instruments if the collection process does not disrupt the automated payments processing and could be fully automated. This Regulation does not affect reporting obligations for other policy purposes, such as for the prevention of money laundering or terrorist financing, or for fiscal purposes.

- (11) Currently, different business models are used for existing national direct debit schemes. To facilitate the launch of the SEPA direct debit scheme, it is necessary to put in place a common business model and provide greater legal clarity on multilateral interchange fees. For cross-border direct debits, this could be achieved, exceptionally, by establishing a maximum amount for the multilateral interchange fee per transaction during a transitional period. The parties to a multilateral agreement should, however, be free to determine a lower amount or agree a zero multilateral interchange fee. For national SEPA direct debits, the same national interchange fee or other agreed inter-bank remuneration between the payment service providers of the payee and of the payer could be used as that which existed before the date of application of this Regulation. Should such a national multilateral interchange fee or other agreed inter-bank remuneration be reduced or abolished during the transitional period, for example as a result of the application of competition law, the revised arrangements should apply to national SEPA direct debits during the transitional period. Where the direct debit transaction is subject to a bilateral agreement, however, the terms of such a bilateral agreement should take precedence over any multilateral interchange fee or other agreed inter-bank remuneration. Industry can make use of the legal certainty provided during the transitional period to develop and agree a common, long-term business model for the operation of the SEPA direct debit. At the end of the transitional period, a long-term solution for the SEPA direct debit business model should be in place in line with EC competition law and the Community regulatory framework. Within the framework of a sustained dialogue with the banking industry and on the basis of contributions made by the relevant market actors, the Commission intends to provide, as a matter of urgency, guidance as to the objective and measurable criteria for the compatibility of such multilateral inter-bank remuneration, which could include multilateral interchange fees, with EC competition law and the Community regulatory framework.

- (12) For a direct debit transaction to be executed, the payer's account must be reachable. To encourage the successful take-up of SEPA direct debits, it is therefore vital that all payer accounts be reachable where this is already the case for existing national direct debits denominated in euro, otherwise the payer and the payee will be unable to enjoy the benefits of cross-border direct debit collection. If the payer account is not reachable under the SEPA direct debit scheme, the payer (debtor) and the payee (creditor) will be unable to benefit from the new direct debit payment opportunities available. This is especially important where the payee initiates direct debit collections in a batch file, for example on a monthly or quarterly basis for electricity or other utility bills, and not as a separate collection for each customer. If creditors are not able to reach all their debtors in a single operation, additional manual intervention will be needed, which is likely to increase costs. Hence, in the absence of mandatory reachability for the payment service provider of the payer, the efficiency of direct debit collections will not be fully enhanced and competition on a pan-European level will remain restricted. Given the specific features of direct debits between businesses, however, this should apply only to the SEPA core direct debit scheme and not to the SEPA business-to-business direct debit scheme. The reachability obligation encompasses the right of a payment service provider not to execute a direct debit transaction in accordance with the direct debit scheme regarding, for example, the rejection, refusal or return of transactions. The reachability obligation should, furthermore, not apply to payment service providers which have been authorised to provide and execute direct debit transactions but which do not engage commercially in such activities.

- (13) Given the technical requirements needed for reachability, it is, furthermore, important for a payment service provider of a payer to have sufficient time to prepare for compliance with the reachability obligation. Payment service providers should therefore enjoy a transitional period of a maximum of one year following the date of application of this Regulation in order to comply with that obligation. Since payment service providers from Member States outside the euro area would need to undertake more preparatory work, such payment service providers should be allowed to defer the application of the reachability obligation for a maximum of five years following the date of application of this Regulation. Payment service providers located in a Member State that has introduced the euro as its currency within four years of the date of application of this Regulation should, however, be required to comply with the reachability obligation within one year of the date on which the Member State concerned joined the euro area.
- (14) Competent authorities should be empowered to fulfil their monitoring duties efficiently and to take all necessary measures to ensure that payment service providers comply with this Regulation.

- (15) In order to ensure that redress is possible where this Regulation has been incorrectly applied, Member States should establish adequate and effective complaint and redress procedures for settling any dispute between the payment service user and the payment service provider. It is also important that competent authorities and out-of-court complaint and redress bodies are appointed either by designating existing bodies, where appropriate, or by establishing new bodies.
- (16) It is essential to ensure that the competent authorities and out-of-court complaint and redress bodies, within the Community, actively cooperate for the smooth and timely resolution of cross-border disputes under this Regulation. It should be possible for such cooperation to take the form of an exchange of information regarding the law or legal practice in their jurisdictions, or a transfer or takeover of complaint and redress procedures if appropriate.
- (17) It is necessary that Member States lay down effective, proportionate and dissuasive penalties in national law for failure to comply with this Regulation.

- (18) Extending the application of this Regulation to currencies other than the euro would have clear benefits, especially in terms of the number of payments covered. In order to allow Member States which do not have the euro as their currency to extend the application of this Regulation to cross-border payments denominated in their national currency, a notification procedure should therefore be established. It should, however, be ensured that Member States that have already complied with that notification procedure do not have to submit a new notification.
- (19) It is desirable that the Commission present a report on the appropriateness of removing settlement-based national reporting obligations. It is also appropriate that the Commission present a report on the application of this Regulation, assessing, in particular, the use of the IBAN and the BIC for the facilitation of payments within the Community as well as market developments in relation to the application of the provisions on direct debit transactions. In the context of the development of SEPA, it is also desirable that such a report assess the appropriateness of the ceiling of EUR 50 000, which currently applies to the principle of equality of charges.
- (20) For reasons of legal certainty and clarity, Regulation (EC) No 2560/2001 should be repealed.

- (21) In order to ensure legal coherence between this Regulation and Directive 2007/64/EC, in particular as regards the transparency of conditions and information requirements for payment services and as regards rights and obligations in relation to the provision and use of payment services, it is appropriate that this Regulation applies from 1 November 2009. It is appropriate to allow Member States to adopt measures introducing penalties for infringements of this Regulation until 1 June 2010.
- (22) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the action, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

1. This Regulation lays down rules on cross-border payments within the Community, ensuring that charges for cross-border payments within the Community are the same as those for payments in the same currency within a Member State.
2. This Regulation shall apply to cross-border payments, in accordance with the provisions of Directive 2007/64/EC, which are denominated in euro or in the national currencies of the Member States which have notified their decision to extend the application of this Regulation to their national currency, in accordance with Article 14.
3. This Regulation shall not apply to payments made by payment service providers for their own account or on behalf of other payment service providers.
4. Articles 6, 7 and 8 lay down rules regarding direct debit transactions denominated in euro between the payment service providers of the payee and of the payer.

Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply:

- 1) "cross-border payment" means an electronically processed payment transaction initiated by a payer or by or through a payee where the payer's payment service provider and the payee's payment service provider are located in different Member States;

- 2) "national payment" means an electronically processed payment transaction initiated by a payer, or by or through a payee, where the payer's payment service provider and the payee's payment service provider are located in the same Member State;
- 3) "payer" means a natural or legal person who holds a payment account and allows a payment order from that payment account, or, where there is no payment account, a natural or legal person who gives a payment order;
- 4) "payee" means a natural or legal person who is the intended recipient of funds which have been the subject of a payment transaction;
- 5) "payment service provider" means any of the categories of legal person referred to in Article 1(1) of Directive 2007/64/EC and the natural or legal persons referred to in Article 26 of that Directive, but excludes those institutions listed in Article 2 of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast)¹ benefiting from a Member State waiver exercised under Article 2(3) of Directive 2007/64/EC;
- 6) "payment service user" means a natural or legal person making use of a payment service in the capacity of either payer or payee, or both;

¹ OJ L 177, 30.6.2006, p. 1.

- 7) "payment transaction" means an act, initiated by a payer or by or through a payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and the payee;
- 8) "payment order" means an instruction by a payer or payee to his payment service provider requesting the execution of a payment transaction;
- 9) "charge" means a charge levied by a payment service provider on the payment service user and directly or indirectly linked to a payment transaction;
- 10) "funds" means banknotes and coins, scriptural money and electronic money as defined in Article 1(3)(b) of Directive 2000/46/EC of the European Parliament and of the Council of 18 September 2000 on the taking up, pursuit of and prudential supervision of the business of electronic money institutions¹;
- 11) "consumer" means a natural person acting for purposes other than his or her trade, business or profession;
- 12) "micro-enterprise" means an enterprise, which, at the time of conclusion of the payment service contract, is an enterprise, as defined in Article 1 and Article 2(1) and (3) of the Annex to Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises²;

¹ OJ L 275, 27.10.2000, p. 39.

² OJ L 124, 20.5.2003, p. 36.

- 13) "interchange fee" means a fee paid between the payment service providers of the payer and of the payee for each direct debit transaction;
- 14) "direct debit" means a payment service for debiting a payer's payment account, where a payment transaction is initiated by the payee on the basis of the payer's consent given to the payee, to the payee's payment service provider or to the payer's own payment service provider;
- 15) "direct debit scheme" means a common set of rules, practices and standards agreed between payment service providers for the execution of direct debit transactions.

Article 3

Charges for cross-border payments and corresponding national payments

1. Charges levied by a payment service provider on a payment service user in respect of cross-border payments of up to EUR 50 000 shall be the same as the charges levied by that payment service provider on payment service users for corresponding national payments of the same value and in the same currency.

2. When assessing, for the purpose of complying with paragraph 1, the level of charges for a cross-border payment, a payment service provider shall identify the corresponding national payment.

The competent authorities shall issue guidelines to identify corresponding national payments where they consider it necessary to do so. The competent authorities shall actively cooperate within the Payments Committee established in accordance with Article 85(1) of Directive 2007/64/EC to ensure the consistency of guidelines for corresponding national payments.

3. Where a Member State has notified its decision to extend the application of this Regulation to its national currency in accordance with Article 14, a national payment that is denominated in the currency of that Member State may be considered as corresponding to a cross-border payment that is denominated in euro.
4. This Regulation shall not apply to currency conversion charges.

Article 4

Measures for facilitating the automation of payments

1. A payment service provider shall, where applicable, communicate to the payment service user the payment service user's IBAN and the payment service provider's BIC.

In addition, where applicable, a payment service provider shall indicate the payment service user's IBAN and the payment service provider's BIC on statements of account, or in an annex thereto.

A payment service provider shall provide the information required under this paragraph to the payment service user free of charge.

2. Where appropriate, with regard to the nature of the payment transaction concerned:
 - (a) for transactions initiated by the payer, the payer shall, on request, communicate to the payment service provider the payee's IBAN and the BIC of the payee's payment service provider;
 - (b) for transactions initiated by the payee, the payee shall, on request, communicate to the payment service provider the payer's IBAN and the BIC of the payer's payment service provider.

3. The payment service provider may levy charges additional to those levied in accordance with Article 3(1) on the payment service user where that user instructs the payment service provider to execute the payment transaction without communicating the IBAN and BIC in accordance with paragraph 2 of this Article. Those charges shall be appropriate and in line with the costs. They shall be agreed between the payment service provider and the payment service user. The payment service provider shall inform the payment service user of the amount of the additional charges in good time before the payment service user is bound by such an agreement.
4. Where appropriate, with regard to the nature of the payment transaction concerned, for all invoicing of goods and services in the Community, a supplier of goods and services that accepts payments covered by this Regulation shall communicate its IBAN and the BIC of its payment service provider to its customers.

Article 5

Balance of payments reporting obligations

1. With effect from 1 January 2010, Member States shall remove settlement-based national reporting obligations on payment service providers for balance of payments statistics related to payment transactions of their customers up to EUR 50 000.

2. Without prejudice to paragraph 1, Member States may continue to collect aggregated data or other relevant readily available information, provided that such collection has no impact on the straight through processing of the payments and can be fully automated by payment service providers.

Article 6

Interchange fee for cross-border direct debit transactions

In the absence of any bilateral agreement between the payment service providers of the payee and of the payer, a multilateral interchange fee of EUR 0,088, payable by the payment service provider of the payee to the payment service provider of the payer, shall apply for each cross-border direct debit transaction executed before 1 November 2012, unless a lower multilateral interchange fee has been agreed upon between the payment service providers concerned.

Article 7

Interchange fee for national direct debit transactions

1. Without prejudice to paragraphs 2 and 3, where a multilateral interchange fee or other agreed remuneration for a national direct debit transaction executed before 1 November 2009 applies between the payment service providers of the payee and of the payer, such a multilateral interchange fee or other agreed remuneration shall apply for any national direct debit transaction executed before 1 November 2012.

2. Where such a multilateral interchange fee or other agreed remuneration is reduced or abolished before 1 November 2012, such reduction or abolition shall apply to any national direct debit transactions executed before that date.
3. In the event of a bilateral agreement between the payment service providers of the payee and of the payer for a national direct debit transaction, paragraphs 1 and 2 shall not apply where that national direct debit transaction was executed before 1 November 2012.

Article 8

Reachability for direct debit transactions

1. A payment service provider of a payer reachable for a national direct debit transaction denominated in euro on the payment account of that payer shall be reachable, in accordance with the direct debit scheme, for direct debit transactions denominated in euro initiated by a payee through a payment service provider located in any Member State.
2. Paragraph 1 shall apply only to direct debit transactions which are available to consumers under the direct debit scheme.
3. Payment service providers shall comply with the requirements of paragraphs 1 and 2 by 1 November 2010.

4. Notwithstanding paragraph 3, payment service providers located in a Member State which does not have the euro as its currency shall comply with the requirements of paragraphs 1 and 2 for direct debit transactions denominated in euro by 1 November 2014. If, however, the euro is introduced as the currency of any such Member State before 1 November 2013, the payment service provider located in that Member State shall comply with the requirements of paragraphs 1 and 2 within one year of the date on which the Member State concerned joined the euro area.

Article 9

Competent authorities

Member States shall designate the competent authorities responsible for ensuring compliance with this Regulation.

Member States shall notify the Commission of those competent authorities by ...*. They shall notify the Commission without delay of any subsequent change concerning those authorities.

Member States may designate existing bodies to act as competent authorities.

Member States shall require the competent authorities to monitor compliance with this Regulation effectively and take all necessary measures to ensure such compliance.

* OJ: Please insert date: six months from the date of entry into force of this Regulation.

Article 10
Complaint procedures for alleged infringements
of this Regulation

1. Member States shall establish procedures which allow payment service users and other interested parties to submit complaints to the competent authorities with regard to alleged infringements of this Regulation by payment service providers.

Member States may use or extend existing procedures for that purpose.

2. Where appropriate, and without prejudice to the right to bring proceedings before a court in accordance with national procedural law, the competent authorities shall inform the party that has submitted a complaint of the existence of the out-of-court complaint and redress procedures established in accordance with Article 11.

Article 11
Out-of-court complaint and redress procedures

1. Member States shall establish adequate and effective out-of-court complaint and redress procedures for the settlement of disputes concerning rights and obligations arising under this Regulation between payment service users and their payment service providers. For those purposes, Member States shall designate existing bodies, where appropriate, or establish new bodies.

2. Member States shall notify the Commission of those bodies by ...^{*}. They shall notify the Commission without delay of any subsequent change concerning those bodies.
3. Member States may provide that this Article applies only to payment service users which are consumers or micro-enterprises. In such event Member States shall inform the Commission accordingly.

Article 12

Cross-border cooperation

The competent authorities and the bodies responsible for out-of-court complaint and redress procedures of the different Member States, referred to in Articles 9 and 11, shall actively and expeditiously cooperate in solving cross-border disputes. Member States shall ensure that such cooperation takes place.

^{*} OJ: Please insert date: six months from the date of entry into force of this Regulation.

Article 13

Penalties

Without prejudice to Article 17, Member States shall, by 1 June 2010, lay down rules on the penalties applicable to infringements to this Regulation and shall take all measures necessary to ensure that they are implemented. Such penalties shall be effective, proportionate and dissuasive. Member States shall notify those provisions to the Commission by ...* and shall notify it without delay of any subsequent amendment affecting them.

Article 14

Application to currencies other than the euro

1. A Member State that does not have the euro as its currency and that decides to extend the application of this Regulation, with the exception of Articles 6, 7 and 8, to its national currency shall notify the Commission accordingly. That notification shall be published in the Official Journal of the European Union. The extended application of this Regulation shall take effect 14 days after such publication.

* OJ: Please insert a date: twelve months after entry into force of this Regulation.

2. A Member State that does not have the euro as its currency and that decides to extend the application of Articles 6, 7 or 8, or any combination thereof, to its national currency shall notify the Commission accordingly. That notification shall be published in the Official Journal of the European Union. The extended application of Articles 6, 7 or 8 shall take effect 14 days after such publication.
3. Member States which, on ...^{*}, have already complied with the notification procedure pursuant to Article 9 of Regulation (EC) No 2560/2001, shall not be required to submit a notification as referred to in paragraph 1 of this Article.

Article 15

Review

1. By 31 October 2011, the Commission shall present to the European Parliament, the Council, the European Economic and Social Committee and the European Central Bank a report on the appropriateness of removing settlement-based national reporting obligations. That report shall be accompanied, where appropriate, by a proposal.

^{*} OJ: Please insert the date of entry into force of this Regulation.

2. By 31 October 2012, the Commission shall present to the European Parliament, the Council, the European Economic and Social Committee and the European Central Bank a report on the application of this Regulation accompanied, if appropriate, by a proposal. That report shall cover, in particular:
- (a) the use of the IBAN and the BIC in relation to the automation of payments;
 - (b) the appropriateness of the ceiling provided for in Article 3(1); and
 - (c) market developments in relation to the application of Articles 6, 7 and 8.

Article 16

Repeal

Regulation (EC) No 2560/2001 is repealed, as from 1 November 2009.

References to the repealed Regulation shall be construed as references to this Regulation.

Article 17
Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

It shall apply from 1 November 2009.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg,

For the European Parliament
The President

For the Council
The President