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## **APACS Response to the Commission's Consultative Document on the Application of Regulation (EC) No 2560/2001 on Cross-border Payments in Euro.**

We are pleased to detail below the APACS response to this Commission working document dated 19<sup>th</sup> October 2005.

### **Introduction**

APACS is the UK payments association, a trade association of institutions delivering payment services to end customers. It provides the forum to address co-operative aspects of the payment services and other payment related developments

APACS and its Members welcome the opportunity to comment on the Commission's consultative document and contribute to the preparation of a report on the application of Regulation (EC) No 2560/2001 on Cross-border Payments in Euro.

### **General Points**

The implementation of the Regulation has not caused significant problems in the UK. The work done by the payment industry, in conjunction with HM Treasury, in developing implementation guidelines (a copy of the guidelines is attached) has meant that there is a common understanding of the scope and implementation of the Regulation, and banks have developed appropriate systems and procedures.

APACS and its Members are actively engaged in and supportive of the work of the EPC to deliver SEPA. Additionally, the UK participates in the EBA's STEP2 clearing (the first accredited PE-ACH system) and has had national receiver capability from the outset.

We have structured our response around the questions highlighted in the conclusions to the Working Document in Section 9.

QUESTIONS	APACS RESPONSE
<b>9.1. Problems encountered in Implementation</b>	
<p><i>9.1.1 Geographic Scope of Applications</i></p> <ul style="list-style-type: none"> <li>Given the application of Regulation (EC) No 2560/2001 to SEK, stakeholders are asked, for each question in this document, to also provide information on state of play as regards payments in SEK.</li> <li>Stakeholders should in particular indicate any differentiation in the treatment of euro and SEK cross-border payments (electronic payments and credit transfers).</li> </ul>	<p><b>APACS members have applied the Regulation to Swedish Kronas as applicable and have no problems to report in this area.</b></p>
<p><i>9.1.2 Provisions on Credit Transfers</i></p> <ul style="list-style-type: none"> <li>Stakeholders are asked whether issues relating to the use of different cost options for transfers in euro have been resolved.</li> <li>Do banks continue to ask consumers whether they wanted to pay all the charges (OUR) or share the charges (SHARE), the customer usually said pay all (OUR)?</li> <li>Do other problems in this field exist?</li> <li>Are consumers aware of their rights in this area?</li> <li>Do stakeholders believe that Regulation (EC) No 2560/2001 should be amended to avoid any artificial circumvention of the Regulation and thus resolve the problem described above?</li> </ul>	<p><b>For euro-payments falling within the scope of the Regulation, we believe that the default applied by APACS members is SHARE. We do not therefore consider there to be any artificial circumvention of the Regulation in this regard.</b></p> <p><b>APACS Members' adherence to the EPC's Interbank Convention on Payments or ICP (which establishes SHARE as the basic principle for interbank charging and does not permit deduction of charges from the original payment amount) is high in terms of market coverage. APACS Members offering products or services compliant with the ICP terms constitute approximately 95% of the total UK market for such products and services.</b></p>
<p><i>9.1.3 Provisions on Credit Transfers</i></p> <ul style="list-style-type: none"> <li>Do stakeholders agree that the problems described in Spain have been resolved?</li> </ul>	<p><b>Yes, the experience of our Members is that these problems have been resolved.</b></p>

QUESTIONS	APACS RESPONSE
<b>9.2 Direct Impact of Regulation (EC) No 2560/2001</b>	
<p><i>9.2.1 Impact on Charges for Payments made Cross-border</i></p> <ul style="list-style-type: none"><li>• Stakeholders are asked to provide their views on whether prices are equalised or whether problems still exist. In the latter case, stakeholders are asked to provide additional information as to exactly why prices are not equalised. Copies of any further studies/surveys that may have been undertaken at the national level are also welcome.</li><li>• Stakeholders are asked to provide their views on whether the prices for cross-border transfers have fallen. Copies of any further studies/surveys that may have been undertaken at the national level are also welcome.</li><li>• Stakeholders are asked to provide information on charges for cross-border payments (electronic payments and credit transfers) above EUR 12 500 and to compare them to charges below the threshold.</li></ul>	<p><b>We believe that prices have been equalised (in cases where they were not already the same), and we are not aware of any problems in the UK.</b></p> <p><b>Because of competition law restrictions it is not possible for APACS to collate detailed information on its members' prices.</b></p>

QUESTIONS	APACS RESPONSE
<p>9.2.2 <i>Impact on Consumer Awareness</i></p> <ul style="list-style-type: none"> <li>Have all the Regulation's requirements on the provision of consumer information been implemented?</li> </ul>	<p><b>Yes - requirements for providing standard information on cross-border payment services to customers in the UK are set out in the Banking Code and the Business Banking Code in sections 5 and 9 (a copy is attached for information). This is supported by individual bank literature. Additional information requirements specific to Regulation 2560 are dealt with in the APACS implementation guidelines to the Regulation, published in July 2003 (also attached).</b></p> <p><b>As reflected in the RBR report, number of cross-border credit transfers made by customers in the UK is very low. This means that while those consumers who regularly make such transfers, and those bank staff who deal with them on a regular basis will be aware of the requirements of the regulation, outside of this fairly small group awareness by both consumers and staff may be limited. APACS members are aware of this and continue to attempt to raise awareness by means of customer literature and staff training.</b></p>
<ul style="list-style-type: none"> <li>Does the Regulation create any inconsistencies with other legislation in this respect?</li> <li>Do stakeholders have any other comments on the provision of information in this respect?</li> </ul> <p>Stakeholders are asked to provide their views on the following aspects:</p> <ul style="list-style-type: none"> <li>Are consumers aware of the scope and/or detail of the Regulation? If not, where is information lacking?</li> </ul>	<p><b>APACS is not aware of any inconsistency in this respect.</b></p> <p><b>No</b></p> <p><b>The APACS implementation guidelines are publicly available on the APACS website, and these have been implemented by our Member banks, including (where appropriate) by means of references in their customer literature.</b></p>

QUESTIONS	APACS RESPONSE
<ul style="list-style-type: none"><li data-bbox="188 177 976 248">• Do stakeholders have any other comments on consumer understanding of the Regulation?</li><li data-bbox="188 544 1099 616">• Have the Regulation requirements (Articles 4(1) and (2)) been fully integrated into national law?</li><li data-bbox="188 711 1050 783">• Do consumers have the required information to make informed decisions?</li></ul>	<p data-bbox="1128 140 2007 416"><b>Given the low numbers of consumers in the UK who need to make such payments (as reflected in the RBR reports), - only a very small proportion of UK consumers need to have any awareness or understanding of the Regulation. Amongst this group we believe that there is a reasonable level of understanding of the Regulation, and that the level of understanding is steadily increasing.</b></p> <p data-bbox="1128 491 1928 603"><b>Yes. The relevant national legislation is:</b> <a href="#"><u>UK Regulations SI 2003 No. 488 relating to EU Regulation 2560/2001</u></a></p> <p data-bbox="1128 695 1391 722"><b>Yes we believe so.</b></p>



QUESTIONS	APACS RESPONSE
<p><i>9.2.3 Impact on National Reporting Obligations</i></p> <p>Stakeholders are asked to provide additional information, particularly on the non-implementation of Article 6.</p> <p>At this stage in the debate, the Commission is reviewing the different options for resolve this inconsistencies between Articles 3 and 6 in Regulation (EC) No 2560/2001. In this respect, the Commission foresees examining two possible alternatives:</p> <ul style="list-style-type: none"> <li>• Member States change their systems of collection of data and remove the reporting obligations between EUR 12 500 and EUR 50 000 in order to place banks in those countries on an equal footing with those of the countries which do not have this reporting obligation;</li> <li>• No agreement on the development of systems is reached. An amendment of the Regulation in order to create a level playing field and bring Articles 3 and 6 in line with each other by raising the threshold to EUR 50 000.</li> </ul> <p>Stakeholders are asked provide their views on the different options.</p> <ul style="list-style-type: none"> <li>• Should changes in the Regulation be required, what would be a suitable timeframe?</li> <li>• Would an increase in the threshold create any inconsistencies with other legislation in this respect?</li> <li>• Stakeholders are asked to provide more detailed information on the nature of national obligations which prevent the automation of payments.</li> </ul>	<p><b>As the Commission notes in its consultation document, there is no balance of payments reporting obligation in the UK. However, in principle APACS Members are supportive of the EPC's recommendation that the minimum threshold for balance of payments reporting should be aligned with the raised Regulation threshold - ideally from 1 January 2006, or as soon as possible thereafter.</b></p> <p><b>As stated in our response to the previous questionnaire in June 2005 and to the NLF draft proposals, the main obstacle to the automation of payments remains the uncertainty in UK law, and in many other jurisdictions, as to whether, in cases where the two differ, the account name quoted on the payment or the account number has legal primacy. The law in this area has arisen from precedents in paper based, largely manual systems and does not reflect the realities to the high volume, automated systems, or the need for straight through processing. Because of the many different ways in which a name may be presented</b></p>

QUESTIONS	APACS RESPONSE
	<p>(e.g. John Smith, John D Smith, J D Smith, John David Smith, Mr John Smith, John Smith Esq. etc, etc.....) all of which may be correct, automated validation of names is almost impossible. In order to achieve full automation and straight-through processing, legislation to protect financial institutions if processing on account number (and branch identifier) alone, is required.</p>
<p><i>9.2.4 Payments Infrastructures</i> Stakeholders are asked to comment on whether issues relating to the development of payment infrastructures should continue to be dealt with in the context of the New Legal Framework and self-regulation, as is currently the case.</p>	<p><b>We are pleased to note the Commission’s stated commitment in the draft SEPA incentives paper (page 22-23) to focus on rules &amp; principles, rather than specify the detail of schemes or infrastructures within legislation. APACS Members believe that, within the principles of a high-level EU regulatory framework, the payments market should be responsible for developing payments infrastructure, given the fast pace of technological change. Recent changes have shown that this is working in practice – for example, the development of STEP 2 was a market-driven response to Regulation 2560/2001.</b></p>

QUESTIONS	APACS RESPONSE
<p><b>9.3 Indirect Impact of Regulation (EC) No 2560/2001</b></p>	
<p><i>9.3.1 Impact on Charges for Payments made within a Member State</i></p> <ul style="list-style-type: none"> <li>• Stakeholders are asked to provide their views on the impact of Regulation (EC) No 2560/2001 on the price of national credit transfers, national payment card purchases and national ATM transactions.</li> <li>• Do stakeholders agree with the results of the study? If not, please provide additional information.</li> </ul>	<p><b>We are pleased to note that the RBR study concludes (at 3.15.1) that there is no evidence that the Regulation has affected the pricing of Euro-denominated national credit transfers in the UK. This coincides with our own view of the position, and we therefore have no issues with the results reported in the study.</b></p>
<p><i>9.3.2 Impact on the functioning of the Internal Market</i></p> <p>Stakeholders are asked to provide their views as to whether the reliability and speed of cross-border transfers has developed since the adoption of Regulation (EC) No 2560/2001. Detailed evidence to support stakeholder views in this area is appreciated.</p>	<p><b>The development of EBA STEP2 (which is generally considered to be the first PE-ACH compliant service provider) and the establishment of the EPC’s Credeuro Convention - a standard that provides for the efficient and low-cost execution of basic euro cross-border credit transfers with a fixed execution time - have given rise to greater speed and certainty with regard to the processing of such transactions. STEP2 is now processing almost 200,000 payments per day on average, and adherence to the Credeuro Convention within the UK and across the EEA is high in terms of market coverage. We anticipate further improvement as SEPA implementation progresses.</b></p>

<b>9.4 Other Issues</b>	
<p><b>9.4.1 Scope</b></p> <p>Stakeholders are asked to provide their views on the exclusion of cheques from the scope of Regulation (EC) No 2560/2001.</p> <p>Stakeholders are asked to provide input as to whether the scope of Regulation (EC) No 2560/2001 should be expanded to cover other payments instruments such as direct debits.</p>	<p><b>We agree with the arguments set out in this consultation that cheques should continue to be excluded from scope.</b></p> <p><b>We do not see the need for the Commission to expand the scope of 2560/2001 to cover other payment instruments. In particular, in the case of direct debits we would urge the Commission to wait until after January 2008 (the planned launch date for the EPC's SEPA Direct Debit Scheme) before even considering taking any such action.</b></p>

<b>QUESTIONS</b>	<b>APACS RESPONSE</b>
<p>Competition</p> <p>Stakeholders are asked to provide comments on the conclusions of the RBR study.</p> <p>In general terms, on the question of “the advisability of improving consumer services by strengthening the conditions of competition in the provision of cross-border payment services”, any conclusions would be premature given the ongoing sectoral investigation into retail financial services.</p>	<p><b>APACS agrees with the assertion above that “any conclusions would be premature given the ongoing sectoral investigation into retail financial services”</b></p> <p><b>We note below a number of comments on the study:</b></p> <ul style="list-style-type: none"><li data-bbox="1131 475 2042 912">• <b>The figure of 80% quoted in the first bullet point of the Executive Summary as the percentage of bank-to-bank cross-border credit transfers which currently still take place through traditional correspondent banking arrangements or via inter-bank transactions is not one that reflects the experience of our Members. We believe that a large proportion of cross-border payments are now routed via payment systems. From the information provided it is not possible to properly validate the study’s estimate of the total market size, and we would challenge its accuracy.</b></li><li data-bbox="1131 949 2042 1184">• <b>We note that the authors have found that no multilateral cross-border credit transfer network has, currently, a large proportion of the total volume of cross-border credit transfers, and are therefore surprised at the concern expressed at the EBA’s size and market share. These conclusions appear to be mutually contradictory.</b></li><li data-bbox="1131 1257 2042 1492">• <b>No attempt at a cost benefit analysis of the various possible models has been made to support the assertion that direct corporate access would be more convenient and cheaper for corporate users. There is no basis for the view that one model is inherently more efficient than another.</b></li></ul>

QUESTIONS	APACS RESPONSE
<p><b>9.4.2 Enforcement</b></p> <p>Stakeholders are asked to provide information on the sanctions schemes available in their Member States.</p> <p>This absence of reference to the competent authorities can be seen as a major weakness of Regulation (EC) No 2560/2001. The issue of core importance is that some mechanism is required to efficiently deal with and resolve problems effectively and efficiently. To solve this issue, two principle options could be foreseen:</p> <p>First, it is possible to envisage, as several Member States do, that an authority has the power to apply sanctions for non-observance of the provisions of the Regulation.</p> <p>A second option would be to establish the role of competent authorities and to make this Regulation enter in the annex of Regulation (EC) No 2006/2004, allowing cooperation between these authorities for these cross-border issues.</p> <p>Stakeholders as requested to provide their view on the different options addressing dispute settlement.</p> <p>Member States are also asked to provide information on whether they have competent authorities or not. If yes, how many cases are dealt with and what would be the estimated cost.</p>	<p><b>The sanctions available in the UK are set out in the Regulation in <a href="#">S.I. 2003 No 488</a></b></p>
<p><b>9.4.2 Review Clause</b></p> <p>Stakeholders are requested to provide their views on the insertion of a revised review clause, in particular:</p> <ul style="list-style-type: none"> <li>• When should the legislation be reviewed (2010 in line with SEPA objectives)?</li> <li>• Should the specific issues highlighted under the Article 8 be re-examined in the future? Should more/less issues be covered? If yes, which issues?</li> </ul>	<p><b>One of the Commission’s stated aims is to abolish this Regulation. Given that 2010 is the date envisaged for a critical mass to migrate to the SEPA schemes, a review would be most appropriate some time after this, once full implementation and migration has taken place. This would allow the Commission to assess whether abolition is possible. It is not possible to say at this time which issues should be covered in Article 8.</b></p>

