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Mr. J. Allix
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Date: December 16, 2005

Re: Reply to Consultative Document to contribute to the
Preparation of a Report on the Application of Regulation (EC)
No 2560/2001 on Cross-border Payments in euro

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Dear Mr Allix,

We hereby send you the Dutch response to the Consultative Document on Regulation 2560 of October 19, 2005. Our response in this letter is general in nature. We have provided a more extensive overview of questions/answers in the Annex.

In general, the Dutch banks hold the opinion that the Commission should seriously reconsider Regulation 2560. Since its inception in 2001, cross-border fees have decreased considerably and a pan European infrastructure is now fully operational and functioning properly (notably EBA STEP-2). We estimate the negative financial effect of the Regulation at approximately € 100-200 million.

Whereas the regulation has achieved the desired direct changes in the payments industry, it has not served its broader goals. The preamble to the regulation suggests in article 6 that the Regulation would help to increase cross-border trade and boost confidence in the euro. In our view, reality has proved this assumption to be an analytical mistake. In the years since 2001, cross-border trade and confidence in the euro were more seriously affected by geopolitical and macro-economic factors than by the mechanics and characteristics of the cross-border payments.

Taking aboard this observation, we hope that the Commission will in the future exercise more care in the estimation of macro-economic benefits as a result of changes in the payment landscape. More in particular we would like to ask you to forward our observation to all Administrative Officers of the Commission that are currently preparing the impact assessment for the New Legal Framework.

Our arguments for reconsidering Regulation 2560, its validity and its limited further use for the European payment industry, are not solely based on the fact that it has not achieved its desired macro-economic goals. We find price-regulation the ultimate remedy for any regulator. It should only be applied if really necessary and for a limited period only. Any ongoing extension of price-regulation is undesirable as it effectively prescribes the market to continue cross-subsidisation or to absorb more loss.

The adverse effect of the Regulation in this respect is most visible in the client practice of splitting payments to remain under the threshold. Given the very low Dutch fees for domestic credit-transfers, the practice of splitting has seriously increased the gap between the costs of transaction processing and its revenues. Payments under the Regulation are thus heavily cross-subsidized by Dutch banks.

In contrast, the need to eliminate cross-subsidisation in European payments is an important policy principle for the New Legal Framework. The Dutch banks fully subscribe to such an approach, as it is the core principle needed to arrive at the benefits of the NLF. Yet, given this policy principle, we wonder how the Commission intends to reconcile proceeding with both Regulation 2560 and the New Legal Framework at the same time?

More generally, we are concerned about both the consistency of regulation regarding the payments industry as well as the restricted timelines for consultation. At present both the e-money directive and regulation 2560 are under evaluation. The Commission has drafted version 6.0 of the NLF as well as a regulation to implement FATF 7. In addition the Commission has recently introduced new elements to the discussion on the NLF (the incentives paper).

We fear that the consequence of the Commission's piecemeal and hasty approach is that the regulatory goals for the internal market for payments will not be achieved at all or at a considerable higher cost to the industry (and in the end to its customers). We would therefore like to ask the Commission to provide the industry with an overarching vision on the complete regulatory framework for payments in the EU as well as possible alternative strategies to achieve the desired regulatory goals.

And we would like to propose -as one of the alternatives- the revocation of the Regulation 2560, bearing in mind that the Regulation is inconsistent with the NLF and in violation of the principles of the EU-treaty. Furthermore it would be in line with goal as stated in the White Paper Financial Service Policy to perform careful ex-post assessments of regulation and repeal such regulation if necessary.

In addition to the above general remarks, we have listed our answers to the previous Questionnaire on the Regulation 2560 in the Annex. We are of course available to provide further information on request.

Yours sincerely



Mr. G. Boudewijn
Head of Payments and Securities Department

Annex 1: Answers to the Previous questionnaire on Regulation 2560

General comments

–On the status quo at the time of adoption of Regulation 2560/2001 and progress on cross-border infrastructures in Member States made since then.

We would like to stress that prior to the introduction of the regulation, Dutch cross border bank charges for credit-transfers were among the lowest in Europe (see report Bank Charges in Europe, April 2000, reporting an average Dutch fee of € 8,68 against the European average of € 15,51). The execution time was on average three days and fully within the prescribed 5 working days.

Since the introduction of Regulation 2560/2001 the Dutch banks have considerably invested in complying with the regulation. We fully absorbed the costs that were the result of discarding the existing fees for cross-border credit-transfers, ATM and POS-transactions. We estimate the cost of the measures taken in the Netherlands at approximately € 100-200 million.

As an ongoing part of our aim to ensure efficient processing, we developed the STEP-1 and STEP-2 system. In addition Interpay and the Dutch central bank created an entry point to the STEP-2 system for small banks.

Furthermore individual banks invested in increasing the number of STP-transactions, setting up the European Payment Council and applying the relevant resolutions on Credeuro and ICP. The resolutions are mandatory for the members of the Netherlands Bankers Association. As a result all Dutch banks comply with the regulation. The IBAN and BIC-code are available on all bank-statements.

–On industries capacities and commitments to deliver the Single Euro Payment Area by 2010.

The Dutch Banking Community is committed to the realisation of SEPA.

By 2010 the Dutch banks envisage a single market for payments in which:

- a level playing field based on the implemented new legal framework;
- transparent cost sharing arrangements exist as a basis for banks' commercial decisions;
- the scheme requirements of payment products are separated from the detailed technical requirements of processors, thus leading to an open and competitive pan-European processor market;
- consolidation in the market for payment processors has taken place as a result of the business need for economies of scale;
- the EPC-payment instruments mentioned in the Roadmap 2004-2010 are available to customers as of 1/1/2008, at least in terms of reachability, with individual banks deciding to actively offer those products;
- the further development of the single payment market is shaped by customer demand, competitive forces in the banking sector and the goal of banks and processors to operate their businesses as efficiently as possible.

We would like to point out that there appears to be a gap between the high expectations as mentioned in the Third Progress Report of the ESCB and the deliverables of the EPC by 2008 and 2010. A similar gap may exist between the ideas of the Commission (as presented in the incentives paper) and the goals of the EPC. In our view it is important to distinguish between the product specifications and offerings

for end-consumers on the one hand (SEPA) and the internal banks discussion on standards on the other hand (EPC).

With respect to migration and possible phasing out issues, the Dutch banks find it of paramount importance to gain a better understanding of the possible impact on the end-users (both consumers and corporates). In this respect we informed the EPC that the Dutch Banking Community is not ready to commit to the ambition to phase out domestic payment schemes in 2010.

–On legal obstacles and market practices that hinder effective competition a) at the level of payment services (competition between instruments) b) at the level of payment service users c) at the level of providers.

Currently, Regulation 2560 itself is an important obstacle to achieve effective and efficient payments markets. See also our letter.

In addition the simultaneous piecemeal and uncoordinated approach of the Commission with respect to payments regulation (evaluation of 2560, evaluation of the e-money Directive, implementation of FATF-7, New Legal Framework, Incentives paper) may result in considerably higher cost to the industry than necessary. See also our arguments in the main letter to this Annex.

-On price structure for payment services, the level of prices before the adoption of the Regulation 2560/2001, changes in the price level and factors influencing such changes.

Whereas already the domestic payments are loss-making (see also the recent report by McKinsey) the Regulation has further deepened the loss of Dutch banks. Ironically, countries with a less competitive payments market place were better off with the regulation. Another perverse effect of the regulation is that, due to the pricing constraints, it becomes more difficult to achieve efficient payments in Europe. Whereas the New Legal Framework rightly acknowledges the need to price payments according to their cost-basis, Regulation 2560 introduced a constraint which requires the industry to maintain a practice of cross-subsidisation. We therefore suggest that Regulation 2560 be revoked.

-Statistical reporting

Given the changes in statistical reporting in the Netherlands, this issue is no longer relevant.

Replies per article

Article 1: subject matter and scope

50 000€: Comments on the threshold?

Are payments between 12 500 and 50 000 split to get the benefit of article 3?

Yes, in practice this does indeed occur, which leads to undesired and averse effects.

As a result of splitting, banks are faced with excessive processing costs for which there is no or very little remuneration. This leads to further cross-subsidisation in the payment value chain, which is generally viewed as an undesired policy.

Payment between institutions.

Is the dividing line between what falls within the scope of the Regulation and outside the scope clear in your Member State? Has it caused problem?

This is clear.

Article 2: Definitions

Cross-border payments, electronic payment instrument, remote access payment instrument, electronic money instrument.

Are there any problems with the interpretation of these definitions?

No.

Cross-border credit transfers (definition 2a)

Is it clear that direct debit is excluded ?

Yes

How the Regulation applied to postal services (money orders, money transfers)?

We have no specific remarks

Charges levied (definition 2f)

Are there any ambiguities about this definition?

No

What about annual charges? Is it clear they are excluded?

Yes.

What about the meaning of "directly"? Is it always possible to make the difference between charges directly related to the transaction and charges related to the management of the payment instruments or of the bank account?

Banks can make the difference.

Article 1 indicates that charges are the same. Has this point raised discussion?

It has raised discussion with respect to the treatment of inbound payments without IBAN but with a correct BBAN. Furthermore as a part of analysis of the possible future impact for card-schemes the issue was raised whether this article prohibits banks to offer two competing pan European card-schemes with distinct uniform prices or whether it prescribes the banks to use a single price (is corresponding payments referring to the difference between domestic vs. European or the difference between two schemes).

How it has been interpreted, for example in the field of cards (debit card, deferred debit card, credit card).

We have provided RBR with basis data and assume they will independently report on the actual effects for the Netherlands.

Article 3: Charges for electronic payment transactions and credit transfers.

Cards and ATM

This article applies to the fees charged to cardholders when making purchases or withdrawing money at ATMs and to the charges applies to merchant when accepting cards (Merchant Service Fee). Are there problems with the application?

No

In some countries, the acquirer for cross-border transactions is not the same as for national transactions and therefore different charges are sometimes applied. Was it already the case before the Regulation?

The situation has not changed.

Some countries have cards which can be used only outside their territories. How is the Regulation applied in this case?

Not applicable in the Netherlands.

Credit transfers

Is it common practice to apply beneficiary charges for national credit transfers?

No.

Does the payer has to choose between different options ("Our", "Ben" and "Share") when making national transfers? Is there a default option?

No (should one compare it, it would be SHA).

Do the three categories "Our", "Ben", "Share" still exist for cross-border euro payments? Are they still proposed to the payer?

The categories still exist and are offered to the payer (notably to properly process euro-payments outside the EU).

Does the payer have to choose between different options (OUR and SHARE) when making a euro cross-border transfer below 12 500€ with Iban and Bic?

This differs per bank and per channel (paper-based / Internet). On the Internet, the consumer will generally be steered towards the options which are as cheap as possible. The actual interface may differ per bank allowing a choice with the one bank and denying the choice with the other.

If the client chooses the OUR option when making a cross-border transfer in euro below 12 500€ with Iban and Bic and only the SHARE option exists at the national level, is the same charge applied as for a national transfer?

No, customers are informed that SHA is needed to fall under the Regulation.

Are you aware of intermediary banks which take fees for cross-border payments covered by the Regulation?

Some banks are aware of it, some banks are not aware of this.

Does the notion of "corresponding payment" raise interpretation issues?

For some banks it does, for others it doesn't.

Any other problem with the implementation of this Article?

No.

How does this Article 3 works when the payer has a non euro account and orders a payment in euro. How are the transaction fee and the currency conversion fee calculated?

If offered by a bank, this depends on specific client conditions.

Article 4 Transparency of charges.

This article not only deals with cross-border payment in euro, it also covers payment effected within any Member State.

Prior information on charges

What are the rules or the practices in your country?

Information is available via a multitude of channels (brochures, bank branch, Internet, call-centres)

Modification of charges

What are the rules or the practices in your country?

This depends on the customer niche and varies from information via meetings, focused newsletters, mailings, and account statements. All information is provided in compliance with legally required timelines.

Foreign exchanges

What are the rules in your country as regards information to be provided in the case of currency conversion?

Information is available beforehand on request. Afterwards, the conversion rate is mentioned in the transaction information.

Article 5: Measures for facilitating cross-border transfers

This article applies to all the EU countries for cross-border transfers. Is it applied in your Member State?

Communication of IBAN and BIC

Is your current national system processing national payments based on national account number only or is BIC also necessary?

No, it is based only on national numbers.

Is the BIC relevant for incoming national payments or could you route them on the national level based on IBAN only?

BIC is not relevant for national payments.

Additional charges if IBAN and BIC are not provided

What is the practise in your country?

This differs per customer segment and agreed conditions. Generally, additional charges are calculated. This is inline with the EPC resolution.

Can you give an indication of the additional fees if IBAN and BIC are not provided?

In the order of € 5

What is the practise in your country if there is a mistake with the IBAN or the BIC?

A missing BIC will be corrected and charged for.

Are there rejection fees for the payer?

No.

Indication of IBAN and BIC on bank statements

Is the rule applied for all bank statements, or only some of them? Why and how?

It is applied for all bank statements.

Cross-border invoicing (communication of IBAN and BIC)

Is this rule applied?

We are not monitoring this.

Article 6: Obligations of the member States

Balance of payments

See the response of the authorities (central bank) on details of the reporting system.

BoP reporting is no longer related to the actual payments.

Other obligations

Are there still obstacles to the automation of the payment execution as regard the minimum information to be provided on the beneficiary?

Some domestic data format issues may come up as a part of the FATF-7 discussion and application.

What happens if the name of the payee is not given or does not match with the IBAN?

Name and IBAN are only checked for higher value payments. Generally transaction data for lower value payments remains available for enquiry and control afterwards.

Article 7: Compliance with this Regulation

Sanctions

Please provide an updated version, with English translation if possible, of the law or any legal act implementing sanctions for the Regulation.

Competent authorities

What is the authority in charge of the application of the Regulation?

The Ministry of Finance.

Out of court redress mechanism

In case of complaint by citizens, which body is competent? What are the links between this body and the competent authorities for the application (previous question) ?

Complaints can be made to the out-of-court commission: Geschillencommissie Bankzaken (www.sgc.nl).

Are the out of court redress mechanisms setup by directive 97/5 competent for this Regulation.

Yes.

8. Any other comment.

We suggest the revocation of Regulation 2560. See our main letter.

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