



**COMMENTS ON THE COMMISSION'S 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**

We would like to thank the Commission for the opportunity to give input on the issues raised. However, as it is not appropriate for the European Payments Council¹ (EPC) to answer on all requests for input/questions, we have focused our input on a number of key comments and requests/questions. You will find our answers below.

In many encounters with the industry, the Commission keeps saying it receives numerous complaints on the application of Regulation 2560. The EPC would be quite interested to know what is the exact number of complaints we are talking about – instead of eluding to quantify and qualify them – so as to be able to establish the proportion of transactions that are affected. Furthermore, it would be worthwhile to give the industry feedback of the kinds of complaints that are received. This would allow us to identify where the source of the problem lies and what actions can be taken to resolve the issue.

I – GENERAL COMMENTS

The EPC is committed to deliver in 2008 the three pan-European payment instruments as part of the SEPA project, where users - whether consumers or businesses - will be able to make payments in Euro in the EU as reliably, easily and conveniently as they are used to in their home market. The EPC believes that the Commission should acknowledge that given this self-regulatory initiative the incentives carried in the Regulation are no longer necessary. Accordingly, the banking industry is of the opinion that Regulation 2560 should neither be revised nor amended but be repealed. The EPC

¹ The European Payments Council is the decision making body for the payments industry. It unites a cross section of banks from the EU, EEA and Switzerland



EUROPEAN BANKING FEDERATION



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deliverables and the Directive on Payment Services will in their combined effect outperform the Regulation.

We would like to substantiate this belief as follows:

- Banks have adjusted their prices

Judging by the results of the Commission's studies, as clearly shown by the tables in annex 1 to the Consultative Document, European banks have equalised cross-border payment services charges to those of domestic payments: prices for cross-border transactions have therefore fallen dramatically, whereas no true infrastructure was present to execute them in an economically viable manner. Having said so, the industry underlines that the price levels for domestic credit transfers and cards may vary significantly between countries and banks in those countries, reflecting both the various commercial practices and the payment habits of local customers. The EPC is of the view that the Regulation has thus met its objective of rendering cross-border payments cheaper, as shown in the annexes of the Commission's consultative document, reaching an initial step for customers to SEPA.

Furthermore, in compliance with Regulation 2560, in countries where it was not yet the case, users benefit since 2002 from more transparency and are able to make informed choices both in terms of the services expected and in terms of prices they want to pay.

- In addition, European banks have committed to realizing the Single Euro Payment Area

The industry is opposed to the principle of price regulation by the European institutions, in line with the market economy principles embedded in the EC Treaty. Since the Regulation was adopted and came into force,

- the industry has developed a Roadmap for the realization of a Single Euro Payments Area.
- the industry established the European Payments Council (EPC), representing banks from all European countries and of all types, as a self regulatory body to drive the work necessary to realize the industry's Roadmap towards SEPA
- the industry reconfirmed its commitment to the Roadmap it developed through the Declaration issued during the meeting of the EPC plenary in March 2005

In this context, the industry has been devoting, since 2002, an enormous amount of resources to create payments schemes and a cards framework² that will allow for the development of payment products which will fit the requirements of a single payments area. These new schemes are to be introduced to the market on 1 January 2008. The EPC is convinced that a critical mass of

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- The SEPA Cards Framework (SCF), which spells out high level principles and rules which, when implemented by banks, schemes, and other stakeholders, will enable European customers to use general purpose cards to make payments and cash withdrawals in euro throughout the SEPA area with the same ease and convenience as they do in their home country. The SCF will create conditions for banks, cards schemes and all stakeholders to achieve the single market for card payments starting in 2008.
 - The SEPA Credit Transfer Scheme will establish a set of interbank rules, practices and standards to be observed by credit institutions. It will allow the banking industry in SEPA to offer a core credit transfer product to customers in euro. As a result, customers and banks will be able to make credit transfers in euro throughout SEPA as easily and efficiently as they do today in their local market.
 - The SEPA Direct Debit Scheme will provide a set of interbank rules, practices and standards which will allow the banking industry in SEPA to offer a pan-European direct debit product in euro to customers. This Scheme will support significant innovation by the banking industry as it for the first time allows creditors, such as utility and insurance companies, to conveniently collect payments in euro due from their customers whether local or from other countries throughout SEPA.

transactions will naturally migrate to these payment instruments by 2010 such that SEPA will be irreversible through the operation of market forces and network effects.

- The Single Euro Payment Area Project needs a coherent legal framework which allows pricing in relation to costs incurred

The industry has always understood the Regulation to have been issued to force banks to complete the last piece of its “internal market for payments puzzle”. Whilst the banking industry may call it somewhat differently, we believe that both parties are talking about an “area where citizens, companies and other economic actors will be able to make and receive payments, within Europe, whether between or within national boundaries under the same basic conditions, rights and obligations, regardless of their location”. We consider that for such an area to be created, price regulation is not the appropriate means. Indeed, apart from penalizing efficient markets for their innovative approach, price regulation prevents payment service providers from any innovation as the development cost of such innovation cannot be reflected in the price which could be charged. What is needed is legislation which removes inconsistencies between payments legislations in Member States and provides both payment service providers and users with a coherent legal framework regardless of their location.

- The “less but better” legislation approach should be followed

In the European Commission’s “Partnership for Growth and Jobs” – the renewed Lisbon strategy launched in spring 2005 as well as in its White Paper Financial Services Policy 2005-2010 (published on 5th December 2005), the Commission recognised that overregulation is a current issue and that there is a need to ensure that the regulatory environment is simple, of high quality and allows market players to successfully perform in terms of competitiveness, growth and employment. It considered that there is a need to more carefully evaluate the need for regulation before issuing legislative measures.

In view of the alignment of cross-border prices to domestic ones and, even more important, the commitment and result shown by the industry in its effort to realising the Single Euro Payment Area Programme, it would seem that there is no longer an economic justification for the Regulation to continue to exist. The industry feels that price regulation is not the appropriate framework to accompany truly the development of SEPA.

The industry would point out that if the Regulation achieved the desired direct changes in the cross-border payments fees, it has not served its broader goal: Recital 6 of the Regulation suggests that the role of the Regulation is to increase cross-border payments and boost confidence in the Euro. Reality has proved that this assumption is an analytical mistake: volumes have not increased and confidence in the Euro much more depends on psychological and macro-economic factors than on the facilitation of cross-border payments. The industry trusts that the Commission will in the future ensure that its impact assessments are carefully weighted against market reality and duly and fairly assess the true benefits, if any, of future legislation.

II – OUTSTANDING CONCERN

As has been communicated to the Commission on numerous occasions, the industry has a serious concern with the Regulation as regards the threshold for reporting obligations. Indeed, whilst the scope of the Regulation has expanded to payments from 12'500€ up to 50'000€ as of 1 January 2006, the balance of payments reporting obligations of 7 of the 12 Euro countries has not accompanied this move. This creates a competitive disadvantage for banks active in these countries and is not at all compatible with the single market principles.

European banks are confronted with a serious problem regarding two elements of the Regulation on cross border payments in Euro. Article 3 stipulates that “with effect from 1 January 2006 the amount EUR 12 500 shall be raised to EUR 50 000” in relation to equal charging practices for national and cross-border electronic payment transactions in euro within the EU. The problem arises in connection to Balance of Payments reporting requirements referred to in Article 6 of the Regulation. The same problem also arises in several countries regarding other types of similar reporting, such as reports to tax authorities and anti-money laundering requirements, where a thresholds have been adopted at various levels. This article, apart from requiring Member States to remove any reporting obligations for cross-border payments up to 12'500€ for Balance of Payments statistics, alludes to a potential recommendation to increase Balance of Payments reporting thresholds to EUR 50 000 from January 2006 based on the European Commission's implementation report.

Furthermore, Balance of Payment reporting requirements differ between Member States and require statistical evaluation of transactions processed. They often cannot be automated and therewith affect the efficiency levels at which cross border payments can be processed. We know that certain Member States have developed alternative means of gathering these data that are far less burdensome on the payments industry and would recommend that these be also introduced in the shortest possible time span by other Member States. It is extremely important that, now that the threshold for application of the Regulation has increased, the Balance of Payment reporting requirements threshold be urgently increased to 50'000€, banks are in a disadvantageous position due an undesired adverse effect of the Regulation.

In a SEPA environment where cross-border fees have been equalised to the level of national fees, banks have no margin of manoeuvre left to process payments otherwise than in an STP manner. It is thus of paramount importance that banks operating within the euro area benefit from a level playing field in this matter, i.e. no unequal treatment obliging a possibly costly Balance of Payment reporting for a certain category of payments in one euro area country and no reporting requirement for the same type of payment in another euro area country. The industry sees as problematic that only some countries would raise the threshold for Balance of Payment statistical reporting from the current 12'500€ to 50'000€. A consistent approach is needed and the Commission is urged to increase the threshold of Balance of Payment statistical reporting obligations for payments to 50'000€. It should also ensure that Member States do not introduce new reporting obligations with various thresholds.

Finally, we would like to take the opportunity to recall that by an EPC letter 070/05 dated 10 October 2005 until now remained without response, the industry has already urged the Commission to act in the direction described above.

III – DETAILED RESPONSES

5.2 – Provisions on Credit Transfers

With reference to the use of different cost options for transfers in Euro, the EPC reiterates that banks have massively adopted the EPC ICP Convention which mandates the SHA option for basic cross-border STP credit transfers in euro. Furthermore, the future SEPA schemes – available early 2008 – will also be based on the SHA principle. Therefore the EPC considers that no amendment is needed to avoid any artificial circumvention of the Regulation.

6.1 – Impact on Charges for Payments made Cross-Border

In compliance with the requirements set forth in the Regulation 2560, the charges for cross-border and national payment transactions have decreased, as referred to in the tables annexed to the Commission's document.

See comment made under 7.1.

6.2 – Impact on Consumer Awareness

The proposed Directive on Payment Services will supersede by far the scope of the Regulation in terms of information and customer awareness and will render the Regulation superfluous.

As regards the use of IBAN and BIC, the EPC reiterates that Yes, BIC and IBAN are the correct standards. They have been massively implemented by banks, which make them available to their customer via numerous means and the account statements in particular. Many corporates and SMEs customers have already upgraded their databases accordingly.

Moreover, in June this year the EPC approved a resolution which will mean that, from 1 January 2007 (following a twelve month transition period), banks sending euro intra-EU/EEA cross border customer credit transfers will exclusively use IBAN and BIC as beneficiary's account identifier and bank routing designation. In addition, the EPC's SEPA Credit Transfer and Direct Debit Schemes will be based on the use of IBAN and BIC.

The Regulation does therefore not need to be maintained, except in so far that it mandates the compulsory use of BIC and IBAN allowing for straight through processing by the industry.

6.3 – Impact of National Reporting Obligations – (see “II – Outstanding issue” above)

As to whether there are reporting obligations still in force for cross-border transfers below 12'500€ the EPC underlines that Balance of Payment reporting requirements differ between Member States and require statistical evaluation of transactions processed. They often cannot be automated and therefore affect the efficiency levels at which cross border payments can be processed.

6.4 – Payment infrastructure

EPC would like to point out that bringing about change in infrastructures takes place in different stages. The first step is the definition of common schemes, which lay down the operational rules, data sets and underlying standards that should be respected when processing payments. The development of infrastructures can only be a second step as they should be able to support the operational rules and transport the required datasets and standards.

Having said this, there are a number of governance issues and high level requirements around infrastructures that can be addressed ahead of these developments. In this context, it should be noted that the EPC has developed several initiatives that, grouped together, put in place a framework aimed at facilitating the establishment of SEPA infrastructure:

- the PE-ACH Resolution of 28 January 2003 which defined the preferred model for euro retail payments clearing
- the Resolution on Receiver Capability within the PE-ACH framework, 4 June 2003 aimed at ensuring reachability of all financial institutions within SEPA
- the Resolution on PE-ACH governance guiding principles, 17 September 2003

Indeed, EBA Step 2, referred to by the EPC (see first Resolution mentioned above) as the first provider to offer PE-ACH services for cross border credit transfers, has developed its service level over the last 4 years. It has achieved nearly 100% receiver capability already by end 2003 and continues to develop its service level to fit SEPA requirements, also with the view of migrating national traffics to the SEPA instruments.

Furthermore, although it is not primarily for EPC to drive this process which should be left to the market and the decisions of banking communities we are aware of initiatives being developed by other organisations to create SEPA infrastructures.

7.1 – Impact on Charges for Payments made within a Member State

As referred to in the study, application of the Regulation did not result in any rise of prices for domestic payments. It would be non-sense to try and compare prices as the price levels for domestic credit transfers and cards may vary significantly between countries and banks in those countries, reflecting both the various commercial practices and the payment habits of local customers.

7.2 – Impact on the Functioning of the Internal Market

The development of EBA STEP2 (which is referred to by the EPC as the first PE-ACH compliant service provider) and the establishment of the EPC's Credeuro Convention - a standard that provides for the efficient 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. The number of cross-border payments processed daily and adherence to the Credeuro Convention across the EEA is high in terms of market coverage.

Finally, the envisaged Directive for payments services intends to address the issue of execution time in a wider sense in its chapter 2; section 2 than in the Regulation.

8.1 – Scope

Cheques are not seen, neither by the EPC, nor by the Commission itself, as repeatedly stated, as a pan-European payment instrument. Its exclusion should thus be maintained

As concerns direct debits instruments, the EPC believes that they should remain out of the scope of the Regulation. Historically, this payment instrument was not caught since no cross-border direct debit did exist at that time. In the meantime, work has been carried out by the EPC SEPA project and the SEPA Direct Debit Scheme and the Commission did include this instrument into its proposal for a Directive on Payment Services. It would then be superfluous to include such instrument into the Regulation, since both the EPC and the Commission have ensured that direct debit would be subject to a more comprehensive set of rules.

8.2.1 – Results of the RBR Study

Corporates access to payment systems and their involvement in payments systems governance:

The EPC is concerned that the study concludes that corporates should by rule have direct access to payment systems. Whilst reiterating that – based on the unbundling principle – conditions to have access to payment system will be transparent and non discriminatory, EPC considers that the entry of participants should explicitly imply the acceptance to participate, inter alia, in the financing of the system, in its risk (loss sharing pool) mitigation, in its supervisory constraints. Hence, it is vital for the soundness of the system that participants are regulated institutions. From a principle point of view, the EPC considers that the participation of economic actors in the governance structure of their suppliers will go against all market principles and would not be without strong risks of conflicts of interests.