

**Comments of the Austrian Ministry of Finance
on the Consultative Document to contribute to the Preparation
of a Report on the Application of
REGULATION ON CROSS-BORDER PAYMENTS IN EURO
EG/2560/2001**

based on comments made by
Oesterreichische Nationalbank as Central Bank of Austria and the
Ministry of Social Security, Generations and Consumer Protection

2 Jan 2006

General Comments

The Commission's efforts to undertake an evaluation and analysis of the impact of Regulation (EC) No 2560/2001 are appreciated, especially in view of the current Better Regulation Initiative conducted by the Commission.

However, as regards the findings in the "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 convey to you the following comments:

In the Consultative Document on page 15 it is stated that in Austria there are still reporting obligations in place for payments under EUR 12.500 (.."At the same it should be underlined, that in some countries, although not reporting individual transactions, global reporting or simplified reporting for payments under EUR 12 500 is still required e.g. Austria and Spain.") We would like to point out that this statement is not correct, since according to Austrian reporting requirements there is no more obligation for Austrian banks, but there is only a Gentlemen Agreement stating that Austrian Banks may report on a voluntary basis in place. Hence, Austria has already fully implemented the requirements of regulation (EC) No 2560/2001 by 1.7.2002. This means that in Austria banks may report, on a voluntary basis, information for payments below

EUR 12 500 for balance of payments purposes to avoid costs (Excluding payments up to EUR 12 500 in the current system would cause significant costs for banks). However the banks only submit the information available in their systems under a single transaction code by currency, either payment by payment or aggregated.

Furthermore we would like to emphasize that in general, the regulation is fully applied in Austria and there are no problems with the implementation.

Specific Comments to the questions posed in the document:

Problems encountered in Implementation

Geographic Scope of Applications

- 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.

- Stakeholders should in particular indicate any differentiation in the treatment of euro and SEK cross-border payments (electronic payments and credit transfers).

Provisions on Credit Transfers

- Stakeholders are asked whether issues relating to the use of different cost options for transfers in euro have been resolved.

Yes. See below.

- 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)?

No, SHARE is the only available option for national transfers and the default option for cross-border transfers below 12.500 Euro, if the payment contains IBAN and BIC.

Nevertheless, there are still consumers, who want to pay all the charges and therefore ask for the option OUR, which is offered as an "value added service" by banks, if explicitly ordered.

- Do other problems in this field exist?

No.

- Are consumers aware of their rights in this area?

Yes. Austrian banks inform their customers with a printed list (terms and conditions) called "Schalterausgang" for standard fees, interest rates and general business terms and conditions in their cashier's hall. When opening a bank account in Austria, customers are additionally provided with general terms and conditions "Allgemeine Geschäftsbedingungen" and a price list.

- 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?

No.

Provisions on Credit Transfers

- Do stakeholders agree that that the problems described in Spain have been resolved?

Direct Impact of Regulation (EC) No 2560/2001

Impact on Charges for Payments made Cross-border

- 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.

No problems exist. Due to the fact that the regulation is fully applied in Austria, prices have been equalised, i.e. charges for cross-border payments under 12.500 Euro were reduced to the national level.

- 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.

Charges for cross-border transfers have significantly fallen since the Regulation entered into force.

- 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.

Depending on the contract higher fees are charges for cross-border transfers above 12.500 Euro.

Impact on Consumer Awareness

- Have all the Regulation's requirements on the provision of consumer information been implemented?

Yes.

- Does the Regulation create any inconsistencies with other legislation in this respect?

No, but overlapping information requirements within Regulation 2560/2001 and Directive 97/5 are confusing for both, banks and consumers.

- Do stakeholders have any other comments on the provision of information in this respect?

No.

Stakeholders are asked to provide their views on the following aspects:

- Are consumers aware of the scope and/or detail of the Regulation? If not, where is information lacking?

Yes, consumers are on the whole aware of the provisions, though knowledge differs depending on consumers' requirements of cross-border transactions.

The Austrian banking industry informed about the consequences of the Regulation and details about IBAN and BIC. One advantage of the Regulation was that it incentivises the provision of data needed for STP. However, banking consumer associations would appreciate more information on banks' internet presences as well as concerning transactions above 12.500 Euro.

- Do stakeholders have any other comments on consumer understanding of the Regulation?

No.

- Have the Regulation requirements (Articles 4(1) and (2)) been fully integrated into national law?

Yes.

- Do consumers have the required information to make informed decisions?

Yes. Required information is provided by banks as mentioned before (via "Schalteraushang" and general terms and conditions).

- Are consumers aware of the Regulation and its scope? If not, what actions could be undertaken to make consumers more aware?

Yes.

- Is there widespread use of IBAN and BIC codes? Are consumers aware of their IBAN/BIC and what they are used for?

Yes (see above), though BIC is actually not necessary. Payments within Austria are normally routed by BBAN (basic bank account number), which is a national bank account number, and (customer) account numbers. The use of the IBAN for domestic payments is possible if the order is submitted electronically.

- Are IBAN and BIC the still correct standards to be used in this respect?

This question is to be dealt with in the context of the SEPA initiative and the ongoing work of the European Payments Council.

Impact on National Reporting Obligations

Stakeholders are asked to provide additional information, particularly on the non-implementation of Article 6.

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:

- 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;

- 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.

Though in Austria the proposed options are of no relevance, we would consider an increase of the threshold as best solution.

In Austria, the current data collection system for Balance of Payments, based on voluntary reports of banks about payments of their customers will be completely replaced by a direct reporting system on 1st of January 2006. No information extracted from payment systems will be used by the new Austrian Balance of Payments reporting system from 2006 onwards. Thus, there also in the future will be no balance of payments reporting obligations which prevent automation of payment execution.

Stakeholders are asked provide their views on the different options.

- Should changes in the Regulation be required, what would be a suitable timeframe?

No relevance, see above.

- Would an increase in the threshold create any inconsistencies with other legislation in this respect?

No.

- Stakeholders are asked to provide more detailed information on the nature of national obligations which prevent the automation of payments.

There are no barriers which prevent the automation of payments (see above).

Payments Infrastructures

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.

Payments infrastructures are not within the scope of the Regulation and therefore should not be assessed in this context. Nevertheless, the responsibility for payments infrastructures should stay with the banking sector and should therefore be dealt within the context of SEPA.

Indirect Impact of Regulation (EC) No 2560/2001

Impact on Charges for Payments made within a Member State

- 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.

The Regulation has not impacted customer charges for national transactions; this means that prices have remained stable (see also findings of the RBR study, page 14ff.).

- Do stakeholders agree with the results of the study? If not, please provide additional information.

We basically agree.

Impact on the functioning of the Internal Market

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.

In our point of view, the reliability and speed of cross-border transfers has increased, which is especially due to the introduction of STEP 2.

Other Issues

Scope

Stakeholders are asked to provide their views on the exclusion of cheques from the scope of Regulation (EC) No 2560/2001.

In line with considerations regarding NLF cheques should continue to stay excluded from the scope of the Regulation.

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.

The question of including direct debits into the scope of this regulation should not be discussed before the implementation of the SEPA-pan-European Direct Debit Scheme in order to avoid any interference of the work of EPC. Further steps should be closely evaluated in line with this initiative.

Competition

Stakeholders are asked to provide comments on the conclusions of the RBR study.

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.

We basically agree.

Enforcement

Stakeholders are asked to provide information on the sanctions schemes available in their **Member States**.

According to Art 7 of the Regulation an additional administrative sanction (Verwaltungsstrafbestimmung) with the below-mentioned wording was implemented in the "Überweisungsgesetz", which was enacted to transpose the Directive 97/5/EG. The respective provision reads as follows:

„§ 7a. (1) Wer entgegen den Bestimmungen der Verordnung (EG) Nr. 2560/2001 des Europäischen Parlamentes und des Rates vom 19. Dezember 2001 (ABl. Nr. L 344/13 vom 28. Dezember 2001)

1. für grenzüberschreitende innergemeinschaftliche elektronische Zahlungsvorgänge in Euro bis zu einem Betrag von 12 500 Euro, ab 1. Jänner 2006 jedoch bis zu einem Betrag von 50 000 Euro, höhere Gebühren verrechnet als für entsprechende elektronische Zahlungsvorgänge in Euro innerhalb des Bundesgebietes, oder

2. für grenzüberschreitende innergemeinschaftliche Überweisungen in Euro bis zu einem Betrag von 12 500 Euro, ab 1. Jänner 2006 jedoch bis zu einem Betrag von 50 000 Euro, höhere Gebühren verrechnet als für entsprechende Überweisungen in Euro innerhalb des Bundesgebietes

begeht, sofern die Tat nicht den Tatbestand einer in die Zuständigkeit der Gerichte fallenden strafbaren Handlung bildet oder nach anderen Verwaltungsstrafbestimmungen mit strengerer Strafe bedroht ist, eine Verwaltungsübertretung und ist von der Bezirksverwaltungsbehörde mit einer Geldstrafe bis 2000 Euro zu bestrafen.

(2) Wer es entgegen der Bestimmung der Verordnung (EG) Nr. 2560/2001 des Europäischen Parlamentes und des Rates vom 19.

Dezember 2001 (ABl. Nr. L 344/13 vom 28. Dezember 2001) unterlässt

1. einen Kunden schriftlich oder elektronisch in leicht verständlicher Form über die Gebühren, die vom Kreditinstitut für grenzüberschreitende Zahlungen und für Zahlungen innerhalb Österreichs verrechnet werden, sowie über jede Gebührenänderung vor deren In-Kraft-Treten zu informieren, oder

2. beim An- und Verkauf von Euro einen Kunden

a) vorab über alle Umtauschgebühren zu informieren und

b) die eingehobenen Umtauschgebühren gesondert auszuweisen

begeht, sofern die Tat nicht den Tatbestand einer in die Zuständigkeit der Gerichte fallenden strafbaren Handlung bildet oder nach anderen Verwaltungsstrafbestimmungen mit strengerer Strafe bedroht ist, eine Verwaltungsübertretung und ist von der Bezirksverwaltungsbehörde mit einer Geldstrafe bis 1 000 Euro zu bestrafen.

(3) Wer es unterlässt, entgegen der Bestimmung der Verordnung (EG) Nr. 2560/2001 des Europäischen Parlamentes und des Rates vom 19. Dezember 2001 (ABl. Nr. L 344/13 vom 28. Dezember 2001)

1. auf den Kontoauszügen seines Kunden oder auf einer Anlage dazu dessen internationale Kontonummer (International Bank Account Number, IBAN) und die Bankleitzahl (Bank Identifier Code, BIC) bekannt zu geben, oder

2. einem Kunden auf Anfrage dessen IBAN sowie den BIC mitzuteilen, oder

3. einen Kunden bei der Ausführung einer Überweisung vorab über die Höhe von Gebühren zu informieren, die verrechnet werden, weil der Kunde die IBAN des Empfängers und den BIC des Empfängerinstitutes nicht bekannt gegeben hat,

begeht, sofern die Tat nicht den Tatbestand einer in die Zuständigkeit der Gerichte fallenden strafbaren Handlung bildet oder nach anderen Verwaltungsstrafbestimmungen mit strengerer Strafe bedroht ist, eine Verwaltungsübertretung und ist von der Bezirksverwaltungsbehörde mit einer Geldstrafe bis 1.000 Euro zu bestrafen.“

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:

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.

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.

Stakeholders as requested to provide their view on the different options addressing dispute settlement.

Pursuant to the legal solution in Austria we are in favour of option one.

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.

The respective district administrative authority is in charge of imposing sanctions in case of breach of law. We do not have any case related figures.

Review Clause

Stakeholders are requested to provide their views on the insertion of a revised review clause, in particular:

- When should the legislation be reviewed (2010 in line with SEPA objectives)?

In our point of view, another review of the regulation should be conducted in a reasonable timeframe after the implementation of the New Legal Framework.

- 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?

Yes, this should be considered, depending on the outcome of the current report.