

Estonian comments on:

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 (OJ L 344 OF 28 DECEMBER 2001, P. 13)

5. PROBLEMS ENCOUNTERED IN IMPLEMENTATION

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).

Charges for payments in SEK of cross-border intra-community and domestic (national) payments are the same (please see Table 1. below).

5.2. Provisions on Credit Transfers

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

- 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)?**
- Do other problems in this field exist?**
- Are consumers aware of their rights in this area?**
- Do stakeholders believe that Regulation (EC) No 2560/2001 should be amended to avoid any artificial circumvention of the Regulation in addition to what is foreseen in the New Legal Framework and thus resolve the problem described above?**

The Regulation 2560/2001 applies to cross-border payments in euro in the Internal Market and not for payments in kroon. Nevertheless, the national (domestic) payments in EEK tend to differ from the payments in euros till EUR becomes the legal tender in Estonia.

With the accession to the European Union on May 1, 2004, credit institutions offer cross-border payments in euro in conformity with the Regulation in question. There are predetermined conditions for intra-community euro payments that all must be met. In particular, the service fee type for this kind of payments is SHARE.

Consumers are informed of more favourable cross-border euro payments beforehand via different channels whether the payment order is initiated in bank office or electronically via Internet bank. For example, in Internet bank, initiating the cross border payments in euro, a payer can choose between international payment and more favourable intra-community euro payment. In case of cross-border euro payments, some preset conditions like currency, the service fee type and type of payment urgency is already filled in. Mainly, the cross-border euro payments in more favourable price can be initiated only electronically via Internet bank. Incoming payments costs in the range of EUR 2 to EUR 5.7. Receivables within one banking group are without charges to beneficiary.

Due to the fact that Estonian banking sector is very electronic¹, the customers of banks operating in Estonia are educated to find information concerning payment conditions via banks WWW pages, which are organised easily finding manner. In addition, at first, when the Regulation in question became applicable for Estonia and banks introduced the more favourable cross-border payment in euros, the Estonian press reverberated the conditions and availability of new kind of euro payments to the public.

In our opinion, the harmonisation of intra-community cross border payments in euros has made reasonable progress and will develop more in near future. One must bear in mind that harmonising of all member states payment infrastructure is not an easy and quickly achievable task. Market participants should have room in order to develop their activities having regard to SEPA, in legally sound and stable environment.

In Spain, however, there was a particular difficulty. Banks do not levy a fee on the beneficiary rather the bank of the sender pays a fee to the recipient's bank to "remunerate" it for its service.

When a transfer is sent by a bank from another Member State, the receiving bank in Spain, which cannot receive a fee from the sending bank, take its remuneration from the beneficiary. This discriminates against customers who receive transfers from other Member States and was considered an incorrect implementation of the Regulation.

The Commission and the Bank of Spain (which also is the national authority in charge of the implementation of the Regulation) held several meetings to find a solution. In April 2005, the Bank of Spain distributed a circular indicating to Spanish banks that they were not permitted to take different fees for national transfers and cross-border transfers in euro. Since this date, the number of complaints received by the Commission against Spanish banks has ceased.

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

The Regulation 2560/2001 clearly states that cross-border intra-community payments and domestic payments within a member state must be made under the same conditions.

6. DIRECT IMPACT OF REGULATION (EC) NO 2560/2001

6.1. Impact on Charges for Payments made Cross-Border

Stakeholders are asked to provide their views on whether prices are equalized or whether problems still exist.

In the latter case, stakeholders are asked to provide additional information as to exactly why prices may not be equalised.

Copies of any further studies/surveys that may have been undertaken at the national level are also welcome.

By the moment of accession to the European Union, the commercial banks operating in Estonia had unified their charges for euro-denominated domestic (national) and cross-border payments within the EU. The intra community cross-border transfers in euro have become much cheaper. Charges for payments in SEK of cross-border intra-community and domestic (national) payments are the same (please see Table 1. below).

¹ *At the end of October 2005, the share of non-cash means of payments from total number of payments settled via central bank settlement system accounts for 99.67%. The share of Internet-bank credit orders accounts for 24.58% of total number of payments.*

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.

In major commercial banks, the charge for payments subject to that regulation is considerably smaller than the charge for cross-border payments in any other currencies. For example, the charge for a euro-denominated cross-border payment inside the EU in the three largest commercial banks is EUR 2 and before enforcement of the Regulation, the cost was approximately four times higher.

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.

Table 1. Average charges in EUR for cross-border and domestic (national) payments (electronic payments and credit transfers)

payment in EUR	up to EUR 12 500		above EUR 12 500	
	from bank office	electronic	from bank office	electronic
<i>cross-border</i>				
SHARE	na ²	2	6.4	4.5
OUR	- ³	- ³	25.5	23
<i>domestic (national)</i>				
SHARE	na ²	2	6.4	4.5
OUR	-	-	25.5	23
<i>payment in SEK</i>				
<i>cross-border</i>				
SHARE	6.4	4.5	6.4	4.5
OUR	25.5	23	25.5	23
<i>domestic (national)</i>				
SHARE	6.4	4.5	6.4	4.5
OUR	25.5	23	25.5	23

A cross-border payment in EUR up to the EUR 12 500 is cheaper than above EUR 12 500.

6.2. Impact on Consumer Awareness

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

- Have all the Regulation's requirements on the provision of consumer information been implemented?
 - Does the Regulation create any inconsistencies with other legislation in this respect?
 - Do stakeholders have any other comments on the provision of information in this respect?
- The Commission would like to request input from stakeholders on the following issues:
- Have the Regulation requirements (Articles 4(1) and (2)) been fully integrated into national law?
 - Do consumers have the required information to make informed decisions?

² Some banks offer such payments initiatory from bank office but for higher charges like EUR 6.4.

³ In practice, cross-border euro payments are made by default SHARE but when a client individually requests to cover all transaction cost, he/she is allowed to do so.

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

The Regulations requirements concerning transparency of charges and their modification have been integrated into Estonian law. More precisely, these conditions are specified with two laws and the general terms and conditions of each bank.

The Law of Obligations Act (§ 711) states that an account manager shall, without charge, provide each interested person with information concerning settlement conditions and expenses related to settlement. Information shall be provided at the account manager's place of business in a format, which can be reproduced in writing or shall be forwarded by electronic means to interested persons or shall be published on the account manager's web site.

The Credit Institutions Act (§ 89. Protection of clients) states that:

- the list of transactions concluded or services provided by a credit institution, the general conditions for relationships between the credit institution and clients, interest rates, service charges, and all amendments thereto shall be displayed in a visible place in the client service area of the credit institution. Clients have the right to request corresponding explanations and instructions from the credit institution.*
- in addition it specifies the terms of general conditions. For example the general terms and conditions must, among other important issues contain the procedure for communication between the credit institution and clients and general conditions for transactions between clients and the credit institution.*

The general terms and conditions of a credit institution state more precisely the means of communication, principles of exchange rate conversions and how the information about any kind of charges and deductions are communicated to the clients.

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

In our opinion, consumer awareness of the Regulation in Estonia is on a satisfactory level.

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

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

Yes, there is widespread use of IBAN and BIC codes in cross-border payments within EU and consumers are aware of these codes. IBAN and BIC codes are easily found in banks web sites and consumers account statements contain these codes.

In our opinion, there is no need of the BIC code for bank clients but the payment systems and thus banks who transfer funds via SWIFT network are dependant on this code. As long as the main messaging transfer system for cross-border payments is SWIFT, there is no possibility to put an end to the BIC code. Abolishing of the BIC code when the messaging transfer network is SWIFT, in practice increases banks workload.

6.3. Impact of National Reporting Obligations

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

The reporting threshold and information concerning the beneficiary comply with the Regulation (EEK 200 000 approximately EUR 12 700).

Stakeholders are asked to provide information on whether transfer behaviour has altered since the implementation of the Regulation. In particular, are consumers reducing the size of their transactions to below the EUR 12 500 threshold in order to reduce charges?

There is no information available to the central bank on that issue.

Stakeholders are asked provide their views on the different options. Should changes in the Regulation be required, what would be a suitable timeframe? Would an increase in the threshold create any inconsistencies with other legislation in this respect?

We would like to recapitulate our opinion on compilation of balance of payments (BOP) in Estonia. The Estonian BOP compilation system is considering local peculiarities: very open and non-concentrated economy. The large number of “small players”, and the “big players” vary from period to period. The statistical sampling techniques are not applicable in Estonia. We would like to proceed with the method we are currently using⁴.

In our opinion rising of the threshold would not give any remarkable cost saving effect or reduction of workload to the banks because the expenditures for infrastructure (necessary for compilation of BOP) has been made and data collection is on a large scale automated. The cost saving of operating costs does not depend on the level of reporting threshold. A rise of the threshold up to EUR 50 000 would only lead to relatively modest reduction in the client’s reporting burden, but entail a considerable loss of information. Hence, we would like to postpone increasing of the reporting threshold and even to annul this requirement for Estonia⁵.

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

There are no such obstacles known to us. Collecting of the data for BOP purposes is on a large scale automated.

⁴ The mixed (dual) BOP compilation system, namely surveys and banking settlements (ITRS).

⁵ Furthermore, up to date and good BOP is needed for assessing Estonia’s convergence in respect of joining the EMU.

6.4. 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.

Stakeholders are asked to identify the key area where problems exist to establish a pan-European payments infrastructure and their view on how these can be overcome.

Yes, we support the current approach continuing to deal with these issues in the context of the NLF and self-regulation.

In our opinion, the key areas of problems lie in inefficiently functioning correspondent banking infrastructure and its too large share in cross-border intra community payments. One possibility to overcome the inefficiency is to analyse and reorganise the whole correspondent-banking infrastructure in respect of different regions in EU. The only real alternative to correspondent banking is competing retail payment system market consisting of two or three widely used competing pan-European retail payment systems.

7. INDIRECT IMPACT OF REGULATION (EC) NO 2560/2001

7.1. 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 (cash withdrawals).

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

Not applicable since Estonia did not take part of the RBR study.

7.2. 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.

Estonian banking community is of the opinion that the cross-border intra community payment intermediation is much more inefficient than our national (domestic) payment intermediary market, which is functioning effectively (intra bank payments are settled within seconds and interbank ones usually same day within one-two hours). Implementing the NLF, which decreases the payment execution time from 5 days to 3 days, will speed up the cross-border intra community payments.

8. OTHER ISSUES

8.1.1. Cheques

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

Yes, we support the idea to exclude the cheques from the scope of the Regulation.

8.1.2. Direct Debit

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.

This issue must be studied in more depth before making any decisions. In order to avoid charging of higher fees for a cross-border direct debit in euro than for a national one and for promoting the implementation of the new SEPA Direct Debit scheme (SDD), there might be need for

8.2. 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.

Not applicable since Estonia did not take part of the RBR study.

8.3. Enforcement

8.3.1. Sanctions

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

*The sanctions scheme in Estonia is established with the following three legal Acts: the Penal Code, the Law of Obligations Act, and the Credit Institutions Act. **The Penal Code** applies to the imposition of punishment for criminal offences⁶ and misdemeanours⁷. **The Law of Obligations Act** applies to all contracts⁸ including employment contracts, multilateral contracts, and other multilateral transactions. **The Credit Institutions Act** applies to credit institutions and regulates the foundation, activities, dissolution, liabilities, and supervision of credit institutions.*

The Penal Code (<http://www.legaltext.ee/indexen.htm>)

Chapter 1

General Provisions, § 3 sets the definitions of a criminal offence and a misdemeanour.

Division 2

Principal Punishments Imposed for Misdemeanours

§ 47. Fine

⁶ A criminal offence is an offence, which in the case of natural persons a pecuniary punishment or imprisonment is prescribed and in the case of legal persons, a pecuniary punishment or compulsory dissolution is prescribed.

⁷ A misdemeanour is an offence, which is the principal punishment, prescribed a fine or detention.

⁸ The Law of Obligations Act apply to all contracts which are not regulated by law but are not in conflict with the content and spirit of the law, and obligations which do not arise from a contract.

(1) For a misdemeanour, a court or an extra-judicial body may impose a fine of three up to three hundred fine units. A fine unit is the base amount of a fine and is equal to sixty kroons.

(2) A court or an extra-judicial body may impose a fine of five hundred kroons up to fifty thousand kroons on a legal person who commits a misdemeanour.

The Law of Obligations Act (<http://www.legaltext.ee/indexen.htm>)

§ 94. Interest on obligations

(1) If interest is to be paid on an obligation pursuant to law or the contract, the interest rate shall be applied on a half-year basis and shall be equal to the last interest rate applicable to the main refinancing operations of the European Central Bank before 1 January or 1 July of each year, unless otherwise provided by the law or the contract.

(2) The Bank of Estonia shall organise timely publication of the interest rates specified in subsection (1) of this section in the official publication Official Notes (Ametlikud Teadaanded).

§ 100. Definition of non-performance

Non-performance is failure to perform or defective performance of a prestation, including a delay in performance.

§ 101. Legal remedies in case of non-performance

(1) In the case of non-performance by an obligor, the obligee may:

- 1) require performance of the obligation;*
- 2) withhold performance of an obligation which is due from the obligee;*
- 3) demand compensation for damage;*
- 4) withdraw from or cancel the contract;*
- 5) reduce the price;*
- 6) in the case of a delay in the performance of a monetary obligation, demand payment of a penalty for late payment.*

(2) In the case of non-performance, the obligee may resort to any legal remedy separately or resort simultaneously to all legal remedies, which arise from law or the contract and can be invoked simultaneously unless otherwise provided by law or the contract. In particular, invoking a legal remedy arising from non-performance shall not deprive the obligee of the right to demand compensation for damage caused by non-performance.

§ 113. Penalty for late payment

(1) Upon a delay in the performance of a monetary obligation, the obligee may require the obligor to pay interest on the delay (penalty for late payment) for the period as of the time the obligation falls due until conforming performance is rendered. The interest rate specified in § 94 of this Act plus seven per cent per year shall be the rate of penalty for late payment. If a contract prescribes payment of interest exceeding the rate provided for in § 94 of this Act, the interest rate prescribed by the contract plus seven per cent per year shall be the rate of penalty for late payment.

§ 115. *Compensation for damage*

(1) *In the case of non-performance of an obligation by an obligor, the obligee may together with or in lieu of performance claim compensation for damage caused by the non-performance from the obligor except in cases where the obligor is not liable for the non-performance or the damage is not subject to compensation for any other reason provided by law.*

§ 128. *Types of damage subject to compensation*

(1) *Damage subject to compensation may be patrimonial or non-patrimonial.*

(2) *Patrimonial damage includes, primarily, direct patrimonial damage and loss of profit.*

(4) *Loss of profit is loss of the gain which a person would have been likely to receive in the circumstances, in particular as a result of the preparations made by the person, if the circumstances on which compensation for damage is based would not have occurred. Loss of profit may also include the loss of an opportunity to receive gain.*

(5) *Non-patrimonial damage involves primarily the physical and emotional distress and suffering caused to the aggrieved person.*

The Credit Institutions Act (<http://www.legaltext.ee/indexen.htm>)

§ 134⁹. *Violation of procedure for settlements*

(1) *Violation of the procedure for settlements by credit institutions provided by legislation is punishable by a fine of up to 200 fine units.*

(2) *The same act, if committed by a legal person, is punishable by a fine of up to 50 000 kroons.*

(25.11.2004 entered into force 01. 01.2005 - RT I 2004, 86, 582)

8.3.2. *Competent authorities*

Member States are also asked to provide information on whether they have competent authorities or not.

In respect of consumer complaints, the Estonian Consumer Protection Board's task is to protect the legitimate rights of consumers and to represent their interests in accordance with the provisions of the European Union consumer policy. The Consumer Protection Board is an independent institution and a government authority within the area of government of the Ministry of Economic Affairs and Communication. Activities of the Consumer Protection Board are regulated by the Consumer Protection Act (<http://www.legaltext.ee/et/andmebaas/ava.asp?m=022>).

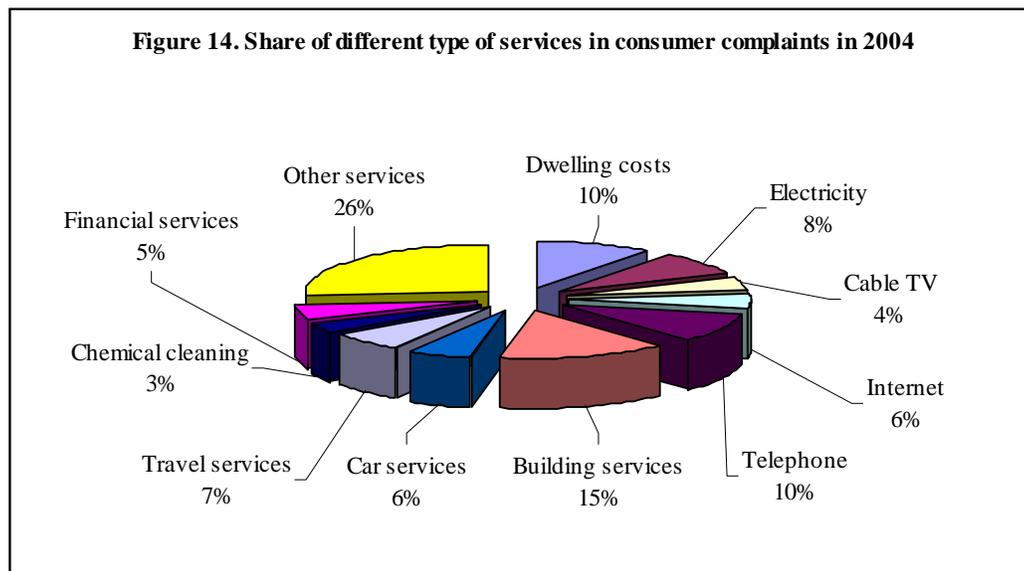
8.3.3. Settlement of disputes

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

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 Estonian Consumer Protection Board in cooperation with the German Federal Ministry of Consumer Protection, Food and Agriculture has initialised a Twinning project “Strengthening the administrative capacity of the Consumer Protection Board for the full implementation and enforcement of the *acquis communautaire*”. In the course of the project, the situation of financial services in Estonia will be analyzed and additional solutions for out of court consumer complaints settlement will be found. In addition, Eesti Pank, the Financial Supervision Authority, and the Ministry of Finance are currently working in close cooperation in order to establish the out of court arbitration body for the whole financial sector.*

Statistics of the Estonian Consumer Protection Board



Source: Annual Report of the Estonian Consumer Protection Board

<http://www.tka.riik.ee/pics/files/2005033110024646.doc>

In period of ten months (from January till October 2005), the Consumer Protection Board has received all together 20-consumer complaints regarding financial services. Ten out of 20 were complaints regarding insurance services and ten regarding other financial services, mainly bank services. The Financial Supervision Authority has processed around 70 consumer complaints. Submitting of a complaint is to a consumer free of charge.