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Banca d'Italia (Italy) comments on:

Working Document of the Commission Services

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)

1. INTRODUCTION

Regulation (EC) No 2560/2001 on cross-border payments in euro entered into force on 28 December 2001 and has been applicable in its totality since 1 July 2003. The Regulation establishes the principle of equality of charges for payments made within a Member State and cross-border. The Regulation covers both electronic payments¹ (since July 2002) and credit transfers² (since July 2003).

Article 8³ (Review Clause) of Regulation (EC) No 2560/2001 requires the Commission to prepare a report on the regulation's application not later than 1 July 2004. Moreover, in line with the Commission's commitment towards better regulation, the Commission intends to undertake a comprehensive evaluation and analysis of the impact of Regulation (EC) No 2560/2001 in order to examine its ongoing applicability and whether any specific amendments are required to take into account the development of markets since its introduction in 2001. The Commission may also consider whether infringement proceedings are necessary.

To allow for a sufficient period between entering into force and the evaluation as well as to enable the Commission to collect sufficient data for a realistic assessment, the date for the report was postponed until 2006.

The purpose of this document is to outline the information gathered to date by the Commission and to offer the opportunity to all stakeholders to comment on the key issues. The input received, together with information already collected will then feed into a draft Evaluation Report on which a subsequent open consultation will take place in the first half of 2006.

Comments on the information collected to date as well as specific comments on the questions raised as part of the evaluation process are welcomed. All comments should be sent to markt-h3@cec.eu.int by 6 January 2006.

¹ Defined as “Cross-border electronic payment transactions being the cross-border transfers of funds effected by means of an electronic payment instrument, other than those ordered and executed by institutions; cross-border cash withdrawals by means of an electronic payment instrument and the leading (and unloading) of an electronic money instrument at cash dispensing machines and ATMs at the premises of the issuer or an institution under contract to accept the payment instrument.”

² Defined as “Cross-border credit transfers being transaction carried out on the initiative of an originator via an institution or its branch in one Member State, with a view to making an amount of money available to a beneficiary at an institution or its branch in another Member State; the originator and the beneficiary may be one and the same person.”

³ “Not later than 1 July 2004, the Commission shall submit to the European Parliament and to the Council a report on the application of this Regulation, in particular on:

- changes in cross-border payment system infrastructures,
- the advisability of improving consumer services by strengthening the conditions of competition in the provision of cross-border payment services,
- the impact of the application of this Regulation on charges levied for payments made within a Member State,
- the advisability of increasing the amount provided for in Article 6(1) to EUR 50 000 as from 1 January 2006, taking into account any consequences for undertakings.

This report shall be accompanied, where appropriate, by proposals for amendments.”

2. RATIONALE FOR REGULATION

Concerns about the integration of European financial markets, in particular, payments structures existed for some time before the adoption of Regulation (EC) No 2560/2001. As early as 1990, the Commission had highlighted concerns about the functioning of cross-border payments system.⁴

The introduction of a single currency, the euro, on 1 January 1999 however gave the issue a new impetus as prices became more transparent. Prior to the introduction of the euro, there was the belief amongst consumers that the high costs for cross-border payments were associated with the exchange rate differentials. After the introduction of the euro and the disappearance of exchange rates between the 12 euro-zone countries, the real price of cross-border payments could no longer be hidden.

In this context, the Commission launched a series of initiatives to facilitate the integration of European financial markets, including payments systems.⁵

In April 2001, the Commission realised that the introduction of Euro notes and coins in January 2002 would not act as a catalyst for a reduction in the cost of cross-border payments as the efficiency and price of cross-border payment systems remained unacceptable, in the minds of both consumers and businesses, for an area which would operate with a common currency. Moreover, this constituted an obstacle to the proper functioning of the Internal Market.

3. OBJECTIVES OF THE REGULATION

Against the background of lengthy discussions with the financial community and its failure to develop efficient and integrated cross-border payments infrastructures, it was decided to propose a regulation which it was hoped would act as a catalyst for change in European payments systems.

On the 25 July 2001, the Commission adopted a proposal for a regulation on cross-border payments. The proposal was signed on 19 December and entered into force on 28 December 2001.

The principle objectives of Regulation (EC) No 2560/2001 can be identified as the following:

- To act as a driver for the financial services industry to make the necessary changes in existing cross-border payment infrastructures;
- To equalise the price of cross-border payments (electronic payment transactions and credit transfers) under EUR 12 500 and in euro so that the charges paid for cross-border payments were the same as the charges for a national payment (Article 3).

⁴ “Making payments in the Internal Market”, COM(1990)447; Credit Transfers in the EU, COM(1994)436; Green Paper on “Practical Arrangements for the Introduction of the Single Currency”, COM(1995)333; etc.

⁵ For example, Financial Services Action Plan, COM(1999)232, “Communication on payments of small amounts in the internal market”, COM(2000)36.

Additional requirements are however set out in both the recital and articles, namely:

- To ensure that consumers were better informed about the charges levied on cross-border payments (Article 4);
- To remove all national reporting obligations for balance of payment statistics for cross-border payments up to EUR 12 500 and to remove any national obligations as to the minimum information to be provided concerning the beneficiary which prevent automation of payment execution (Article 6);
- To facilitate the execution of cross-border payments through the use of IBAN and BIC for automated processing of cross-border credit transfers.

4. METHODOLOGY

4.1. Structure of the Report

This report will examine whether the objectives of the regulation can be considered as achieved.

To create a framework for this analysis, several direct and indirect impacts of the regulation have been identified.

First, possible direct impact impacts of the introduction of the Regulation could be the equalisation in the price for cross-border and national payments; increased customer awareness of charges; and a removal of several national reporting obligations. Moreover, it should be examined whether the Regulation has had consequences for establishment of new payments infrastructures.

Second, possible indirect consequences of the introduction of the Regulation could be changes on the charges for payments within a Member State (which will be discussed together with the analysis of the overall price impact); a reduction in the costs for cross-border payments; an increase in the number of cross-border payments; an improvement in the overall functioning of the Internal Market. It should also assess the impact on the level of competition in the provision of cross-border payment services.

Following an analysis of the impact of the Regulation on the abovementioned issues, it should also be considered if any amendments to the Regulation should be adopted, such as whether the amount provided for in Article 6(1) should be increased to EUR 50 000 or whether the scope of Regulation (EC) No 2560/2001 remains appropriate.

4.2. Methodology

In order to obtain a comprehensive understanding of the impact of the Regulation, the Commission launched a tender for an independent consultant to study two

aspects: the impact on charges levied for payments made within a Member State and a more general analysis on competition for cross-border payment services.⁶

Furthermore, in order to collect information on the impact of the regulation from stakeholders, approx. 100 questionnaires were sent via the Commission's two existing consultative committees on retail payments to regulators, banking and user organisations in all EU Member States. A total of 44 responses were received from Member State authorities, banking organisations and user representatives from 24 Member States.

Selected results of both the studies and the questionnaires are incorporated into this report.

The Commission is now opening this document for consultation to interested stakeholders on the Internet. In addition, it plans to launch an interactive policymaking initiative in the near future. The report will also be discussed in detail within the Commission's working groups on payments (PSMG⁷ and PSGEG⁸) as well as the Commission's financial service's user group, FIN-USE.

It is planned that a draft Report will be published for consultation in the first half of 2006, with the Final Report being ready for adoption by the Commission in the second half of 2006.

5. PROBLEMS ENCOUNTERED IN IMPLEMENTATION

Before examining the impact of the introduction of Regulation (EC) No 2560/2001 and drawing conclusions for its future development, it is important to understand some of the key issues which have had to be addressed during its implementation.

5.1. Geographic Scope of Application

COUNTRIES	EURO COINS AND NOTES	REGULATION (EC) No 2560/2001 ON CROSS-BORDER PAYMENTS
Austria, Belgium, Germany, Greece, Finland, France, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain	YES	YES
Sweden	NO	YES for the euro and the Swedish Krona
Cyprus, Czech Republic, Denmark, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia,	NO	YES for the euro and optional (Article 9) for national currencies

⁶ "Study of the Impact of Regulation 2560/2001 on bank charges for national payments" and "Regulation 2560/2001: Study of Competition for Cross-border Payment Services" both by Retail Banking Research Ltd., September 2005. Both studies are published on the European Commission internet site at http://europa.eu.int/comm/internal_market/payments/crossborder/index_en.htm#studies. Comments on both studies are welcome and should be sent to markt-h3@cec.eu.int by 6 January 2006.

⁷ Payment Systems Market Group

⁸ Payment Systems Government Expert Group

United Kingdom, Monaco, San Marino, Vatican	YES (special coins)	NO (under discussion for Monaco)
Andorra, Kosovo, Montenegro	YES	NO
French overseas departments (French Guiana, Guadeloupe, Martinique, Réunion)	YES	YES
Azores, Canary Islands, Madeira	YES	YES
Overseas territories (listed in Annex II to the EC Treaty)	Depends on decisions in country to which they are attached	NO
Iceland, Liechtenstein, Norway	NO	Yes and optional (Article 9) for national currencies

The Regulation covers payments in euro in the European Economic Area (EEA). The scope is not therefore limited to the euro-zone as was indicated by various tables in the explicative notice when the Regulation was issued, it is the currency in which the payment order is given determines the applicability of the Regulation.⁹ The Regulation therefore applies when the payment order is given in euro.

When the account of the originator (or of the recipient) is not in euro, the financial institution of the originator (or of the recipient) may perceive an exchange fee (currency conversion) in addition to the service fee.

Article 9 states that *“This Regulation shall also apply to cross-border payments made in the currency of another Member State when the latter notifies the Commission of its decision to extend the Regulation’s application to its currency.”*

Under Article 9 of the Regulation, the Swedish authorities decided to extend the Regulation's application to Swedish Krona (SEK) entering into effect on 25 July 2002.¹⁰

It is clear from Article 9 that the Regulation applies to cross-border payments made in the currency of another Member State when the latter notifies the Commission of its decision to extend the Regulation’s application to its currency. In order to clarify issues relating to the extension of Regulation (EC) No 2560/2001 to SEK, the Commission issued an interpretative note in 2003 which states that the extension implies that:¹¹

- Article 4: The provisions on prior information on charges (national and cross-border) and on any modification apply to SEK. As regards exchange charges for conversion into and from SEK the prior information must be given as well.

⁹ http://europa.eu.int/comm/internal_market/payments/crossborder/index_fr.htm#interpretation

¹⁰ Svenska författningssamling (SFS) of 24. 6.2002. Communication from the Commission pursuant to Article 9 of Regulation (EC) No 2560/2001, OJ C 165 of 11 July 2001.

¹¹ http://www.europa.eu.int/comm/internal_market/payments/docs/reg-2001-2560/reg-2001-2560-article9_en.pdf

- Article 5: All provisions on use of IBAN and BIC are applicable for payments in SEK. That means for example that a bank in Sweden will have to indicate on the statements of account IBAN and BIC after 1 July 2003.
- Article 6: The removal of the national reporting obligations and other obstacles mentioned will apply for payments made in SEK.
- Article 7: The sanctions for non-compliance will be the same.
- Article 8: The review report will have to cover also the situation for payments in SEK.

For the sake of clarity it is however useful to emphasis that there is no link in the charges made on euro payments and SEK payments. For example, a payment in SEK between Frankfurt and Brussels is now covered under the scope of the Regulation, however, the German bank would apply the same tariff as for a SEK payment to Hamburg.

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).

5.2. Provisions on Credit Transfers

When the provisions on credit transfers entered into force on 1 July 2003, there was confusion surrounding the notions of OUR, SHARE and BEN.¹² This was illustrated by the number of complaints received by the European Commission on this subject. When customers were asked whether they wanted to pay all the charges (OUR) or share the charges (SHARE), the customers tended to opt to pay all the charges (OUR). On this basis, the bank did not apply the Regulation, as it is based on the principle of SHARE since SHARE is the only available option at the national level, except in Spain.

Under Directive 97/5/EC on Cross-Border Credit Transfers, even though the terms do not appear in the text itself, all three options for the sharing of charges between the originator and the beneficiary are available, with OUR as the default option. The setting of OUR as the default was intended to ensure price transparency thus avoid double charging and to ensure the arrival of the full amount transferred on the account of the beneficiary. National credit transfers were always executed as “national share”, whereby customers are only confronted with the charges of their

¹² OUR, BEN and SHARE are codes which were introduced as inter-bank “standards” illustrating the different options that could be proposed to customers as regards the sharing of the charge(s) levied to the originator and/or the beneficiary of a credit transfer: all charges are borne by the originator (OUR); all charges are borne by the beneficiary (BEN); charges are shared between the originator and the beneficiary (SHARE). These codes are mainly used for cross-border credit transfers, for which banks generally offer some or all of these options. These standard instructions are also integrated into the SWIFT rules and used worldwide.

own bank, the full amount is transferred and intermediaries do not intervene in the charging process.

The Commission services indicated on several occasions that this behaviour circumvented the Regulation insofar as the bank does not raise the same question for a strictly national transfer.

To resolve these issues, in March 2004, the Commission services published an interpretative note on “the practical aspects of the implementation of Article 3 of Regulation (EC) No 2560/2001 and the notion of corresponding payment for credit transfers”.¹³ The main point of this interpretative note was that from the perspective of the Commission services, Regulation (EC) No 2560/2001 overrules Directive 97/5/EC as regards charging rules.

Under Regulation (EC) No 2560/2001, the charges for cross-border credit transfers have to be the same from 1 July 2003 as those for national transfers. Services proposed at cross-border level should therefore be subject to the same charges as the corresponding national ones. At the national level the various options are not all available. When banks propose cross-border credit transfers with choices on distribution of the charges that do not exist at national level, their charges cannot differ from those for a national credit transfer.

With the adoption of the Regulation, the need for a default option as regards the repartition of charges between the payer and the payee has become obsolete for euro transactions. The provisions of the Cross-Border Credit Transfers Directive (Article 7, "obligation to execute the cross-border transfer in accordance with instructions") only remain applicable to payments that are not covered by the Regulation.

Consequently, credit transfers are executed, by default, as “national SHARE”, and customers should not be automatically prompted with a different option. This is coherent with industry’s efforts to build a cross-border payments infrastructure, as the Credeuro Convention only accepts “domestic SHARE” payments.

At the same time, it is important to underline that anecdotal evidence seems to indicate that problems in this field continue to exist. For example, in some Member States, customers continue to be presented with the three cost options (OUR, BEN, SHARE) for cross-border transfers in euro.

Although the New Legal Framework should also address issues relating to the transfer of the full amount and SHARE option, one idea to be considered as part of this evaluation would be the revision of Regulation (EC) No 2560/2001 to avoid any misunderstandings in this area and thus to clearly state that SHARE is the only option. This would be consistent with the approach being taken in the preparation of the new legal framework for payments, where it is currently foreseen to have only SHARE as an option.

¹³ http://www.europa.eu.int/comm/internal_market/payments/docs/reg-2001-2560/reg-2001-2560-article3-par2_en.pdf

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)?

The most currently used option is the SHARE. Many banks consider SHARE as the default option, while allowing the OUR option for cross-border payments.

Do other problems in this field exist?

It seems that in other Member States article 3 of the Regulation is applied only when the SHARE option is applied. This leads to an uneven playing field among banks in the EU.

- Are consumers aware of their rights in this area?

According to the controls carried out so far, article 4 of the Regulation is complied with by Italian banks.

- 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?

A provision setting an obligation to apply the SHARE option solves the problem; whether this should be set in the New Legal Framework or on the revised Regulation is just a matter of timing for the approval of the two pieces of legislation.

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?

We do not know the detailed content of the circular.

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

As stated above, the adoption of Regulation (EC) No 2560/2001 can be considered to have had several potential direct consequences: the equalisation in the prices for cross-border and national payments; increased customer awareness of charges; and a removal of several national reporting obligations.

6.1. Impact on Charges for Payments made Cross-Border

According to Article 3 of the Regulation, charges levied by an institution in respect of cross-border electronic payment transactions and credit transfers in euro up to EUR 12 500 shall be the same as the charges levied by the same institution in respect of corresponding payments in euro transacted within the same Member State in which the establishment of that institution executing the cross-border payment is located.

In order to evaluate the impact of the Regulation on charges for cross border payments, several questions should be examined:

- Are the charges for cross-border and national payment transactions the same?
- What are the charges for cross-border transfer above the threshold EUR 12 500?

In addition, although not a direct consequence of the Regulation, it is perhaps useful to examine possible indirect consequences on pricing at the same time.

- Have the charges for cross-border transfers become cheaper?
- Is a cross-border transfer below the EUR 12 500 threshold cheaper than that above EUR 12 500?
- **Are the charges for cross-border and national payment transactions (electronic payments and credit transfers) the same?**

Regulation (EC) No 2560/2001 should have led to an equalisation in the prices of national and cross-border payment transactions.

Based on an analysis of the flow of complaints to the European Commission, complaints appear to have diminished considerably over the last year. This, however, cannot be taken as a complete indication that everything is functioning smoothly as the appropriate body for consumers to address their complaints is not the European Commission but the national competent authorities.

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

The Regulation is applied by Italian banks, however problems do exist with regard to credit transfers in terms of costs borne by banks when the OUR or BEN options are chosen.

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.

- **Have the charges for cross-border payment transactions (electronic payments and credit transfers) become cheaper?**

In its efforts to monitor integration in payments services and assess the progress of a European payments market, the European Commission has over the years undertaken several surveys on the costs of **cross-border credit transfers** in the European Union.

Table 1 (annexed) provides an overview of the main results of the surveys. The last study was undertaken in March 2003, three months before the entry into force of the provision on credit transfers. At that time, the average cost was around EUR 17.60. Table 3 (annexed) indicates the current situation in national charging. Given that the cost of national and cross-border transfers are equalised under the Regulation, it would appear logical that the cost of cross-border payments has fallen since the introduction of Regulation (EC) No 2560/2001.

Stakeholders are asked to provide their views on whether the prices for cross-border transfers have fallen.

National payment prices trend in recent years does not seem to show abnormal fluctuations in nominal level and there is no clear evidence supporting the hypothesis that the Regulation 2560/01 could be accompanied by changes (increases) in prices significantly different from the ones eventually experimented before its adoption in Italy.

In particular, as regards POS transactions, the average “merchant discount fee” has been reducing since 2000 to 2004 (- 10 per cent per year for the national debit card network; - 5 per cent for international payment card networks, especially credit cards). The average “fixed fee” to cardholders in Italy have remained substantially invariated in the last four year. As regard credit transfers, prices vary strongly depending on a number of factors: the automation level of the transaction, use of Internet accounts, conditions applied to specific customers (eg. a credit transfer fee paid by the sender can vary, on average, from 0.90 to 5.00 euro, for “Internet” and “at the branch cash” payments, respectively (source: “Patti Chiari” initiative by the Italian bankers’ association). In recent years end-users in Italy have been shifting significantly towards electronic payment instruments (eg.: STP and Internet credit transfers), whose price conditions benefit from the costs induced by technology. In the last years the average fee applied to a national credit transfer amounted to 2.20-2.50 euro per transaction.

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

- **What are the charges for cross-border payments (electronic payments and credit transfers) above the threshold EUR 12 500? Is that more expensive than below the threshold?**

In order to be able to assess, the impact of Regulation (EC) No 2560/2001, it would be useful to examine the cost of a transfer above and below the EUR 12 500 threshold.

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.

We do not have reliable data on this topic.

6.2. Impact on Consumer Awareness

According to the Regulation (Recital 9), to enable a customer to fully assess the cost of a cross-border payment, *“it is necessary that he be informed of the charges applied and any modification to them. The same holds for the case that a currency other than the euro is involved in the cross-border euro payment transaction.”* To address these concerns, Article 4 on the Transparency of Charges was introduced. This should enable customers to compare the prices being charged cross-border and nationally and thus ensure that Article 3 of the Regulation is adhered to.

Article 4 complements the provisions of Directive 97/5/EC on cross-border payments on the rules regarding the transparency of charges for cross-border credit transfers. Directive 97/5/EC does not however cover national payments or cross-border card payments. Some Member States do however have national legislation on price transparency or else self-regulations such as banking codes.

In order to evaluate the impact of the Regulation on consumer awareness the several aspects should be examined:

- Have the Regulation requirements been integrated into national law?
- Are consumers aware of the Regulation and its scope?
- Is there widespread use of IBAN and BIC codes?

Have the all Regulation requirements on consumer information been implemented?

Regarding Article 4(1), according to information collected via the questionnaires, information on charges is provided to customers in a variety of different ways. In addition, such information appears to be general available for customers to consult should they so wish. In some countries, such as Spain and Ireland, the regulator has to be informed of prices.

On Article 4(2), based on the information provided from questionnaires, customers appear to be informed about any modification in the charges applicable using the same distribution channels as the original provision of the information. The rules surrounding the date that any modification takes affect however differ considerably between countries. In Sweden, for example, customers should be informed about any modification of charges at least 14 days prior to the modification taking effect or in reasonable good time where cards and ATM charges are concerned. In contrast, France, the information should be communicated to the customer 3 months in advance of the scheduled date. Should the customer then not object during a two month period, the customer is deemed to have approved the new tariffs.

In this context, and based on the information currently available, both Articles 4(1) and (2) might be considered implemented. It should however be emphasised that the

notion that the information should be provided in advance of any modification of any change of charges does not always appear to be clear.

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?**

Yes.

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

No.

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

No.

- **Are consumers aware of the Regulation and its scope?**

At the same time, it should be examined whether, despite the availability of the relevant information, customers are fully aware of the Regulation and implications.

Information from the questionnaires appears to indicate that customers are not fully satisfied with the information provided. Anecdotal evidence based on complaints received by the European Commission also seem to support this.

At the same time, it should be noted that consumers appear to be confused about the scope and requirements of the Regulation. In particular, based on evidence from complaints received by the European Commission, many consumers appear to believe for example, that the Regulation covers all European currencies and not only the euro and that all cross-border payments instruments are covered. Moreover, a small minority of consumers also seem to believe that the Regulation implies that cross-border payments are free.

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.

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

No.

- **Is there widespread use of IBAN and BIC codes?**

According to recital 11, “*standardisation should be promoted as regards, in particular, the use of the International Bank Account Number (IBAN) and the Bank*

Identified Code (BIC) necessary for automated processing of cross-border credit transfers.”

According to information collated from the questionnaires, national account numbers, together with national bank codes, continue to be the primary basis for national payments in a large number of EU countries (Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, France, Germany). In this respect, the BIC not required for national payments (Austria, Belgium, Cyprus, Italy). The IBAN is however occasionally required for domestic payments conducted electronically e.g. Austria. The reason provided for this is that BIC is only relevant for incoming payments from abroad as it facilitates STP processing.

A small minority of countries (4) have however moved to the BIC and/or IBAN standards: in Latvia, for example, from 1 January 2005, all national account numbers were changed to the IBAN standard and BIC has been the only bank identifier since 1995. SWIFT format is used in both national and cross-border transfers and therefore contain both the BIC and IBAN.

Comments provided from the questionnaires seem to indicate that a usage of IBAN for domestic payments transactions would be complicated and in some cases require an overhaul of the entire system.

IBAN and BIC are most commonly provided to customers via bank statements. Although one regulatory authority indicated that some banks within their jurisdiction did not always provide IBAN and BIC e-banking statements. It should however be noted that some specialised banks that do not deal with international payments only provide IBAN and BIC on request.

There appears to be no homogenous approach as to the treatment of a cross-border credit transfer should IBAN and BIC not be provided even within Member States. Moreover, the procedure frequently differs depending on whether the transaction is incoming or outgoing. In a majority of cases however charges are applied, although the size of the varies depending on a variety of factors. In general, terms however the charges applied range from EUR 5 to EUR 25.

Likewise, in the event that an IBAN and/or BIC are entered wrongly, different approaches seem to be adopted. In many cases, this may mean a rejection of the payment. In other cases, a correction may occur. Both outcomes may result in charges however the exact outcome may depend on whether it was an incoming/outgoing transaction. Charges may also differ depending on the amount of work entailed to correctly process the transaction (so-called investigation charges). In this regard, a number of questionnaire responses indicated that the CredEuro Convention was followed.

The Commission also intends to study the use of IBAN and BIC in more detail in the context of its ongoing incentives project.

The Commission would like to request input from stakeholders on the following issues:

- **Have the Regulation requirements (Articles 5(1) and (2)) been fully integrated into national law?**

Yes.

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

Yes.

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

To achieve full customers awareness, specific action could be taken on consumers and firms associations, since BIC and IBAN information need to be exchanged among bank customers

- **Is there widespread use of IBAN and BIC codes?**

- **Are consumers aware of their IBAN/BIC and what they are used for?**

Yes, see also the answer to the one but last question.

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

Yes, we think that IBAN + BIC should be SEPA standard both in the customer-to-bank space and in the bank-to-bank domain. Currently the domestic routing codes are generally embedded into the BBAN/IBAN and therefore, for national payments, BIC is generally not required. We consider that, in order to remove the current separation between domestic and cross-border procedures, the IBAN should only identify the account number and it should not be used for routing. In this respect the national routing codes should be removed from the IBAN; in this case end-users would always provide IBAN + BIC to their banks and account numbers would be portable.

6.3. Impact of National Reporting Obligations

Article 6 of Regulation (EC) No 2560/2001 states that Member States shall remove national reporting obligations for cross-border payments up to EUR 12 500 for balance of payment statistics as from 1 January 2002. From this date, any national obligations as to the minimum information to be provided concerning the beneficiary which prevent automation should also be removed. These requirements are in line with the thresholds proposed in Articles 3(1) and (2).

Article 3(3) however states that the Regulation will also apply to transfers between EUR 12 500 and 50 000 from 1 January 2006. This increase in the threshold is however not imitated in Article 6 on reporting obligations.¹⁴ Consequently, Article 8 asks the Commission to examine the advisability of increasing the EUR 12 500 threshold to EUR 50 000 from 1 January 2006, with particular reference to the impact on “undertakings”.

¹⁴ This corresponding increase in the threshold was deleted from the Regulation following concerns amongst some Member States who rely on data provided by credit institutions for information for balance of payments statistics.

Reporting statistics are an important source of information for the Balance of Payments for many Member States. Community legislation stipulates that Member States have to collect statistical data, but they are completely free as to the choice of the method.¹⁵ Such data is often a vital economic tool for Member States policy development.

At the same time, balance of payments reporting requirements are frequently costly for financial institutions. Such statistical reporting requires a significant effort by a credit institution. For each payment that it sends or that it receives the bank has to declare to the statistical body the amount transferred, accompanied by an indication on the nature of the goods or services concerned. The work of the bank is particularly cumbersome for incoming payments because the recipient must be contacted to know the nature of goods or services. According to some estimates from credit institutions, this work accounts for at least 25 % of the cost of an international payment.

In order to evaluate the impact of the Regulation on national reporting obligations, the following questions should be examined:

- Are reporting obligations still in force for cross-border transfers below EUR 12 500?
- Has there been a change in transfer behaviour since the implementation of the Regulation?
- Will the system for systematic reporting by banks between EUR 12 500 and EUR 50 000 be altered in 2006?
- Are there any national obligations which prevent automation of payment execution?
- **Are reporting obligations still in force for cross-border transfers below EUR 12 500?**

The below information is taken from an initial analysis of the information received via questionnaires.

In a large majority of cases, systematic reporting for cross-border transfers below EUR 12 500 has been abolished within the EU-15. This appears to be part of a general shift towards survey based systems, meaning that direct reporting of payments transfers by credit institutions is no longer necessary. According to information from the questionnaires, in the euro-zone, eight countries continue to use bank settlements as the basis for the balance of payments. Many countries however have or are preparing new systems which are no longer dependent on bank settlements reporting.

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.

¹⁵ Article 3 of the Regulation: “Member States shall collect the information required under this Regulation using all the sources they consider relevant and appropriate.”.

Moreover, some reporting obligations may still be in place in Italy, although additional information is required to verify the precise nature of these requirements.

In the new Members States, the situation appears to be different. Almost all new Member States (and the accession countries) rely on bank settlements for the compilation of their balance of payments statistics. Many responses from the new Member States emphasised the importance of detailed information for the balance of payments statistics in particular to monitor convergence with the EU. The exact nature of these requirements however varies considerably from country to country, for example:

- In Cyprus, banks have been requested to provide, on a voluntary basis, information for payments below EUR 12 500 for balance of payments purposes;
- In Slovenia, the threshold of EUR 12 500 has, according to information from the questionnaire, not been implemented yet. The Bank of Slovenia has an agreement with commercial banks in which both sides agreed not to implement the threshold before Euro adoption.
- In Latvia, the banks only submit the information available in their systems (no additional information). For data submission, banks can either use the EUR 12 500 threshold for euro and SEK payments or an exemption threshold of \pm EUR 1 400 (LVL 1 000) for all payments. Some use one approach and some the other.
- In Lithuania, all payments irrespective of amount are reported for balance of payments statistics. Excluding payments up to EUR 12 500 would determine a significant loss of information. The same methodology is used for all payments (euro/non-euro, euro-zone/other countries, incoming/outgoing).
- In Hungary, from May 2004, client's transactions below EUR 12 500 are reported aggregately under a single transaction code by currency.

In conclusion, and based on the information received in the questionnaires, it appears that several Member States have not yet fully implemented the requirements of Regulation (EC) No 2560/2001.

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

As regards statistical reporting, in Italy the “non direct” methodology is used; there are no differences between Euro and non Euro payment or between EU and non EU countries. The adoption of the “direct reporting” methodology is in progress, but it is not possible to complete it before 2007/2008.

- **Has there been a change in transfer behaviour since the implementation of the Regulation?**

One question which should be examined in the context of the evaluation of Regulation (EC) No 2560/2001 is the question of whether a transfer amounts have been divided into multiple tranches in order to keep transfers below the EUR 12 500 threshold. Should this behaviour take place, it may be argued that the Regulation has already had an impact on the reporting for some Member States.

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?

- **Will the system for systematic reporting by banks between EUR 12 500 and EUR 50 000 alter in 2006?**

On this point, the responses in the questionnaires received varied considerably. The responses can however be divided into three general categories: 1) no changes because no reporting is currently required; 2) yes, there will be a change; and 3) no changes currently foreseen.

First, for countries such as Denmark, Finland, Ireland, Netherlands, Sweden, United Kingdom, no systematic balance of payments reporting currently exists. Consequently, there will be no change.

Second, in countries such as Austria, there will be a change as the banks' liability for reporting will end in 2006. In Belgium too, from 2006 onwards; the data collection process for the drawing up of the balance of payments will be simplified and the banking sector's intervention will no longer be required. The present system will be replaced with a new method based on statistical sampling. The contribution requested from economic agents will be limited to information which is neither publicly available nor can be estimated.

Third, and by far the largest group are those countries which do not currently foresee any change but will continue to have some form of systematic reporting requirements. This group however can be divided into two broad categories: EU-15 Member States such as France, Greece, Italy, Luxembourg, and Spain; and many new Member States.

In the former group, no changes are currently envisaged but in several cases, it was indicated that a direct reporting system was in the development which would either partially or entirely remove the need for bank reporting. In this respect, countries such as Greece, Italy and Spain proposed that the deadline for any change be 2008. Some of these countries did however emphasise that the development of an EU position on this question was essential. Moreover, it was also questioned whether any increase in the threshold was in line with other EU policies such as money laundering.

In the latter group, a core argument against any raising of the threshold were that timely, consistent data on external equilibrium is a vital part of the convergence process. A large increase in the threshold would cause large decrease in the quality of the data and time is required to find alternative data sources to ensure good balance of payments statistics. Moreover, it was felt that the change would not give any major cost saving for credit institutions because the expenditures for infrastructure (necessary for the compilation of balance of payments statistics) had already been made.

At this stage in the debate, and with a view to resolving these difficulties between Articles 3 and 6 in Regulation (EC) No 2560/2001, the Commission services are contemplating two options. In this respect, the Commission services 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;
- Should no agreement on the development of systems be 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.

Stakeholders are asked provide their views on the different options.

As already stated in previous occasions, we support the first option which however should not be effective before than 1st January 2008.

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

The deadline should be 2008, for raising the threshold envisaged by article 6, but also for the application of the third indent of article 3.

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

Since in our country (as it is the case for other member States) statistical reporting for the BoP has to be carried out by banks, it is difficult for them to levy the same charges for cross-border payments as for domestic ones, since the costs borne are different. Moreover, the multiplication of thresholds (article 3, article 6 of the Regulation, anti-money laundering provisions) could create difficulties in complying with the different obligations.

- **Are there any national obligations which prevent automation of payment execution?**

The existence of national obligations preventing the automation of payments varies considerably from country to country. For example, in Sweden, there are legal requirements for reporting to the tax authority of all cross-border payments exceeding approx. EUR 16 000 which can hinders STP and increase the costs.

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

There are no provisions in our legal framework which prevent the automation of payments.

6.4. Payments Infrastructures

Although not specifically mentioned in the Regulation itself, one of the core intentions of the adoption of the Regulation was to spur the market into developing

more integrated and efficient payments infrastructures. Price regulation was regarded as last resort, in which self-regulation had failed to deliver the required results. By establishing the principle of equality of charges it was hoped to create an incentive for industry to build the necessary infrastructures and thus create integrated and efficient cross-border payment systems. With this in mind, Article 8 contains a specific clause requiring the Commission to assess progress in this field.

To this end, it is useful to assess the following aspects:

- Are there any changes in the existing cross-border payment infrastructures?
- Are there any new cross-border payment infrastructures?
- **Are there any changes in the existing cross-border payment infrastructures?**

The combination of Regulation (EC) No 2560/2001 and costly correspondent banking infrastructures made business models unsustainable. In order to achieve an acceptable – and economically viable – unit cost level, the only solution for industry was to construct efficient payment systems.

In 2002, the European banking industry established the European Payments Council (EPC) at its main co-ordination and decision-making body for the Single Euro Payment Area (SEPA). The EPC adopted a roadmap, subscribing to the vision that all payments in euro should become domestic by end 2010.¹⁶ The programme includes the development and adoption of necessary standards and infrastructures for the three main payment instruments, credit transfer, direct debit and cards.

When Regulation (EC) No 2560/2001 was adopted the necessary infrastructures were not in place to allow equally efficient processing of national and cross-border payments. In retrospect, it is now possible to conclude that this regulatory intervention has provided the necessary incentive for the payment industry to modernise EU-wide payment infrastructures.

- **Are there any new cross-border payment infrastructures?**

In terms of SEPA progress, it should be noted that despite the ambitious workplan set out by SEPA in its White Paper of 2002, delays have already crept into its implementation. At the end-2004 industry acknowledged¹⁷ that there has been slippage against the milestones as defined in 2002. If SEPA is to be completed by 2010 the major part of work for SEPA needs to be done during the remaining five years between now and 2010.

In order to facilitate this development, the Commission intends to publish a comprehensive proposal for a New Legal Framework for payments in the near future. In addition, the Commission believes that it is important to encourage the payments industry to implement SEPA by 2010 and the wide scale uptake of the

¹⁶ See Annex 2.

¹⁷ In its progress report 2004, ECB criticised the EPC for the slow progress. In its updated roadmap 2004, industry admitted delays in the first two years, also reacting to the critical ECB progress report.

standards that will delivery this. To do so, the Commission envisages the design of appropriate incentives to support the migration to the new standards.

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.

Self-regulation should be the main tool to resort to in fostering the development of payment infrastructure; self-regulation should be guided by a general legal framework (like the one provided for in the proposed Directive).

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.

The problem of infrastructures is twofold: the setting of new standards for SEPA payment instruments; the creation of Pan European ACHs. The European Payment Council, under the scrutiny of the Eurosystem is currently dealing with both the aspects. For the creation of PEACHs, the requirements fixed by the European banks seem to be clear and solid enough to allow for the implementation of a fully-fledge solution by the 2010: today we already have the system STEP2, owned and managed by EBA, as a first example of PEACH and some national ACHs are working to upgrade their services with EPC requirements in order to guarantee interoperability at European level.

For the setting of SEPA standards the EPC proposals (the so called 'rulebooks') have been submitted to public consultation in September 2005. First results strongly criticised the limited 'interbanking' vision and approach of the 'rulebooks'. Indeed, the present version of the proposals hampers the implementation of the end-to-end STP approach for SEPA instruments (especially with regard to B2B payments). The Eurosystem - and in particular the Banca d'Italia - is already acting to foster dialogue between the EPC and SEPA stakeholders (above all corporate customers and SME) in order to define cross-industry standards (eg. E-invoicing, reconciliation and e-signatures) and improve the SEPA service levels.

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

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

When Regulation (EC) No 2560/2001 was adopted, concerns were raised that the regulation could lead to an increase in the charges for a payment made within a particular Member State as financial institutions increased the costs of national payments to offset the reduced revenues from cross-border payments.

In order to examine this issue in more detail, the European Commission tendered a study on the impact of the Regulation on bank charges for national payments.¹⁸

According to the study, banks have developed more sophisticated and differentiated price strategies since the adoption of Regulation (EC) No 2560/2001. The purpose of these strategies is to encourage consumers to use the most cost efficient payment mechanisms. A number of factors are provided for this development including increasing competition, the transparency impact of the internet and regulatory pressures to improve technology and infrastructure. One difficulty in analysing the impact of Regulation (EC) No 2560/2001 is to particularly attribute developments to its adoption rather than other developments. Moreover, differences in pricing structures between Member States mean that international comparisons are uncertain.

The study into the impact of Regulation (EC) No 2560/2001 have concluded the following (for further information see tables 1–3 annexed):

7.1.1. Credit Transfers

Charges for national euro credit transfers have remained largely unchanged in half the euro-zone countries since 2001.

At the same time, limited evidence exists suggests that the Regulation may have impacted on increases in credit transfer charges in Italy, Luxembourg and Spain. It is however not entirely possible to attribute these affects to the regulation alone.

While providing a general indication of the trends, these statistics should however also be treated with a degree of caution. The increased used of differentiated pricing together with different national pricing structures mean that international comparisons are difficult, for example, some banks charge bundled account fees which include a number of “free” transactions.

Stakeholders are asked to provide their views on the impact of Regulation (EC) No 2560/2001 on the price of national credit transfers.

We do not agree with the results of the study which are not supported by the data we have. See description under 6.1.

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

See description under 6.1.

¹⁸ Further information on the analysis and findings can be found in “Study of the Impact of Regulation 2560/2001 on Bank Charges for National Payments”, Retail Banking Research Ltd., August 2005.

7.1.2. *Payment Card Purchases*

According to research¹⁹, cardholder charges relating to card purchases have not changed and are in general free across all Member States. Some exceptions were however identified in the study namely: card payments at petrol stations (Italy and Portugal) and merchant fees/surcharges (Denmark, Netherlands, Sweden and United Kingdom).

At the same time, whereas transaction fees appear unaltered, annual card fees have risen, according to research. In some cases, this is in excess of the rate of inflation. Moreover, while some banks provide a basic debit card as part of the service, others have introduced annual fees.

According to the RBR report²⁰, merchant service charges have declined due to rising efficiency and increased transaction volumes. Market forces and the intervention of regulatory and competition authorities have also played a role.

At the same time, the research concludes that no evidence could be found indicating that the Regulation resulted in either the rise in cardholder charges or the evolution of merchant service charges.

Stakeholders are asked to provide their views on the impact of Regulation (EC) No 2560/2001 on the price of national payment card purchases.

See description under 6.1.

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

See description under 6.1.

7.1.3. *ATM Cash Withdrawals*

According to RBR research²¹, no fees exist for making withdrawals from ATMs from cardholder's banks ("on-us" transactions). In contrast, in at least 50 % of euro-zone countries (Belgium, Finland, France, Italy, Luxembourg and Spain), "not-on-us" charges on customers using another bank's or network's ATM have been introduced or have increased since the implementation of the Regulation. The study concludes that there is some evidence therefore to indicate a relationship between the increase/introduction of these charges and the Regulation.

¹⁹ Further information on the analysis and findings can be found in "Study of the Impact of Regulation 2560/2001 on Bank Charges for National Payments", Retail Banking Research Ltd., September 2005.

²⁰ Further information on the analysis and findings can be found in "Study of the Impact of Regulation 2560/2001 on Bank Charges for National Payments", Retail Banking Research Ltd., September 2005.

²¹ Further information on the analysis and findings can be found in "Study of the Impact of Regulation 2560/2001 on Bank Charges for National Payments", Retail Banking Research Ltd., September 2005.

Stakeholders are asked to provide their views on the impact of Regulation (EC) No 2560/2001 on the price of national ATM cash withdrawals.

See description under 6.1.

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

See description under 6.1.

7.2. Impact on the functioning of the Internal Market

According to Regulation (EC) No 2560/2001, Directive 97/5/EC of 27 January 1997 on cross-border credit transfers sought to improve cross-border credit transfer services and in particular their efficiency; The key was to ensure that payment services were rapid, reliable and cheap.

In this context, the adoption of Regulation (EC) No 2560/2001 should have facilitated the further development of these goals. Moreover, the infrastructure developments outlined above should have contributed to these achievements. As such, it is useful to examine whether the reliability and speed of cross-border transfers has improved.

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.

Both reliability and speed of cross-border transfers are dealt with in the SEPA project (i.e. by self-regulation) and, from a regulatory standpoint, by the New Legal Framework with general provisions.

8. OTHER ISSUES

8.1. Scope

According to the Point 8 of the introduction, “*At present, it is not advisable to apply the principle of uniform charges for paper cheques as by nature they cannot be processed as efficiently as the other means of payment, in particular electronic payments.*”.

The Regulation therefore covers electronic payment transactions and credit transfers:

- Cross-border electronic payment transactions being the cross-border transfers of funds effected by means of an electronic payment instrument, other than those ordered and executed by institutions; cross-border cash withdrawals by means of an electronic payment instrument and the loading (and unloading) of an electronic money instrument at cash dispensing machines and ATMs at the premises of the issuer or an institution under contract to accept the payment instrument;

- Cross-border credit transfers being transaction carried out on the initiative of an originator via an institution or its branch in one Member State, with a view to making an amount of money available to a beneficiary at an institution or its branch in another Member State; the originator and the beneficiary may be one and the same person.

With view to the scope of the Regulation, it is perhaps useful to examine whether the scope of the Regulation remains appropriate or whether it should be extended to cover other payment instruments.

8.1.1. Cheques

According to recital 8 of Regulation (EC) No 2560/2001, “*At present, it is not advisable to apply the principle of uniform charges for paper cheques as by nature they cannot be processed as efficiently as the other means of payment*”.

As a means for domestic payments, the use of the cheque is diminishing in the majority of countries of the European Union. Moreover, the cheque does not aim to become a means of automated cross-border payment as illustrated in recital 8. Moreover, no initiatives are currently underway to further the development and efficiency of a European cheque processing scheme. A cheque does not have legal tender status; no retailer or bank is required to accept a payment by cheque.

Banks which accept the cross-border use of the cheques have to inform their customers, pursuant to Article 4, about the charges connected to these operations. However, under EU legislation nothing prevents the beneficiary's bank and/or the bank of the issuer from taking fees on a payment by cheque. Banks in many countries wish to reduce the use of cheques and their pricing practice may include elements that act as a disincentive.

Against this background, and based on the information currently available, it is proposed that cheques remain excluded from the scope of Regulation (EC) No 2560/2001.

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

We subscribe to this choice as far as the cross-border use of the cheque is concerned. At the national level, since the cheque is a widely used payment instrument, we are trying to improve the automated processing of cheques exploiting available technology (electronic transmission of the image of cheques).

8.1.2. Direct Debit

In contrast to the lack of initiatives on cheques, plans are currently underway to establish a pan-European direct debit scheme (the SEPA Direct Debit scheme). This was not included in the original Regulation as such an instrument did not exist.

The European Payments Council has however worked on developing a pan-EU direct debit instrument and recently adopted a “Rulebook”. Pilot schemes are scheduled for 2007 with the scheme becoming operational from January 2008. National direct debit schemes are thereafter supposed to migrate into the new SEPA Direct Debit scheme before the end of 2010.

Instead of trying to harmonise existing national direct debit schemes, the new SEPA Direct Debit (SDD) scheme is being built from scratch. The aim is to develop a basic scheme that is flexible enough to be adapted to various kinds of market requirements and processes and which will allow banks to offer value added services to their customers. By creating a new scheme, however, divergences with existing schemes will emerge. To facilitate the changeover to the SDD scheme, single banks or groups of banks could decide to provide value added services, hereby making the customer interface more in line with existing national schemes.

The proposed SDD scheme consists of the following parts:

The mandate contains a set of fixed information and a fixed legal text. The payer signs the mandate and hands it over to the payee, who is responsible towards his bank for the accuracy of the mandate. The payer cancels the mandate by informing the payee. The payee must transfer mandate information to electronic form and transmit the information to the payee’s bank, who should forward it to the payer’s bank.

The new legal framework (NLF) will provide the necessary legal basis to the establishment of this scheme.

The successful development of this instrument does however pose a policy dilemma in that with its introduction in 2008, credit institutions could theoretically although perhaps unlikely charge higher fees for a cross-border credit transfer in euro than for a national credit transfer.

It is therefore necessary to discuss whether the scope of Regulation (EC) No 2560/2001 should be extended to include 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.

We believe that the evaluation on whether to extend the scope of Regulation no 2560/2001 to direct debits should be postponed some time after the SEPA direct debit scheme is launched: this would allow to evaluate whether there has been a market failure or not.

8.2. Competition

One of the aspects singled out for attention by Article 8 of the Regulation for closer examination is “the advisability of improving consumer services by strengthening the conditions of competition in the provision of cross-border payment services”. The inclusion of this clause should be seen against the background of the results of the ‘Cruickshank Report’ which examined the degree of competition in payments markets in 2000.

8.2.1. Results of RBR Study

With view to discussions on this clause, the Commission tendered a study on “Regulation 2560/2001: study of competition for cross-border payment services”. The Report was produced by Retail Banking Research Ltd, acting as consultant to Internal Market and Services DG of the European Commission. The text below in italics under the headings Cross-border Credit Transfers, Payment Cards, and ATM Cash Withdrawal Networks is the Executive Summary of the study. The study’s recommendations are not outlined here however are available in the report itself.

It should be emphasised that the views expressed in the Report are those of the consultants. These views have not been adopted or in any way approved or endorsed by the Commission and should not be regarded as a statement of the views of either the European Commission or of Internal Market and Services DG.

Cross-border Credit Transfers

- *“At least 80 % of bank-to-bank cross-border credit transfers currently take place through traditional correspondent banking arrangements or via intra-bank transactions.*
- *No multilateral cross-border credit transfer network has a large proportion of the total volume of cross-border credit transfers.*
- *Both EURO1/STEP1 and STEP2 are growing rapidly. It is likely that STEP2 will gain a significant proportion of cross-border credit transfers below €12,500 transacted through multilateral bank networks in the next one to two years – currently EURO1/STEP1 and STEP2 combined represent approximately one-eighth of this volume.*
- *As well as growth from the migration of cross-border volumes from other networks and methods, the volumes of transactions handled by EURO1/STEP1 and STEP2 will increase as the result of the migration of national traffic.*
- *One of the main drivers encouraging the migration of traffic to STEP2 is the need for banks to reduce costs in response to the requirements of the Regulation.*
- *Using STEP2 or the other multilateral bank networks – either those operated by EBA Clearing or those with targeted membership – may not always be cheaper or more efficient for banks than correspondent banking or intra-bank transactions.*
- *There are limited technical barriers to creating a new multilateral bank network to compete with those now operated by EBA Clearing, and even to being a new PEACH operator to compete with EBA Clearing’s STEP2, and the cost of doing so is relatively small. Far more difficult, however, is creating the requisite commercial framework and operating regulations and, more importantly, having the ability to access directly or indirectly all bank accounts in the EU. In addition it is not clear that any new*

multilateral bank network, including a new PEACH operator, would grow to gain the necessary economies of scale, particularly in terms of transaction processing.

- An uncertainty for policymakers, banks and operators of credit transfer networks is the likely growth of P2P funds transfer networks and services, including MoneySend and Visa Direct. The convenience of such networks and services may become increasingly attractive to consumers as they become accustomed to using, and confident in the security, of these systems.*
- Cross-border credit transfer networks are segmented and display a high degree of product differentiation. Banks choose the most appropriate methods and networks to transact their and their customers' cross-border credit transfers, based upon a wide range of factors. Although credit transfer networks are not perfect substitutes, banks appear to substitute relatively easily between networks.*
- All the cross-border credit transfer networks investigated during the study are owned by some or all of their member banks. Several banks are shareholders of more than one network, many banks have network shareholdings but also participate in other networks, while many more have membership of more than one network. Whilst conflicts of interest could theoretically arise from networks' ownership and governance, the translation of these conflicts of interest into anti-competitive behaviour is unproven.*
- All the cross-border credit transfer networks investigated during the study require their members to be regulated financial institutions. Corporates are denied network membership, and with the exception of SWIFT, corporates must send credit transfers through their selected commercial bank(s). This may be inconvenient or more costly than if the corporate were a direct member of the network. In addition, as users rather than members, corporates are not involved in a network's decision making and thus a network may develop in ways that do not meet the needs of a significant sector of users.*
- For cross-border credit transfers, the biggest influences on end-user prices are national factors relating to their provision."*

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

Basically, we agree with the analysis.

Payment Cards

- "The share of transaction volumes held by the two main international payment card schemes, Visa and MasterCard, varies by country. In the eurozone MasterCard Europe accounted for an estimated 48% of cross-border payment card purchase transactions under €12,500 in 2004, and Visa Europe 51%; the corresponding proportions for EU15 countries were 44% and 55%.*

- *On a European level, the merchant acceptance networks of MasterCard and Visa flag cards are similar, as are those of Maestro and Visa Electron.*
- *There are a number of countries – Austria, Belgium and Germany – where all international debit cards are co-branded with a logo of just one of the international payment card schemes.*
- *In Austria, Denmark, Finland, Luxembourg and the Netherlands, a single national organisation acquires MasterCard Europe and/or Visa Europe transactions, or transactions for a specific MasterCard or Visa brand. In addition, in Portugal one local company acquires virtually all such transactions. In other countries there are at least two major acquirers. With the exception of Finland, this is the result of a collective agreement of national banks and banking organisations.*
- *Cross-border acquirers have not gained a significant share of acquired transactions in any country, and have not had any significant impact on MSCs.*
- *In general in EU15 countries, consumers and businesses have a wide choice of potential issuers for their credit and charge cards, and concentration levels tend to be low. Competition in debit cards cannot normally be separated from the competition for retail banking services and therefore the concentration levels in retail banking apply.*
- *MasterCard Europe and Visa Europe offer similar products in the areas of credit, charge and debit cards. However, there are a number of areas where they offer different products and services*
- *Acquirers compete on many facets of their services to merchants, and although they cannot compete on interchange fees, this does not preclude all price competition.*
- *There is considerable product differentiation between issuers, particularly between issuers of credit and charge cards.*
- *The degree of governance duality is high in the payment cards industry. The impact of this on competition between payment card networks has not been established in either the US or Europe, although it is clear that this duality has positive impacts on cardholder choices.*
- *Most large banks in the EU are members of both MasterCard Europe and Visa Europe – at least 80% of the largest issuers have dual membership – and many banks that are MasterCard or Visa members are also members of a national debit card scheme. Several also have some form of relationship with a T&E organisation.*
- *There are a number of joining and membership restrictions within the payment card networks that could result in barriers to competition within networks, notably in acquiring.*

- *The degree of competition within and between card payment schemes is also affected by national practices and restrictions. National restrictions are particularly important for entrants into cross-border acquiring. There are a number of obstacles that make it more difficult for a cross-border acquirer to compete successfully with indigenous local acquirers for the business of national-only merchants.*
- *Competition in processing is stronger than that for other payment card services, as other banks, third party processors and suppliers compete with the payment card schemes to provide processing services to the schemes' member banks. Payment schemes do not generally restrict their members from using other banks, third party processors or outsourcing suppliers to perform any or all of their acquiring or issuing processing functions.*
- *The major obstacle to creating a new multilateral international payment card scheme in Europe is the difficulty of constructing a convincing "business case". This is due to the very large investment required to create a new scheme with the same card-base, acceptance network, infrastructures and economies of scale as the existing schemes. We observe that no new multilateral four-party international card payment scheme has emerged worldwide in the last thirty years.*
- *The creation of a new arrangement whereby pan-European debit card functionality is provided by making national debit card schemes interoperable and allowing reciprocal usage of their cards is a major task. In addition to the investment required, major obstacles are the definition of operating regulations and technical standards, the agreement of a commercial framework, the need to change ATMs and merchant terminals and re-negotiate merchant contracts, and the creation of switching and clearing and settlement infrastructures for "foreign" authorisations and transactions.*
- *Where multiple acquirers operate, the desire and ability of a merchant to switch to another acquirer, for both national and cross-border transactions, varies per country. In general, this depends upon the merchant's size and its commercial and technical relationship with its acquirer.*
- *There have been significant innovations in the payments cards industry, however this may not be an indicator of the level of competition. Innovation has resulted from competition, co-operative initiatives and other factors such as SEPA.*
- *MasterCard Europe and Visa Europe co-operate on the technology standards that underpin the payment cards industry, such as those for smart cards and electronic purses, contactless cards, new delivery channels and fraud prevention. In general, these co-operative initiatives facilitate the operation and growth of the card payments industry.*
- *The payment cards industry is characterised by the combination of co-operation in the development of unsponsored (common) standards and*

competition through the development and use of sponsored (proprietary) standards.

- The existence of sponsored standards in some aspects of the payment cards industry could create barriers to entry. However, the development of the underlying unsponsored standards such as EMV may help to remove barriers. Overall the impact of standards on competition is mixed.
- For payment card transactions, customer charges are determined by acquirers and issuers and are mainly determined by national factors.”

Stakeholders are asked to provide comments on the conclusions of the RBR study.
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We need to analyse some facts that can mitigate the results of the report. Here are some examples related to the Italian experience.

1. According to the European (eg. Visa case) and national Antitrust decisions (eg. PagoBANCOMAT case in Italy), even if the interchange fees could be useful for the network provision of services, the levels should be transparent and consider productivity gains across time. Moreover, only the effective costs have to be considered in the multilateral (or bilateral) fee determination (eg., the card fraud rate is different at domestic and cross border level). The interchange fee is also an important component of the merchant fee. To this purpose, retailers’ associations are boosting to make the merchant fee applied by acquirers more adherent to the real cost sustained by each kind of merchant (eg. processing, frauds, credit risk, etc.).

2. Implementation of multi-bank system in PagoBANCOMAT , the Italian debit card circuit: the Oversight Office and the Competition Department of the Banca d’Italia have worked together on a project aimed at introducing the “multi-bank system” to Pagobancomat POS circuit. In particular, the rules of the circuit asked all Italian retailers to deal with only one acquirer bank, for security reasons, so that retailers were unable to direct transactions made with Pagobancomat cards to the bank that had issued the card. If that were possible, retailers would save the entire amount of interchange fee normally retained by the acquirer bank (euro 0,30 for an average debit card transaction of euro 100, almost half of the full price charged to the retailer), because the issuer bank and the acquirer bank would be the same. A thorough assessment was made of the system’s security, reliability, efficiency and transparency. Two main results have emerged. First, in its original form, the Pagobancomat system, designed to minimise the risk of fraud, had been modified as regards the aspects managed by large retailers, making it less secure. Second, no evidence was found indicating that the multi-bank system increased the risk of fraud or misuse of the cards.

As a consequence, the Banca d'Italia issued in March 2005 an order for Pagobancomat Administrator to withdraw the letter on the grounds that it was expression of an agreement between intermediaries to restrict competition and to set up a new system on multi-bank principles within six months. The Oversight Office and the Competition Department have been entitled to monitor and enforce the decision.

3. Italy and other countries, characterized by a high level of cash transactions, are experimenting a high growth rate of electronic transactions and could further benefit from relevant increasing return to scale for non-cash payments (especially debit and credit cards).

4. In recent years end-users in Italy have been shifting towards electronic payment instruments, whose price conditions benefit from the savings induced by technology. In 2004 average transaction fees in Italy have been reduced up to 4 per cent (estimated data). In particular, the average “merchant discount fees” for POS transactions (debit and credit cards) have decreased from 2000 to 2004: 10 per cent yearly for national debit cards and 5 per cent for credit cards.

5. Also the interest margin on current account deposits and the banking “cost/income ratio” have significantly decreased in Italy both in 2003 and 2004 (see Bank of Italy, Annual Report). The increasing relevance of market shares of non-banking entities at the domestic level (the postal sector and money transfers, for example), call for analysing and monitoring carefully the payment services offered by these new competitors in the SEPA environment.

ATM Cash Withdrawal Networks

- *“From a competition viewpoint, ATM cash withdrawal networks operate in a similar way to payment card networks, and are provided by the same organisations.*
- *Excluding the T&E schemes, MasterCard Europe-branded cards accounted for an estimated 67% of cross-border ATM cash withdrawals in euro in the euro area in 2004, Visa Europe-branded cards for 27% and EUFISERV for 7%. Within EU15 countries the proportions were 49%, 45% and 6%.*
- *MasterCard Europe, Visa Europe and EUFISERV compete (inter-network competition) across a number of dimensions. These include the ATM acceptance networks, the numbers of cards issued, transaction fees, interchange fees and (except EUFISERV) card products.*
- *MasterCard Europe and Visa Europe co-operate on the technology standards that underpin ATMs and cash dispensers, in particular on EMV and new security techniques such as Triple DES.*

- *ATM surcharging is limited to a small proportion of ATMs in the Netherlands and a larger share of ATMs in the UK. It is prohibited by Visa Europe's regulations, unless a country's national law expressly requires that an ATM owner be permitted to impose a surcharge, and not allowed by MasterCard Europe's rules. In addition, there are inter-bank agreements or regulations that do not permit it in some countries.*
- *ATM surcharging allows an ATM owner to charge a commercial rate for the use of its machine and thus it attracts new ATM deployers and fuels the installation of additional machines in convenience "off-site" locations.*

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

[*See previous comment.*](#)

8.2.2. *European Commission Sectoral Investigation*

The European Commission launched inquiries into competition in financial services on 13 June 2005, pursuant to Article 17 of Regulation (EC) No 1/2003. The sector inquiry into the retail banking sector will, amongst other things, examine payment cards but will then move on to other areas. Issues to be investigated include conditions for market entry, state of competition between payment networks, and the degree of effective choice for consumers and SMEs.

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.

8.3. **Enforcement**

8.3.1. *Sanctions*

In Article 7, Regulation (EC) No 2560/2001 provides for "*compliance with this Regulation shall be guaranteed by effective proportionate and deterrent sanctions*". Consequently, each Member State sanctions should ensure that there are sanctions for the non-application of the Regulation's provisions.

In this respect, and based on the information provided by the questionnaires, Member States can be divided into two categories:

- Member States which do not need to establish a specific sanctions procedure because there already is a general non-observance procedure of this type of provision in place. This sanctions procedure is generally the one which applies to banks (Greece, Luxembourg, Spain, Sweden).
- Member States which need to draw up special legislation for the issuing of sanctions (Austria, Belgium, Ireland, Italy, Slovenia, and United Kingdom).

Based on the information provided to date, sanctions do not appear to be established in either France and in Poland.

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

Violations of article 3 of the regulation are sanctioned with a fine ranging from 10.000 EUR to 100.000 EUR; for serious violations the fine applied may not be lower than 50.000 EUR. Violations of articles 4 and 5 are sanctioned with a fine ranging from 5.000 EUR to 50.000 EUR; for serious violations the fine applied may not be lower than 25.000 EUR. The sanctions are applied by the Ministry of Economy and Finance upon a proposal from Banca d'Italia or the Ufficio Italiano dei Cambi (UIC).

8.3.2. Competent authorities

In contrast to numerous other Community texts, Regulation (EC) No 2560/2001 does not mention the competent authorities.

Since the Regulation entered into force, the Commission has received hundreds of complaints concerning its application. As far as possible, the Commission has, when it was informed of it, indicated to the complainant, the details of the competent authority for the application of the text in the respective country.

Frequently, the competent authorities indicates that the complainant should contact the relevant out-of-court redress scheme, as the competent authorities do not deal directly with such disputes, even if it appears that there was an infringement of the Regulation.

In numerous countries, the complainant has to go direct to court to obtain compensation. For a customer domiciled in another state, this is difficult and questionable in terms of cost/benefit: it is expensive to initiate a procedure in another Member State simply because a bank has taken EUR 5 on the transfer that sent.

8.3.3. Settlement of disputes

Recital 13 illustrates that there should be procedures for the treatment of complaints and the resolution of disputes (*“the Member States should ensure that there are adequate and effective procedures for lodging complaints or appeals for settling any disputes between the originator and his institution or between the beneficiary and his institution, where applicable using existing procedures”*).

This recital is identical to the recital 14 of Directive 97/5/EC, but it is not accompanied by a corresponding article. Neither the recital nor the article appeared in the original proposal of the Commission however the recital was introduced at the last minute in a discussion between Parliament and the Council. Not being accompanied by an article, this recital is therefore a wish which does not involve any real obligation for Member States.

For the application of this recital, the Commission asked Member States to provide it with the details of their respective dispute settlement systems so that the information could be published the Commission's Internet site in order to make this information available throughout the Union.²²

The solution of a dispute however settles only the complainant's problem and not more general problems of erroneous application of the regulation.

8.3.4. Possible Solutions

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.

The forthcoming New Legal Framework provides for a new regime on authorities competent for ensuring compliance with the provisions concerning payments; the regime for authorities competent for ensuring compliance with the regulation 2560/2001 should be the same. As a consequence, we would support a solution whereby Member States chose competent authorities not only for the application of sanctions but also for ensuring compliance with the regulation and communicate their choices to the Commission who in turn would make them publicly available.

- 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 competent authority for verifying compliance with Regulation EC/2560/2001 is Banca d'Italia; sanctions are applied by the Ministry of Economy and Finance upon proposal of Banca d'Italia or UIC. The settlement of disputes is conferred upon courts or, alternatively, to dispute resolution mechanisms that fall under the competence of the Ombudsman Bancario or similar entities.

²² http://www.europa.eu.int/comm/internal_market/payments/crossborder/complaintbodies_en.htm

8.4. Review Clause

According to Article 8, “*Not later than 1 July 2004, the Commission shall submit to the European Parliament and to the Council a report on the application of this Regulation...This report shall be accompanied, where appropriate, by proposals for amendments.*”

The inclusion of a review clause for legislation has increasingly become common practice for new legislation.

In the field of payments, technological and infrastructural developments are ongoing and the market situation is continually evolving. With this in mind, the question should therefore be raised as to whether a new or revised review clause should be inserted into the text thereby obliging the Commission to examine the market situation in the future.

As the situation currently stands, initiatives to create an integrated, efficient and reasonably priced infrastructure are still at the developmental stage. It is hoped however that the payments industry will continue to work on its goals.

A revision of the Review Clause would enable the Commission to reassess progress towards a real EU market for payments that delivers real benefits to citizens in the future and thus re-evaluate the need for Regulation (EC) No 2560/2001. Should it be determined that the Regulation has met its objectives then its abolishment could be considered.

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)?**

Yes, 2010 seems an adequate deadline.

- **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?**

Consistently with the approach followed in identifying the new deadline, the new review clause could refer to the achievement of the SEPA objectives: in case of successful achievement of the latter by market forces, it could be considered whether it is appropriate to eliminate the regulation.

9. CONCLUSIONS

The conclusions contained a summary of all the questions posed in the document. These questions are group together in order to facilitate responses.

9.1. Problems encountered in Implementation

9.1.1. 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).

9.1.2. Provisions on Credit Transfers

- Stakeholders are asked whether issues relating to the use of different cost options for transfers in euro have been resolved.
- 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 and thus resolve the problem described above?

9.1.3. Provisions on Credit Transfers

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

9.2. Direct Impact of Regulation (EC) No 2560/2001

9.2.1. 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.
- 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.

- 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.

9.2.2. Impact on Consumer Awareness

- 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?

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

9.2.3. 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.

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

9.2.4. 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.

9.3. Indirect Impact of Regulation (EC) No 2560/2001

9.3.1. 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.
- Do stakeholders agree with the results of the study? If not, please provide additional information.

9.3.2. 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.

9.4. Other Issues

9.4.1. Scope

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

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.

9.4.2. 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.

9.4.3. *Enforcement*

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

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.

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.

9.4.4. *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)?
- 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?

ANNEXE I: STATISTICS

Table 1: Cross-border credit transfers: cost of transferring EUR 100 (EUR)

	Study 1993 (EU12) (rank)	Study 1994 (EU12) (rank)	Study 1999 (EU11) (rank)	Study 2001 (EU11) (rank)	Study 2001 (EU15) (rank)	Study March 2003 (EU15) (rank)	Situatio n in 2005²³
	(1048 transfers of 100 Ecu)	(1048 transfers of 100 Ecu)	(352 transfers of EUR 100)	(352 transfers of EUR 100o)	(1480 transfers of EUR 100)	(1480 transfers of EUR 100)	
Austria	–	–	10.61 (3)	17.40 (6)	22.27 (7)	11.19 (4)	0.6
Belgium	23.93 (8)	23.06 (6)	13.37 (4)	11.87 (3)	12.84 (3)	14.26 (5)	0.15
Denmark	19.89 (5)	21.19 (4)	–	–	21.23 (5)	17.21 (8)	
Finland	–	–	20.11 (8)	14.36 (5)	21.26 (6)	18.71 (10)	2
France	34.79 (12)	33.01 (12)	16.88 (6)	18.06 (7)	25.41 (9)	22.62 (14)	3.4
Germany	19.57 (3)	26.16 (7)	13.78 (5)	11.93 (4)	14.73 (4)	10.56 (2)	1
Greece	27.23 (9)	32.78 (10)	–	–	47.33 (15)	31.09 (15)	12
Ireland	23.04 (7)	27.13 (9)	25.98 (10)	25.04 (10)	36.08 (14)	22.24 (13)	0.38
Italy	19.79 (4)	20.88 (3)	18.28 (7)	19.74 (8)	28.61 (13)	16.71 (7)	3.5
Luxembourg	16.84 (1)	15.75 (1)	8.91 (1)	9.58 (1)	9.79 (1)	9.89 (1)	0.75
Netherlands	17.69 (2)	18.84 (2)	10.00 (2)	11.45 (2)	12.11 (2)	11.11 (3)	0
Portugal	34.37 (11)	26.75 (8)	29.68 (11)	31.04 (11)	28.08 (11)	18.12 (9)	1.75
Spain	21.10 (6)	22.04 (5)	20.50 (9)	20.56 (9)	24.65 (8)	19.78 (11)	4
Sweden	–	–	–	–	27.20 (10)	14.62 (6)	
UK	27.45 (10)	32.99 (11)	–	–	28.47 (12)	22.03 (12)	
TOTAL	23.93	25.41	17.10	17.37	24.09	17.60	

²³ European Commission services own calculations based on selected figures from the September 2005 RBR studies.

Table 2: Evolution of Typical Cardholder Charges, 2001-2005 (EUR)²⁴

Country	Typical Transaction Charges		Typical Annual Charges	
	2001	2005	2001	2005
Austria	0	0	0.00-40.00	0.00-40.00
Belgium	0	0	4.12-61.97	6.00-61.97
Finland	0	0	0.00-51.60	0.00-67.00
France	0	0	29.00-120.00	32.00-128.00
Germany	0	0	0.00-30.00	0.00-30.00
Greece	0	0	0.00-35.00	0.00-33.00
Ireland	0	0	0.00-48.05	10.00-59.05
Italy	0	0	0.00-31.00	0.00-31.00
Luxembourg	0	0	9.92-15.00	11.00-15.00
Netherlands	0	0	0.00-50.00	0.00-55.00
Portugal	0	0	2.50-65.00	3.12-75.00
Spain	0	0	7.89-17.71	10.21-21.35
Denmark	0	0	0.00-130.00	0.00-130.00
Sweden	0	0	16.00-30.00	16.00-33.00
UK	0	0	0.00-140.00	0.00-140.00

²⁴ Further information on the analysis and findings can be found in “Study of the Impact of Regulation 2560/2001 on Bank Charges for National Payments”, Retail Banking Research Ltd., September 2005.

Table 3: Evolution of Typical Credit Transfer Charges, 2001-2005 (EUR)²⁵

Country	Typical Sender Charges		Observations
	2001	2005	
Austria	0.00-1.20	0.00-1.20	10-20 free transfers typically allowed each month
Belgium	0.00-0.25	0.00-0.30	No charge for internet based transfers
Finland	0.00-4.00	0.00-4.00	No charge for internet based transfers
France	2.30-3.50	2.85-3.90	Increase in charges for non-electronic transfers
Germany	0.00-2.00	0.00-2.00	Service included in basic account packages fee
Greece	Min. 5.58	Min. 12.00	Increase in min. fee unrelated to Regulation
Ireland	0.00-0.76	0.00-0.76	Changes require approval by regulator
Italy	0.25-4.00	2.00-5.00	Average cost for internet based transfer is EUR 0.90
Luxembourg	0.00	0.00-1.50	6-12 free transfers typically allowed each month
Netherlands	0.00	0.00	Business customers are charged
Portugal	0.00-1.50	0.00-3.50	Increase in charge for paper based transfers
Spain	2.52-28.10	3.18-29.10	Charges proportional to value of transfers
Denmark	0.25-2.00	0.25-2.00	Euro transfers incur a higher fee (EUR 5.00-6.00)
Sweden	0.00-1.65	0.00-1.65	Euro transfers incur a slightly higher fee (ca. EUR 0.33)
UK	0.00	0.00	Euro transfers incur a much higher fee (EUR 26-36)

²⁵ Further information on the analysis and findings can be found in “Study of the Impact of Regulation 2560/2001 on Bank Charges for National Payments”, Retail Banking Research Ltd., September 2005.

Table 4: Evolution of Typical ATM Charges, 2001-2005 (EUR)²⁶

Country	Typical ATM Charges		Observations
	2001	2005	
Austria	0.00	0.00	Credit card cash advance fees of ca. 3 %
Belgium	0.00-0.07	0.00-0.10	EUR 0.10 “not-on-us” fee seen as a result of the Regulation
Finland	0.00	0.00	2002 “not-on-us” fee may have been due to the Regulation
France	0.00-0.78	0.00-1.00	“Not-on-us” charges generalised since 2002
Germany	0.00-4.50	0.00-4.25	Convergence of fees may be linked to Regulation
Greece	0.00-1.00	0.00-2.49	Changes in “not-on-us” fees unrelated to Regulation
Ireland	0.15-0.40	0.15-0.40	Under certain account conditions there is no fee
Italy	0.00-2.20	0.00-2.20	Increase in average “not-on-us” charges
Luxembourg	0.00	0.00-3.00	“Not-on-us” fees introduced as a result of the Regulation
Netherlands	0.00	0.00	Credit card cash advance fees of EUR 4-5
Portugal	0.00	0.00	Credit card cash advance fees of 3.33 %-4.00 %
Spain	0.00-2.98	0.00-3.45	Increase in “not-on-us” fees linked to the Regulation
Denmark	0.00-0.54	0.00-0.54	“Not-on-us” and outside banking hour fees
Sweden	0.00	0.00	Euro dispensing ATMs are being introduced
UK	0.00	0.00	44 % of ATMs apply a surcharge of ca. EUR 0.70.

²⁶ Further information on the analysis and findings can be found in “Study of the Impact of Regulation 2560/2001 on Bank Charges for National Payments”, Retail Banking Research Ltd., September 2005.

ANNEX II: SEPA OBJECTIVES – ROADMAP 2002-2010²⁷

“Over the last 5–10 years Europe has achieved a major step forward by agreeing to the introduction of a single currency – the euro – and by converting accounts, notes and coins to this currency. Time has come now to launch the next wave that will ensure that the economic benefits of this conversion accrue to all actors: consumers, SMEs, corporates, retailers and banks. In the previous chapters, the key recommendations for achieving these benefits were laid out. This chapter combines the proposed actions and milestones into an overall roadmap (exhibit 6.1):

By December 31, 2002: *a substantiated, syndicated and detailed roadmap* achieved by: (1) launching a strong governance structure and the five working groups by 1 July 2002; (2) reviewing and substantiating the choice for a Pan-European ACH (e.g., review of existing options, business rationale, business requirements); (3) systematically analyzing standards, rules, business practices and conventions required for STP; (4) conducting a detailed investigation of the specific networks and switching fees for cards and proposing options to allow efficient cash handling within the euro-zone (the last three actions by the end of 2002). These efforts will lay the foundation for a concerted course of action over the next 5-10 years.

By July 1, 2003: *the first tangible results* achieved by: (1) having an operational pan-European ACH; (2) defining a pan-European direct debit product (e.g., value proposition, requirements, migration timetable); and (3) agreeing to the basic standards, rules and conventions for credit transfers and cards, leveraging the existing standards (e.g., IBAN, BIC, MT103+). These targets are ambitious, but necessary to create the right momentum and make efforts credible to the other stakeholders.

By December 31, 2004: *ramp up activity* by: (1) having 50 % of cross-border payments volumes on the pan-European ACH infrastructure; and (2) agreeing to the value added services standards and their implementation plan (including incentive measures and cut-off point). By this time the industry should be in the acceleration phase, provided there is a real will to move forward.

By July 1, 2005: *the next wave of innovations*, starting with the processing of the first transaction of the new pan-European direct debit instrument. By this time the governance structure should be able to demonstrate that it can respond to the continuing changes in the environment by launching new initiatives.

By December 31, 2007: *achieve target service levels* for the pan-European infrastructure, so that banks will be able to reap the full benefits from the migration in their own back-offices.

By December 31, 2010: *achieve a full migration for banks and their customers to the Single Euro Payment Area*, with realization of all economic benefits and a clear shift in mindset from “Migration towards SEPA” to “Managing SEPA on a going concern basis”. Although this time horizon might seem long, it is actually quite ambitious given the changes that will have to take place in legislation, in the activities of thousands of banks and in the habits of millions of customers.”

²⁷ According to the EPC’s White Paper on SEPA adopted in May 2002: