

THE REGULATION ON CROSS-BORDER PAYMENTS IN EURO

CARDS COMPLIANCE GUIDELINES FOR THE UK BANKING INDUSTRY

JULY 2003



APACS

Association for Payment Clearing Services

The European Parliament and Council Regulation on *cross-border payments in euro* (No 2560/2001) was adopted on 19 December 2001 and came into effect on 31 December 2001. This Regulation applies in all 15 EU (European Union) Member States and EEA (European Economic Area) countries (Iceland, Liechtenstein and Norway). Article 3 provisions within the Regulation relating to cross-border electronic payment transactions (generally regarded as card transactions) became effective on 1 July 2002 and those relating to cross-border credit transfers came into effect on 1 July 2003. Compliance Guidelines for credit transfers are available separately.

The Regulation has immediate legal effect and does not require separate national implementing legislation. H M Treasury, the UK government department responsible for managing the implementation of European financial services legislation, was taking steps to deal with non-compliance as required under Article 7 (Compliance with this Regulation) but is not issuing additional advice on the overall text of the Regulation. H M Treasury supports the development of sectoral guidelines and has reviewed this text. Consumer complaints can be addressed to the Financial Ombudsman Service.

APACS, as the UK trade association for payments, is issuing these Guidelines to aid interpretation of, and compliance with, the Regulation. In all instances, the wording of the Regulation has legal primacy and these Guidelines should not be used as a substitute for proper legal advice on the Regulation. No liability rests with APACS and the legal advice it sought in developing these Guidelines. The Guidelines present a general understanding of the requirements within the Regulation and the impact on institutions in the UK which make cross-border payments.

The base principles enshrined within the Regulation are:

- non-discrimination between corresponding domestic and cross-border payments made in euro on the basis of price;
- requirement on institutions who offer cross-border payment services to operate a fully transparent charging structure;

The Regulation is not prescriptive on detailed implementation, thereby offering financial institutions flexibility in approach. The Regulation is completely neutral on systems, infrastructures and interbank arrangements and is concerned entirely with the customer-facing impact of an institution's domestic and cross-border payment services. It may be useful to review the impact on an institution with an eye on how this is seen by the customer. Key areas for consideration when reviewing compliance with the Regulation include:

- customer Terms and Conditions for current accounts and charges for foreign currency transactions and use of debit card products;
- customer Terms and Conditions for credit cards and charges for foreign currency transactions;
- level of transparency provided before and after a cross-border payment is made, particularly if this information is included within a regular statement;

- the development of 'e' type payment instruments;
- advice offered to merchants who may wish to acquire credit and/or debit card transactions in euro in the UK.

The structure of these Guidelines follows the order of the relevant recitals and articles of the Regulation, with supplementary information at the end covering issues raised within interbank discussions, e.g. impact of possible UK entry to the euro and impact on off-shore subsidiaries. They also cover all electronic payment transactions referred to in the Regulation under Article 3 – cash withdrawals at ATMs, card payments at point-of-sale and e-money transactions.

Whilst the manner of processing the payment would not be considered as a valid reason for differential pricing, the Regulation would not impact on an institution's commercial policy for applying different charging structures depending on how a payment was initiated (branch, PC banking from home, internet and mobile).

These Compliance Guidelines meet the requirements placed on industry bodies to comply with the Competition Act 1998.

Comments and suggestions on the Guidelines should be sent to Neelam Jobanputra at neelam.jobanputra@apacs.org.uk.

Other documentation and advice has been used in developing these Guidelines:

S J Berwin **Memorandum of Advice prepared for The Association for Payment Clearing Services on the proposed Council Regulation on cross-border payments in euros** (20 December 2001)

REGULATION (EC) No 2560/2001 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 19 December 2001 on cross-border payments in euro (published in the *Official Journal of the European Communities* on 28 December 2001)

European Commission **DRAFT NOTE on PRACTICAL IMPLEMENTATION OF ARTICLE 3 OF THE REGULATION No 2560/2001 on cross-border payments in euro** (MARKT 2902/2002)

European Banking Federation **Applicability of the EU Regulation on Card Payments** (26 February 2002)

S J Berwin advice by letter on **Cross-Border Payments in Euros** (1 May 2002)

Europay interpretation note on **Regulation (EC) No 2560/2001 of 19 December 2001 on cross-border payments in euro Application to Payment Cards** (2 May 2002)

European Commission **NOTE on the PRACTICAL IMPLEMENTATION OF ARTICLE 9 OF REGULATION No 2560/2001 on cross-border payments in euro** (MARKT 4000/2003)

Copies of these documents are available to APACS Members from corpcomms@apacs.org.uk and APACS Online.

Recital 10

This Regulation does not affect the possibility for institutions to offer an all-inclusive fee for different payment services, provided that this does not discriminate between cross-border and national payments.

Compliance

This permits use of annual fees for card products as long as there is no differentiation in prices between cross-border and domestic euro products.

Account maintenance fees, as these may relate to the provision of debit card services, are also permitted.

Article 1

Scope of the Regulation

This Regulation lays down the rules on cross-border payments in euro in order to ensure that charges for those payments are the same as those payments in euro within a Member State.

It shall apply to cross-border payments in euro up to EUR 50 000 within the Community.

This Regulation shall not apply to cross-border payments made between institutions for their own account.

Compliance

- The value limit up to EUR 50,000 applies to transparency aspects within Article 4. Article 3 on charges has an initial limit of EUR 12,500, rising to EUR 50,000 on 1 January 2006.
- Interchange fees applied between the issuer and acquirer's institutions are not within the scope.
- The Channel Islands and Isle of Man are Crown Dependencies of the UK and are not Members of the European Union. Banks operating in the Channel Islands and the Isle of Man therefore do not come within the scope provided that they are separate legal entities to that of any UK parent company.
- Gibraltar is part of the European Union and banks operating there will be bound by the Regulation.
- Sterling payments are not within the scope of the Regulation (see Article 9).

Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply:

- 'cross-border payments' means:*
 - 'cross-border credit transfers'*
 - 'cross-border electronic payment transactions'*
 - 'cross-border cheques'*
- 'electronic payment instrument' means a remote access payment instrument and electronic money instrument that enables its holder to effect one or more electronic payment transactions;*
- 'remote access payment instrument' means an instrument enabling a holder to access funds held on his/her account at an institution, ... and normally requires a personal identification code ...;*
- 'electronic money instrument' means a reloadable payment instrument;*
- 'institution' means any natural or legal person which, by way of business, executes cross-border payments;*
- 'charges levied' means any charge levied by an institution and directly linked to a cross-border payment transaction in euro.*

Compliance

- The Regulation defines payment instruments, not the mechanism used for processing that payment.
- All institutions which make payments (including non-credit institutions such as those developing arrangements that enable card payments over internet) are within the scope.
- ATM withdrawals are within scope, coming under the definition of Article 2 a) ii).

Article 3

Charges for cross-border electronic payment transactions

1. *With effect from 1 July 2002, charges levied by an institution in respect of cross-border electronic payment transactions 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 Member State in which the establishment of that institution executing the cross-border electronic payment transaction is located.*
2. *With effect from 1 July 2003 at the latest, charges levied by an institution in respect of cross-border 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 credit transfers in euro transacted within the Member State in which the establishment of that institution executing the cross-border transfer is located.*
3. *With effect from 1 January 2006 the amount EUR 12 500 shall be raised to EUR 50 000.*

Compliance

- From 1 July 2002, all electronic payment transactions up to EUR 12,500, as defined in Article 2 a ii), from one EU Member State to the other should carry the same charges as corresponding domestic payments in euro.
- The Regulation applies to charges levied on both cardholders and merchants, but only where corresponding domestic payments in euro exist.
- It is the corresponding nature of the transaction that is the determining factor in the application of this Article. Institutions can continue to levy differential charges for different branded cards (i.e. Visa, MasterCard, Switch) and product platforms (credit, debit, charge cards).
- Where no charge is applied domestically to a euro transaction, no charge should be applied to a corresponding cross-border transaction. If a charge is applied domestically, that charge for a corresponding cross-border transaction must be charged.
- Institutions can continue to levy an exchange fee for converting sterling to euro.
- Corresponding electronic payment transactions would include:
 - the withdrawal of euro notes from an ATM where the service is identical;
 - a debit card purchase made in euro where the service is identical;
 - a credit card purchase made in euro where the service is identical.
- If a UK-based institution does not charge for its own ATM euro withdrawals domestically, it cannot levy any charge for use of its own ATMs within other EU Member States. Where a customer is levied a charge for using ATMs other than those of his own bank domestically, that same charge would apply cross-border. The notification of disloyalty fees should be transparent.
- If a bank offers a free-of-charge facility (i.e. no disloyalty fee) to its customers to withdraw euro notes from other institutions' ATMs within the UK, those customers cannot be charged for withdrawals within another Member State.
- The Regulation does not prevent ATM owners from applying a transaction fee (as a number of UK-based independent deployers do). ATM acquirers may also surcharge customers from other banks using their network. To aid compliance with the Regulation, the issuer would need to be advised of fees levied.
- Whilst the UK remains outside of the eurozone, the issue of euro withdrawals from ATMs cross-border has no impact in the UK if there is no dispensing of euros at ATMs in the UK.
- Any UK institution that does not charge its customer for a credit and/or debit card purchase made in euros in the UK (except the currency exchange charge), cannot levy a charge for those corresponding euro transactions made in another Member State.
- As the Regulation only covers the 15 EU Member States and EEA countries (Iceland, Liechtenstein and Norway), a different merchant service charge can be applied to non-EU cards.

Article 4

Transparency of Charges

1. An institution shall make available to its customers in a readily comprehensible form, in writing, including, where appropriate, in accordance with national rules, by electronic means, prior information on the charges levied for cross-border payments and for payments effected within the Member State in which its establishment is located.
2. Any modification of the charges shall be communicated in the same way as indicated in paragraph 1 in advance of the date of application.
3. Where institutions levy charges for exchanging currencies into and from euro, institutions shall provide their customers with:
 - a) prior information on all the exchange charges which they propose to apply; and
 - b) specific information on the various exchange charges which have been applied⁴.

Compliance

- The requirement under the Regulation to be transparent to customers for both domestic and cross-border transactions has been in operation since 31 December 2001.
- Institutions may consider reviewing Terms and Conditions/Tariff of Charges to clarify that charges are levied for foreign currency transactions. Systems may have to identify payments by currency rather than country code.
- Institutions must notify customers of a change in the charges levied in advance.
- Prior information should include an indication of how the exchange rate is calculated and applied.

Good practice may include the following text:

<i>Commission for foreign currency transactions using Cirrus/Visa at cash machines</i>	<i>X% of the value of the transaction min/max being X</i>
<i>Maestro/Visa debit at point-of-sale</i>	<i>flat fee of £0.XX</i>

All foreign currency transactions will include a foreign exchange transaction fee of X.XX%

The exchange rate used is the wholesale rate used by Visa/MasterCard on the date the transaction is applied to your account adjusted to include a handling fee. The actual rate used will be quoted on your regular statement of transactions

- Specific information on customer account statements for ATM card transactions should include as a minimum:
 - original transaction amount (in euro)
 - handling fee
 - exchange rate applied
 - billing amount to the customer (in sterling after charges and conversion have taken place)

Good practice may include the following on a statement:

<i>CASH 1200410068</i>	
<i>D508 62AIB BAN</i>	
<i>64 GRAFTON 2</i>	
<i>EUR 200.00 @ 1.5502</i>	<i>£129.02</i>
<i>CHARGE CASH MACHINE FEE</i>	<i>£1.93</i>

- Specific information on customer account statements for credit/debit card transactions should include as a minimum:
 - original transaction amount (in euro)
 - exchange rate applied
 - billing amount to the customer (in sterling after charges and conversion have taken place)

Good practice may include the following on a statement:

<i>Hotel Lutetia 4203, 75Paris 6</i>	
<i>951.57 EUR Exchange Rate 0.62925/£</i>	
<i>billing amount</i>	<i>£598.78</i>

The following presentation would not meet the requirements of the Regulation:

<i>Euro-Information-Center Frankfurt DEU</i>	
<i>Foreign Currency 34.00 EUR</i>	
<i>billing amount</i>	<i>£21.38</i>

Credit card issuers providing credit card cheques to customers would need to meet these transparency requirements.

Article 5

Measures for facilitating cross-border transfers

1. An institution shall, where applicable, communicate to each customer upon request his International Bank Account Number (IBAN) and that institution's Bank Identifier Code (BIC).
2. The customer shall, upon request, communicate to the institution ... the IBAN of the beneficiary and the BIC of the beneficiary's institution. If the customer does not communicate the above information, additional charges may be levied on him by the institution. In this case, the institution must provide customers with information on the additional charges in accordance with Article 4.
3. With effect from 1 July 2003, institutions shall indicate on statements of account of each customer, or in an annex thereto, his IBAN and the institution's BIC.

Compliance

This aspect of the Regulation is not applicable to the electronic payment transactions made with payment cards.

Article 6

Obligations of the Member States

1. Member States shall remove with effect from 1 July 2002 at the latest any national reporting obligations for cross-border payments up to EUR 12 500 for balance-of-payments statistics.
2. Member States shall remove with effect from 1 July 2002 at the latest any national obligations as to the minimum information to be provided concerning the beneficiary which prevent automation of payment execution.

Compliance

There are no national reporting obligations in the UK and therefore no impact from this Article.

Article 7

Compliance with this Regulation

Compliance with this Regulation shall be guaranteed by effective, proportionate and deterrent sanctions.

Compliance

The UK Government issued a consultation paper on Proposed Sanctions for Breach of the Regulation on Cross-Border Payments in Euro in September 2002. These proposals included:

- "that a person overcharged in breach of Article 3 may sue in the civil courts as if there had been a breach of statutory duty imposed by an Act of Parliament, and
- that breaches of Articles 4 and 5 should constitute a criminal offence.

The criminal penalty proposed is: a fine not exceeding level 4 on the standard scale, currently £2,500. Cases would be heard in the Magistrates' courts. This is the same as for breach of comparable provisions in the Cross-border Credit Transfer Regulations 1999." In January 2003, HM Treasury confirmed that this would be the sanction regime to be followed.

Article 8

Review Clause

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.

Compliance

The European Commission is undertaking studies to develop benchmarks prior to work being undertaken on the impact of the Regulation in 2004.

Article 9

Entry into Force

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. The notification shall be published in the Official Journal by the Commission. The extension shall take effect 14 days after the said publication.

Exercising of the opt-in by EU Member States that are not part of the eurozone

- The Regulation also applies to corresponding payments made in euro by those EU Member States not participating in the euro (Denmark, Sweden and the UK).
- An opt-in clause within Article 9 allows those EU States not participating in the euro to opt-in their domestic currency.
- The UK has chosen not to opt-in at this stage. The UK Government confirmed in a statement on 5 December 2001 that they did not intend to extend the scope of the Regulation to sterling payments.
- The Swedish authorities decided to exercise the Regulation's application to Swedish Krona (SEK). The law has been published and notified to the European Commission, and took effect on 25 July 2002. The effect of this opt-in is that all provisions of the Regulation become applicable to transactions in SEK, as well as euro. Essentially this means that SEK payments between Member States come within the scope of the Regulation, i.e. the payment does not have to originate from or be received by an institution based in Sweden.
- As the Regulation is an internal market measure under Article 95 of the Treaty, the States of the European Economic Area – Iceland, Liechtenstein and Norway – would also fall within its scope.

UK entry to the euro

If the UK enters the euro, then transfers of sterling, as a matter of law, would be regarded as transfers in euro at the time that euro and sterling exchange rates are irrevocably locked. At that time the Regulation would have an extensive domestic impact. UK institutions would not be permitted to differentially price cross-border credit transfers from domestic credit transfers in either denomination. In law these transactions would be seen as being undertaken in the same currency, the euro. This would also be true for cross-border card transactions at point-of-sale and ATM withdrawals (even though sterling notes would still be the notes withdrawn domestically).

Banks could continue to offer differential pricing and service packages to different customers; but a customer undertaking both domestic and cross-border ATM withdrawals and card transactions at point-of-sale would have to be charged the same fee for those services.



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