

**PROPOSED SANCTIONS FOR BREACH OF THE REGULATION ON  
CROSS-BORDER PAYMENTS IN EURO**

**PREFACE**

**This consultation document seeks views on proposed legislative measures for ensuring compliance with the Regulation on cross-border payments in euro.**

A draft of the proposed Statutory Instrument is attached at *Annex A*.

The Regulation on cross-border payments in euro is attached at *Annex B*

The Treasury would be grateful for any comments on the draft Statutory Instrument to be sent by 17 December 2002 to the following address:

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Please could respondents give details of any organisation whose views they represent.

Unless respondents indicate to the contrary, it will be assumed that they have no objection to their responses being made public.

This document can be accessed via the Treasury's website (<http://www.hm-treasury.gov.uk>).

# A CONSULTATION DOCUMENT

## Introduction

On 19<sup>th</sup> December 2001, the European Parliament and the Council of the European Union adopted the Regulation on cross-border payments in euro (EC) No 2560/2001. It came into force on the 31<sup>st</sup> December 2001. As a Regulation it is directly applicable in all Member States, including the UK, and does not need transposing into UK law.

The main objective of the Regulation is to protect the consumer by prohibiting institutions from charging more for certain cross-border payments in euro than for corresponding payments in euro transacted within the Member State. Further, it requires institutions to be transparent with their charges for such payments and to disseminate International Bank Account Numbers and Bank Identifier Codes in order to facilitate cross-border credit transfers.

## **Proposed Sanctions for breach of the Regulation on Cross-border Payments in Euro 2001:**

This paper is a consultative document on proposed sanctions for the breach of the Regulation in the United Kingdom, as required by Article 7 of the Regulation.

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“Article 7:

### **Compliance with this Regulation**

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

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The proposed sanctions include both criminal penalties and civil remedies. This document discusses the reasoning behind these proposals.

## Issues and Proposal

### A: Issues

#### Compliance

The Regulation applies to cross-border payments in euro up to €50,000 within the Community. Cross-border payments are defined in Article 2 of the Regulation, see *Annex B*.

The Regulation imposes obligations on “institutions”. An institution is defined as “any natural or legal person which, by way of business, executes cross-border payments.” (Article 2(e)).

The three main provisions of the Regulation that institutions have to comply with are:

#### **Article 3:**

##### Charges for cross-border electronic payment transactions and credit transfers

- This Article requires institutions to charge the same for cross-border electronic payment transactions and cross-border credit transfers in euro or Swedish krona<sup>1</sup> as they do for corresponding domestic payments in those respective currencies.
- From 1 July 2002 cross-border electronic payment transactions up to the value of €12,500, or the equivalent in Swedish krona, are covered.
- From 1 July 2003 cross-border credit transfers up to the value of €12,500, or the equivalent in Swedish krona, will be covered.
- From 1 July 2006 both cross-border electronic payments and cross-border credit transfers up to the value of €50,000, or the equivalent in Swedish krona, will be covered.

#### **Article 4:**

##### Transparency of charges

- Article 4 imposes three obligations on institutions:
  - (a) institutions are to make available to their customers prior information on the charges levied for cross-border payments in euro or Swedish krona and for payments in those currencies effected within the Member State in which the establishment is located. This is to be done in a readily comprehensible form, in writing, and where appropriate, in accordance with national rules, by electronic means.
  - (b) institutions are to communicate any modification of the charges in the same way as indicated in (a) above in advance of the date of application; and

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<sup>1</sup> Article 9 of the Regulation allows non-eurozone Member States to opt transactions denominated in their currencies into the scope of the Regulation if they so wish. Sweden, has exercised this option, Denmark and the UK have decided not to.

(c) where institutions levy charges for exchanging currencies into and from euro, or Swedish krona, institutions shall provide their customers with: (i) prior information on all the exchange charges which they propose to apply and (ii) specific information on the various exchange charges which have been applied.

#### **Article 5:**

##### Measures for facilitating cross-border transfers

- Article 5(1) requires institutions to communicate, where applicable, to each customer upon request his International Bank Account Number and that institution's Bank Identifier Code.
- Article 5(3) requires institutions, from 1 July 2003, to indicate on statements of account of each customer, or in an annex thereto, his International Bank Account Number and the institution's Bank Identifier Code.

### Sanctions

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#### “Article 7

#### **Compliance with this Regulation**

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

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There are three possible approaches to meeting the obligation of Article 7. These are:

1. Imposing simple criminal penalties,
2. Allowing those who incur losses because of a breach of the Regulation to sue in respect of those losses, and
3. Giving regulatory powers to the relevant bodies such as the Financial Services Authority (FSA), Department of Trade and Industry (DTI) and the Office of Fair Trading (OFT).

#### **1. Criminal Penalties:**

Penalties for infringement would involve making “institutions”, which includes both legal and natural persons, that fail to comply with the requirements of the Regulation liable to fines. Such criminal penalties could be adopted using section 2(2) of the European Communities Act 1972 (in accordance with the limitations contained in Schedule 2 to the Act).

#### **2. Civil Remedies:**

Civil remedies could be made available to those persons who suffered loss as a result of breach of the Regulation by an institution. This could include enabling such

persons to sue for compensation in respect of the loss that they had suffered or to obtain a court order / injunction to prevent the institution overcharging. Again section 2(2) of the European Communities Act 1972 could be used to ensure access to the courts in such cases.

### **3. Extending Regulatory Powers:**

If bodies such as the FSA, DTI and the OFT were to regulate institutions falling within the scope of the Regulation, then they would need to be given the necessary remit. It would then have to be decided whether it would be desirable for them (or one of them) to be able to bring a prosecution (option 1 above) or alternatively to have other disciplinary sanction powers. An example of such additional disciplinary powers would be the imposition of conditions on the carrying out of business by the relevant institution or the withdrawal of the institution's authorisation.

## **B: Proposal**

The Government proposes:

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

This proposal does not include any extension of regulatory powers.

The reasons for this proposal are:

### **Article 3 - Civil Remedies**

The Government believes that civil remedies are more suitable for Article 3 of the Regulation than criminal penalties for the following reasons:

- It is unnecessary to impose a criminal penalty when all the customer needs to do is not pay the excess if the charge for a cross-border payment is above that for a comparable domestic payment. The customer would be entitled to have the service provided for that amount and can refuse to pay the excess. If Articles 4 & 5 are complied with it will be very clear if an institution is overcharging for a cross-border payment.
- The mere existence of a criminal penalty would not stop an institution from overcharging, give a customer any basis for refusing to pay the excess charge at the time or enable the customer to recover the amount overcharged.
- However, with civil remedies, a customer who was either unaware of being overcharged at the time or who was unaware of how to deal with the overcharge then would still be able to sue through the courts to recover the excess.
- Civil action should also prove more of a deterrent than criminal penalties because of the incentives for customers to bring action (in order to recover what they have lost) and hence the incentive for institutions not to overcharge. These incentives

are not there to the same extent with criminal penalties as the customer does not gain financially from an institution being fined, as the fine goes to the State.

#### **Articles 4 and 5 – Criminal penalties**

The Government believes that criminal penalties are a more suitable sanction for breaches of Articles 4 and 5 of the Regulation for the following reasons:

- A simple criminal penalty for breach of these obligations would be in line with the sanctions set out for non-compliance in a similar piece of legislation – the Cross-border Credit Transfers Regulations 1999 (SI 1999/1876).
- Criminal penalties appear to be a more appropriate sanction for non-compliance with the obligations to provide information than civil action, as a customer would not necessarily suffer any actual losses by not receiving information upfront and so would have little or no reason to bring a civil claim. Civil sanctions for these articles, therefore, may not be sufficiently deterrent.
- 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 Transfers Regulations 1999.

The Government does not propose to extend regulatory powers for the following reasons:

- It is also not clear which body (e.g. FSA, DTI or OFT) should have responsibility for regulatory measures that deal with breaches of the Regulation.
- FSA rules cannot be used in all areas covered by the Regulation because the FSA only regulates authorised institutions, whereas the Regulation also applies to institutions that are not authorised (e.g. credit card issuers).
- Although the extension of regulatory powers could mean a more rigorous policing of the area, the issues identified above and the considerable resources that would be involved in extending regulatory power mean it is not practical to do so.