

EXPLANATORY MEMORANDUM TO
THE CROSS-BORDER PAYMENTS IN EURO REGULATIONS 2010

2010 No. 89

1. This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations implement, in part, Regulation (EC) No 924/2009 of the European Parliament and Council on cross border payments in the Community (“the EU Regulation”)¹. The main aim of the EU Regulation is to ensure that the charges for cross-border payments in Euro are the same as the charges for identical national payments in Euro within a Member State. These Regulations provide the Financial Services Authority (“FSA”) with the relevant monitoring and enforcement powers to ensure compliance with the EU Regulation.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The EU Regulation replaces Regulation (EC) No 2560/2001 of the European Parliament and of the Council of 19 December 2001 on cross-border payments in Euro, which was implemented, in part, by the Cross-Border Payments in Euro Regulations 2003 (S.I. 2003/488). Whilst the requirements set out in the EU Regulation are directly applicable, Member States are required to establish a regime for monitoring and ensuring compliance with the EU Regulation, including a procedure for dealing with complaints. These Regulations set out the responsibilities and powers of the FSA for carrying out that function.

4.2 The EU Regulation applies to payment service providers to whom the Payment Services Directive (Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market) applies. That Directive was implemented by the Payment Services Regulations 2009 (S.I. 2009/209). The approach to enforcement of the EU Regulation is, in broad terms, modelled on Part 7 of those Regulations, with appropriate modifications. The compulsory jurisdiction of the Financial Ombudsman Service (“FOS”), established by section 226 of the Financial Services and Markets Act 2000, already extends to complaints about payment services providers by virtue of amendments to that provision made by the Payment Services Regulations 2009.

¹ OJ No L 266, 9.10.2009, p.11.

4.3 The Treasury submitted an explanatory memorandum to Parliament dated 30 October 2008² on the Commission proposal to replace Regulation (EC) 2560/2001 (COM (2008) 640 final)³. The House of Commons Select Committee on European Scrutiny reported on the proposal in its Thirty-Ninth Report (2007-08), paragraph 4, and its Second Report (2008-09) paragraph 17, clearing it after Ministerial correspondence (letter from Lord Myners dated 2 December 2008). Lord Myners wrote a further letter to the Committee containing information on additional provisions dated 26 February 2009.

4.4 A Transposition Note is attached.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The 2001 EU Regulation on cross-border payments in Euro was introduced to assist cross-border electronic payments in the Euro-zone, following the introduction of the single currency. In 2008, the European Commission reviewed the application of the 2001 EU Regulation and concluded that whilst it had resulted in a general reduction of the charges for such payments, there were still a number of problems, including a lack of competent authorities to deal with enforcement and disputes, divergent statistical reporting obligations and non-coverage of direct debit payments. The new EU Regulation aims to deal with these issues and encourage the payments industry itself to make improvements to the existing cross-border infrastructure, in terms of cost, speed and quality, to facilitate the Single Market, as well as the Single Euro Payments Area (SEPA - an industry-led initiative for handling cross-border Euro payments in the European Economic Area more efficiently).

7.2 During negotiation of the new EU Regulation, the Government maintained the option for extending the application of the EU Regulation to the national currencies of non-Euro Member States and, following consultation, decided not to exercise that option for Sterling. The impact of the EU Regulation for the UK is therefore minimal, as the main provision (article 3 - requiring equal charges) only applies where payment service providers which carry out cross-border payments in Euro also carry out corresponding domestic Euro payments. Where such Euro payments do take place within the UK, as there are no existing UK schemes for making domestic payments in Euro, the payment service provider will use a cross-border payments scheme, such as the SEPA Credit Transfer Scheme and the SEPA Direct Debit Scheme, and charges are unlikely to differ.

² <http://www.publications.parliament.uk/pa/cm200708/cmselect/cmeuleg/16-xxxv/1606.htm>

³ http://ec.europa.eu/internal_market/payments/docs/reg-2001-2560/proposal_en.pdf

7.3 The specific provisions on direct debit transactions (articles 6-8) are also unlikely to have a significant impact for the UK, for similar reasons - as there are no existing domestic Euro-based direct debit schemes in the UK, payment service providers which do offer such direct debits in the UK, are likely to use the SEPA Direct Debit scheme which is compliant with the new rules.

7.4 However, the UK is nevertheless required to comply with the obligations imposed on it by the EU Regulation, in particular to establish a monitoring and enforcement regime. The Government has decided to appoint the FSA as the competent authority responsible for ensuring compliance with the EU Regulation, as the FSA is already responsible for application of the Payment Services Regulations 2009. The FOS, which already deals with disputes under those Regulations, will also deal with disputes under the EU Regulation.

8. Consultation outcome

8.1 The Government undertook a 12-week consultation in January 2009 on the policy approach towards implementing the EU Regulation, namely on:

- whether to exercise the 'opt-in' option for payments made in Sterling into the scope of the Regulations; and
- which bodies to appoint as the competent authority and an out-of-court redress body to deal with complaints and disputes relating to the application of these Regulations.

8.2 Five responses were received in relation to the specific questions posed on the application of the EU Regulation in the UK. All respondents agreed with the Government proposals that:

- the scope of the EU Regulation should not be extended to payments made in Sterling as such an increase in scope could cause:
 - o upward pressures on the prices charged for domestic payments to bring them more in line with the cost of cross-border transactions; and/or
 - o some financial institutions to withdraw from offering such cross-border payment services if they are unable to recoup adequately the costs in providing such services;
- the FSA should be designated as the competent authority responsible for enforcement of the EU Regulation, and FOS should act as the out-of-court redress body.

8.3 A summary of responses to the consultation was published in June 2009 and an electronic version of the document is available at:

http://www.hm-treasury.gov.uk/fin_payment_services_directive.htm

9. Guidance

9.1 Neither HMT nor the FSA are currently planning to issue any guidance on the Regulations.

10. Impact

10.1 The main aim of the EU Regulation is to ensure that charges for cross-border Euro payments are no higher than charges for identical national payments in Euro within a Member State. As there are no domestic Euro-based payment schemes in the UK, the impact on business, charities or voluntary bodies should be negligible.

10.2 The impact on the public sector will be negligible.

10.3 An Impact Assessment has not been prepared for this instrument, as there is negligible impact on the private, voluntary or public sector.

11. Regulating small business

11.1 Small businesses employing up to 20 people that provide cross-border payment services in Euro within the scope of the EU Regulation (credit transfers, direct debits, electronic payments (including card transactions) and ATM cash withdrawals) will need to comply with the provisions of these Regulations. However, as there are no domestic Euro-based payment schemes in the UK, the impact on small business will be negligible. The majority of cross-border payment services offered in Euro that fall within the scope of these Regulations are provided by large firms (i.e. credit institutions).

12. Monitoring & review

12.1 The European Commission is required to review the application of the EU Regulation by no later than 31 October 2012.

13. Contact

Phelan Hill at the HM Treasury (Tel: 020 7270 6105 or email: Phelan.Hill@hm-treasury.gov.uk) can answer any queries regarding the instrument.

Transposition note for Regulation 924/2009 of the European Parliament and of the Council on cross-border payments in the Community and repealing Regulation (EC) No 2560/2001

Article of the EU Regulation	Objective	Implementation	Body Responsible
1	Sets out the subject matter and scope of the EU Regulation	Not transposed	HM Treasury
2	Sets out the definitions used in the EU Regulation	Regulation 2 contains definitions relevant to the implementing Regulations	HM Treasury
3	Requires charges for cross-border payments to be the same as charges for corresponding national payments. Also requires identification of corresponding national payments.	Not transposed as directly applicable	HM Treasury
3.2 (second paragraph)	Requires competent authorities to issue guidelines on corresponding national payments, where necessary	Regulation 14 provides power for the FSA to give guidance and to impose reasonable charges for that guidance	HM Treasury & FSA
4	Imposes requirements for facilitating the automation of payments	Not transposed as directly applicable	HMT Treasury
5	Requires Member States to remove balance of payment reporting obligations	Not transposed as directly applicable (but in practice not relevant to the UK)	HM Treasury
6	Sets out the interchange fee for cross-border direct debits	Not transposed as directly applicable	HM Treasury
7	Imposes requirements in relation to interchange fees for national direct debits	Not transposed as directly applicable	HM Treasury
8	Imposes requirements on reachability for direct debits	Not transposed as directly applicable	HM Treasury
9	Requires Member States to designate competent authorities and requires	Regulations 3 and 4 designate the FSA as the	HM Treasury

	them to monitor compliance and take all necessary measures to ensure compliance	competent authority responsible for monitoring and enforcement. Regulations 5-7 deal with penalties and statements of censure. Regulations 8-10 provide the FSA with power to seek injunctions and require restitution. Paragraph 2 of the Schedule deals with information gathering and investigations powers.	
10	Requires Member States to establish complaints procedures and for complainants to be informed of out-of-court redress mechanisms	Regulation 12 provides for complaints to be submitted to the FSA and requires the FSA to inform complainants, where appropriate, about the Financial Ombudsman Scheme (FOS)	HM Treasury and FSA
11	Requires Member States to establish out-of-court complaint and redress procedures	Part 16 of the Financial Services and Markets Act 2000 (as amended by Paragraph 1 of Schedule 6 to the Payment Services Regulations 2009 SI 2009/209) already provides for complaints about payment services providers to be submitted to the FOS. Rules relating to complaints are made by the FSA	HM Treasury and FSA
12	Requires competent	Transposed in part	HM Treasury and

	authorities and out-of-court redress bodies to co-operate in resolving disputes	by Regulation 16 and paragraphs 4 and 10 of the Schedule which deal with exchange of information by the FSA	FSA
13	Requires Member States to lay down rules on penalties by 1 June 2010	Regulations 5 to 7 and 11, and paragraphs 1, 3, 5 and 7 to 9 of the Schedule deal with penalties and the procedures for imposing them.	HM Treasury and FSA
14	Provides an option to extend application of the EU Regulation to currencies other than the euro	Not necessary to transpose. The UK has not exercised this option	HM Treasury
15	Requires the European Commission to report on: 1) the appropriateness of removing settlement based national reporting obligations by 31 October 2011; and 2) The application of the EU Regulation by 31 October 2012	Not necessary to transpose.	HM Treasury
16	Repeals Regulation (EC) No 2560/2001 from 1 November 2009	Regulation 20 revokes the Cross Border Payments in Euro Regulations 2003 (SI 2003/488) which implemented the 2001 EU Regulation	HM Treasury
17	Provides for the entry into force of the EU Regulation	Not necessary to transpose	HM Treasury

These Regulations do what is necessary to implement the EU Regulation, including making consequential changes to domestic legislation to ensure its coherence in the area to which they apply.