Regulation (EC) No 924/2009 of the European Parliament and of the Council of 16 September 2009 on cross-border payments in the Community and repealing Regulation (EC) No 2560/2001 (Text with EEA relevance)

REGULATION (EC) No 924/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 16 September 2009

on cross-border payments in the Community and repealing Regulation (EC) No 2560/2001

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95(1) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee[(1)],

Having regard to the opinion of the European Central Bank[(2)],

Acting in accordance with the procedure laid down in Article 251 of the Treaty[(3)],

Whereas:

(1) For the proper functioning of the internal market and in order to facilitate cross-border trade within the Community it is essential that the charges for cross-border payments in euro are the same as for corresponding payments within a Member State. That principle of equality of charges is established by Regulation (EC) No 2560/2001 of the European Parliament and of the Council of 19 December 2001 on cross-border payments in euro[(4)], which applies to cross-border payments in euro and in Swedish kronor up to EUR 50 000, or equivalent.

(2) The report of the Commission of 11 February 2008 on the application of Regulation (EC) No 2560/2001 on cross-border payments in euro, confirmed that the application of that Regulation has effectively brought down the charges for cross-border payment transactions in euro to the level of national charges and that the Regulation has encouraged the European payments industry to make the necessary efforts to build a Community-wide infrastructure for payments.

(3) The Commission's report examined the practical problems encountered in relation to the implementation of Regulation (EC) No 2560/2001. In conclusion, a number of amendments to that Regulation were proposed in order to address the problems identified during the review process. Those problems concern the disruption of the internal market in payments caused by divergent statistical reporting obligations, the enforcement of Regulation (EC) No 2560/2001 due to a lack of identified national

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competent authorities, the absence of out-of-court redress bodies for disputes related to that Regulation, and the fact that the Regulation does not cover direct debits.

(4) Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market[(5)] provides a modern legal foundation for the creation of a Community-wide internal market for payments. In order to ensure legal consistency between both legal acts, it is advisable to amend the relevant provisions of Regulation (EC) No 2560/2001, in particular the definitions.

(5) Regulation (EC) No 2560/2001 covers cross-border credit transfers and cross-border electronic payment transactions. In conformity with the objective of Directive 2007/64/EC, which is to make cross-border direct debits possible, it is advisable to extend the scope of Regulation (EC) No 2560/2001. It is still not advisable to apply the principle of equality of charges for payment instruments which are mainly or exclusively paper-based, such as cheques, since, by their very nature, they cannot be processed as efficiently as electronic payments.

(6) The principle of equality of charges should apply to payments initiated or terminated on paper or in cash, which are processed electronically in the course of the payment execution chain, excluding cheques, and to all charges linked directly or indirectly to a payment transaction, including charges linked to a contract but excluding currency conversion charges. Indirect charges include charges for setting up a permanent payment order, or fees for using a payment card, or debit or credit card, which should be the same for national and cross-border payment transactions within the Community.

(7) In order to prevent the fragmentation of payment markets, it is appropriate to apply the principle of equality of charges. For that purpose, a national payment having the same characteristics as, or very similar characteristics to, the cross-border payment should be identified for each category of cross-border payment transaction. It should be possible, inter alia, to use the following criteria to identify the national payment corresponding to a cross-border payment: the channel used to initiate, execute and terminate the payment, the degree of automation, any payment guarantee, customer status and relationship with the payment service provider, or the payment instrument used, as defined in Article 4(23) of Directive 2007/64/EC. Those criteria should not be considered to be exhaustive.

(8) Competent authorities should issue guidelines to identify corresponding payments where they consider it necessary. The Commission, assisted, where appropriate, by the Payments Committee, should provide adequate guidance and assist the competent authorities.

(9) It is important to facilitate the execution of cross-border payments by payment service providers. In that respect, standardisation should be promoted as regards, in particular, the use of the International Bank Account Number (IBAN) and the Bank Identifier Code (BIC). It is therefore appropriate that payment service providers provide payment service users with the IBAN and the BIC for the account in question.

(10) Diverging balance-of-payments statistical reporting obligations, which apply exclusively to cross-border payment transactions, hinder the development of an

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integrated market in payments, in particular in the framework of the Single Euro Payments Area (SEPA). It is advisable, in a SEPA context, to reassess, by 31 October 2011, the appropriateness of removing those reporting obligations based on bank settlements. In order to guarantee the continuous, timely and efficient provision of balance-of-payments statistics, it is also desirable to ensure that it remains possible to collect readily available payments data such as the IBAN, the BIC and the amount of the transaction or basic, aggregated payments data for different payment instruments if the collection process does not disrupt the automated payments processing and could be fully automated. This Regulation does not affect reporting obligations for other policy purposes, such as for the prevention of money laundering or terrorist financing, or for fiscal purposes.

(11) Currently, different business models are used for existing national direct debit schemes. To facilitate the launch of the SEPA direct debit scheme, it is necessary to put in place a common business model and provide greater legal clarity on multilateral interchange fees. For cross-border direct debits, this could be achieved, exceptionally, by establishing a maximum amount for the multilateral interchange fee per transaction during a transitional period. The parties to a multilateral agreement should, however, be free to determine a lower amount or agree a zero multilateral interchange fee. For national SEPA direct debits, the same national interchange fee or other agreed inter-bank remuneration between the payment service providers of the payee and of the payer could be used as that which existed before the date of application of this Regulation. Should such a national multilateral interchange fee or other agreed inter-bank remuneration be reduced or abolished during the transitional period, for example as a result of the application of competition law, the revised arrangements should apply to national SEPA direct debits during the transitional period. Where the direct debit transaction is subject to a bilateral agreement, however, the terms of such a bilateral agreement should take precedence over any multilateral interchange fee or other agreed inter-bank remuneration. Industry can make use of the legal certainty provided during the transitional period to develop and agree a common, long-term business model for the operation of the SEPA direct debit. At the end of the transitional period, a long-term solution for the SEPA direct debit business model should be in place in line with EC competition law and the Community regulatory framework. Within the framework of a sustained dialogue with the banking industry and on the basis of contributions made by the relevant market actors, the Commission intends to provide, as a matter of urgency, guidance as to the objective and measurable criteria for the compatibility of such multilateral inter-bank remuneration, which could include multilateral interchange fees, with EC competition law and the Community regulatory framework.

(12) For a direct debit transaction to be executed, the payer's account must be reachable. To encourage the successful take-up of SEPA direct debits, it is therefore vital that all payer accounts be reachable where this is already the case for existing national direct debits denominated in euro, otherwise the payer and the payee will be unable to enjoy the benefits of cross-border direct debit collection. If the payer account is not reachable under the SEPA direct debit scheme, the payer (debtor) and the payee (creditor) will be unable to benefit from the new direct debit payment opportunities available. This

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is especially important where the payee initiates direct debit collections in a batch file, for example on a monthly or quarterly basis for electricity or other utility bills, and not as a separate collection for each customer. If creditors are not able to reach all their debtors in a single operation, additional manual intervention will be needed, which is likely to increase costs. Hence, in the absence of mandatory reachability for the payment service provider of the payer, the efficiency of direct debit collections will not be fully enhanced and competition on a pan-European level will remain restricted. Given the specific features of direct debits between businesses, however, this should apply only to the SEPA core direct debit scheme and not to the SEPA business-to-business direct debit scheme. The reachability obligation encompasses the right of a payment service provider not to execute a direct debit transaction in accordance with the direct debit scheme regarding, for example, the rejection, refusal or return of transactions. The reachability obligation should, furthermore, not apply to payment service providers which have been authorised to provide and execute direct debit transactions but which do not engage commercially in such activities.

(13) Given the technical requirements needed for reachability, it is, furthermore, important for a payment service provider of a payer to have sufficient time to prepare for compliance with the reachability obligation. Payment service providers should therefore enjoy a transitional period of a maximum of 1 year following the date of application of this Regulation in order to comply with that obligation. Since payment service providers from Member States outside the euro area would need to undertake more preparatory work, such payment service providers should be allowed to defer the application of the reachability obligation for a maximum of 5 years following the date of application of this Regulation. Payment service providers located in a Member State that has introduced the euro as its currency within 4 years of the date of application of this Regulation should, however, be required to comply with the reachability obligation within 1 year of the date on which the Member State concerned joined the euro area.

(14) Competent authorities should be empowered to fulfil their monitoring duties efficiently and to take all necessary measures to ensure that payment service providers comply with this Regulation.

(15) In order to ensure that redress is possible where this Regulation has been incorrectly applied, Member States should establish adequate and effective complaint and redress procedures for settling any dispute between the payment service user and the payment service provider. It is also important that competent authorities and out-of-court complaint and redress bodies are appointed either by designating existing bodies, where appropriate, or by establishing new bodies.

(16) It is essential to ensure that the competent authorities and out-of-court complaint and redress bodies, within the Community, actively cooperate for the smooth and timely resolution of cross-border disputes under this Regulation. It should be possible for such cooperation to take the form of an exchange of information regarding the law or legal practice in their jurisdictions, or a transfer or takeover of complaint and redress procedures if appropriate.

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(17) It is necessary that Member States lay down effective, proportionate and dissuasive penalties in national law for failure to comply with this Regulation.

(18) Extending the application of this Regulation to currencies other than the euro would have clear benefits, especially in terms of the number of payments covered. In order to allow Member States which do not have the euro as their currency to extend the application of this Regulation to cross-border payments denominated in their national currency, a notification procedure should therefore be established. It should, however, be ensured that Member States that have already complied with that notification procedure do not have to submit a new notification.

(19) It is desirable that the Commission present a report on the appropriateness of removing settlement-based national reporting obligations. It is also appropriate that the Commission present a report on the application of this Regulation, assessing, in particular, the use of the IBAN and the BIC for the facilitation of payments within the Community as well as market developments in relation to the application of the provisions on direct debit transactions. In the context of the development of SEPA, it is also desirable that such a report assess the appropriateness of the ceiling of EUR 50 000, which currently applies to the principle of equality of charges.

(20) For reasons of legal certainty and clarity, Regulation (EC) No 2560/2001 should be repealed.

(21) In order to ensure legal coherence between this Regulation and Directive 2007/64/EC, in particular as regards the transparency of conditions and information requirements for payment services and as regards rights and obligations in relation to the provision and use of payment services, it is appropriate that this Regulation applies from 1 November 2009. It is appropriate to allow Member States to adopt measures introducing penalties for infringements of this Regulation until 1 June 2010.

(22) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the action, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

[[F1]1 This Regulation lays down rules on cross-border payments and on the transparency of currency conversion charges within the Union.**]**

2 This Regulation shall apply to cross-border payments, in accordance with the provisions of Directive 2007/64/EC, which are denominated in euro or in the national currencies of the Member States which have notified their decision to extend the application of this Regulation to their national currency, in accordance with Article 14.