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**NOTE
ON THE
PRACTICAL ASPECTS OF THE IMPLEMENTATION OF
ARTICLE 3
OF REGULATION 2560/2001¹
AND THE NOTION OF “CORRESPONDING PAYMENTS”
FOR CREDIT TRANSFERS².**

Article 3 §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 12500 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.

¹ OJ L 344/13 of 28/12/2001

² Important note: The interpretation of Community Law in this note is without prejudice to possible future findings by the ECJ. This explanatory note does not represent the views of the Commission, but the Commission services, and is not, in any way, binding.

I. INTRODUCTION

Some months have passed since the entry into force in July 2003 of Regulation 2560/2001 on cross-border payments in euro for credit transfers. Complaints received from citizens on the application of the Regulation demonstrate the need for clarification as regards certain aspects of the application of the principle of equality of charges and the notion of “corresponding payments”. This note deals with the banking practices of OUR, BEN and SHARE.

II. OUR, BEN, SHARE: DEFINITION AND MARKET PRACTICE

(1) Definition

OUR, BEN and SHARE are codes which have been introduced to translate into inter-bank “standards” the underlying options 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)

(2) Market practice

These codes have been largely used for cross-border credit transfers, for which banks generally offer some or all of these options. These standard instructions are integrated also into the Swift rules and used worldwide.

As regards national credit transfers, banks generally execute them, by default, as “national share”³, whereby:

- ≈ Customers are only confronted with the charges of their own bank.
- ≈ The full amount is transferred
- ≈ Intermediaries do not intervene in the charging process.

This is because in a national environment, with very few exceptions, **neither charging options nor interchange fees are common for low value credit transfers** (see EPC's Inter-bank Convention on Payments⁴).

III. OUR, BEN, SHARE IN COMMUNITY LAW

EU legislation applicable to credit transfers is Directive 97/5/EC and Regulation 2560/2001/EC. However, OUR, BEN and SHARE are never expressly mentioned in any of these acts.

³ Banks prefer to use the expression “domestic share”

⁴ Credeuro and ICP conventions, Information package, European Payments Council, April 2003

(a) Directive 97/5/EC

In Directive 97/5/EC, Article 7 § 1, it is stated that “the originator’s institution, any intermediary institution and the beneficiary’s institution, (...) shall each be obliged to execute that credit transfer for the full amount thereof unless the originator has specified that the costs of the cross-border credit transfer are to be borne wholly or partly by the beneficiary. Banks apply these provisions by offering OUR as a default option, and alternatively BEN or SHARE options.

The objective of the Directive with this provision was to limit double charging and consequently to lower the costs of cross-border credit transfers.

(b) Regulation 2560/2001/EC

The objective of the Regulation is to achieve a domestic payment area in the EU for euro payments. The basic principle of the Regulation is that charges have to be the same irrespective of the payment being national or cross-border. This means that a bank should apply the same tariffs to euro payments within the EU, no matter whether they are made in the national sphere or not.

(c) Regulation 2560/2001/EC overrules Directive 97/5/EC as regards charging

With the adoption of the Regulation, the need for a default option as regards the repartition of charges between the originator and the beneficiary has become obsolete for euro transactions. It is nevertheless necessary to ensure that the full amount is transferred, and that no deductions are made by intermediaries in the payment chain. In this respect, a legal provision is in preparation in the ambit of the “New legal framework for payments in the Internal Market”⁵.

IV. THE PRINCIPLE OF EQUALITY OF CHARGES APPLIED TO CREDIT TRANSFERS: GUIDING PRINCIPLES FOR THE CORRECT USE OF CHARGING OPTIONS

(a) Equality of charges for corresponding payments

The principle of equality of charges in so far as it relates to credit transfers is stated in Article 3 §2 of the Regulation:

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 credit transfer is located.

This means that the charges at both ends of the credit transfer (i.e. for the originator and for the beneficiary) have to be the same as corresponding national ones. If several modalities of credit transfers exist at national level, the charges levied for cross-border credit transfers should be the same as for the corresponding modality at national level.

⁵ Communication from the Commission to the Council and the European Parliament concerning a New Legal Framework for Payments in the Internal Market”, 02/12/03, COM (2003) 718 final

Issues arise when the modalities proposed at cross-border level do not exist at national level.

(b) How should the principle of equality of charges be applied in the case of OUR, BEN and SHARE credit transfers?

The choice of OUR, BEN or SHARE does not change the nature of the service offered to the customer: it is always a transfer of funds from one account to another account, performed when certain conditions are met (e.g. the provision of IBAN and BIC, if requested) and executed as a “normal” bank transfer⁶. Credit transfers denominated as OUR, BEN or SHARE are not different services, but the same services with a different sharing of charges between the originator and the beneficiary.

Therefore, whatever the repartition of charges chosen by the customer for a cross-border credit transfer, its corresponding payment should be the national standard (i.e. in most of the cases national SHARE), except if the same modality of repartition of charges exists at national level. In other words, when the service proposed at cross-border level is not offered at national level with the same choice of distribution of charges, the charges for such service cannot differ from those of the service with the most similar modalities at national level. The interpretation of the notion of “corresponding payment” in Article 3 should be based on the principles and objectives of the Regulation. Otherwise, differences in the payment instruction may result in different charges at national and cross-border level and, ultimately, to an implementation of the Regulation which is contrary to its basic principle.

In practice, this interpretation of the notion of corresponding payments is already endorsed by the market, as it corresponds to the Inter-bank agreement ICP/ Credeuro, is implemented in the technical infrastructure (EBA, STEP 2) and is integrated in the SWIFT format MT 103+.

(c) Do banks need to offer different charging options for cross-border credit transfers?

From a practical standpoint there seems to be little reason for banks to propose different charging practices for national and cross-border transfers. For national transfers, with few exceptions, customers are not prompted with a choice, and a credit transfer is executed according to the “default option”. The same policy could be adopted as regards cross-border transfers. This would foster clarity and transparency, as the SHARE option does not mean that the beneficiary would pay more charges than for any other (national) incoming transfer, as with few exceptions, charges for incoming transfers are 0.

V. CONCLUSION

Banks’ charging policies for euro payments must be in accordance with Regulation 2560/2001. Services proposed at cross-border level should be subject to the same charges as the corresponding national ones. When banks propose cross-border credit transfers

⁶ As opposed to an urgent or « express » transfer, which may imply differences in the execution of the transfer?

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.

Credit transfers are executed, by default, as “national SHARE”, and customers are not automatically prompted with a different option. In order to avoid unclear situations for customers, it would be desirable if the same process were to apply for cross-border transfers.

This is coherent with industry’s efforts to build a cross-border payments infrastructure, as the Credeuro Convention only accepts “domestic SHARE” payments.

As regards payments falling outside the scope of the Regulation (above 12.500 € in Pound Sterling or Danish Kroner) different charging options may be more useful in order to avoid double charging or excessively high charges. As a consequence, Article 7.1 of Directive 97/5/EC should only be applicable to payments that are not covered by Regulation 2560/2001.