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**THE EFFECT OF HARMONIZED LEGISLATION ON  
CROSS-BORDER PAYMENTS (EC REGULATION NO.  
560/2001) AND ENSURING EQUAL COMPETITION  
CONDITIONS ON THE EXTENDED INTERNAL MARKET**

Thesis of PhD Dissertation

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## **I. A summary of the research task and fundamental theoretical issues**

The need for legislation harmonization in relation to cross-border payments was set up within the framework of the European Union on the basis of economic monitoring. Its aim is to bring closer to each other the costs of cross-border and domestic operations and thus clarifying the concept of euro zone and allowing it to be understood as a “domestic payment area”. In line with this, legislation harmonization plays an important role in the establishment of a competitive internal market by boosting cross-border trade and demolishing barriers in the internal market’s proper functioning. The harmonization of the national legislation with the community law generates measurable economic changes on the Internal Market. At the same time, it affects significantly the new and already existing range of products on the market by payment service providers.

From an economic point of view this fact could have a huge importance regarding the area under study, i.e. the role of payment service providers in the economic life.

The question is to what extent will the EC Regulation No. 2560/2001 on the harmonization of national provisions on cross-border payments and its repealing EC Regulation No. 924/2009 affect banks’ competition conditions on the internal market. EC Regulation No. 924/2009 aims to reduce the costs of cross-border cash flow, i.e. to reduce to equal level the costs of cross-border payments and payments initiated within the Member States, and providing accurate information for customers regarding the costs of cross-border credit transfer.

The next question (that has already been answered nowadays) the study deals with, refers to whether reducing costs of cross-border cash flow causes the increase of costs concerning internal payments initiated within the Member States. Until the harmonization of the community law and the national legislation regarding cross-border payments the internal market competition conditions regarding cross-border payments were different within a country – and in some Member States it is true even today – a condition that ensures internal market operators high revenues for

the management of these banking transactions. Thus, we can formulate the question whether there exists such an economic action, in our case the compulsory cost reduction of payments service providers that ensures significant advantage to other market operators – consumers – and yet serves the rising of economic indicators.

Does this hinder payment service providers in the implementation of their aims and interest with regard to present and future? The compulsory implementation of the new legislative conditions by Member States, and its more intensive effect on euro-zone countries in which the euro is the official currency, has a significant impact on the market competition and range of products. Thus, the regulation's indirect effect, among others, is the appearance of cost-effective products, alternative channels of banking, offered to customers by payment service providers.

However, the question is into what direction was the bank market put and what are the chances of traditional banking products in relation to the newly released products?

The research project examined the effects of the Regulation's implementation in Middle-East European member states, Romania and Hungary, and also carried out a growth indicator analysis of products appeared on the market as a result of the Regulation's application.

The community legislature, already after its first attempts, i.e. regulation through cross-border cash flow directives (EC 97/5) and its lack of economic and market efficiency, felt the need to introduce such regulation through secondary legal norms that oblige member states and payment service providers to its accurate application. Thus, the question is what kind of official measures are taken by the state to ensure compulsory cost reductions of payment service providers and whether they provide costumers with appropriate security towards its correct application. In order to conduct research in this field and to examine the possibilities of customers and out-of-court redress procedures we need to take into consideration member state institutions that ensure the application of the regulation, institutions through which customers protected by community norms can assert their rights.

Last but not least, it is necessary to insert the studies of legal norms into the EU regulation framework in order to get a comprehensive picture of the community legislature's purpose which is to develop the single euro payment area and to be able to examine the importance of the Regulation and its efficiency in reaching its goals.

## **II. Research Method**

Controlling payment services at the community level is the result of a longer process. While legislation harmonization exerted significant effects primarily on other areas, in the case of payment services the importance of harmonization and consolidation have become significant only recently, although there have been some attempts in this direction.

Therefore, it is important to present the chronological or even historical development of the community legislation. Historical tracing of the legislation helps us to reflect upon the needs of the society and economy and clarifies the internal market changes perceived as important and desirable by the community legislature. This specifies us the legislative intent that was to be achieved by the adoption of the legal norm. Whereas the legislation in force at the time when the scientific research started was repealed by a subsequent, modifying document, it is an important part of the research to analyze and present the effects of the repealed regulation and to discuss its relevance for the market.

The market environment, on the one hand, reflects the evolution of economic indicators as a result of the accepted legal norms and, on the other hand, it serves as a guide for the proclamation of further positions necessary in the management of economic conditions.

The lack of Hungarian literature regarding the studied market segment caused large difficulties in the research process. Unfortunately, scholarly resources on the field of cross-border payment service were limited to short reports, national bank data, community reports and English books and articles.

Of course, I have tried to expand these data with relevant and useful information and scholarly opinions present in the scientific literature on law. Another factor hindering the research was the lack

of law practice in this topic. According to my knowledge, there is no European Court decision regarding cross-border credit transfers, i.e. regarding the application of EC Regulations No. 2560/2001 and No. 924/2009.

There is only a small number of case-law in connection with the Regulations under study, and these refer mainly to the infringement of the competition rules and the application of different rates by some payment provider services.

One of the research methods used during the present study is historical analysis; its importance and usefulness being highlighted by describing the impact that legal norms brought about on the market.

The other method the author used refers to the economic analysis of the law which reflects on the effects of norms on economy.

Furthermore, a comparative method was used but only in case of the products present on the market, as comparing economic data from the last part of the paper should be treated with caution because data from different states can be compared only if we have proper knowledge of their socio-economic development, welfare and rate of living, minimum wages and prices. However, such analysis would be applied primarily in the field of economic research.

The paper discusses various branches of law. The first and most important field to be examined is financial law, and within this framework a small market segment of the banking law, which by its application is tightly connected to the regulations of competition law and it directly concerns the exercise of state authority in order to guarantee protection for the economic and market participants, and it highly depends on the harmonization of laws.

All in all, the paper analyzes legislations from the financial and more specifically from the banking law perspective trying to answer the question of economic effectiveness of laws.

### **III. Research results**

The first section of the paper deals with theoretical issues regarding the research field that have been already mentioned in the

first part of the present summary and provides an analysis of the questions that came up during the application of the legislations. Analyzing the economic effect of the legislations and their implementation into practice constitutes a significant part of the paper and reveals any regulatory shortcomings and additional regulatory requirements.

Presenting the short financial history of the European Community the reader can easily place the studied legal documents into that market environment and economic relations – namely market demand and supply – that made the adoption of norms necessary. This is followed by the presentation and short analysis of the paper's main topic, i.e. banking, and the analysis of the general concept on legislation harmonization, as the community jurisdiction aims at complete harmonization among member states on the market segment under study.

In addition, I consider legislation harmonization to be a very important element as it represents the application of community laws within the internal jurisdiction of the member states. Harmonized legislation is a permanent mechanism – functioning between community and member state regulations – which closely follows the adoption of the Union's legal acts and changes member state jurisdiction in accordance with these changes.

The second part of the paper concentrates on the presentation of the Union's norms under study and defines the aims of this document and the targeted persons. Beside the examined financial law, the second chapter of this second part introduces the regulation's impact on the competition conditions on the internal market. Among the factors that led to the acceptance of the Regulation are the high costs of cross-border credit transfers, the consumers inadequate informing regarding costs and the length of time for the completion of credit transfers. Therefore, the community legislature defined the objectives of the regulation as creating cost-effective transfer services and actual cost reduction by applying the same costs for internal and cross-border transfers in euro.

The second chapter in the paper's second part presents the Regulation's effects on competition conditions regarding cross-

border payments. The study concerning competition conditions identified different problems within several fields that were examined and it formulated recommendations in order to solve these problems. In case of cross-border lending, we need to mention banks' possibilities to choose a lending channel. At the time when the study was written banks carried out their transactions mainly through interchange agreements or through networks that were previously used. The goal today is to use the SEPA network for cross-border transactions. In the case of payment card transactions, a "disorder" or rather insistent and identified problem – to be found in the law practice as well – is the exchange rate applied by each provider and the market entry barriers. In the case of cash machines (ATM), the ATM surcharge is the element identified by the study as not recommended for use and as affecting market competition.

The third chapter of the second part focuses on the effects of cross-border transfer cost reduction on internal payment costs. The study concerning internal payments found only limited evidence regarding internal transfer costs, thus it concludes that the regulation brought about huge cost reductions in the case of cross-border transfers without causing significant cost increase in national payments.

The fourth chapter presents the European Committee report about the application of the regulation. This last chapter brings forward all the market effects that necessitated the expansion of the regulation, with other words, the developmental trends of economy and society since the regulation's acceptance.

Compared to the two studies above the committee report puts more emphasis on the lack of out-of-court complaint and redress bodies in the member states and indicates the social need to extend the application of the regulation on direct money collections as well which calls for modifications in the regulation. The report contains another important element related to the field of payment service development, namely the concept of forming and integrating into the market the single euro payments area that would enable consumers to initiate electronic payments in euro in the euro zone. Consumers would use only one bank account and a single set of payment instruments and there will be no differences between national and

member state initiated cash flow costs. The legal instrument for creating a single payment market is the payment services directive (PSD). The SEPA and PSD constitute a modern legal basis for the development of the single payment market that ensures transparency, increases competition, provides a uniform approach to payment service providers, may increase the degree of competition on the market and the rate of innovation.

The third part of the paper presents the new community regulation that takes over the objectives of the norms on cross-border euro transfers expanding the Regulation's application on direct money collecting as well and orders the nomination of out-of-court redress bodies by the member states. Furthermore, it repealed the old community regulation. On the basis of the impact assessment of the EC Regulation No. 924/2009 the Committee has already defined the proposal for the changes. These changes mainly contain the development of such technical standards that enable an integrated and uniform internal market regarding payment services and the market fragmentation can be reduced to minimum.

The market segment under study, i.e. the payment services market on the expanded internal market, according to the impact assessment, the market, economic and community interests presented in the paper cannot be analyzed on its own, without taking into consideration the other branches of the law. As the regulation's most important effect on the internal market was to intensify the competition, it would be worth placing the legal norm into that legislative and market environment in which it was formed, developed, repealed leaving behind a similar legal regulation. The analysis of regulations on the competition laws concerning payment services is tightly connected to consumer protection. The analysis of these market realities and legislative environment was meant to clarify the economic situation that influenced and formed the community law in the period between 2001 and 2010.

The last part of the paper presents the state and effects of the community legal harmonization in Romania and Hungary. In the case of Romania, it was possible to provide the reader with such a description that analyzes the history of legislature concerning transfer regulations. Additionally, it gives and insight into a world of



banks which was still emerging and developing before the planned economy, then breaking this line it had to survive other times to be able to start over a significant progress in the present and to meet the requirements of the market economy. There is a similar situation on the Hungarian money market. The banking industry developed and booming after the planned economy started a sharp improvement. According to the research we can state that the payment services of the two countries offer the same products to consumers, although further comparison would constitute an economic task.

The last part of the paper contains proposals regarding the smoother realization of the single payment area, the SEPA. The development of the single payment area not only led to a close coordination of the services and their costs but taking into consideration consumers' needs and market demand it has boosted innovation on the extended internal market. It resulted in the appearance of new products and market entrants that has led to further questions regarding future. As it could be observed, community legislature made restrictions on laws and the national legislature harmonized internal legislature according to the community regulations that can have significant impact on the implementation of the regulation and the SEPA.

In order to ensure a full implementation of the SEPA, I believe that in the future it would be useful to introduce in the cost policy of banks and payment services, in non-euro countries, a differentiated price structure in the case of currency-based cash flow that would offer cash flow in euro at a more reasonable price opposed to payments initiated in other currencies. No doubt, this is not a legal or regulatory decision but an economic and bank policy which, however, may negatively affect the banks' already reduced incomes.

At the same time, I believe that the introduction of such a measure could provide opportunity to both payment services and consumers to actually enjoy the benefits of the single market and exploit its potentials.

#### **IV. The Author's Publications**

EC Regulation No. 2560/2001 on cross-border payments and its effects on competition conditions on the internal market and payments initiated within member states, In: *Romániai Magyar Jogtudományi Közlöny [Hungarian Law Gazette of Romania]*, 2009/1, no. 14, 39-48

B.N.R. – a mediator of disagreements appeared during the implementation of cross-border payments, In: *Tribuna economică [Economy Tribune]*, Economic-Legislative Supplement, 2010/07, no. 27, 50-51

Cross-border payments in euro – Changes in the legislation by repealing EC Regulation No. 2560/2001 and the adoption of the EC Regulation No. 924/2009 – The aims of EC Regulation No. 2560/2001 regarding cross-border payments in euro, *Economie și administrație locală [Local economy and administration]*, 2010/05, no.5, 7-11

**Doctoral Symposium** – Fundamental rights and entitlements 12 December 2008, “Pázmány Péter” Catholic University, Budapest

The rights of natural and legal persons in the EC Regulation No. 2560/2001 on cross-border payments in euro

#### **Planned Publications**

Is the Hungarian law effective? Conference on Economic Law, 11 May 2012, “Pázmány Péter” Catholic University, Budapest

Regulation of cross-border payments in the European legal system and the effects of legal norms on cross-border cash flow on the internal market

Business and economic trends in the Carpathian Basin,  
Economics Conference, Sapientia Hungarian University of  
Transylvania, 20-22 April 2012, Csíkszereda

The relationship between community norms on cross-  
border payments and bank industry innovations