



EUROPEAN COMMISSION

Brussels, 14.11.2013
C(2013) 7582 final

Dear President,

The Commission would like to thank the Bundesrat for its Opinion on the Proposal for a Directive of the European Parliament and of the Council on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features {COM (2013) 266 final}.

The Commission particularly welcomes the support of the Bundesrat for the Commission's objectives pursued with this proposal and is grateful for the detailed and constructive remarks provided.

With regard to the key points put forth by the Bundesrat, the Commission would like to make the following remarks:

Harmonisation

The Bundesrat highlights the importance of allowing Member States to adopt transposing measures that are more protective of consumers than those established at EU level (no full harmonisation).

The Commission would like to point out that the provisions contained in the proposal generally establish a minimum level of consumer protection, which could be further enhanced in the context of transposition at national level. The Commission would also highlight, however, that this process requires an accurate assessment of what would be the most appropriate solution for the benefit of consumers. For example, the obligations to provide consumers with information on fees have been limited to some key services which have the strongest impact on them, in order to avoid overburdening consumers with unnecessary information. From this perspective, a transposition measure that obliges banks to provide consumers with a substantially larger amount of information may not be an appropriate option.

Information on overdraft fees

The Bundesrat's opinion underlines the importance of fees related to overdrafts and suggests that specific information on the interest paid for overdrafts should be given to the consumer.

The Commission shares the view of the Bundesrat on the incidence of fees connected to overdraft on the overall charges paid by consumers on their accounts. However, it should be

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highlighted in this respect that such fees are in any event most likely to fall under the scope of the provisions on transparency and comparability of fee information (Articles 3-5) which establish information obligations on payment service providers for “at least 20 payment services accounting for at least 80% of most representative payment services at national level”.

Coordination between Article 15(1)(2) and (3) and Article 18(2)(d)

The Bundesrat notes that the provisions contained in Article 15(1)(2) and (3) are not coordinated with Article 18(2)(d). In particular, it is the Bundesrat’s view that while the provision contained in Article 18 allows consumers to potentially access basic accounts in each of the 28 Member States, the wording of Article 15 allows this possibility only if the consumer does not hold an account in his country of origin.

The Commission does not share the Bundesrat's view about incoherence between the mentioned provisions. The Bundesrat's interpretation seems to be based on an incorrect reading of the wording of Article 15(3). The provision states that “Payment services providers may not refuse an application for access to a payment account with basic features except [...] where a consumer already holds a payment account, with a payment service provider located in their territory”. For the sake of clarity, it should be highlighted that the expression “in their territory” in the text refers to the territory where the providers are located. In other words, if a consumer already has an account in a Member State, he cannot require a second basic bank account from a provider located in the same Member State. Therefore, a German bank may refuse to provide a basic account to a consumer who already holds another account (basic or otherwise) in Germany. Thus, there is no incoherence between Articles 15 and 18.

Right of access to a payment account with basic features

The Bundesrat Opinion contains numerous suggestions concerning the approach to be taken in relation to the right of consumers to access payment accounts with basic features. The Bundesrat suggests that such accounts should be offered by all payment services providers (instead of at least one per Member State) but also that further exceptions should be introduced with respect to the consumers’ right of access to the accounts. For example, such a right should not be granted if the consumer made false declarations to the provider or left the account without credit for a long time, misused the service, harassed the provider’s staff or in other individually specified cases. This approach would, in the Bundesrat’s opinion, favour consumers by providing them with more opportunities to access basic account and it would also be more respectful of the freedom to contract of payment service providers.

In this context, the Commission would like to highlight the following important points:

The choice of limiting the obligation to provide accounts with basic features to at least one provider per Member State was specifically aimed at avoiding an overly invasive approach with respect to banks’ activity and to guarantee that adequate solutions are identified on the basis of the national situation. Given that the need for such accounts, as well as the legal and economic landscape, may be different from country to country, it is the Commission’s view that the most appropriate solution would be allowing Member States to identify how many banks and which ones should provide the service. This would allow solutions that impose a burden on the providers only to the extent needed on the basis on national circumstances and would also guarantee sufficient compliance with the principle of proportionality.

As for the additional exemptions suggested by the Bundesrat, the Commission agrees that some further limitations to the right to access may be envisaged to guarantee that the obligation posed on the providers does not result in an unreasonable burden. However, the Commission also highlights the importance of correctly shaping such exemptions. Some of the categories indicated by the Bundesrat are overly wide and therefore could put consumers at risk of being discriminated against or of being unjustly rejected. This applies for example to formulations such as "harassment of staff", which may be very difficult to define correctly. This is even more the case for blanket exemption clauses such as "other reasons in individual cases" which may open the door to unreasonable limitations of the right to access a basic account.

Moreover, the Commission would like to remark that some of the additional exemptions suggested in the Bundesrat's Opinion seem to be already (entirely or partially) covered by the current wording of the proposal. This is the case for the exception for consumers who made false declaration, which is to some extent addressed as a possible cause for a termination of the contract in Article 18(2)(c)¹. Similarly, the exception for consumers who misused the account is addressed in Article 18(2)(a) where it is stated that the contract can be terminated if the consumer "deliberately used the account for criminal activities". In this respect, it seems appropriate to underline that the reference to criminal activities rather than general "misuse" of the account is to make sure that the text is legally as clear as possible. Criminal activities is a more precise notion than the word "misuse" which is likely to be subject to different interpretations.

Finally, the Bundesrat suggests an exception for consumers who have no credit for a long time on the account. The Commission believes that the formulation used in Article 18(2)(b), which allows contract termination where "there has been no transaction on the account for more than 12 consecutive months" is more in line with the general policy approach underlying the proposal. The lack of transactions relates to an inactivity of the account, which can indicate that the consumer does not need to keep such an account. It is therefore justified, after a certain period of time, to close it. On the other hand, the closure of the account due to insufficient funds credited on it is very likely to discriminate customers with fewer economic means, who may need the account but have to use their available funds in their entirety on a regular basis. Such an approach would not be in line with the purpose of the initiative for a portion of population that are likely to be the main beneficiaries of the measures proposed by the Commission.

Fees for basic accounts

The Bundesrat's Opinion highlights the importance of keeping the fees for basic accounts reasonable, and indicates that such condition should be expressly indicated in the text and that such reasonable fees should be standardised. The Commission notes that Article 17 already expressly stipulates (as also noted in the Opinion) that accounts with basic features must be offered for free or at reasonable fee and sets out a series of criteria to define what constitutes a reasonable fee, as well as delegating to the European Banking Authority (EBA) the task of guaranteeing a consistent application of such criteria throughout the EU.

The Opinion also suggests that accounts with basic features must not be more costly than any other account with the same features. The Commission notes that such an occurrence may be

¹ The payment service provider may unilaterally terminate a framework contract where [...] the consumer knowingly provided incorrect information in order to obtain the payment account with basic features where the correct information would have resulted in the absence of such right

addressed indirectly when setting up the EBA guidelines for the concrete application of the criteria mentioned above.

Language to be used by providers

The Opinion suggests that there should be an express indication that payment service providers are only obliged to use the official language of the Member State where they are located when providing information or communicating on basic accounts. It also highlights that it would be disproportionate to oblige providers to provide such information in all 24 EU official and working languages.

The Commission agrees that the provision of information in all languages could be a disproportionate burden. However, providers should be encouraged to offer their products in more languages if that is a feasible and profitable option for them. The draft directive remains silent on this issue given that it is rather for Member States or providers to decide on such issues.

Termination of contract

The Bundesrat observes that Member States should be entitled to allow providers to terminate contracts for payment accounts without charging any fee, even in case of switching.

The Commission notes that its proposal does not prevent Member States from doing that. Article 11(3) merely recalls the provision contained in Article 45 of the Payment Services Directive, which regulates the termination of framework contracts. Such reference does not create any new obligation with respect to the fees to be charged for closing an account in the context of a switching procedure. Its objective is rather to avoid that providers charge higher fees to consumers who close the account because they switch to a different one than those currently charged to customers who simply close the account.

SEPA customer identification

Finally, the Commission points out that the remark made in the Opinion with respect to the verification of customers' information in SEPA credit transfers should not be dealt with in the context of the proposal at issue but should rather be raised in relation to the SEPA Regulations or the Payment Services Directive.

The Commission hopes that these clarifications address the issues raised by the Bundesrat and looks forward to continuing our political dialogue in the future.

Yours faithfully,

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Vice-President*