



EUROPEAN COMMISSION

Brussels, 18.7.2011
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COMMISSION RECOMMENDATION

of 18.7.2011

on access to a basic payment account

(Text with EEA relevance)

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 292 thereof,

Whereas:

- (1) Ensuring that consumers have access to payment services in the European Union (hereinafter referred to as 'the Union') is essential to enable them to fully benefit from the Single Market and for the Single Market to function properly. At present, the availability of essential payment services is neither ensured by payment service providers nor guaranteed by all Member States in the Union.
- (2) Existing restrictive eligibility criteria imposed by payment service providers to open payment accounts, beyond what is required by law, may prevent full access to the right of freedom of movement of persons within the Union. Moreover, lack of access to payment accounts prevents consumers from accessing the mainstream financial services market and thereby weakens financial and social inclusion, often to the detriment of the most vulnerable part of the population. It also makes it more difficult for consumers to access essential goods and services. It is therefore necessary to establish principles on access to basic payment accounts which is a key element for promoting social inclusion and cohesion, in order to allow consumers to benefit as a minimum from a common set of essential payment services.
- (3) It is important to ensure that principles on access to basic payment accounts are applied consistently throughout the Union. However, in order to be more effective, those principles would need to be implemented taking into account the variety of banking habits within the Union.
- (4) This Recommendation sets out general principles applicable to the provision of basic payment accounts within the Union.
- (5) This Recommendation should apply in conjunction with Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in

the internal market¹. Accordingly, rules on the transparency of conditions and on information regarding payment services should apply to basic payment accounts.

- (6) The provisions of this Recommendation should not prevent Member States or payment services providers from taking measures justified on legitimate grounds of public security and public order in conformity with Union law.
- (7) In any Member State, consumers who are legally resident in the Union and who do not hold a payment account in that Member State should be in a position to open and use a basic payment account in that Member State. In order to ensure the widest possible access to basic payment accounts, Member States should ensure that consumers have access to such an account in spite of their financial circumstances, such as unemployment or personal bankruptcy. However, the right to access a basic payment account in any Member State should be granted in conformity with the requirements set out in Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing², in particular with regard to customer due diligence procedures.
- (8) Furthermore this Recommendation should be without prejudice to the payment service provider's obligation to terminate the basic payment account contract in exceptional circumstances under relevant Union or national legislation, such as legislation on money laundering and terrorist financing or on the prevention and investigation of crimes.
- (9) To ensure the availability of basic payment accounts in light of their specific national circumstances, Member States should be able to designate, based on the principles of transparency, non-discrimination and proportionality, one, several or all payment service providers. The measures to be adopted by Member States in this respect should not create distortions of competition between payment service providers and should be based on the principles of transparency, non-discrimination and proportionality. In this context, Member States should make public the rights enjoyed by and the obligations placed on the providers that are responsible for providing basic payment account.
- (10) In order to ensure transparency and fairness of treatment and in order to allow the consumer to question the payment service provider's decision, the payment service provider should inform the consumer of the grounds and justification for his refusal of access to a basic payment account.
- (11) Access to a core range of essential payment services should be guaranteed in any Member State. Services inseparably linked to basic payment accounts should include the facility to deposit and withdraw cash into and from the account. They should enable the consumer to make essential payment transactions such as receiving income or benefits, paying bills or taxes and purchasing goods and services, including via direct debit, credit transfer and the use of a payment card. In order to ensure the fullest financial inclusion possible, such services should allow the purchase of goods and services online where technically possible. They should also give the opportunity to

¹ OJ L 319, 5.12.2007, p. 1.

² OJ L 309, 25.11.2005, p. 15.

the consumer to initiate payment orders via the payment service provider's online banking facilities where technically possible. However a basic payment account should not allow the execution of payment orders where such payment orders would result in a negative balance on the account. Access to credit should not be considered as an automatic component of or a right attached to a basic payment account.

- (12) Where the payment service provider charges the consumer for the opening, operating and closing of the account and for using the services that are inseparably associated to it as defined in this Recommendation, the total amount charged should be reasonable for the consumer and should be such that the consumer, in the light of specific national circumstances, is not prevented from opening the basic payment account and using its associated services. All additional charges to the consumer in the event of non-compliance with any of the terms laid down in the contract should also be reasonable.
- (13) In order to ensure consistency and efficiency in the implementation of the principle of a reasonable charge, Member States should establish what constitutes a reasonable charge on the basis of the indicative criteria laid down in this Recommendation, which may be considered together.
- (14) Measures to enhance consumers' awareness of the availability of basic payment accounts are also necessary in order to promote financial inclusion. General, clear and comprehensible information should therefore be provided to consumers by Member States as well as by payment service providers on the main features and conditions of the use of such accounts as well as on the practical steps that the consumer should follow in exercising the right to open a basic payment account. The consumer should also be informed that the purchase of additional services is not compulsory to access a basic payment account.
- (15) Compliance with the provisions laid down in this Recommendation requires the processing of consumers' personal data. Such processing is governed by Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data³, notably its Articles 6, 7, 10, 11, 12 and 17 so as to ensure the fair and lawful processing and the respect of the fundamental right to protection of personal data, in particular with regard to the general requirements of necessity and proportionality, the data subject's right of access to his own data, the rectification and erasure or blocking of inaccurate data, and its Article 28 regarding the monitoring of compliance with Directive 95/46/EC by independent public data protection authorities.
- (16) Consumers should have access to effective out-of-court complaint and redress procedures for the settlement of disputes arising from the principles set out in this Recommendation. Existing bodies and schemes, for instance those existing for the settlement of disputes concerning rights and obligations arising under Directive 2007/64/EC, may be used.
- (17) The implementation of the principles laid down in this Recommendation should be reinforced through supervisory review at the national level. Competent authorities should be empowered to fulfil their monitoring duties efficiently.

³ OJ L 281, 23.11.1995, p. 31.

- (18) Member States should have reliable annual statistics at least on the number of basic payment accounts opened, the number of refusals and terminations of basic payment accounts and the charges associated to basic payment accounts. To this end, Member States are invited to use any relevant sources of information. They should communicate this information to the Commission on an annual basis and for the first time by 1 July 2012 at the latest.
- (19) Member States should be invited to take the necessary measures to ensure the application of this Recommendation at the latest 6 months after its publication. Based on the reporting provided by Member States, the Commission will monitor and assess the measures taken by 1 July 2012. On the basis of this monitoring, the Commission will propose any necessary action, including legislative measures if needed, in order to ensure that the objectives of this Recommendation are fully met.

HAS ADOPTED THIS RECOMMENDATION:

SECTION I DEFINITIONS

1. For the purposes of this Recommendation, the following definitions apply:
- (a) 'Consumer' means any natural person who is acting for purposes other than his trade, business, craft or profession.
 - (b) 'Payment service provider' means the payment service provider(s) as defined in Article 4(9) of Directive 2007/64/EC, which is in charge of offering basic payment accounts pursuant to paragraph 3.
 - (c) 'Payment account' means an account held in the name of one consumer which is used for the execution of payment transactions.
 - (d) 'Payment transaction' means a payment transaction as defined in Article 4(5) of Directive 2007/64/EC.
 - (e) 'Funds' means funds as defined in Article 4(15) of Directive 2007/64/EC.
 - (f) 'Contract' means a framework contract as defined in Article 4(12) of Directive 2007/64/EC.

SECTION II RIGHT OF ACCESS

2. Member States should ensure that any consumer legally resident in the Union has the right to open and use a basic payment account with a payment service provider operating in their territory provided that the consumer does not already hold a payment account allowing him to make use of the payment services listed in paragraph 6 in their territory. Such a right should apply irrespective of the consumer's financial circumstances.

3. Member States should ensure that at least one payment service provider is in charge of offering basic payment accounts in their jurisdiction. For this purpose, they should take into consideration the geographical location or market share of payment service providers in their jurisdictions. Member States should ensure that this does not create distortions of competition between payment service providers.
4. Member States should take measures to guarantee that payment services providers use transparent, fair and reliable systems when verifying whether the consumer already holds or does not hold a payment account.
5. Member States should ensure that where an application for access to a basic payment account is refused, the payment service provider immediately informs the consumer of the grounds and the justification for such a refusal, in writing and free of charge. Limitations to this right to information may be made by legislative measures where such a limitation constitutes a necessary and proportionate measure to safeguard the objectives of national security or public policy.

SECTION III

CHARACTERISTICS OF A BASIC PAYMENT ACCOUNT

6. A basic payment account should include the following payment services:
 - (a) services enabling all the operations required for the opening, operating and closing of a payment account.
 - (b) services enabling money to be placed on a payment account.
 - (c) services enabling cash withdrawals from a payment account.
 - (d) execution of payment transactions, including transfers of funds in and out of a payment account with the consumer's payment service provider or with another service provider following:
 - (i) the execution of direct debit;
 - (ii) the execution of payment transactions through a payment card that does not allow the execution of payment transactions that would exceed the current balance of the payment account;
 - (iii) the execution of credit transfers.
7. Access to a basic payment account should not be made conditional on the purchase of additional services.
8. The payment service provider should not offer, explicitly or tacitly, any overdraft facilities in conjunction with a basic payment account. A payment order to the consumer's payment service provider should not be executed where such an execution would result in a negative balance of the consumer's basic payment account.

SECTION IV ASSOCIATED CHARGES

9. Member States should ensure that a basic payment account is provided either free of charge or at a reasonable charge.
10. Where a payment service provider charges the consumer for the opening, operating and closing of a basic payment account or for the use of one, some or all services listed in paragraph 6, the total amount of charges to the consumer should be reasonable.
11. Any additional fees that the payment service provider may charge in relation to the basic payment account contract, including those resulting from non-compliance with the consumer's commitments laid down in the contract, should be reasonable.
12. Member States should establish what constitutes a reasonable charge according to one or several of the following criteria:
 - (a) national income levels;
 - (b) average charges associated with payment accounts in that Member State;
 - (c) total costs relating to the provision of the basic payment account;
 - (d) national consumer prices.

SECTION V GENERAL INFORMATION

13. Member States should launch campaigns raising awareness among the public about the availability of basic payment accounts, their pricing conditions, the procedures to be followed in order to exercise the right to access basic payment accounts and the methods for having access to an out-of-court complaint and redress mechanism.
14. Member States should ensure that payment service providers make information available to consumers about the specific features of the basic payment accounts on offer, their associated charges and their conditions of use. The consumer should also be informed that the purchase of additional services is not compulsory to access a basic payment account.

SECTION VI SUPERVISION AND OUT-OF-COURT DISPUTE RESOLUTION MECHANISMS

15. Member States should designate competent authorities to ensure and monitor effective compliance with the principles set out in this Recommendation. Those designated competent authorities should be independent from payment service providers.

16. Member States should ensure that appropriate and effective complaints and redress procedures are established for the out-of-court settlement of disputes concerning the rights and obligations established under the principles set out in this Recommendation between payment service providers and consumers, using existing bodies where appropriate. Member States should further ensure that all payment service providers responsible for providing basic payment accounts adhere to one or more such bodies implementing such complaint and redress procedures.
17. Member States should ensure that the bodies referred to in paragraph 16 actively cooperate in the resolution of cross-border disputes.

SECTION VII STATISTICAL INFORMATION

18. Member States should ensure that payment services providers provide national authorities with reliable information at least on the number of basic payment accounts opened, the number of applications for basic payment accounts refused and the grounds of such refusals, the number of terminations of such accounts as well as the charges associated to basic payment accounts on an annual basis. Such information should be provided in an aggregated form.
19. On an annual basis and for the first time by 1 July 2012 at the latest, Member States are invited to provide the Commission with information on the number of basic payment accounts opened, the number of applications for basic payment accounts refused and the grounds of such refusals, the number of terminations of such accounts as well as the charges associated to basic payment accounts.

SECTION VIII FINAL PROVISIONS

20. Member States are invited to take the necessary measures to ensure the application of this Recommendation at the latest 6 months after its publication and to notify the Commission of any measures taken in accordance with this Recommendation.

21. This Recommendation is addressed to the Member States.

Done at Brussels, 18.7.2011

For the Commission
Michel BARNIER
Member of the Commission

CERTIFIED COPY
For the Secretary - General

Jordi AYET PUIGARNAU
Director of the Registry