



The Consumer Voice in Europe

EBA CONSULTATION

Draft Guidelines on national provisional lists of the most representative services linked to a payment account and subject to a fee

BEUC RESPONSE

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The Payment Accounts Directive adopted last year seeks to, inter alia, standardise the most relevant terminology linked to a payment (bank) account at Member states level and at Union level.

In order to assist Member States with the practical implementation, the Directive includes four mandates to the European Banking Authority: The first mandate for the EBA is to issue Guidelines to ensure the sound application of the criteria set out in Article 3(2) for the Member States to establish provisional lists of the most representative services linked to a payment account. From the provisional lists the EBA is mandated to develop draft regulatory technical standards, by 18 September 2016, setting out the Union standardized terminology for those services that are common to at least a majority of Member States. The other two mandates for the EBA are to develop implementing technical standards, regarding a standardized presentation format of the fee information document and its common symbol; and of the statement of fees and its common symbol. Both implementing technical standards will require consumer testing.

Please find below BEUC response to the EBA consultation on draft Guidelines on national provisional lists of the most representative services linked to a payment account and subject to a fee.

Question 1: Do you agree with the proposed guidelines?

Please see BEUC comments below.

Question 2: Are there any additional requirements that you would suggest adding?

- Scope of the standardisation exercise

BEUC has always advocated for the standardised terminology to apply to **all** services and fees linked to a payment (bank) account at national level, instead of partial standardisation covering 10-20 services. We believe full standardisation, hence full comparability, would yield much better benefits to consumers, taking into account also the needs of vulnerable consumers. Unfortunately, policymakers did ultimately choose the sub-optimal option of limited comparability.

That loophole may be exploited by payment service providers (PSP) to exempt some services and fees from the list of the most representative services, in case this list is very limited in scope. For example, our Belgian member, Test-Achats, has identified between 17-20 items that deserve to be included in the standardised list of the most representative services¹. It is worth reminding that in terms of bank tariffs Belgium ranks in the group of the most transparent and cheapest Member States². In France, while the standardised list of the most representative services currently contains 11 services, the number of items to be included can be higher if the bank uses different pricing for the same service (for example, service provided at the counter or on the internet). Furthermore, the recent Moscovici Law on banks has

¹ See Test-Achats' online fees comparator.

² See the study "Data collection for prices of current accounts provided to consumers", European Commission, 2009: http://ec.europa.eu/consumers/archive/rights/docs/study_bank_fees_en.pdf

also imposed the standardisation of 48 terms in the fee information document, including overdraft fees. In France, on average, around 300 fees are included in fee information documents of banks³.

We therefore call on the EBA to encourage national competent authorities to include in the list of the most representative services 20 rather than 10 services, i.e. opt for the upper rather than lower threshold defined by the Directive. This would be relevant especially for Member States with complex and relatively expensive tariffs.

It is also important to make sure that consumer-friendly measures already in place at national level are not undermined by the partial standardisation exercise mandated by the Payment Accounts Directive. This is the case in Portugal: as reported by our Portuguese member, DECO, since 2010 all banks have to provide standardised fee information documents that include **all** bank fees.

- *Standardisation of the terminology versus different usage channels*

In point 10, the EBA draft Guidelines suggest a criterion according to which national competent authorities should consider consolidating standardised terms in certain cases. Specifically, they "*should consider the payment service provided as a single service, irrespective of the potential for providers to differentiate costs by channels of usage or by the identity of the receiving bank.*" A standardised term of this type would also be used when banks bill different charges for individual types of transactions.

Point 10 is incomprehensible and might greatly restrict the transparency, which is against the purpose of the directive. Indeed, banks use different designations and terms for services linked to a payment account depending on to how the transaction is executed. For example as identified by the Vienna Chamber of Labour, the unclear description and designation of the individual services meant that consumers were not adequately informed about which price differences exist between voucher-based and non-voucher-based transactions; manual transactions and electronic transactions; or between automated and non-automated transactions⁴. In Austria, there are often price differences for bank transfers depending on whether another bank is involved as the receiving bank. Prices sometimes also differ for incoming cash payments within the same bank depending on whether the incoming payment is to be made to the payer's own account or to an account at a different bank.

From the standpoint of consumers, the vital thing is that the list of the most representative services contains separate standardised terms and term definitions for each type of transaction in payment procedures. According to the directive, the list of standardised terms will apply to the fee information document, the glossary and the statement of fees. A consolidation of individual terms would greatly limit these new documents with respect to information content and to how understandable they are.

³<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000028790930&dateTexte=&categorieLien=id>

⁴http://akeuropa.eu/en/publication-full.html?doc_id=252&vID=43

- *Fees and penalties linked to a payment account*

The Payment Accounts Directive defines 'services linked to a payment account' as *all services related to the opening and closing of a payment account, including payment services and payment transactions falling within the scope of point (g) of Article 3 of Directive 2007/64/EC⁵ and overdraft facilities and overrunning⁶*. This implies that not only real services such as direct debit, credit transfer, debit card, etc., but also all kinds of fees and penalties linked to the use of a payment account such as unauthorised overdraft penalties fall under the definition. Therefore, EBA Guidelines should explicitly stipulate that when establishing the provisional lists of the most representative services linked to a payment account and subject to a fee, national competent authorities will also take into account all kinds of fees and penalties linked to the use of a payment account.

This is crucial to make sure there will not be hidden high fees applied by PSPs, especially in countries where the retail banking business model is largely based on overrunning penalties, while PSPs advertise cheap or free-of-charge payment services to gain new customers. For example, when shopping around for a payment (bank) account, the level of penalties for unarranged overdraft is not considered by most consumers among essential account features, while it is paid by many of them. For instance, 61% of French consumers have their bank account overdrawn at least once a year⁷, and the discussions related to the Moscovici Law proved that only the "commission d'intervention" fee, one of the 6 or 7 existing overdraft fees, cost more than 3 billion euros per year to consumers. This has to do with behavioural biases – most people tend to overestimate their financial capability and self-discipline, and underestimate the likelihood of their account being overdrawn in future. Thus, any penalties that generate high cost for consumers must be included in the lists of the most representative services to draw the consumer's attention to them.

More generally, the lists of the most representative services linked to a payment account and the fee information documents should be developed by competent authorities using behavioural insight principles to ensure that the qualification of "representativeness" of a service is based on the consumer perspective and that those information documents are an effective prompt for consumers to compare fees and potentially switch accounts to the best product which suits their personal circumstances.

- *Criteria defined by the Directive*

The draft Guidelines provide that when identifying services to be considered for the provisional list of the most representative services, national competent authorities must consider services most commonly used by consumers and generating the highest cost for the consumer (criteria established by Article 3 of the Payment Accounts Directive). Yet, according to the EBA, those criteria are not strictly cumulative under the Directive, and competent authorities could as an exception

⁵ The Payment Services Directive.

⁶ Article 2(6) of the Payment Accounts Directive.

⁷ <http://www.latribune.fr/entreprises-finance/banques-finance/banque/20141008trib39c517b65/compte-en-banque-deux-tiers-des-francais-depassent-l-autorisation-de-decouvert.html>

include certain services that are most commonly used by consumers, although they do not generate the highest costs, and vice versa.

BEUC supports the EBA proposal that competent authorities should give priority to those services that satisfy both criteria. Furthermore, we consider that, in order to avoid different interpretations by competent authorities, the term 'exception' should be clarified by the EBA. This can be done through examples.

The risk linked to a strictly non-cumulative approach is to include cheap services used by the majority of consumers, while leaving aside high fee-generating services or penalties that affect an important minority of consumers. It is worth reiterating here, that considering the limited character of the standardisation exercise (minimum 10 and maximum 20 services) the content of the lists of the most representative services should be as efficient as possible.

- Temporary promotions and conditional offers

Payment account providers often promote teaser offers for new customers, such as "no account management fees first year" or "free of charge credit card during..." Conditional offers are also a common practice, e.g. "free of charge payment account if certain amount of money is deposited on the account each month". Yet, the normal tariff after the initial teaser period is over or penalty in case the condition is not fulfilled by the consumer, are usually not clearly communicated by providers.

When considering services to be included in the lists of the most representative services, competent authorities should take into account the above factors. Thus, the standardised list should disclose the normal tariff of a service, while the promotional tariff, if any, could be indicated alongside.

- Concrete case studies

As the Guidelines aim to assist Member States in implementing the Directive, they must be as concrete and practical as possible. It would therefore be very useful if the Guidelines included a number of country case studies, focusing on Member States where the payment account fees are most intransparent/incomparable and high⁸.

The case studies would not be mandatory to be applied by national competent authorities, but would rather be useful to demonstrate how the Guidelines can be implemented practically.

- Legality/illegality of fees related to payment accounts

The EBA Guidelines and national lists of the most representative services linked to a payment account and subject to a fee must be without prejudice to the legality or illegality of those fees. Any fees included in the standardised lists and fee information documents provided by PSPs are only indicative, in the sense that they are charged by the PSP, but those fees are not legally acknowledged. For example, in some recent cases the German highest civil court ruled that e.g. the need to calculate a fee concerning a loan within the APRC does not indicate in itself that the

⁸ See the study "Data collection for prices of current accounts provided to consumers", European Commission, 2009: http://ec.europa.eu/consumers/archive/rights/docs/study_bank_fees_en.pdf

fee is actually legal. In yet another recent judgement, the application of lump sum fees in addition to overdraft interest has been considered illegal by a higher court in Germany⁹.

- *Data collection by competent authorities*

Paragraph 12 of the draft Guidelines provides that "*Competent authorities should base their decisions on relevant data. Competent authorities may collect and rely on data from a wide range of sources, provided that they are statistically robust*".

The Guidelines should stipulate that the "*wide range of sources*" should in no case be limited to the financial industry representatives, but should also include consumer organisations. Similarly, competent authorities could invite all relevant stakeholders to suggest their lists of the most representative services and use this as a basis for their own assessment.

Question 3: Do you agree with the analysis of the cost and benefit impact of the guidelines?

See our answer to question 2.

Question 4: Please provide any evidence or data that would further inform the analysis of likely cost and benefit impacts of the proposal.

N/A

END

⁹ BGH, verdict of 13.5.2014 – XI ZR 405/12.