

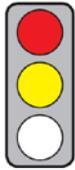
RIGHT TO A BASIC ACCOUNT, ACCOUNT SWITCHING AND ACCOUNT CHARGES

cepPolicy Brief No. 2013-39 of 23 October 2013

KEY ISSUES

Objective of the Directive: The Commission wants to introduce the right for all consumers to have a basic payment account, make it easier to switch banks and improve the comparability of account charges.

Parties affected: Consumers and payment service providers, particularly banks.



Pro: (1) The reduction of obstacles to switching accounts and obtaining information on charges strengthens competition.

Contra: (1) The right to a basic account will not result in economic or socio-political advantages, at least not on an EU-wide basis, so that, if at all, it should only be introduced at national level.

(2) Existing distortions in competition are unlikely to be removed by giving Member States the right to choose whether to impose the basic account free of charge or for a "reasonable" fee; it is therefore doubtful whether the EU is competent to pass the Directive.

CONTENT

Title

Proposal COM(2013) 266 of 8 May 2013 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

Brief Summary

► Objective and area of application

- According to the Commission (Explanatory Memorandum p. 3, Impact Assessment SWD(2013) 164, p. 33)
 - about 58 million EU consumers, approx 9%, do not have a payment account and 25 million of them would like to open one,
 - "only" 16% of consumers in the EU have switched account provider in the previous five years,
 - 25% of consumers in the EU do not feel they are sufficiently informed about their account charges.
- The Commission therefore wants to (Art. 1 (1) and (2))
 - define a right to have "access to a payment account" with basic features ("basic account"),
 - facilitate payment account switching - also across borders - and
 - improve "transparency and comparability" of payment account fees.
- The Directive applies to all account providers in the EU (Art. 1 (4)); that is banks and electronic money institutions (hereinafter: banks) (Art. 2 e in conjunction with Art. 4 (9) of Directive 2007/64/EC).

► Right to a basic account for everyone

- Every Member State must ensure that at least one bank offers a basic account (hereinafter: basic account bank). This cannot be a bank offering solely online facilities. (Art. 15 (1))
- Every consumer resident in the EU has the right to open and use a basic account with a basic account bank of their choice (Art. 15 (2)). They may not be discriminated against, in this regard, by reason of their nationality or place of residence (Art. 14).
- The basic account bank may refuse to open an account if the consumer (Art. 15(3))
 - already holds a basic account with another basic account bank located in the same Member State,
 - the rules on money laundering and terrorist financing are not satisfied.
- Opening a basic account cannot be made conditional on the purchase of additional services subject to a charge (Art. 15 (6)).
- The basic account cannot include overdraft facilities (Art. 16 (4)).
- A basic account includes the following payment services (Art. 16 (1)):
 - payments-in and withdrawals,
 - payments using a payment card, including on-line payments and
 - credit transfers and direct debits.
- The basic account bank must offer the services free of charge or in return for a "reasonable" fee. Each Member State will also determine a minimum number of operations which the bank must provide to the consumer free of charge or for this "reasonable" fee. (Art. 16 (2), Art. 17 (1)).

The competent banking authority establishes the criteria for "reasonableness" and in doing so takes account of (Art. 17 (3), Art. 20 (1))

- national income levels,
- average charges for an account in the Member State
- total costs relating to the provision of a basic account,
- national consumer prices.

The EBA develops non-binding guidelines to assist the competent authorities (Art. 17 (4)).

► **Switching accounts**

- Every bank must offer consumers, who hold an account in the EU, an "account switching service". They must, in particular, inform consumers of the charges they will incur for switching accounts. (Art. 9 and Art. 13 (1))
- The bank to which the consumer wishes to switch (hereinafter: receiving bank),
 - initiates the account switching service (Art. 10 (1) and (2)) and
 - within one working day after receiving authorisation to do so, requests the bank, with whom the consumer wishes to terminate the account (hereinafter: original bank), to transfer to it, inter alia, a list of all existing standing orders and direct debits as well as information on incoming credit transfers and outgoing direct debits executed in the previous 13 months, free of charge and within seven calendar days (Art. 10 (3) a - c and (6) a, Art. 11 (2)).
- At the consumer's request, the original bank must also transfer to the consumer, information on standing orders, direct debits and credit transfers (Art. 10 (3) a and b, Art. 11 (1)).
- The original bank
 - must cancel all standing orders and stop accepting direct debits as from the switching date insofar as it does not automatically redirect them to the new account (Art 10 (3) d and (6) b),
 - must, insofar as the consumer has given its specific consent in each case (Art. 10 (3) e and f in conjunction with Art. 11 (3), (6) c and d)
 - transfer any positive balance remaining on the old account to the newly opened account, and
 - close the account as of the switching date "free of charge" or in return for a "reasonable" charge.
- The receiving bank must
 - execute standing orders and accept direct debits as from the switching date (Art. 10 (4) a and b),
 - where the consumer has given specific consent in each case, inform the following parties of the new account details (Art. 10 (4) c and d):
 - payers making recurrent credit transfers into the consumer's account, and
 - payees using a direct debit to collect funds from the consumer's account.
- Switching accounts within a Member State must be concluded within 15 days, a cross-border switch within 30 days (Art. 10 (8) and (9)).

► **EU standard terminology for account services**

- Every competent banking authority will compile a list of at least 20 account services – e.g. direct debits – accounting altogether for at least 80% of the most representative services subject to a fee at national level (Art. 3 (1) and (2)).
- The Commission will specify terms and definitions, by way of delegated acts, for all account services which are mentioned in at least 15 national lists. These will then be integrated into all national lists (Art. 3 (4) and (5)).

► **Account fees**

- Every bank must
 - provide the consumer with a "fee information document", free of charge, prior to entering a contract, about the services referred to in the national list (Art. 4 (1), (3) and (6)),
 - provide the consumer with an "unambiguous" glossary, free of charge, containing "at least" the services referred to in the respective list (Art. 4 (4) - (6)).
- Every bank must provide its customers with a "statement of fees" at least once a year containing the total amount of the fees for the account as well as the fees for each individual service used (Art. 5 (1) - (3)).
- In implementing acts, the Commission defines the format of the fee information document and the statement of fees as well as the order in which the services are presented (Art. 4 (7), Art. 5 (4)).
- Every Member State must have "at least one" website which compares the bank account fees at national level ("comparison website") (Art. 7 (1)).
 - Any private operator may receive "accreditation" for a comparison website. For this it must, in particular, be independent of any bank.
 - Where no private comparison website is "accredited", the banking authority, or another public body, must establish one. (Art. 7 (2) and (3))

Main Changes to the Status Quo

There have not yet been any binding EU provisions on basic accounts or account switching and no detailed instructions on the comparability of account fees. The Payment Services Directive (2007/64/EC) provides only general rules on the transparency of account fees.

Statement on Subsidiarity by the Commission

According to the Commission, different regulatory frameworks, or the lack thereof, raise barriers to market entry across borders, lead to "uncompetitive" markets and unequal levels of consumer protection.

Policy Context

In the Single Market Act [COM (2011) 206] of April 2011, the Commission called for greater transparency of bank charges. In July 2011 it published a non-binding recommendation (2011/442/EU) on the right to a basic account. This stated that the Member States were to introduce such a law within six months.

In August 2012, the Commission reported [SWD(2012) 249] that "only a few Member States apply the most important principles".

In Germany, in July 2013, the Bundesrat, on the initiative of Nordrhein-Westfalen (NRW), proposed in the Bundestag a "Draft bill on the introduction of a right to set up a current account without overdraft facilities". This was based on the Commission's recommendation of July 2011.

In 2008, the European Banking Industry Committee (EBIC) passed voluntary commitments for banks relating to account switching. In May 2011, it also proposed voluntary commitments on the transparency of account charges. In the Commission's view, both measures are "insufficient".

Legislative Procedure

8 May 2013	Adoption by the Commission
Open	Adoption by the European Parliament and the Council, publication in the Official Journal of the European Union, entry into force

Options for Influencing the Political Process

Leading Directorate General:	DG Internal Market
Leading Committee of the EP:	Economic and Monetary Affairs, Rapporteur: Jürgen Klute (GUE/NGL-Group, DE)
Leading Federal Ministry:	Ministry of Finance
Leading Committee of the BT:	Finance
Decision mode in the Council:	Qualified majority (Adoption by a majority of the Member States and with 260 of 352 votes; Germany: 29 votes)

Formalities

Legal competence:	Art. 114 TFEU
Form of legislative competence:	Shared competence (Art. 4 (2) TFEU)
Legislative procedure:	Art. 294 TFEU (ordinary legislative procedure)

ASSESSMENT

Economic Impact Assessment

An EU-wide right for everyone to hold an account amounts to the establishment of a universal service for bank accounts. This should ensure that what are considered to be essential payment services are available to every consumer even if the banks do not provide this of their own volition. From the banks' point of view, **the right to a basic account** involves net costs - otherwise they would offer it. At best, such a right **may be justified if it gives rise to economic or socio-political benefits** - such as the simplification of business transactions or the financial integration of certain groups of the population - and the banks are unable to factor these advantages into the account fees to a sufficient degree. **The right to an account should in any case be introduced at national level: the existence of such untapped benefits on an EU-wide level, which would justify an EU-wide right to a basic account, is highly doubtful.**

Firstly: In Member States such as Denmark, Germany and Finland there is no under-supply of accounts so that hardly any economic benefits would be realised. In other Member States, where accounts are less well distributed, such as Romania (45%) and Bulgaria (53%), it is unclear whether this is due to a low demand for bank accounts or a lack of availability of bank accounts. Where the demand is low, the right to an account will not result in any economic benefits. Secondly: There is no EU-wide consensus that a right to an account is linked to significant socio-political benefits. If this were the case, the Member States would have established the right to an account in national law. Only five of the 28 Member States have done so however. Consequently, there is no convincing argument in favour of an EU-wide right to have access to an account.

The concrete wording should also be rejected. The rule that every Member State "ensures" that one or more banks have to offer a basic account interferes with the banks' contractual freedom and allows distortions in competition. Instead, the Member States should first offer for general tender a universal bank account service - similar to the approach in the postal sector - and - if necessary - allow it to be financed by all participants by a pro-rate contribution.

The removal of obstacles to account switching - whether national or cross-border - **basically strengthens competition and promotes the internal market.** However: even if the Directive does remove obstacles to switching, a change of account still involves transaction costs. In view of the inelastic demand - the consumer's desire to switch is extremely low - it is therefore unclear to what extent the consumer will consider switching at all. The European Payment Area (SEPA) also reduces the need to hold accounts in several Member States.

Although EU-wide unification of terms and definitions for account services does increase the cross-border comparability of account fees, it is questionable whether the consumer, who is already reluctant to switch accounts at national level, will be interested in this information. In addition, language barriers often remain an obstacle when it comes to comparing fees.

Details of charges prior to concluding the contract and an annual statement of fees are appropriate because they break down informational asymmetries between consumers and banks and **increase competition**. However, in the case of flat-rate tariffs the benefit of a statement of fees is limited. Comparison websites for account fees also contribute to lower transaction costs and a reduction in informational asymmetries thus strengthening competition between the banks. State intervention, such as the establishment of accreditation systems for operators of comparison websites, is not advisable because there is already a functioning private market for these websites. If customers of a website are unsatisfied - due to its lack of objectivity, for example - there are plenty of alternatives available; poor operators will disappear from the market.

Legal Assessment

Legislative competence

There is no EU competence for introducing a basic account for all citizens as a socio-political measure because, in matters of social policy, the EU is only empowered to undertake coordinating measures (Art. 5 (3) TFEU).

It is doubtful whether the Directive can be based on the internal market competence (Art. 114 TFEU). The requirement for this is that the approximation of laws must reduce more than just minor competitive distortions. Although it does distort competition if Member States have different rules on whether and at what prices the banks must provide basic accounts, the Commission fails to provide any evidence that this is more than just a minor distortion. Above all, the following is true: existing distortions in competition are highly unlikely to be removed by giving Member States the right to choose whether to obligate the banks to provide the basic account free of charge or for a "reasonable" fee - i.e. possibly one which varies from Member State to Member State -, thus the Commission's stated regulatory objective will not be achieved.

Subsidiarity

Unproblematic if EU competence exists.

Proportionality

The legislative form of a Directive is proportional because the non-binding recommendation on the right to a payment account, issued by the Commission in 2012, achieved no reaction in the Member States (see Policy Context).

Other compatibility with EU law

The obligation on account providers to enter into contracts does interfere with the basic freedom to conduct a business [Art. 16 EU Charter of Fundamental Rights (CFREU)], the protective scope of which includes contractual freedom and thus also the freedom to choose one's own contractual partner (cf. ECJ, Case 90/90 of 10 July 1991). The obligation to contract is in itself proportional, however, because there is no other more lenient measure available to achieve the objective, i.e. guaranteed access for EU citizens to basic banking services.

It would be disproportionate, however, if, when implementing the obligation to contract, the Member States linked it to a duty on the part of the payment service provider to provide the basic account free of charge because it is sufficient for achieving the legislative aim to stipulate access to an account in return for a reasonable fee.

In implementing the Directive, the Member States must also ensure that they comply with the principle of equality (Art. 20 CFREU). Under the Directive, each Member State only has to impose a duty on at least one bank to provide a basic account. Individual banks cannot, without an objective reason, be disadvantaged with respect to their competitors.

Impact on German law

In Germany, the obligation to contract would have to be significantly extended (cf. Policy Context). Until now, only the savings bank regulations or laws in a few Bundesländer provide for an obligation to enter contracts for current accounts (e.g. § 5 (2) Sparkassengesetz NRW). Aside from that, the German credit services sector has been subject to voluntary regulation since 1995.

Conclusion

At best, the right to a basic account may be justified if it gives rise to economic or socio-political benefits. It is extremely doubtful whether such benefits exist EU-wide. The right to an account should therefore be introduced at national level, if at all. The reduction of obstacles to switching accounts and obtaining information on charges strengthens competition. Existing distortions in competition are unlikely to be removed by giving Member States the right to choose whether to impose the basic account free of charge or for a "reasonable" fee; it is therefore doubtful whether the EU is competent to pass the Directive.