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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**

(Text with EEA relevance)

{SWD(2013) 164}
{SWD(2013) 165}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1. Grounds for and objectives of the proposal

The continued development of the single market in the area of financial services is of primary importance for Europe's growth and competitiveness. However obstacles to a fully integrated internal market for financial services remain. Recent initiatives at EU level have sought to help the single market to develop its full potential by ending market fragmentation and eliminating barriers and obstacles to the movement of services, while also strengthening citizens' confidence in their internal market and ensuring that its benefits are passed on to consumers.

The Single Market Act (SMA) I, adopted by the Commission in April 2011, outlined twelve levers to boost growth and strengthen citizens' confidence in the single market. In the field of retail financial services, SMA I stated that particular regard should be given "to the transparency of bank fees and better protection of borrowers in the mortgage market". The Commission also announced "an initiative concerning access to a basic payment account for all citizens at a reasonable cost, wherever they live in the EU" in order to enable all citizens to participate actively in the single market.

The SMA II, adopted on 3 October 2012, identified a legislative initiative on bank accounts in the EU as one of the twelve priority actions to generate real effects on the ground and make citizens and businesses confident to use the single market to their advantage.¹ Its aim is to "give all EU citizens access to a basic payment account, ensure bank account fees are transparent and comparable, and make switching bank accounts easier".² Furthermore, the Commission announced proposals in the area of transparency and comparability of bank fees and bank account switching as part of the Commission's Work Programme for 2013.³

Previous initiatives in the field of retail banking have not only improved the ability of payment service providers to operate cross border, but have brought substantial benefits to many European consumers, in particular through cheaper transactions, faster payments and more transparent conditions and prices. The Payment Services Directive (2007/64/EC) provides certain transparency obligations with respect to the fees charged by payment service providers. This initiative has contributed to substantially shortening the time required to execute transactions and increase the consistency of the information provided to consumers in relation to their payment services. The recent Regulation on the Single Euro Payment Area (SEPA) has created a coherent framework for carrying out secure and fast payment transactions within the Eurozone, simplifying the provision of payment services and facilitating customer mobility.

While measures to complete the single market for financial services should generate growth and enhance business opportunities for providers of financial services, their impact on consumers is also of vital importance. At present, the opacity of payment account fees make it difficult for consumers to make informed choices. Even where fees are comparable, the process for switching from one payment account to another is often lengthy and complex. As a result, consumers still show a very high degree of inertia with respect to payment accounts.

¹ http://ec.europa.eu/commission_2010-2014/barnier/headlines/news/2012/10/20121003_en.htm

² "Single Market Act II - Together for new growth", COM(2012) 573 of 3 October 2012, page 16.

³ "Commission Work Programme 2013", COM(2012) 629 of 23 October 2012, Annex I, page 5.

A survey on retail financial services conducted in 2012⁴ showed that a large share of consumers tends to remain attached to their payment providers. Only 16% of the respondents who already held a financial product had opened a new payment account in the previous five years. Further, only 3% of the respondents declared having opened a payment account cross-border. Consumers were dissuaded from purchasing retail financial products cross-border by unclear information (21%), lack of clarity of the rights available to the consumer (18%) or the process being too complicated (15%). Consumer inertia makes it more difficult for financial service providers to attract new clients and may make the entering of new markets less attractive, in particular in a cross-border context. In turn, this raises prices and lowers the quality of services provided to the consumers.

The impact of EU measures aimed at ensuring a sound and robust framework to fully develop the benefits of the internal market for financial services is reduced by the fact that a large portion of the EU population is still unbanked. The World Bank estimated that about 58 million EU consumers do not have a payment account⁵ and approximately 25 million of them would like to open one. Moreover, surveys and consultations undertaken by the Commission and complaints from consumers demonstrate that many citizens have faced difficulties in opening a payment account due to their lack of a permanent address in the Member State where the payment service provider is located. This situation also affects a large number of EU consumers living in another Member State (12.3 million people in 2010). All these factors negatively impact upon consumers' ability to obtain payment accounts, especially cross-border. As noted in the recently adopted package on social investment, payment accounts are a vital tool for people to participate in the economy and society⁶.

Moreover, the fact that a large number of consumers do not currently participate in the internal market for financial services has negative consequences for both payment service providers and consumers. On the one hand, providers are less incentivised to offer their services in the Union and to enter new markets, which stifles the competitive process and in turn leads to less favourable conditions for consumers. On the other hand, unbanked consumers are excluded from the benefits of the internal market. The economy is steadily moving towards an increase of cashless transactions. This trend affects companies and consumers. It also affects public administrations, which have realised the advantages of non-cash transactions.⁷ Furthermore, the lack of access to a payment account prevents consumers from fully benefiting from the internal market, for example, by hindering the purchase of goods cross-border or online.

As payment accounts are the financial services product most likely to be purchased cross-border, identifying adequate solutions to the problems outlined above is vital. The

⁴ Eurobarometer

⁵ World Bank report

⁶ Commission communication 'Towards Social investment for Growth and Cohesion', COM (2013)83 of 20 February 2013

⁷ For example, in Ireland only 40% of social benefits payments are made through a payment account, while another 52% by a post office, see *Strategy for Financial Inclusion*, Steering Group on Financial Inclusion, Irish Department of Finance, June 2011, p. 14, <http://www.finance.gov.ie/documents/publications/reports/2011/Fininclusreport2011.pdf>. Also, it has been estimated that that "the use of non-electronic payments systems costs the economy approximately €1 billion each year." 2007 survey of the members of the Irish Payment Services Organisation [...], p. 18. Similar conclusions were reached in Germany, where a report on financial inclusion prepared by the German Bundestag confirmed high administrative costs incurred as result of payments of benefits made through non-electronic means by the governmental agencies, see *Bericht der Bundesregierung zur Umsetzung der Empfehlungen des Zentralen Kreditausschusses zum Girokonto für jedermann*, Drucksache 17/8312, German Bundestag, 27.12.2011, p. 7.

consequences of inaction are potentially serious, including the inhibited development of a fully-functioning internal market with significant impacts upon payment service providers, consumers, and the wider economy. Furthermore, the financial crisis has brought to light the importance of effective measures to restore a high level of consumer confidence towards financial institutions.

In light of this, and with a view to enhancing the integration of the EU payment account market, this proposal aims to improve the transparency and comparability of fee information relating to payment accounts, facilitate switching between payment accounts, eliminate discrimination based on residency with respect to payment accounts and provide access to a payment account with basic features within the EU. It will contribute to easier market entry, increased economies of scale and therefore increased competition in the banking and payment industries, both within and across Member States. Taking steps to simplify the comparison of services and fees offered by payment services providers and facilitate the process of switching between payment accounts will, in turn, improve prices and services for consumers. This proposal will also guarantee access to basic payment services to all EU consumers and prohibit discrimination based on residency against consumers who intend to open a payment account abroad, to the benefit of both payment service providers and consumers.

1.2. Existing provisions in the area of the proposal

Transparency and comparability of payment account fees

The Payment Service Directive (2007/64/EC) provides certain transparency obligations with respect to the fees charged by payment service providers but it does not provide a framework to define the manner of presentation of such information, nor does it contain any provisions concerning the comparability of fees.

In 2010 the European Commission invited the European Banking Industry Committee (EBIC), representing the banking industry at EU level, to develop, through self-regulation, a framework ensuring increased transparency on payment account fees. In May 2011 EBIC presented the European Commission with its proposal, which proved unsatisfactory. In particular, this self-regulatory attempt failed to establish a consistent terminology within a reasonable time-frame.

Payment account switching

In 2008, EBIC adopted the Common Principles for Bank Account Switching which define the process to facilitate payment account switching within a Member State. Implementation of the Common Principles was meant to be completed by the end of 2009. However, as of 2012, the enforcement of these guidelines remained unsatisfactory.

In particular, not all payment services providers have followed the principles established by the EBIC and the application of these principles has been often patchy and not homogeneous. This led to several difficulties for consumers trying to switch accounts. Many consumers faced problems with the misdirection of their payment orders, which may sometimes even lead to fines. Also, the duration of the switching process in certain countries exceeds substantially the 15 days prescribed by the Common Principles. Moreover, consumers are often not provided with clear information as regards the availability of the switching mechanism and its basic features.

Access to a payment account with basic features

On 18 July 2011 the Commission issued a Recommendation on access to a basic payment account.⁸ The Recommendation invited Member States to put in place the measures necessary to ensure that payment accounts with basic features are offered to consumers within 6 months of its publication. As a follow-up, on 22 August 2012 the Commission services issued a Report on "*National Measures and practices as regards access to basic payment accounts*"⁹ to evaluate the extent to which Member States are complying with the Recommendation and concluded that only a few Member States appear to comply with its main principles.

In particular, to date eleven Member States have no measure in force concerning the right to open an account, features of such an account and associated charges. Only a few Member States appear to be close to complying with the principles of the Recommendation. In the remaining Member States, some rules or systems are in place or about to be put in place, although with widely differing standards and degrees of implementation. In some countries the measures in place do not amount to legislative initiatives but are limited to self-regulatory actions, only impacting those banks which voluntarily chose to adhere to the principles in question. Their effectiveness is thus limited and the application inconsistent. In other Member States, only generic and general provisions with respect to access are in force whilst structured measures in this respect are still lacking.

1.3. Consistency with the EU's other policies and objectives of the Union

The proposal is consistent with the policies and objectives pursued by the Union. The measures envisaged will foster the development of the internal market and enable all consumers in all Member States to enjoy the full benefits deriving from it. By enhancing competition between payment service providers and facilitating consumers' participation in the single market, the proposal will also increase the volume of transactions within the Union and will contribute to the attainment of the wider objectives of economic growth.

This proposal complements the measures adopted by the Commission with the Payment Service Directive. The Payment Service Directive provides harmonised rules on fee transparency, with the aim of reducing the cost of payment systems for payment service providers. The present proposal, on the other hand, directly targets the harmonisation of fee terminology and presentation, and establishes quality standards for information tools to facilitate comparison between payment accounts. Further, it provides a procedure for the effective switching of payment accounts as well as guaranteeing access to basic payment services.

The proposal is consistent with the Union's policy in the fight against money laundering and terrorism financing. Consumers will still need to be able to satisfy identity requirements before opening an account, as required by the Third Anti-Money Laundering Directive¹⁰. However, it will no longer be possible to refuse the opening of a payment account by alleging anti-money laundering concerns based on the mere fact that the consumer is not a resident of the Member State where he or she wants to open an account.

⁸ 2011/442/EU: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32011H0442:EN:NOT>
⁹ http://ec.europa.eu/internal_market/finservices-retail/docs/inclusion/swd_2012_249_en.pdf

¹⁰ Directive 2005/60/EC of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, 26.10.2005.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

2.1. Consultation of interested parties

Consultation methods, main sectors targeted and general profile of respondents

The Commission services launched a public consultation on 20 March 2012. The objective of the consultation was to collect stakeholders' views on the transparency of payment account fees, switching between payment accounts and on access to basic payment accounts in order to assess the need for action at European Union level and identify what measures, if any, should be taken. The European Commission received 124 responses from stakeholders in 19 Member States and one EEA member as well as from representative bodies at EU and international level.

Summary of responses and how they have been taken into account

Regarding transparency of payment accounts fees, a majority of respondents in all categories of stakeholder reported that problems were encountered in the retail banking sector with respect to the manner of presentation and the comparability of such fees. Unanimous support emerged among consumers for EU level action aimed at ensuring a level playing field in these areas. However, more diverging positions were expressed by Member States and the industry on the possible means to tackle these issues. Some Member States supported EU action or considered this possibility, while others considered that further measures should be conducted at national level initially. The majority of stakeholders from the financial services industry did not see the need for legislation at EU level and expressed the view that, if EU action were to be pursued, it should be flexible and take account of efforts made at national level.

With regard to switching, consumers and representatives of civil society argued that banks do not always offer switching services and even where such services are provided, they do not fully comply with the provisions of the Common Principles. The financial services industry, on the other hand, considered that most providers offer a switching service in line with the Common Principles. The views of public authorities tended to fall between these. There were mixed views as to whether the Common Principles should be made compulsory. Several Member States as well as the financial services industry believed that the Common Principles should remain voluntary. Respondents from other Member States were more open to making the Common Principles compulsory, as this would guarantee a more effective enforcement of the provisions. Consumers and representatives of civil society strongly believed that the Common Principles should be made binding. Stakeholders were also split as to whether any initiative should cover cross-border switching. Consumers mostly appeared in favour of cross-border switching, while most respondents from the industry opposed this option. As for Member States, while several respondents were not supportive of a cross-border dimension, others took the view that this option would favour the achievement of the single market.

With respect to access, the consultation provided mixed results. On the one hand, the financial services industry, as well as some Member States, argued that there were no major obstacles to consumers accessing a basic account as the financial services industry either adheres to a national provision on access or the EU Recommendation. They therefore concluded that no action should be taken in this area. The financial services industry further emphasised that if any measure were to be taken, it should be at national level to accommodate the different legal and regulatory landscapes across the EU. On the other hand, consumers, representatives of civil society and some other Member States took the view that the current situation is unsatisfactory and that major difficulties exist in accessing basic account services. They would, therefore, strongly support an initiative that ensures access to a basic account.

Consequently, they argued in favour of legislative measures at EU level, albeit with some flexibility for national circumstances.

Commission services also met with Member States, payment service providers, industry representatives, and consumer representatives, throughout the process.

2.2. Impact Assessment

In line with its "Better Regulation" policy, the Commission prepared an impact assessment of policy alternatives. Policy options related to the scope of the new provisions, the level of standardisation, the setting up and functioning of measures on transparency and comparability of fees, switching between payment accounts, improved access to basic payment services and how to ensure their effective application for consumers.

A number of studies and surveys supported the impact assessment. This included: the Eurobarometer Survey; a study on "Quantification of economic impacts of EU action to improve fee transparency, comparability and mobility in the internal market for bank personal current accounts"; a study on "Bank fees transparency and comparability and bank mobility"; and a survey of consumers' switching experiences with reference to the Common Principles on Bank Account Switching.

The impact assessment identified a series of problems concerning the transparency and comparability of payment account fees. Fee information provided to consumers is overly complex. Diversity in pricing models adds to the complexity of choosing an appropriate product. This leads to information asymmetries and impairs a consumer's ability to understand what fees represent, hindering consumer choice and, ultimately, competition. Moreover, wide price variations have been observed for payment accounts, calling into question the degree of price competition in the market. Price variations also feed the perception that payment accounts are not fairly priced, denting consumer confidence and trust in the sector.

Based on these findings and following an analysis of the available options, the Commission concluded that the recommended set of policy measures should consist of the introduction of a standard list of fees charged for services offered on payment accounts; measures aimed at ensuring the independence of websites comparing fees for services offered on payment accounts at Member state level and mandating the creation of such websites where they do not already exist; and requiring payment service providers to provide ex-post information at least annually on the fees incurred by consumers on their payment accounts.

The impact assessment also demonstrated that payment account mobility in the EU is still limited. This is partly caused by insufficient and often inconsistent information on the switching process, and a lack of assistance by the staff of payment service providers. Switching is frequently perceived by customers to be costly or time-consuming; it is also often unclear how long the process will take and what would happen to direct debits/credits in the 'transitional period' (i.e. the period when the new account is opened but not all recurring payments have been transferred to it). Finally, the deadlines set in the Common Principles are often not respected.

The impact assessment also highlighted that there is no common framework in place to facilitate cross-border switching or comparability of payment account fees. Although there is significant potential demand, consumers may be deterred by the complexity of the process in practice. In a fully functioning internal market, comparable information on payment account prices across the EU would broaden consumer choice and facilitate domestic and cross-border switching.

In light of the above issues, and following a thorough assessment of the available options, the Commission concluded that in order to improve the functioning of the switching process, measures to give binding legal force to the provisions of the Common Principles on account switching are necessary. Moreover, such measures should broaden the scope of the Common Principles by extending them to cross-border switching. This will help consumers receive clear and comprehensible information by payment account providers and therefore identify the payment account most suitable for their needs. Moreover if consumers, based on such information, decide to move to another account, a switching service will be at their disposal.

With respect to access, the impact assessment concluded that it is necessary to ensure the right of access to a payment account with basic features for every EU consumer by means of binding European legislation. 58 million EU consumers do not have a payment account. Several factors were identified as the main drivers for this, including the lack of a consistent regulatory framework across the EU, refusal based on nationality or lack of residence, the high price of the account as well as consumers' lack of financial education and awareness and low confidence in the financial system.

The impact assessment considered a range of policy options and sub-options.¹¹ It concluded that the most appropriate policy measure to address the issue identified is to impose a legal obligation on Member States to ensure the right of access to a payment account with basic features for every consumer. The features of basic payment accounts should be enlarged from those contained in the Recommendation to include internet banking and online purchasing. The new measures will improve the availability, accessibility, and affordability of basic payment services. This, in turn, is expected to substantially reduce consumer detriment, enhance financial and social inclusion and consumer confidence, encourage cross-border mobility and promote the full participation of the greatest possible number of consumers in the internal market.

The impact assessment was first submitted to the Impact Assessment Board on 27 July 2012. The Board asked for resubmission with additional information on the problem definition, on subsidiarity aspects, and a critical review of the proportionality and EU value added of the presented options involving binding measures. The Board also asked for the presentation of the options and their expected impacts to be improved and for the report to more consistently refer to the views of different stakeholder groups throughout. The impact assessment was resubmitted on 29 October 2012. On 28 November the Board stated it could not issue a positive opinion and proposed some further amendments concerning mostly the issue of cross-border switching. In response, the Commission services made additional changes to the text, including reinforcing the interlinks between the problem areas, clarifying the trans-national dimension of the problem, and providing further detail on stakeholder views as well as additional insight with respect to the issue of cross-border switching.

3. LEGAL ELEMENTS OF THE PROPOSAL

3.1. Legal basis

The proposal is based on Article 114 of the Treaty on the Functioning of the European Union. As explained above, by setting up an EU level framework in the fields covered by the proposal, it aims to remove the remaining barriers to the free movement of payment services and, more broadly, to the free movement of goods, persons, services and capital for which a fully integrated and developed single market for payment services is vital. The proposal also

¹¹ Commission Staff Working Paper (IA paragraph 7 page 56)

prevents any further fragmentation of the single market which could occur if Member States were to take diverging and inconsistent regulatory actions in this field.

3.2. Subsidiarity principle

According to the principle of subsidiarity, EU action may only be taken if the envisaged aims cannot be achieved by Member States alone. EU intervention is needed to improve the proper functioning of the internal market and avoid the distortion of competition in the field of retail banking.

Different regulatory frameworks, or the lack thereof, raise barriers to entry across borders. An EU initiative will better address factors that prevent the pursuit of business or raise the cost of doing business in another Member State relative to the costs faced by domestic providers. Credit institutions that seek to operate across borders not only need to meet differing requirements but are also prevented from making full use of economies of scale in developing processes and in operations in areas such as back office activities.

Low customer mobility in general and inefficient switching mechanisms in particular, create obstacles to market entrants gaining new clients. Inaction or action from Member States alone is likely to result in different sets of rules, leading to uncompetitive markets and unequal levels of consumer protection in the EU. However, common criteria established at EU level for the functioning of the retail banking sector will provide consumers with the necessary information required to make informed choices. This, in turn, will contribute to the strengthening of competition and to the efficient allocation of resources within the EU financial retail market to the benefit of businesses and consumers.

Moreover, an EU-level playing field will allow consumers to participate in e-commerce and the digital market, and thereby take advantage of more attractive products and services in other Member States. As regards transparency of bank fees and switching of accounts, self-regulatory initiatives have been tested but have proven unsatisfactory and ineffective. Finally, for access to payment accounts with basic features in particular, implementation of the 2011 Recommendation on access to a basic payment account has been insufficient. Rules on access therefore remain patchy throughout the EU and is unlikely to change in the near future, especially given the global financial turmoil and the retrenchment of national markets.

3.3. Proportionality principle

The actions entailed by EU level intervention are limited to those necessary to achieve the stated objectives. The elements of the package are complementary and provide the right balance between effectiveness in ensuring a fully functioning internal market for retail financial services with a high level of consumer protection and due regard to efficiency.

With respect to the transparency and comparability of payment account fees the proposal takes a flexible approach, for example, by mandating standardised terminology at a national level and only standardising terminology at an EU level where it is possible to do so. In relation to switching, the time allowed for the switching of payment accounts cross border is doubled (this provision will be subject to review after 5 years). For access, whilst this initiative establishes a right of access to a payment account with basic features, it leaves considerable flexibility to Member States to determine how this is implemented.

For discrimination in relation to place of residence, the proposal includes a general provision building on the approach followed in Article 20 of Directive 2006/123 for non-financial services. A more specific obligation is only established for payment accounts with basic features.

Only binding legislation will ensure a level playing field throughout the EU, minimising costs and maximising the scope for economies of scale for account providers seeking to operate

cross-border. Although adopting binding legislation imposes an implementation burden for stakeholders in terms of time and money, this burden will be similar to that incurred under a Recommendation or self-regulation, if properly applied.

3.4. Choice of instrument

Proposed instrument: Directive.

The attempts to address the issues of comparability of payment account fees and account switching through self-regulatory measures were largely unsuccessful. The implementation of the Common Principles for payment account switching in the Member States was mostly evidenced to be unsatisfactory. This may, to a large degree, be the result of the lack of monitoring and enforcement measures within a self-regulatory approach. The efforts made to develop, together with the industry, a self-regulatory initiative to increase the comparability of payment account fees did not lead to a successful outcome either. Self-regulation would not, therefore, be an effective solution.

Compliance with the Commission's Recommendation on access to a basic payment account was also largely inadequate. Only three Member States broadly complied with it and more than half the Member States had no framework in place at all to promote the right of access. As with comparability and transparency and switching, a non-binding measure proved to be unsuccessful.

The introduction of a binding measure is the most effective and efficient way of achieving the set objectives. Only a binding legislative instrument can guarantee that the policy options are introduced in all 27 Member States and that the rules are enforceable. A Directive allows for consideration of national specificities in the payment account market. This would help to ensure a level playing field for both consumers and businesses throughout the EU.

4. BUDGETARY IMPLICATION

This proposal has no implication for the budget of the EU or those of EU agencies.

5. OPTIONAL ELEMENTS

5.1. Review/revision/sunset clause

The proposal includes a review clause.

5.2. European Economic Area

The proposed act concerns the internal market and should therefore extend to the European Economic Area.

5.3. Detailed explanation of the proposal

The following short summary aims at facilitating the decision making process by outlining the main substance of the Directive.

Article 1 (subject matter and scope) defines the scope of the Directive.

Article 2 (definitions) contains the definitions of the terms used in the Directive.

Article 3 (List of the most representative payment services subject to a fee at national level and standardised terminology) requires Member States to establish a list of the most representative payment services subject to a fee at national level and standardised terminology for these services.

Article 4 (Fee information document and glossary) requires Member States to establish the obligation for payment service providers to provide consumers with the list of the most

representative payment services subject to a fee at national level from Article 3 and their corresponding fees. This information should be provided in a standard format. The provision also requires Member States to establish the obligation for payment service providers to make available a glossary of at least the services contained in the list.

Article 5 (Statement of fees) requires Member States to establish the obligation for payment service providers to provide customers with information on all fees incurred at least annually. This information should be provided in a standard format.

Article 6 (Contractual and commercial information) requires payment service providers to use the standardised terminology from Article 3 in their contractual and commercial information, where relevant.

Article 7 (Comparison websites) establishes an obligation on Member States to ensure that consumers have access to at least one website comparing payment account fees. Member States shall establish an accreditation scheme for private operators.

Article 8 (Packaged offers) requires Member States to establish the obligation on payment service providers, when offering a payment account together with another financial service or product as part of a package, to provide the customer with the necessary information on the separate components.

Article 9 (Provision of the switching service) requires Member States to establish a general obligation for payment service providers to make a switching service available to any consumer who holds an account with a payment service provider located in the Union.

Article 10 (The switching service) establishes the specific roles and obligations for the receiving and transferring payment service providers in the context of the switching service.

Article 11 (Fees connected with the switching service) establishes principles to guarantee that the charges related to the switching services, if any, are appropriate and in line with the costs incurred.

Article 12 (Financial loss for consumers) establishes the obligation for payment service providers to refund charges incurred by consumers due to their mistake or delay during the switching service. It also aims to prevent consumers from financial loss, as a result of misdirected credit transfers or direct debits by third parties.

Article 13 (Information about the switching service) establishes the obligation for payment service providers to make information available to consumers about the switching service.

Articles 14 (Non-discrimination) requires Member States to ensure that consumers are not discriminated against on the basis of their nationality or residence when applying for a payment account or in their use of a payment account.

Article 15 (Right of access to a payment account with basic features) establishes a right of access to a basic payment account for consumers in any Member State. It also establishes an obligation on Member States to designate at least one payment service provider to offer a basic payment account.

Article 16 (Characteristics of a payment account with basic features) specifies the list of payment services that a payment account with basic features should include.

Article 17 (Associated fees) requires Member States to ensure that the services indicated in Article 16 are offered by payment service providers free of charge or for a reasonable fee.

Article 18 (Framework contracts and termination) recalls that Directive 2007/64/EC is applicable to payment accounts with basic features. However it provides for a limited list of

grounds that may justify the termination of the framework contract of a payment account with basic features by the payment service provider.

Article 19 (General information on payment accounts with basic features) requires Member States to ensure that measures are in place to raise awareness of basic payment accounts.

Article 20 (Competent authorities) regulates the procedures for designating the national authorities responsible for the application of provisions in the Directive.

Article 21 (Alternative dispute resolution) requires Member States to establish specific requirements for the settlement of disputes between consumers and payment service providers.

Articles 22 (Administrative measures and sanctions) requires Member States to establish rules on sanctions for breaches of the national provisions adopted to implement this Directive.

Articles 23 (Delegated acts) and 24 (Exercise of the delegation) empower the Commission to adopt delegated acts and sets out how this power should be used.

Article 25 (Implementing acts) empowers the Commission to adopt implementing acts and sets out how this power should be used.

Articles 26 (Evaluation) and 27 (Review clause) sets out the mechanisms for assessing the effective application of the provisions in the Directive and, if needed, propose changes to it.

Article 28 (Transposition) provides the obligation for Member States to adopt the legislative measures necessary to implement the present Directive.

Article 29 (Entry into force) states the date upon which the Directive enters into force.

Article 30 (Addressees) states that this Directive is addressed to Member States.

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DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**on the comparability of fees related to payment accounts,
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(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee¹²,

Having regard to the opinion of the Committee of the Regions¹³,

After consulting the European Data Protection Supervisor¹⁴,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) In accordance with Article 26(2) TFEU the internal market is to comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured. Fragmentation of the internal market is detrimental to competitiveness, growth and job creation within the Union. Eliminating direct and indirect obstacles to the proper functioning of the internal market is essential for its completion. EU action with respect to the internal market in the retail financial services sector has already substantially contributed to developing cross-border activity of payment service providers, improving consumer choice and increasing the quality and transparency of the offers.
- (2) In this respect, Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC, and 2006/48/EC and repealing Directive 97/5/EC ("Payment Services Directive") has established basic transparency requirements for fees charged by payment service providers in relation to services offered on payment accounts. This has substantially facilitated the activity of payment service providers, creating uniform rules with respect to the provision of payment services and the

¹² OJ C , , p. .

¹³ OJ C , , p. .

¹⁴ OJ C xx, xx.xx.xxxx, p. .

information to be provided, reduced the administrative burden and generated cost savings for payment service providers.

- (3) However, more can be done to improve and develop the single market for retail banking. In particular, the lack of transparency and comparability of fees as well as the difficulties in switching payment accounts still pose barriers to the deployment of a fully integrated market.
- (4) The current conditions of the Single Market may deter payments services providers from exercising their freedom to establish or to provide services within the Union because of the difficulty in attracting customers when entering a new market. Entering new markets often entails large investments. Such investments are only justified if the provider foresees sufficient opportunities and a corresponding demand from consumers. The low level of mobility of consumers with respect to retail financial services is to a large extent due to the lack of transparency and comparability as regards the fees and services on offer, as well as difficulties in relation to the switching of payment accounts. These factors also stifle demand. This is particularly true in the cross-border context.
- (5) Moreover, significant barriers to the completion of the single market in the area of payment accounts may be created by the fragmentation of existing national regulatory frameworks. Existing provisions at national level with respect to payment accounts, and particularly with respect to the comparability of fees and payment account switching diverge. For switching, the lack of uniform binding measures at EU level has led to divergent practices and measures at national level. These differences are even more marked in the area of comparability of fees, where no measures, even of a self-regulatory nature, exist at EU level. Should these differences become more significant in the future, as banks tend to tailor their practices to national markets, this would raise the cost of operating cross-border relative to the costs faced by domestic providers and therefore make the pursuit of business cross-border less attractive. Cross-border activity in the internal market is hampered by obstacles to consumers opening a payment account abroad. Existing restrictive eligibility criteria may prevent European citizens from moving freely within the Union. Providing all consumers with access to a payment account will permit their participation in the internal market and allow them to obtain the benefits of the single market.
- (6) Moreover, since some prospective customers do not open accounts, either because they are denied them or because they are not offered adequate products the potential demand for payment account services in the EU is currently not fully exploited. Wider consumer participation in the internal market would further incentivise payment service providers to enter new markets. Also, creating the conditions to allow all consumers to access a payment account is a necessary means to foster their participation in the internal market and to allow them to reap the benefits the Single Market has brought about.
- (7) Transparency and comparability of fees have been addressed in a self-regulatory initiative, initiated by the banking industry. However, no final agreement was found on these guidelines. As regards switching, the common principles established in 2008 by the European Banking Industry Committee provide a model mechanism for switching between bank accounts offered by payment service providers located in the same Member State. However, given their non-binding nature, these principles have been applied in an inconsistent manner throughout the EU and with ineffective results. Moreover, the Common Principles only address bank account switching at national

level and do not address cross-border switching. Finally, as regards access to a basic payment account, the Commission Recommendation 2011/442/EU of 18 July 2011 invited Member States to take the necessary measures to ensure its application at the latest six months after its publication. To date, only few Member States comply with the main principles of the Recommendation.

- (8) It is vital, therefore, to establish a uniform set of rules to tackle the issue of low customer mobility and in particular to improve comparison of payment account services and fees and to incentivise payment account switching as well as avoid that consumers who intend to purchase a payment account cross-border are discriminated on the basis of residency. Moreover, it is essential to adopt adequate measures to foster customers' participation in the payment accounts market. These measures will incentivize entry for payment service providers in the internal market and ensure a level playing field, thereby strengthening competition and the efficient allocation of resources within the EU financial retail market to the benefit of businesses and consumers. Also, transparent fee information and switching possibilities combined with the right of access to basic account services will allow EU citizens to move and shop around more easily within the Union and therefore benefit from a fully functioning internal market in the area of retail financial services and contribute to its further development.
- (9) This Directive applies to payment accounts held by consumers. Consequently, accounts held by businesses, even small or micro enterprises, unless held in a personal capacity, are outside its scope. Furthermore, this Directive does not cover savings accounts, which may have more limited payments functions.
- (10) The definitions contained in the Directive are aligned with those contained in other Union legislation, and in particular those of Directive 2007/64/EC and those of Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009¹⁵.
- (11) It is vital for consumers to be able to understand fees so that they can compare offers from different payment service providers and make informed decisions as to which account is most suitable for their needs. Comparison between fees cannot be achieved where payment service providers use different terminology for the same payment services and provide information in different formats. Standardised terminology, coupled with targeted fee information for the most representative payment services in a consistent format, can help consumers to both understand and compare fees.
- (12) Consumers would benefit most from information that is concise and easy to compare between different payment service providers. The tools made available to consumers to compare payment account offers would not have a positive impact if the time invested in going through lengthy lists of fees for different offers outweighed the benefit of choosing the offer that represents the best value. Accordingly, fee terminology should only be standardised for the most representative terms and definitions within Member States in order to avoid the risk of excessive information.
- (13) The fee terminology should be determined by national competent authorities, allowing for consideration of the specificities of local markets. To be considered representative, services should be subject to a fee at a minimum of one payment service provider in

¹⁵ OJ L 94, 30.3.2012, p. 22.

Member States. In addition, where possible, fee terminology should be standardised at EU level, thus allowing for comparison across the Union. The European Banking Authority (EBA) should establish guidelines to assist Member States to determine the most representative payment services subject to a fee at national level.

- (14) Once national competent authorities have determined a provisional list of the most representative services subject to a fee at national level together with terms and definitions, the Commission should review them to identify, by means of delegated acts, the services that are common to the majority of Member States and propose standardised EU level terms and definitions for them.
- (15) In order to help consumers compare payment account fees throughout the single market easily, payment service providers should provide consumers with a list of fees charged for the services listed in the standardised terminology. This would also contribute towards establishing a level playing field between credit institutions competing in the payment account market. The fee information document should only contain information on the most representative payment services in each Member State, using the terms and definitions established at EU level where relevant. In order to help consumers understand the fees they have to pay for their payment account, a glossary providing explanations for at least the fees and services contained in the list should be made available to them. The glossary should serve as a useful tool to encourage a better understanding of the meaning of fees, contributing towards empowering consumers to choose from a wider choice of payment account offers. An obligation should also be introduced for payment service providers to inform consumers, at least annually, of all the fees charged on their account. Ex-post information should be provided in a dedicated summary. It should provide a complete overview of the fees incurred to enable a consumer to understand what fee expenditures relate to, and to assess the need to either modify consumption patterns or move to another provider. This benefit would be maximised by the ex-post fee information covering the same services as the ex-ante information.
- (16) To meet the needs of consumers, it is necessary to ensure that fee information on payment accounts is accurate, clear and comparable. This Directive should therefore lay down common presentation requirements for the fee information document and the statement of fees, in order to ensure that they are understandable and comparable for consumers. The same format, order of items and headings should be followed for every fee information document and statement of fees in each Member State, allowing consumers to compare the two documents, thereby maximising understanding and use of the information. The fee information document and statement of fees should be clearly distinguishable from other communications. They should be identified by a common symbol.
- (17) In order to ensure the consistent use of applicable EU level terminology across the Union, Member States should establish an obligation for payment service providers to use the applicable EU level terminology together with the remaining national standardised terminology identified in the provisional list when communicating with consumers, including in the fee information document and the statement of fees. Except for in the fee information document and statement of fees, payment service providers may use brand names to denote services.
- (18) Comparison websites are an effective means for consumers to assess the merits of different payment account offers in a single space. They can provide the right balance between the need for information to be clear and concise, yet complete and

comprehensive, by enabling users to obtain more detailed information where this is of interest to them. They can also reduce search costs as consumers will not need to collect information separately from payment service providers.

- (19) In order to obtain impartial information on bank fees, consumers should be able to access comparison websites which are operationally independent from payment service providers. Member States should therefore ensure that at least one such website is available to consumers in their respective territories. Such comparison websites may be operated by competent authorities, other public authorities and/or accredited private operators. Member States should establish a voluntary accreditation scheme allowing private operators of comparison websites to apply for accreditation in accordance with specified quality criteria. A comparison website operated by a competent authority or other public authority should be established where a privately operated website has not been accredited. Such websites should also comply with the quality criteria.
- (20) It is current practice for payment service providers to offer a payment account in a package with other financial products or services. This practice can be a means for payment service providers to diversify their offer and to compete against each other, and in the end it can be beneficial for consumers. However the Commission study on tying practices in the financial sector conducted in 2009 as well as relevant consultations and consumer complaints have showed that payment service providers may offer bank accounts packaged with products not requested by consumers and which are not essential for payment accounts, such as household insurance. Moreover, it has been observed that these practices may reduce transparency and comparability of prices, limit purchasing options for consumers and negatively impact upon their mobility. Therefore, Member States should ensure that when payment service providers offer packaged payment accounts consumers are provided with information on the applicable fees for the payment account and for each other financial service included in the package separately. These obligations should not apply to services which are naturally connected to the use of the payment account, such as withdrawals, wire transfers or payment cards. As a result, these services should be excluded from the scope of this provision.
- (21) Consumers are only incentivised to switch accounts if the process does not entail an excessive administrative and financial burden. The procedure for switching payment accounts to another payment service provider should be clear and quick. The fees, if any, charged by payment service providers in relation to the switching service should be in line with the actual cost incurred by payment service providers. In order to have positive impact on competition, switching should also be facilitated at cross-border level. Given that switching cross-border could be more complex than the switching at national level and may require payment service providers to adapt and refine their internal procedures, longer deadlines for the cross-border switch should be foreseen. The need to maintain different deadlines should be evaluated in the context of the review of the proposed Directive.
- (22) The switching process should be as straightforward as possible for the consumer. Accordingly Member States should ensure that the receiving payment service provider is responsible for initiating and managing the process on behalf of the consumer.
- (23) Consumers should be allowed to ask the receiving payment service provider to perform the switch of all or part of the recurring payments, as well as transferring the remaining balance, ideally within a single meeting with the receiving payment service

provider. To this end, consumers should be able to sign one authorisation giving consent to the mentioned tasks. Before giving the authorisation the consumer should be informed of all the steps of the procedure necessary to complete the switch.

- (24) The co-operation of the transferring payment service provider is necessary for the switch to be successful. The receiving payment service provider should be provided by the transferring payment service provider with all the information it considers necessary to reinstate the recurrent payments on the new payment account. However, such information should not exceed what is necessary to carry out the switch and the receiving payment service provider should not ask for superfluous information.
- (25) Consumers should not be subject to penalties or any other financial detriment caused by the misdirection of incoming credit transfers or direct debits. This is particularly important for certain categories of payer and payee, such as utilities companies, which use electronic means (e.g. databases) to store information on consumers' account details and perform numerous periodical transactions involving large numbers of consumers.
- (26) Member States should guarantee that consumers who intend to open a payment account are not discriminated against on the basis of their nationality or place of residence. While it is important for payment service providers to ensure that their customers are not using the financial system for illegal purposes such as fraud, money laundering or terrorism financing, they should not impose barriers to consumers who want to benefit from the advantages of the single market by purchasing payment accounts cross-border.
- (27) Consumers who are legally resident in the Union and who do not hold a payment account in a certain Member State should be in a position to open and use a payment account with basic features in that Member State. In order to ensure the widest possible access to such accounts, consumers should have access to them irrespective of their financial circumstances, such as unemployment or personal bankruptcy, and of their place of residence. Moreover, the right to access a payment account with basic features 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 financing¹⁶, in particular with regard to customer due diligence procedures.
- (28) Member States should ensure that at least one payment service provider offers a payment account with basic features to consumers. Access should not be overly difficult and should not entail excessive costs for consumers. In this respect, Member States should consider factors such as the location of the designated payment service providers in their territory. In order to minimise the risk for consumers to become financially excluded, Member States should improve financial education, including at school, and combat over-indebtedness. Furthermore, Member States should promote initiatives of payment service providers in order to facilitate the combination of providing payment accounts with basic features and financial education.
- (29) To exercise their right to access a basic payment account, consumers should not already hold a payment account in the same territory. When it is not possible to use electronic systems to establish whether or not a consumer already holds a payment

¹⁶ OJ L 309, 25.11.2005, p. 15.

account, payment service providers should accept a declaration by consumers as a reliable means of verifying that they do not already hold a payment account.

- (30) Consumers should be guaranteed access to a range of basic payment services, for which a minimum number of operations shall be determined by Member States in a way that should take into account both the needs of the consumers and the commercial practices in the Member State concerned. Beyond this list of minimum services, banks may apply their regular fees. Services linked to basic payment accounts should include the facility to deposit and withdraw money. Consumers should be able to undertake 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. Such services should allow the purchase of goods and services online and should give consumers the opportunity to initiate payment orders via the payment service provider's online banking facility, where available. However, a payment account with basic features should not be restricted to online usage as this would create an obstacle for consumers without internet access. Consumers should not be given access to an overdraft facility with a payment account with basic features. However, Member States may allow payment services providers to offer buffering facilities for very small amounts in relation to payment accounts with basic features.
- (31) In order to ensure that basic payment accounts are available to the widest possible range of consumers, they should be offered free of charge or for a reasonable fee. Furthermore, any additional charges to the consumer for non-compliance with the terms laid down in the contract should be reasonable. Member States should establish what constitutes a reasonable charge according to national circumstances. In order to ensure consistency and efficiency in the implementation of the principle of a reasonable charge, the EBA should be tasked with issuing guidelines as regards the general criteria identified in this Directive.
- (32) The payment service provider should refuse to open or should terminate a contract for a payment account with basic features only in specific circumstances, such as non-compliance with the legislation on money laundering and terrorist financing or on the prevention and investigation of crimes. Even in these cases, a refusal can only be justified where the consumer does not comply with the provisions of that legislation and not because the procedure to check compliance with the legislation is too burdensome or costly.
- (33) Clear and comprehensible information on the right to a bank account with basic features should be provided by Member States and payment service providers to consumers. The information should cover the main features and conditions for using the account and also the steps consumers should follow to exercise their right to open a payment account with basic features. Notably, consumers should be informed that the purchase of additional services is not compulsory in order to access a payment account with basic features.
- (34) Member States should designate competent authorities that are empowered to ensure enforcement of this Directive and that are granted investigation and enforcement powers. Designated competent authorities shall have adequate resources for the performance of their duties. Member States should be able to designate different competent authorities in order to enforce the wide ranging obligations laid down in this Directive.
- (35) Consumers should have access to effective and efficient out-of-court redress procedures for the settlement of disputes arising out of rights and obligations

established under this Directive. Such access is already ensured by Directive 2013/.../EU insofar as relevant contractual disputes are concerned. However, consumers should also have access to out-of-court redress procedures in the event of -pre-contractual disputes concerning rights and obligations established by this Directive, e.g. when they are denied access to a payment account with basic features. Compliance with the provisions laid down in this Directive 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 data¹⁷. The present Directive should therefore comply with the rules established in Directive 95/46/EC and the national laws implementing them.

- (36) In order to attain the objectives set out in this Directive, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of identifying the standardised terminology at EU level for payment services common to a number of Member States and the related definitions for these terms
- (37) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission. These powers relate to the definition of the format of the fee information document, its common symbol and the order in which the services contained in it shall be presented, as well as to the format of the statement of fees, its common symbol and the order in which the services contained in it shall be presented. These powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.
- (38) Within three years from entry into force of this Directive and every two years thereafter, Member States should obtain reliable annual statistics on the functioning of the measures introduced by the present Directive. They should use any relevant sources of information and communicate that information to the Commission.
- (39) A review of this Directive should be carried out five years after its entry into force in order to take account of market developments, such as the emergence of new types of payment accounts and payment services, as well as developments in other areas of Union law and the experiences of Member States. The review should assess whether the measures introduced have improved consumer understanding of payment account fees, the comparability of payment accounts and the ease of switching accounts. It should also determine how many basic payment accounts have been opened including by previously unbanked consumers. It should also assess whether extended deadlines for payment service providers performing cross-border switching are to be maintained for a longer period. Also, it should assess whether the provisions on the information to be provided by payment service providers when offering packaged products are sufficient or whether additional measures are needed. The Commission should submit a report to the European Parliament and the Council accompanied, if appropriate, by legislative proposals.
- (40) This Directive respects fundamental rights and observes the principles recognised by the Charter of the Fundamental Rights of the European Union.

¹⁷ OJ L 281, 23.11.1995, p. 31.

- (41) In accordance with the Joint Political Declaration of Member States and the Commission of 28 September 2011 on explanatory documents¹⁸, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a Directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter and scope

1. This Directive lays down rules concerning the transparency and comparability of fees charged to consumers on their payment accounts held within the European Union and provided by payment service providers established in the Union and rules concerning the switching of payment accounts within the Union.
2. This Directive also defines a framework for the rules and conditions according to which Member States shall guarantee a right for consumers to open and use payment accounts with basic features in the Union.
3. The opening and use of a payment account with basic features, pursuant to this Directive shall be in conformity with the provisions of Chapter II of Directive 2005/60/EC
4. This Directive shall apply to payment service providers located in the Union.

Article 2

Definitions

For the purposes of this Directive, the following definitions shall apply:

- (a) 'consumer' means any natural person who is acting for purposes which are outside his trade, business, craft or profession;
- (b) 'payment account' means an account held in the name of one or more payment service users which is used for the execution of payment transactions;
- (c) 'payment service' means a payment service as defined in Article 4(3) of Directive 2007/64/EC;
- (d) 'payment transaction' means an act, initiated by the payer or by the payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and the payee;
- (e) 'payment service provider' means a payment service provider as defined in Article 4(9) of Directive 2007/64/EC;

¹⁸ OJ C 369, 17.12.2011, p. 14.

- (f) 'payment instrument' means a payment instrument as defined in Article 4(23) of Directive 2007/64/EC;
- (g) 'transferring payment service provider' means the payment service provider from which the information on all or some recurrent payments is transferred;
- (h) 'receiving payment service provider' means the payment service provider to which the information on all or some recurrent payments is transferred;
- (i) 'payer' means a natural or legal person who holds a payment account and allows a payment order from that payment account or, where there is no payer's payment account, a natural or legal person who makes a payment order to a payee's payment account;
- (j) 'payee' means a natural or legal person who is the intended recipient of funds which have been the subject of a payment transaction;
- (k) 'fees' means the charges, if any, payable by the consumer to the payment service provider for the provision of payment services or for transactions operated on a payment account;
- (l) 'durable medium' means any instrument which enables the consumer or the payment services provider to store information addressed personally to him in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;
- (m) 'switching' means, upon a consumer's request, transferring from one payment service provider to another the information about all or some standing orders for credit transfers, recurring direct debits and recurring incoming credit transfers executed on a payment account, with or without transferring the positive account balance from one payment account to the other or closing the former account;
- (n) 'direct debit' means a payment service debiting a payer's payment account, where a payment transaction is initiated by the payee with the payer's consent;
- (o) 'credit transfer' means a national or cross-border payment service for crediting a payee's payment account with a payment transaction or a series of payment transactions from a payer's payment account by the payment service provider which holds the payer's payment account, based on an instruction given by the payer;
- (p) 'standing order' means a service, crediting at regular intervals a payee's payment account with a series of payment transactions from a payer's payment account, executed by the payment service provider which holds the payer's payment account on the basis of an instruction given by the payer;
- (q) 'Funds' means banknotes, coins and scriptural money as well as electronic money as defined in Article 2(2) of Directive 2009/110/EC¹⁹;
- (r) 'Framework contract' means payment service contract which governs the future execution of individual and successive payment transactions and which may contain the obligation and conditions for setting up a payment account.

¹⁹

OJ L 267, 10.10.2009, p. 7.

CHAPTER II

COMPARABILITY OF FEES CONNECTED WITH PAYMENT ACCOUNTS

Article 3

List of the most representative payment services subject to a fee at national level and standardised terminology

1. Member States shall ensure that the competent authorities referred to in Article 20, determine a provisional list of at least 20 payment services accounting for at least 80% of the most representative payment services subject to a fee at national level. The list shall contain terms and definitions for each of the services identified.
2. For the purposes of paragraph 1, the competent authorities shall have regard to the services:
 - (1) most commonly used by consumers in relation to their payment account;
 - (2) which generate the highest cost for consumers per service;
 - (3) which generate the highest overall cost for consumers;
 - (4) which generate the highest profit for payment service providers per service;
 - (5) which generate the highest overall profit for payment service providers.

The EBA shall develop guidelines pursuant to Article 16 of Regulation (EU) No 1093/2010 to assist the competent authorities.
3. Member States shall notify to the Commission the provisional lists referred to in paragraph 1 within 6 months of the entry into force of this Directive.
4. The Commission shall be empowered to adopt delegated acts, in accordance with Article 24, concerning the setting out, on the basis of the provisional lists submitted pursuant to paragraph 3, of an EU standardised terminology for those payment services that are common to at least a majority of Member States. The EU standardised terminology will include common terms and definitions for the common services.
5. After the publication in the Official Journal of the European Union of the delegated acts referred to in paragraph 4, each Member State shall without delay integrate the EU standardised terminology adopted pursuant to paragraph 4 into the provisional list referred to in paragraph 1 and shall publish this list.

Article 4

Fee information document and glossary

1. Member States shall ensure that before entering into a contract for a payment account with a consumer, payment service providers provide the consumer with a fee information document containing the list of the most representative services referred to in paragraph 5 of Article 3 and the corresponding fees for each service.
2. Where one or more payment services referred to in paragraph 1 is offered as part of a package of financial services, the fee information document shall disclose which of

the services referred to in paragraph 1 are included in the package, the fee for the entire package and the fee for any service that is not referred to in paragraph 1.

3. The title "fee information document" shall prominently appear at the top of the first page of the fee information document next to a common symbol to distinguish the document from other documentation.
4. Member States shall ensure that payment service providers make available to consumers a glossary of at least the list of payment services referred to in paragraph 1 and the related definitions.
5. Member States shall establish an obligation for payment service providers to ensure that the glossary is drafted in clear, unambiguous and non-technical language.
6. The fee information document and the glossary shall be made available free of charge at all times by payment service providers on a durable medium at premises accessible to consumers and shall be made available in electronic form on their websites.
7. The Commission shall be empowered to adopt implementing acts pursuant to Article 26 to define the format of the fee information document, its common symbol and the order in which the services referred to in paragraph 5 of Article 3 shall be presented in the fee information document.

Article 5

Statement of fees

1. Member States shall ensure that payment service providers provide the consumer with a statement of all fees incurred on their payment account at least annually.
2. The statement referred to in paragraph 1 shall specify the following information:
 - (a) the unit fee charged for each service, the number of times the service was used during the relevant period and the date on which the service was used;
 - (b) the total amount of fees incurred for each service provided during the relevant period;
 - (c) the total amount of fees incurred for all services provided during the relevant period.
3. The title "statement of fees" shall prominently appear at the top of the first page of the statement next to a common symbol to distinguish the document from other documentation.
4. The Commission shall be empowered to adopt implementing acts pursuant to Article 26 to define the format of the statement of fees, its common symbol and the order in which the services referred to in paragraph 5 of Article 3 shall be presented in the statement of fees.

Article 6

Contractual and commercial information

1. Member States shall ensure that in their contractual and commercial information, payment service providers use, where relevant, the terms and definitions contained in

the list of the most representative payment services referred to in Article 3, paragraph 5.

2. Payment service providers may use brand names to designate their services in their contractual and commercial information, subject to the condition that they identify, where relevant, the corresponding term in the list referred to in Article 3, paragraph 5. Payment service providers shall not use brand names in the fee information document or the statement of fees.

Article 7

Comparison websites

1. Member States shall ensure that consumers have access to at least one website comparing fees charged by payment service providers for services offered on payment accounts at national level in accordance with paragraphs 2 and 3.
2. Member States shall establish a voluntary accreditation scheme for websites comparing fees charged by payment service providers for services offered on payment accounts operated by private operators. In order to be granted accreditation, comparison websites operated by private operators shall:
 - (a) be operationally independent of any payment service provider;
 - (b) use plain language and, where relevant, the terms referred to in Article 3, paragraph 5;
 - (c) provide up-to-date information;
 - (d) provide a sufficiently broad overview of the payment accounts market;
 - (e) operate an effective enquiry and complaints handling procedure.
3. Where no website is accredited pursuant to paragraph 2, Member States shall ensure that a website operated by the competent authority referred to in Article 20 or any other competent public authority is established. Where a website has been accredited pursuant to paragraph 2, Member States may decide to establish an additional website operated by the competent authority referred to in Article 20 or any other competent public authority. Websites operated by a competent authority pursuant to paragraph 1 shall comply with paragraphs 2 (a) to (e).
4. Member States shall retain the right to refuse or withdraw accreditation from private operators in the event of a failure to comply with the obligations in paragraph 2.
5. Member States shall ensure that adequate information about the websites referred to in paragraph 1 is available to consumers. This shall include, where relevant, the maintenance of a publicly accessible register of accredited comparison websites.

Article 8

Packaged accounts

1. Member States shall ensure that when a payment account is offered together with another service or product as part of a package, the payment service provider informs the consumer of whether it is possible to buy the payment account separately and provides separate information regarding the costs and fees associated with each of the products and services offered in the package.

2. Paragraph 1 does not apply when only payment services as defined in Article 4(3) of Directive 2007/64/EC are offered together with a payment account.

CHAPTER III SWITCHING

Article 9

Provision of the switching service

Member States shall ensure that payment service providers provide a switching service as described in Article 10 to any consumer who holds a payment account with a payment service provider located in the Union.

Article 10

The switching service

1. Member States shall ensure that the switching service is initiated by the receiving payment service provider and provided in accordance with the rules set out in paragraphs 2 to 7.
2. The switching service shall be initiated by the receiving payment service provider. The receiving payment service provider shall request written authorisation from the consumer to perform the switching service. The authorisation shall allow the consumer to provide specific consent to the transferring payment service provider to perform each of the tasks indicated in paragraphs 3(e) and 3(f) and to provide specific consent to the receiving payment service provider to perform each of the tasks indicated in paragraphs 4(c), 4(d) and 5. The authorisation shall allow the consumer to specifically request the transmission by the transferring payment service provider of the information indicated in paragraphs 3(a) and 3(b). The authorisation shall also specify the date from which recurrent payments are to be operated from the account opened with the receiving payment service provider.
3. Within one business day from the receipt of the authorisation referred to in paragraph 2, the receiving payment service provider shall request the transferring payment service provider to carry out the following tasks:
 - (a) transmit to the receiving payment service provider and, if specifically requested by the consumer pursuant to paragraph 2, to the consumer a list of all existing standing orders for credit transfers and debtor driven direct debit mandates;
 - (b) transmit to the receiving payment service provider and, if specifically requested by the consumer pursuant to paragraph 2, to the consumer the available information about incoming credit transfers and creditor driven direct debits executed on the consumer's account in the previous 13 months;
 - (c) transmit to the receiving payment service provider any additional information deemed necessary by the receiving payment service provider to perform the switch;
 - (d) where the transferring payment service provider does not provide a system for automated redirection of the standing orders and direct debits to the account

- held by the consumer with the receiving payment service provider, cancel standing orders and stop accepting direct debits on the date specified in the authorisation;
- (e) where the consumer gave specific consent pursuant to paragraph 2, transfer any remaining positive balance to the account opened or held with the receiving payment service provider on the date specified by the consumer; and
 - (f) where the consumer gave specific consent pursuant to paragraph 2, close the account held with the transferring payment service provider on the date specified by the consumer.
4. Upon receipt of the information requested from the transferring payment service provider referred to in paragraph 3, the receiving payment service provider shall carry out the following tasks :
- (a) set up within seven calendar days the standing orders for credit transfers requested by the consumer and execute them from the date specified in the authorisation;
 - (b) accept direct debits from the date specified in the authorisation;
 - (c) where the consumer gave specific consent pursuant to paragraph 2, inform payers making recurrent credit transfers into a consumer's payment account of the details of the consumer's account with the receiving payment provider. If the receiving payment service provider does not have all the information it needs to inform the payer, it shall ask the consumer or the transferring payment service provider to provide the missing information;
 - (d) where the consumer gave specific consent pursuant to paragraph 2, inform payees using a direct debit to collect funds from the consumer's account of the details of the consumer's account with the receiving payment service provider and the date from which direct debits shall be collected from that account. If the receiving payment service provider does not have all the information it needs to inform the payee, it shall ask the consumer or the transferring payment service provider to provide the missing information;
 - (e) where the consumer chooses to personally provide the information indicated in points (c) and (d), provide the consumer with standard letters providing details of the new account and the starting date indicated in the authorisation.
5. Where the consumer gave specific consent pursuant to paragraph 2, the receiving payment service provider may carry out any additional tasks necessary for the performance of the switch.
6. Upon receipt of a request from the receiving payment service provider, the transferring payment service provider shall carry out the following tasks:
- (a) send the receiving payment service provider the information indicated in points (a), (b) and (c) of paragraph 3 within seven calendar days of receiving the request;
 - (b) where the transferring payment service provider does not provide a system for automated redirection of the standing orders and direct debits to the account held by the consumer with the receiving payment service provider, cancel any standing orders and stop accepting direct debits on the payment account on the date requested by the receiving payment service provider;

- (c) transfer the remaining positive balance from the payment account to the account held with the receiving payment service provider;
 - (d) close the payment account;
 - (e) carry out any additional tasks necessary for performing the switch, pursuant to paragraph 5.
- 7. Without prejudice to Article 55(2) of Directive 2007/64/EC, the transferring payment service provider shall not block payment instruments before the date agreed with the receiving payment service provider.
 - 8. Member States shall ensure that the provisions contained in paragraphs 1 to 7 also apply when the switching service is initiated by a payment service provider located in another Member State.
 - 9. In the case indicated in paragraph 8, the deadlines indicated in paragraphs 3, 4 and 6 shall be doubled. The present provision shall be subject to review pursuant to Article 27.

Article 11

Fees connected with the switching service

- 1. Member States shall ensure that consumers are able to access their personal information regarding existing standing orders and direct debits held by either the transferring or the receiving payment service provider free of charge.
- 2. Member States shall ensure that the transferring payment service provider provides the information requested by the receiving payment service provider pursuant to paragraph 6 (a) of Article 10 without charging the consumer or the receiving payment service provider.
- 3. Member States shall ensure that fees, if any, applied by the transferring payment service provider to the consumer for the termination of the payment account held with it are determined in accordance with Article 45(2) of Directive 2007/64/EC.
- 4. Member States shall ensure that fees, if any, applied by the transferring or the receiving payment service provider to the consumer for any service provided under Article 10, other than those referred to in paragraphs 1 to 3, shall be appropriate and in line with the actual costs of that payment service provider.

Article 12

Financial loss for consumers

- 1. Member States shall ensure that any financial loss incurred by the consumer resulting from the non-compliance of a payment service provider involved in the switching process with its obligations under Article 10 is refunded by that payment service provider.
- 2. Consumers shall not bear any financial loss resulting from mistakes or delays in updating their payment account details by a payer or payee.

Article 13

Information about the switching service

1. Member States shall ensure that payment service providers make available to consumers the following information about the switching service:
 - (a) the roles of the transferring and receiving payment service provider for each step of the switching process, as indicated in Article 10;
 - (b) the timeframe for completion of the respective steps;
 - (c) the fees, if any, charged for the switching process;
 - (d) any information that the consumer will be asked to provide;
 - (e) the alternative dispute resolution procedures scheme referred to in Article 21.
2. The information shall be provided free of charge on a durable medium at all branches of the payment service providers accessible to consumers and be available in electronic form on their websites at all times.

CHAPTER IV ACCESS TO PAYMENT ACCOUNTS

Article 14

Non-discrimination

Member States shall ensure that consumers legally resident in the Union are not discriminated against by reason of their nationality or place of residence when applying for or accessing a payment account within the Union.

Article 15

Right of access to a payment account with basic features

1. Member States shall ensure that at least one payment service provider in their territory offers a payment account with basic features to consumers. Member States shall ensure that payment accounts with basic features are not only offered by payment service providers that provide the account solely with online banking facilities.
2. Member States shall ensure that consumers legally resident in the Union have the right to open and use a payment account with basic features with the payment service provider or providers identified pursuant to paragraph 1. Such a right shall apply irrespective of the consumer's place of residence. Member States shall ensure that the exercise of the right is not made excessively difficult or burdensome for the consumer. Before opening the payment account with basic features, payment service providers shall verify whether the consumer holds or does not hold a payment account in their territory.
3. Payment services providers may not refuse an application for access to a payment account with basic features except in the following cases:
 - (a) Where a consumer already holds a payment account, with a payment service provider located in their territory, which allows him to make use of the payment services listed in Article 17(1);

- (b) where the conditions established by Chapter II of Directive 2005/60 are not satisfied.
4. Member States shall ensure that, in the cases indicated in paragraph 3, the payment service provider immediately informs the consumer of the refusal, in writing and free of charge, unless such disclosure would be contrary to the objectives of national security or public policy.
 5. Member States shall ensure that, in the cases indicated in paragraph 3(b), the payment service provider adopts appropriate measures pursuant to Chapter III of Directive 2005/60.
 6. Member States shall ensure that access to a payment account with basic features is not made conditional on the purchase of additional services.

Article 16

Characteristics of a payment account with basic features

1. Member States shall ensure that a payment account with basic features includes 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 within the Union from a payment account;
 - (d) execution of the following payment transactions within the Union:
 - (1) direct debit;
 - (2) payment transactions through a payment card, including online payments;
 - (3) credit transfers.
2. Member States shall determine, for all the services referred to in paragraph 1, a minimum number of operations which will be provided to the consumer for the fee, if any, referred to in Article 17. The minimum number of operations shall be reasonable and in line with the common commercial practice in the Member State concerned.
3. Member States shall ensure that the consumer is able to manage and initiate payment transactions from the consumer's payment account with basic features via the payment service provider's online banking facilities, where available.
4. Member States shall ensure that the consumer is not offered any overdraft facilities in conjunction with the payment account with basic features.

Article 17

Associated fees

1. Member States shall ensure that the services indicated in Article 16 are offered by payment service providers free of charge or for a reasonable fee.
2. Member states shall ensure that the fees charged to the consumer for non-compliance with the consumer's commitments laid down in the framework contract are reasonable .

3. Member States shall ensure that the competent authorities establish what constitutes a reasonable fee 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 payment account with basic features;
 - (d) national consumer prices.
4. The EBA shall develop guidelines pursuant to Article 16 of Regulation (EU) No 1093/2010 to assist the competent authorities

Article 18

Framework contracts and termination

1. Framework contracts providing access to a payment account with basic features shall be subject to the provisions of Directive 2007/64/EC unless otherwise specified in paragraphs 2 and 3.
2. The payment service provider may unilaterally terminate a framework contract where at least one of the following conditions is met:
 - (a) the consumer deliberately used the account for criminal activities;
 - (b) there has been no transaction on the account for more than 12 consecutive months;
 - (c) 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;
 - (d) the consumer is no longer legally resident in the Union or has subsequently opened a second payment account in the Member State where he already holds a payment account with basic features.
3. Member States shall ensure that where the payment service provider terminates the contract of a payment account with basic features, it informs the consumer of the grounds and the justification for the termination at least 2 months before the termination enters into force, in writing and free of charge.

Article 19

General information on payment accounts with basic features

1. Member States shall ensure that measures are in place to raise awareness among the public about the availability of payment accounts with basic features, their pricing conditions, the procedures to be followed in order to exercise the right to access payment accounts with basic features and the methods for having access to alternative resolution for the settlement of disputes.
2. Member States shall ensure that payment service providers make available to consumers information about the specific features of the payment account with basic features on offer, their associated fees and their conditions of use. Member States shall also ensure that the consumer is informed that the purchase of additional services is not compulsory to access a payment account with basic features.

CHAPTER V

COMPETENT AUTHORITIES AND ALTERNATIVE DISPUTE RESOLUTION

Article 20

Competent authorities

1. Member States shall designate competent authorities to ensure and monitor effective compliance with this Directive. Those competent authorities shall take all necessary measures to ensure such compliance. They shall be independent from payment service providers. They shall be competent authorities within the meaning of Article 4(2) of Regulation 1093/2010.
2. The authorities referred to in paragraph 1 shall possess all the powers necessary for the performance of their duties. Where more than one competent authority is empowered to ensure and monitor effective compliance with this Directive, Member States shall ensure that those authorities collaborate closely so that they can discharge their respective duties effectively.
3. Member States shall notify the Commission of the designated competent authorities referred to in paragraph 1 by one year after entry into force of this Directive. They shall inform the Commission of any division of duties of those authorities. They shall immediately notify the Commission of any subsequent change concerning the designation and respective competences of those authorities.

Article 21

Alternative Dispute Resolution

Member States shall ensure that consumers have access to effective and efficient out-of-court redress procedures for the settlement of disputes concerning rights and obligations established under this Directive.

CHAPTER VI

SANCTIONS

Article 22

Administrative measures and sanctions

Member States shall lay down the rules on administrative measures and sanctions applicable to breach of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. Such administrative measures and sanctions shall be effective, proportionate and dissuasive.

CHAPTER VII

FINAL PROVISIONS

Article 23

Delegated acts

The Commission shall be empowered to adopt delegated acts in accordance with Article 25 concerning Article 3(4).

Article 24

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The delegation of power referred to in Article 24 shall be conferred for an indeterminate period of time from the date of entry into force of this Directive.
3. The delegation of powers referred to in Article 24 may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 24 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or the Council.

Article 25

Implementing acts

1. For the adoption of implementing acts under Article 4 and 5, the Commission shall be assisted by the European Banking Committee established by Commission Decision 2004/10/EC. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 26

Evaluation

Member States shall provide the Commission with information on the following matters for the first time within 3 years from entry into force of this Directive and every 2 years thereafter:

- (a) compliance by payment service providers with the provisions in Articles 3 to 6;
- (b) the number of accredited comparison websites established pursuant to Article 7;
- (c) the number of payment accounts that have been switched, the average fee charged for switching, the number of refusals to switch.
- (d) the number of payment accounts with basic features opened, the number and grounds for refusal and the associated charges.

Article 27

Review clause

1. The Commission shall present to the European Parliament and the Council, within five years of entry into force of this Directive, a report on the application of this Directive accompanied, if appropriate, by a proposal.
2. The review shall assess, based also on the information received from Member States pursuant to Article 26, whether to amend and update the list of services that are part of a payment account with basic features, having regard to the evolution of means of payment and technology.
3. The review shall also assess whether the extended deadlines established in Article 10(9) shall be maintained for a longer period of time and whether additional measures in addition to those adopted pursuant to Article 7 and 8 with respect to comparison websites and packaged offers are needed.

Article 28

Transposition

1. Member States shall adopt and publish, by [one year after entry into force of this Directive] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.
2. They shall apply those provisions from one year after entry into force of this Directive.
3. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.
4. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 29

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 30

Addressees

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Brussels,

For the European Parliament
The President

For the Council
The President