FEDERATION BANCAIRE FRANCAISE

Paris, June 2013

FBF position paper on the European Commission's proposal for a Directive on bank accounts

The French Banking Federation (FBF) is the professional body that represents all banks operating in France. This includes 430 French and foreign commercial, cooperative and mutual banks. Member banks employee 400,000 people, total nearly 39,000 branches with 72 million current accounts, and process 16.4 billion payment transactions per year.

FEDERATION BANCAIRE FRANÇAISE (FBF)
18, rue La Fayette
F-75440 PARIS cedex 09
EU transparency register number: 09245221105-30
Contact for this paper: Laurent Bertonnaud – lbertonnaud(at)fbf.fr

****

General remarks on the opportunity of this proposal

In its response to the 2012 consultation of the European Commission, the French banking industry noted the effectiveness of the self-regulation mechanisms in terms of fee transparency and banking mobility, provided they are the result of close cooperation with stakeholders. Recognising the importance for consumers to have access to financial services in order to fully participate in the economy and society, the French banking industry stressed the fact that the answer to this question could only be found at the national level. In conclusion, the FBF considered that, in the areas addressed by the consultation, the European Commission would do well to examine the best way to approach these matters while drawing on the principle of subsidiarity, which appears to be the most appropriate approach to meeting the needs of European citizens in their diversity.

The publication of the responses to this aforementioned consultation showed that the French authorities and a very large majority of other national authorities who’s response has been made public supported this call for subsidiarity. In the FBF's view, it is unfortunate that this call was not sufficiently heard, particularly since it appears to also be a major concern of the Impact Assesment Board, which issued several reservations, as indicated in the Commission's proposal (paragraph 2.2).

The motivations of the current proposal are highly questionable. The French banking industry particularly wishes to dispute the unsupported affirmation that there is "*significant potential demand*" from consumers to make it easier to change accounts or compare fees from one member state to another.

The crucial trust necessary to performing banking and financial transactions is built in part on the geographic proximity between the customer and the service provider. The crisis has further enhanced consumer demand for closer relations with their bank. Thus, despite the development of online banking, the French and probably many Europeans as well still attach a great deal of importance to having a qualified advisor available at their branch[1].

[1] 65% wish to have a qualified personal advisor versus 21% who would accept to have fewer physical branches and no qualified advisor. IFOP survey on bank images – 2013

It is unfortunate that the Commission only partially used the data from Eurobarometer 373. The section on cross-border purchases is very instructive regarding the lack of needs expressed by consumers: only 5% of consumers would consider opening a payment account in another EU country, and a crushing majority (8 out of 10) do not plan to purchase any financial product whatsoever in another EU country. For reference, these figures were respectively 7% and 75% in 2005, thus confirming the greater need for closer relations due to the crisis. When consumers are asked for the reasons for this situation, they mainly point to:

- The fact that they do not need to open an account in another country because they can buy everything they are looking for in their own country (32%);
- Their preference for purchasing these products in their own country (23%).

The language barrier is also something of a deterrent (17%).

Cases in which consumers tend to open an account in a country other than their usual country of residence (expats, students, etc.) are few in number relative to retail banking volumes. If the people in these situations encounter problems, they are not bound by their special status but rather stand for all consumers in the country in question, and it is at the national level that solutions have to be found.

The Commission has long used the example of study-abroad/cross-border students to illustrate the so-called problems in obtaining a bank account for non-residents. In March 2012, the Commission launched a consultation on this very target group. The impact study provides an opportunity to obtain the results that were not published online, as is usually the case for a public consultation. Of the 4,864 students who took part in the consultation, only 95 (i.e. 1.9%) indicated that they had been unable to open a bank account because they were non-residents. This particularly low rate of 1.9% supports our affirmations that, while problems like this do exist, they are very marginal and a solution should be found in the few countries concerned. They do not justify implementing expensive cross-border systems, the costs of which would be borne by all consumers for the benefit of a very small minority.

We support the establishment of a “safety net” in each member state according to its specific characteristics, which would compensate for any flaw in the market preventing a citizen from being without a bank account subsequent to refusals. From the perspective of banking exclusion and, more broadly, social exclusion, this right should apply in each member state with which the citizen has natural connections. There is no reason to offer it in all member states. However, each member state must ensure that this right also covers the rare special cases, outside the scope of social exclusion, such as short-term residencies for example.

We formally dispute the affirmation that levels of transparency and mobility are obstacles to the freedom of establishment of payment service providers. This freedom exists; however, it may be difficult to exercise this freedom for several reasons. One of the main reasons is definitely the large capital requirements, in accordance with prudential rules. And yet, on a mature banking market, as most European banking markets are, the prospects for making a profit with this capital are both uncertain and spread out over the very long term.

Based on these precise, quantified factors, we do not see any clear evidence that the proposed measures will help stimulate growth in Europe. On the contrary, their implementation is technically complex and will represent a considerable cost for the banking industry, which will ultimately be passed on to consumers. Is it reasonable to impose this additional constraint on a major economic participant, which Europe is depending on to be able to return to growth[2] for such an uncertain benefit to consumers given that it is based on an incorrect and misleading situational analysis?

[2] Banks fund 75% of the economy in Europe

Detailed remarks concerning the proposals on fee comparability

The general aim is positive, of course, but the transposition into uniform concrete measures in considerable detail for the entire European Union respects neither the principle of subsidiarity nor the principle of proportionality.

Selection of at least 20 services: the choice of the number 20 appears arbitrary and is hardly compatible with the parallel requirements of 80%. The proposed criteria have no meaning, given the multiple concomitant objectives this list is supposed to meet.

Excluding the concept of "*most commonly used*" services, the rest cannot be calculated and varies in particular based on the customer's consumer habits, the intensity of which is highly variable, and on the profiles of banking institutions. Furthermore, there is no logical consistency between the criteria. Instead of facilitating comparability, these criteria will only add to the consumer's confusion.

In addition, we do not know of any economic participant that would accept such obligations of transparency on its profit margins. Is this not protected economic information?

We reject the possibility of a delegated act in which the Commission could impose a minimal list used by "*at least a majority of member states*", or the format of the fee brochure or its chapter division. This is not in accordance with the principle of subsidiarity and the simple analysis of the reality of the European banking markets.

Harmonisation of fee terminology in the EU: the process for selecting these terms looks extremely cumbersome and impractical (participation of member states, the EBA, the Commission) relative to the potential added value for the consumer, while we have no idea of the number of terms it would ultimately be possible to harmonise at the European level. At any rate, language is a barrier to comparability. The question of exchange rates will also be an obstacle to transparency for countries outside the euro zone.

It would be preferable to leave the choice of the number of terms up to each member state, according to its national practices and customs, based on a national collaboration with stakeholders.

Harmonised terms will have to be used in contracts: this represents an additional impact in terms of costs. Standard presentation rules for the fee information document and the statement of fees, with the use of a common symbol: this is another source of high costs for what is sure to remain marginal cross-border use (comparison of documents between countries).

Fee information documents and glossaries will have to be made available in branches on a durable medium: this is expensive, particularly for glossaries, which customers actually use very little.

Article 8.2 can only lead to distortions in competition. Payment institutions would not be concerned by the measure, even though they are the ones that will potentially offer the payment account in addition to their historic non-banking activity.

On the whole, we believe that the European standardisation of banking services and terms would be a complex process, generating considerable expenditures for an unattainable goal (specific features of the markets, language barrier, currency differences, etc.), and one that is also likely to be pointless (lack of customer appetite for purchasing banking services and financial products outside their country). The Directive should be limited to defining guidelines, whose deployment must be left to the national level, bearing in mind that European harmonisation of the “details” is of no interest for consumers. This approach will also prevent countries that already have an extensive system from having to make marginal adjustments with no real added value for customers but which are nevertheless costly to implement.

Detailed remarks concerning the proposals on banking mobility

The FBF's greatest reservation concerning these provisions pertains to paragraph 8, which stipulates that this service is also available when the old bank and the new bank are not in the same member state. In addition to the preliminary remarks above, the following problems arise:

- the language difference between the new bank (or its service provider) and the old bank or payment transaction issuers;
- cases in which non-SEPA payment instruments are involved (cheques, interbank payment order);
- some countries (UK, Netherlands) have set up special automated services at the national level for redirecting payments to closed accounts, which could create a problem vis-à-vis the Directive, especially if for reasons of non-discrimination they were extended to all of Europe.

Furthermore, while the EBIC mobility principles already applied around Europe are centred on the "new bank/customer" relationship, the proposed directive shifts the focus to the "old bank/new bank" relationship, with the new bank being responsible for relations with the old bank (with the customer's express approval).

Consumers should not have to be penalised or hit with any other financial loss in the event incoming credit transfers or direct debits are poorly processed: the Commission seems to want to put the onus for respecting deadlines and proper execution of service solely on banks. The essential responsibility of creditors or debtors in ensuring that account details are properly changed is not taken into account. The success of banking mobility lies with the combined initiatives of three participants: the customer, the bank and the economic operators involved in the account transactions.

Overall, we do not believe that the cross-border extension of the mobility service is a good option, not only due to the lack of current demand, but also due to the very absence of justification for the service, as a change of country generally means a change of service providers and/or creditors for the customer.

Detailed remarks concerning the proposals on access to a payment account

The FBF shares the opinion of the European Commission on the need for consumers to be able to access financial services, and particularly a payment account, in order to fully participate in the economy and society. We disagree, however, on how to achieve this objective, and with the Commission's proposals.

In our view, this objective should be achieved first and foremost through free and undistorted competition, enabling consumers to find the right solution for them, based on their own needs, from among the offers on the market. Legislators should limit their intervention to providing a "safety net", i.e. a solution for the cases in which a customer ends up without a bank account after receiving several refusals from banks. It is under this principle that the right to a bank account has existed for many years in France, resulting in a near-complete banking penetration rate.

In this case there is a fundamental difference of approach between what should be a system that combats banking exclusion, aimed at correcting the flaws on the market, and the Commission's proposal, which aims to entitle all citizens to open a certain type of account in all countries without bothering to learn if the customer is excluded or not from the banking system. And yet, it is this very exclusion that undermines participation in the economy and society. We point also point out that this banking exclusion is in general only one aspect of a broader social exclusion.

Moreover, the "cross-border" factor raises several questions concerning the implementation of this proposal. We will not bother to reiterate the lack of demand already mentioned in our introduction.

The only two reasons for refusal are:

- the customer already holds an account with basic features in the country in question;
- where the conditions of the 3rd anti-money laundering directive are not met.

In light of the many examples of ID documents in Europe, authentication of the customer's identity is liable to be a real challenge and in many cases will lead back to the application of the anti-money laundering directive, particularly article 9: "Member States shall require that the verification of the identity of the customer and the beneficial owner takes place before the establishment of a business relationship or the carrying-out of the transaction." By the very nature of opening a cross-border account, and contrary to the Commission's intentions, there is a risk of being systematically forced to apply the provisions of section III, "Enhanced customer due diligence".

Never mind the paradoxical provision stating that the applicant must be immediately informed of any refusal to open an account "unless such disclosure would be contrary to the objectives of national security or public policy". One might consider that a matter of national security would call for some discretion; in this case, however, failure to explain why the account was not opened would obviously indicate that the applicant is considered to be a national security or money laundering risk.

The prerequisite to creating this right should have been the creation of an "EENIC" (European electronic national identity card). And of course, each member state would have to have a database to make sure an applicant for an account with basic features does not already have one in the country, which could be consulted from anywhere in Europe with a secure common identifier.

Given that the right to open an account is available to any person residing in Europe, making it a "European right to an account", which has no reason to be combined with another "national right to an account", and that this associated service must be "free of charge or for a reasonable fee", rights to a national account would no longer have any meaning even when they offered superior services for customers. This would be the case in France, for example, where the European system would be less favourable for vulnerable populations, because the Directive states that loss of a valid EU residency permit is an acceptable reason for terminating the account. However, French case law has confirmed that the right to a French account also applies to individuals without a valid residency permit, the only criterion being they must provide proof of their residence in France.

On the whole, we believe that in order to meet the objective of banking inclusion that the Commission has set for itself, it must be clear that access to a payment account coupled with basic banking services should serve to compensate for a flawed free competition system. Accordingly, this access must be guaranteed solely for customers who find themselves without a payment account.

Within this framework, access to this type of service in each member state is unfounded in that this banking exclusion is in general only one aspect of a broader social exclusion. However, each member state should take the necessary steps to ensure that customers also have this right when, though not victims of social exclusion, they nevertheless are unable to open a bank account in a member state despite having legitimate reasons to want one, and even if they qualify as special cases (such as short-term residencies).

***