

Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features (Text with EEA relevance)

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PARLIAMENT AND OF THE COUNCIL

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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 Central Bank<sup>(1)</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>(2)</sup>,

Acting in accordance with the ordinary legislative procedure<sup>(3)</sup>,

Whereas:

- (1) In accordance with Article 26(2) of the Treaty on the Functioning of the European Union (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. Union 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<sup>(4)</sup> 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 information to be provided, reduced the administrative burden and generated cost savings for payment service providers.
- (3) The smooth functioning of the internal market and the development of a modern, socially inclusive economy increasingly depends on the universal provision of payment services. Any new legislation in this regard must be part of a smart economic strategy

for the Union, which must effectively take into account the needs of more vulnerable consumers.

- (4) However, as indicated by the European Parliament in its resolution of 4 July 2012 with recommendations to the Commission on Access to Basic Banking Services, more must be done to improve and develop the internal market for retail banking. Currently, the lack of transparency and comparability of fees as well as the difficulties in switching payment accounts still create barriers to the deployment of a fully integrated market contributing to low competition in the retail banking sector. Those problems must be tackled and high-quality standards must be achieved.
- (5) The current conditions of the internal market could deter payment service 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 investment. Such investment is 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. Those factors also stifle demand. This is particularly true in the cross-border context.
- (6) Moreover, significant barriers to the completion of the internal 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 Union level has led to divergent practices and measures at national level. Those differences are even more marked in the area of comparability of fees, where no measures, even of a self-regulatory nature, exist at Union level. Should those differences become more significant in the future, as payment service providers tend to tailor their practices to national markets, this would raise the cost of operating across borders relative to the costs faced by domestic providers and would therefore make the pursuit of business on a cross-border basis 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 Union 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 reap the benefits of the internal market.
- (7) Moreover, since some prospective customers do not open payment accounts, either because they are denied them or because they are not offered adequate products, the potential demand for payment account services in the Union 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 of fostering their participation in the internal market and of allowing them to reap the benefits the internal market has brought about.

- (8) Transparency and comparability of fees were considered at Union level in a self-regulatory initiative, initiated by the banking industry. However, no final agreement was reached on that initiative. As regards switching, the common principles established in 2008 by the European Banking Industry Committee provide a model mechanism for switching between payment accounts offered by banks located in the same Member State. However, given their non-binding nature, those common principles have been applied in an inconsistent manner throughout the Union and with ineffective results. Moreover, the common principles address payment account switching at national level only and do not address cross-border switching. Finally, as regards access to a basic payment account, Commission Recommendation 2011/442/EU<sup>(5)</sup> invited Member States to take the necessary measures to ensure its application at the latest six months after its publication. To date, only a few Member States comply with the main principles of that Recommendation.
- (9) In order to support effective and smooth financial mobility in the long term, it is vital 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 to avoid discrimination on the basis of residency against consumers who intend to open and use a payment account on a cross-border basis. Moreover, it is essential to adopt adequate measures to foster consumers' participation in the payment accounts market. Those measures will incentivise 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 Union's financial retail market to the benefit of businesses and consumers. Also, transparent fee information and switching possibilities, combined with the right of access to a payment account with basic features, will allow Union citizens to move and shop around more easily within the Union, thereby benefitting from a fully functioning internal market in the area of retail financial services, and will contribute to the further development of the internal market.
- (10) It is also vital to ensure that this Directive does not hamper innovation in the area of retail financial services. Each year, new technologies become available, which may render the current model of payment accounts out of date, such as mobile banking services and stored value payment cards.
- (11) This Directive should not preclude Member States from retaining or adopting more stringent provisions in order to protect consumers, provided that such provisions are consistent with their obligations under Union law and this Directive.
- (12) The provisions of this Directive concerning the comparability of fees and payment account switching should apply to all payment service providers, as defined in Directive 2007/64/EC. The provisions of this Directive concerning access to payment accounts with basic features should apply only to credit institutions. All provisions of this Directive should concern payment accounts through which consumers are able to carry out the following transactions: place funds, withdraw cash and execute and receive payment transactions to and from third parties, including the execution of credit transfers. As a consequence, accounts with more limited functions should be excluded.

For example, accounts such as savings accounts, credit card accounts where funds are usually paid in for the sole purpose of repaying a credit card debt, current account mortgages or e-money accounts should in principle be excluded from the scope of this Directive. However, should those accounts be used for day-to-day payment transactions and should they comprise all of the functions listed above, they will fall within the scope of this Directive. Accounts held by businesses, even small or micro enterprises, unless held in a personal capacity, should fall outside the scope of this Directive. Member States should be able to choose to extend the application of this Directive to other payment service providers and other payment accounts, for example those which offer more limited payment functions.

- (13) Since a payment account with basic features is a type of payment account for the purposes of this Directive, the provisions in respect of transparency and switching should also apply to such accounts.
- (14) The definitions contained in this Directive should be aligned as far as possible with those contained in other Union legislative acts, and in particular with those contained in Directive 2007/64/EC and in Regulation (EU) No 260/2012 of the European Parliament and of the Council<sup>(6)</sup>.
- (15) 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 payment account is most suitable for their needs. Comparison between fees cannot be made where payment service providers use different terminology for the same services and provide information in different formats. Standardised terminology, coupled with targeted fee information presented in a consistent format covering the most representative services linked to payment accounts, can help consumers to both understand and compare fees.
- (16) Consumers would benefit most from information that is concise, standardised 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. Those tools should be multifold and consumer testing should be conducted. At this stage, 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 and to facilitate swift implementation.
- (17) The fee terminology should be determined by Member States, 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 a Member State. In addition, where the services are common to a majority of Member States, the terminology used to define such services should be standardised at Union level, thus allowing for better comparison of payment account offers across the Union. In order to ensure sufficient homogeneity of the national lists, the European Supervisory Authority (European Banking Authority) ('EBA') established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council<sup>(7)</sup> should issue guidelines

to assist Member States to determine the services which are most commonly used and which generate the highest cost to consumers at national level. To that end, Member States should by 18 December 2014 indicate to the Commission and EBA the appropriate authorities to which those guidelines should be addressed.

- (18) Once Member States have determined a provisional list of the most representative services subject to a fee at national level together with terms and definitions, EBA should review them to identify, by means of draft regulatory technical standards, the services that are common to the majority of Member States and propose standardised Union-level terms and definitions for them in all the official languages of the institutions of the Union. EBA should ensure that only one term is used for each service in any official language of each Member State which is also an official language of the institutions of the Union. This means that different terms can be used for the same service in different Member States sharing the same official language of the institutions of the Union, thereby taking into account national specificities. Member States should then integrate any applicable Union-level terms into their provisional lists and publish their final lists based on this.
- (19) In order to help consumers compare payment account fees throughout the internal market easily, payment service providers should provide consumers with a fee information document that states the fees for all services contained in the list of the most representative services linked to a payment account at national level. The fee information document should where applicable use the standardised terms and definitions established at Union level. This would also contribute to establishing a level playing field between payment service providers competing in the payment account market. The fee information document should not contain any other fees. Where a payment service provider does not offer a service appearing in the list of the most representative services linked to a payment account, it should indicate this by, for example, marking the service as ‘not offered’ or ‘not applicable’. Member States should be able to require key indicators such as a comprehensive cost indicator summarising the overall annual cost of the payment account for consumers to be provided with the fee information document. In order to help consumers understand the fees they have to pay for their payment account, a glossary providing clear, non-technical and unambiguous explanations for at least the fees and services contained in the fee information document 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 requiring payment service providers to inform consumers, free of charge and at least annually, of all the fees charged on their payment account including, if applicable, the overdraft interest rate and the credit interest rate.

This is without prejudice to the provisions on overdrafts set out in Directive 2008/48/EC of the European Parliament and the Council<sup>(8)</sup>. *Ex post* information should be provided in a dedicated document called a ‘statement of fees’. It should provide an overview of interest earned and all the fees incurred in relation to the use of the payment account 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. That benefit would be maximised by the *ex post* fee information presenting the most representative services in the same order as the *ex ante* fee information.

- (20) To satisfy the needs of consumers, it is necessary to ensure that fee information on payment accounts is accurate, clear and comparable. EBA should therefore, after consulting national authorities and after consumer testing, develop draft implementing technical standards regarding a standardised presentation format for the fee information document and the statement of fees and the common symbols, 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. Furthermore, when developing those formats, EBA should also take into account the fact that Member States may choose to provide the fee information document and the statement of fees together with information required pursuant to other Union or national legislative acts on payment accounts and related services.
- (21) In order to ensure consistent use of applicable Union-level terminology across the Union, Member States should establish an obligation requiring payment service providers to use the applicable Union-level terminology together with the remaining national standardised terminology identified in the final list when communicating with consumers, including in the fee information document and the statement of fees. Payment service providers should be able to use brand names in their contractual, commercial and marketing information to consumers, as long as they clearly identify the applicable corresponding standardised term. Where they choose to use brand names in the fee information document or statement of fees, this should be in addition to the standardised terms as a secondary designation, such as in brackets or in a smaller font size.
- (22) Comparison websites that are independent are an effective means for consumers to assess the merits of different payment account offers in one place. Such websites can provide the right balance between the need for information to be clear and concise and the need for it to be complete and comprehensive, by enabling users to obtain more detailed information where this is of interest to them. They should aim at including the broadest possible range of offers, so as to give a representative overview, while also covering a significant part of the market. They can also reduce search costs as consumers will not need to collect information separately from payment service providers. It is crucial that the information given on such websites be trustworthy, impartial and transparent and that consumers be informed of the availability of such websites. In this regard, Member States should inform the public of such websites.
- (23) In order to obtain impartial information on fees charged and interest rates applied in relation to payment accounts, consumers should be able to use publicly accessible comparison websites that are operationally independent from payment service providers, which means that no payment service provider should be given favourable

treatment in search results. Member States should therefore ensure that consumers have free access to at least one such website in their respective territories. Such comparison websites may be operated by, or on behalf of, the competent authorities, other public authorities and/or private operators. The function of comparing fees connected to payment accounts may also be fulfilled by existing websites comparing a broad range of financial or non-financial products. Such websites should be operated in accordance with specified quality criteria including the requirement to provide details of their owners, to provide accurate and up-to-date information, to state the time of the last update, to set out clear, objective criteria on which the comparison will be based and to include a broad range of payment account offers covering a significant part of the market. Member States should be able to determine how often comparison websites are to review and update the information they provide to consumers, taking into account the frequency with which payment service providers generally update their fee information. Member States should also determine what constitutes a broad range of payment account offers covering a significant part of the market, by assessing, for example, how many payment service providers exist and therefore whether a simple majority or less would be sufficient and/or market share and/or their geographic location. A comparison website should compare the fees payable for services contained in the list of most representative services linked to payment accounts, integrating Union-level terminology.

It is appropriate that Member States should be able to require such websites to compare other information, for example information on determinants of the level of services provided by payment service providers, such as the number and location of branches or automated teller machines. Where there is only one website in a Member State and that website ceases to operate or ceases to comply with the quality criteria, the Member State should ensure that consumers have access within a reasonable time to another comparison website at national level.

- (24) It is current practice for payment service providers to offer a payment account in a package with products or services other than services linked to a payment account, such as insurance products or financial advice. That practice can be a means for payment service providers to diversify their offers and to compete against each other, and in the end it can be beneficial for consumers. However, the Commission's 2009 study on tying practices in the financial sector, as well as relevant consultations and consumer complaints, have shown that payment service providers may offer payment accounts packaged with products not requested by consumers which are not essential for payment accounts, such as household insurance. Moreover, it has been observed that those 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 whether it is possible to purchase the payment account separately and if so, provide separate information regarding the applicable costs and fees associated with each of the other products or services included in the package that can be purchased separately.

- (25) The process for switching payment accounts should be harmonised across the Union. At present, existing measures at national level are extremely diverse and do not guarantee an adequate level of consumer protection in all Member States. The provision of legislative measures establishing the main principles to be followed by payment service providers when providing such a service in each Member State would improve the functioning of the internal market for both consumers and payment service providers. On the one hand, it would guarantee a level playing field for consumers who may be interested in opening a payment account in a different Member State, as it would ensure that an equivalent level of protection is offered. On the other hand, it would reduce the differences between the regulatory measures in place at national level and would therefore reduce the administrative burden for payment service providers which intend to offer their services on a cross-border basis. As a consequence, the measures on switching would facilitate the provision of services related to payment accounts within the internal market.
- (26) Switching should not imply the transfer of the contract from the transferring payment service provider to the receiving payment service provider.
- (27) Consumers only have an incentive to switch payment accounts if the process does not entail an excessive administrative and financial burden. Therefore, payment service providers should offer to consumers a clear, quick and safe procedure to switch payment accounts, including payment accounts with basic features. Such a procedure should be guaranteed when consumers want to switch from one payment service provider to another, and also when consumers want to switch between different payment accounts within the same payment service provider. This would allow consumers to benefit from the most convenient offers on the market and to easily change from their existing payment account to other potentially more suitable ones, irrespective of whether this occurs within the same payment service provider or between different payment service providers. Any fees charged by payment service providers in relation to the switching service should be reasonable and in line with the actual cost incurred by payment service providers.
- (28) Member States should be allowed, with regard to switching where both payment service providers are located in their territory, to establish or maintain arrangements that differ from those provided for in this Directive if this is clearly in the interests of the consumer.
- (29) 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. Member States should be able to use additional means, such as a technical solution, when establishing the switching service. Such additional means may exceed the requirements of this Directive; for example, the switching service may be provided in a shorter time-frame or payment service providers may be required to ensure, upon a consumer's request, the automated or manual routing of credit transfers received on the former payment account to the new payment account for a set limited period starting from receipt of the authorisation to switch. Such additional means may also be used

by payment service providers on a voluntary basis even where this is not required by a Member State.

- (30) Consumers should be allowed to ask the receiving payment service provider to switch all or part of the incoming credit transfers, standing orders for credit transfers or direct debit mandates, ideally within a single meeting with the receiving payment service provider. To that end, consumers should be able to sign one authorisation giving consent to each of the abovementioned tasks. Member States could require that the authorisation from the consumer be in writing, but could also choose to accept equivalent means where appropriate, for example where an automated system for switching is in place. Before giving the authorisation, the consumer should be informed of all the steps of the procedure necessary to complete the switching. For example, the authorisation could include all the tasks that form part of the switching service and could allow for the possibility of the consumer choosing only some of those tasks.
- (31) The cooperation of the transferring payment service provider is necessary in order for the switching to be successful. The receiving payment service provider should be provided by the transferring payment service provider with all the information necessary to reinstate the payments on the other payment account. However, such information should not exceed what is necessary in order to carry out the switching.
- (32) In order to facilitate cross-border account-opening, the consumer should be allowed to ask the new payment service provider to set up on the new payment account all or part of standing orders for credit transfers, accept direct debits from the date specified by the consumer, and provide the consumer with information giving details of the new payment account, preferably within a single meeting with the new payment service provider.
- (33) Consumers should not be subject to financial losses, including charges and interest, caused by any mistakes made by either of the payment service providers involved in the switching process. In particular, consumers should not bear any financial loss deriving from the payment of additional fees, interest or other charges as well as fines, penalties or any other type of financial detriment due to delay in the execution of the payment.
- (34) 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 credit institutions 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 internal market by opening and using payment accounts on a cross-border basis. Therefore, the provisions of Directive 2005/60/EC of the European Parliament and of the Council<sup>(9)</sup> should not be used as a pretext for rejecting commercially less attractive consumers.
- (35) Consumers who are legally resident in the Union should not be discriminated against by reason of their nationality or place of residence, or on any other ground referred to in Article 21 of the Charter of Fundamental Rights of the European Union (the ‘Charter’) when applying for, or accessing, a payment account within the Union. Furthermore, access to payment accounts with basic features should be ensured by Member States

irrespective of the consumers' financial circumstances, such as their employment status, level of income, credit history or personal bankruptcy.

- (36) 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. The concept of 'legally resident in the Union' should cover both Union citizens and third country nationals who already benefit from rights conferred upon them by Union acts such as Council Regulation (EEC) No 1408/71<sup>(10)</sup>, Council Directive 2003/109/EC<sup>(11)</sup>, Council Regulation (EC) No 859/2003<sup>(12)</sup> and Directive 2004/38/EC of the European Parliament and of the Council<sup>(13)</sup>. It should also include people seeking asylum under the Geneva Convention of 28 July 1951 Relating to the Status of Refugees, the Protocol thereto of 31 January 1967 and other relevant international treaties. Furthermore, Member States should be able to extend the concept of 'legally resident in the Union' to other third country nationals that are present on their territory.
- (37) Member States should be able, in full respect of the fundamental freedoms guaranteed by the Treaties, to require consumers who wish to open a payment account with basic features in their territory to show a genuine interest in doing so. Without prejudice to the requirements adopted in conformity with Directive 2005/60/EC to prevent money laundering, physical attendance at the premises of the credit institutions should not be required in order to show such a genuine interest.
- (38) Member States should ensure that the number of credit institutions offering payment accounts with basic features is sufficient to ensure the reach of all consumers, to avoid any kind of discrimination against them and to prevent distortions of competition. When determining the sufficient number of credit institutions, the factors to be taken into account should include the coverage of the network of the credit institutions, the size of the territory of the Member State, the distribution of consumers on the territory, the market share of the credit institutions and whether payment accounts with basic features represent only a small part of the payment accounts provided by the credit institution. In principle, payment accounts with basic features should be offered by as many credit institutions as possible, with a view to guaranteeing that consumers can open such accounts at premises of a credit institution that is within close reach of their place of residence and that consumers are in no way discriminated against when accessing such accounts and can use them effectively. In particular, Member States should ensure that there is no visible discrimination illustrated by, for example, a different appearance of the card, a different account number or a different card number. However, it should be possible for a Member State to envisage that payment accounts with basic features are offered by a smaller number of credit institutions, but this should be justified on the basis that, for example, those credit institutions have such a widespread presence on the territory of that Member State that they could serve all consumers without forcing them to travel too far away from their home to reach them. Moreover, consumers accessing payment accounts with basic features should not be stigmatised in any way, and that objective can be better achieved if a larger number of credit institutions are designated.

- (39) Member States should be able to put in place mechanisms to assist consumers with no fixed address, asylum seekers and consumers who are not granted a residence permit, but whose expulsion is impossible for legal or factual reasons, to fully benefit from this Directive.
- (40) When allowing credit institutions to provide, at the request of a consumer, an overdraft facility in relation to a payment account with basic features, Member States should be able to define a maximum amount and a maximum duration of any such overdraft. Member States should also ensure that information concerning any related fees is communicated to consumers in a transparent manner. Finally, credit institutions should comply with Directive 2008/48/EC when offering overdraft facilities in conjunction with a payment account with basic features.
- (41) In order for users of payment accounts with basic features to be served in an appropriate way, Member States should require credit institutions to ensure that relevant staff are adequately trained and that potential conflicts of interest do not affect those customers negatively.
- (42) Member States should be able to permit credit institutions to refuse the opening of a payment account with basic features for consumers who already hold an active and at least equivalent payment account in the same Member State. In order to verify whether or not a consumer already holds a payment account, credit institutions should be able to rely on a declaration of honour provided by the consumer.
- (43) Member States should ensure that credit institutions process applications for a payment account with basic features within the deadlines laid down in this Directive and that, in the event of refusal of such an application, the credit institutions inform the consumer of the specific reasons for the refusal unless such disclosure would be contrary to national security, public policy or Directive 2005/60/EC.
- (44) Consumers should be guaranteed access to a range of basic payment services. Services linked to payment accounts with basic features should include the facility to place funds and withdraw cash. 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 credit institution's online 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. Member States should ensure, with respect to the services related to opening, operating and closing the payment account as well as placing funds and withdrawing cash and undertaking payment transactions with payment cards, with the exclusion of credit cards, that there are no limits to the number of operations which will be available to the consumer under the specific pricing rules laid down in this Directive. With respect to the execution of credit transfers and direct debits, as well as transactions made by means of a credit card, linked to the payment account with basic features, Member States should be able to determine a minimum number of operations, which will be available to the consumer under the specific pricing rules laid down in

this Directive, provided that the services to which those operations relate are for the personal use of the consumer. In determining what should be considered as personal use, Member States should take into account existing consumer behaviour and common commercial practice. The fees charged for operations above the minimum number of operations should never be higher than those charged under the usual pricing policy of the credit institution.

- (45) In the process of identifying the services to be offered with a payment account with basic features and the minimum number of operations to be included, national specificities should be taken into account. In particular, certain services may be considered essential in guaranteeing full use of a payment account in a certain Member State, due to their widespread use at the national level. For example, in some Member States consumers still widely use cheques, while that means of payment is very rarely used in other Member States. This Directive should therefore allow Member States to identify additional services that are considered essential at national level and which should be provided with a payment account with basic features in the Member State concerned. Also, Member States should ensure that the fees charged by credit institutions for the offer of such additional services in relation to a payment account with basic features are reasonable.
- (46) In order to ensure that payment accounts with basic features are available to the widest possible range of consumers, they should be offered free of charge or for a reasonable fee. To encourage unbanked vulnerable consumers to participate in the retail banking market, Member States should be able to provide that payment accounts with basic features are to be offered to those consumers on particularly advantageous terms, such as free of charge. Member States should be free to define the mechanism to identify those consumers that can benefit from payment accounts with basic features on more advantageous terms, provided that the mechanism ensures that vulnerable consumers can access a payment account with basic features. In any event, such an approach should be without prejudice to the right of all consumers, including non-vulnerable ones, to access payment accounts with basic features at least at 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.
- (47) Credit institutions 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 those cases, a refusal can only be justified where the consumer does not comply with that legislation and not because the procedure to check compliance with the legislation is too burdensome or costly. However, there could be cases where a consumer abuses his right to open and use a payment account with basic features. For example, a Member State should be able to permit credit institutions to take measures against consumers who have committed a crime, such as a serious fraud against a credit institution, with a view to avoiding a recurrence of such a crime. Such measures may include, for example, limiting access by that consumer to a payment account with basic features for a certain period of time. Besides, there may be cases in

which the previous refusal of an application for a payment account may be necessary in order to identify consumers who could benefit from a payment account on more advantageous terms. In such a case, the credit institution should inform the consumer that he may use a specific mechanism in the event of refusal of an application for a payment account for which a fee is charged as provided for in this Directive to obtain access to a payment account with basic features that is free of charge. Both such additional cases should, however, be limited, specific and based on precisely identified provisions of national law. When identifying additional cases in which credit institutions can refuse to offer payment accounts to consumers, Member States should be able to include, inter alia, grounds of public security or public policy.

- (48) Clear and comprehensible information on the right to open and use a payment account with basic features should be provided by Member States and credit institutions to consumers. Member States should ensure that communication measures are well-targeted and, in particular, that they reach out to unbanked, vulnerable and mobile consumers. Credit institutions should actively make available to consumers accessible information and adequate assistance about the specific features of the payment account with basic features on offer, their associated fees and their conditions of use, and also the steps consumers should take to exercise their right to open a payment account with basic features. In particular, consumers should be informed that the purchase of additional services is not compulsory in order to access a payment account with basic features.
- (49) Member States should promote measures that support the education of the most vulnerable consumers, providing them with guidance and assistance in the responsible management of their finances. Information also needs to be provided regarding the guidance that consumer organisations and national authorities may provide to consumers. Furthermore, Member States should encourage initiatives by credit institutions seeking to combine the provision of a payment account with basic features and independent financial education services.
- (50) In order to facilitate the ability of payment service providers to provide their services on a cross-border basis, for the purposes of cooperation, information exchange and dispute resolution between competent authorities, the competent authorities responsible for the enforcement of this Directive should be those acting under the auspices of EBA, as set out in Regulation (EU) No 1093/2010, or other national authorities provided that they cooperate with the authorities acting under the auspices of EBA in order to carry out their duties under this Directive.
- (51) Member States should designate competent authorities empowered to ensure enforcement of this Directive, and ensure that they are granted investigation and enforcement powers and adequate resources necessary for the performance of their duties. Competent authorities could act for certain aspects of this Directive by application to courts competent to grant a legal decision, including, where appropriate, by appeal. This could enable Member States, in particular where provisions of this Directive were transposed into civil law, to leave the enforcement of those provisions to the relevant bodies and to the courts. Member States should be able to designate different competent authorities in order to enforce the wide-ranging obligations

laid down in this Directive. For instance, for some provisions, Member States could designate competent authorities responsible for the enforcement of consumer protection, while for others, they could decide to designate prudential supervisors. The option to designate different competent authorities should not affect the obligations for ongoing supervision and cooperation between the competent authorities, as provided for in this Directive.

- (52) Consumers should have access to effective and efficient alternative dispute resolution procedures for the settlement of disputes arising out of rights and obligations established under this Directive. Such access is already ensured by Directive 2013/11/EU of the European Parliament and of the Council<sup>(14)</sup> in so far as relevant contractual disputes are concerned. However, consumers should also have access to alternative dispute resolution procedures in the event of pre-contractual disputes concerning rights and obligations established by this Directive, for example when they are denied access to a payment account with basic features. This Directive therefore provides that consumers should have access to alternative dispute resolution procedures for the settlement of disputes concerning rights and obligations established by this Directive, without distinguishing between contractual and pre-contractual disputes. Such alternative dispute resolution procedures and the entities offering them should comply with the quality requirements established by Directive 2013/11/EU. Compliance with this Directive requires the processing of consumers' personal data. Such processing is subject to Directive 95/46/EC of the European Parliament and of the Council<sup>(15)</sup>. This Directive should therefore comply with the rules laid down in Directive 95/46/EC.
- (53) On a biennial basis, and for the first time within four years from the entry into force of this Directive, Member States should obtain reliable annual statistics on the functioning of the measures introduced by this Directive. They should use any relevant sources of information and communicate that information to the Commission. The Commission should provide a report on the basis of the information received from the Member States for the first time after four years from the entry into force of this Directive and thereafter biennially.
- (54) 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 report based on the review should include a list of infringement proceedings initiated by the Commission in relation to this Directive. It should also include an assessment of the average fee levels in Member States for payment accounts falling within the scope of this Directive, of the question whether the measures introduced have improved consumer understanding of payment account fees, the comparability of payment accounts and the ease of switching payment accounts and of the number of account holders who have switched payment accounts since the transposition of this Directive.
- It should also analyse the number of providers offering payment accounts with basic features and the number of such accounts that have been opened, including by previously unbanked consumers, examples of best practices among Member States for reducing consumer exclusion from access to payment services, and the average

annual fees levied for payment accounts with basic features. It should also assess the costs and benefits of implementing Union-wide portability of payment accounts, the feasibility of a framework for ensuring automated redirection of payments from one payment account to another within the same Member State combined with automated notifications to payees or payers when their transfers are redirected, and of extending the switching services to cases where the receiving and transferring payment service provider are located in different Member States. It should also include an assessment of the effectiveness of existing measures and the need for additional measures to increase financial inclusion and to assist vulnerable members of society in relation to over-indebtedness. 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. It should also assess the need for additional measures with regard to comparison websites and the need for an accreditation of comparison websites. The Commission should submit that report to the European Parliament and to the Council accompanied, if appropriate, by legislative proposals.

- (55) This Directive respects fundamental rights and observes the principles recognised by the Charter in accordance with Article 6(1) of the Treaty on European Union (TEU).
- (56) Since the objectives of this Directive, namely to facilitate the transparency and comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features, cannot be sufficiently achieved by the Member States but can rather, due to the need to overcome market fragmentation and ensure a level-playing field in the Union, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the TEU. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (57) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents<sup>(16)</sup>, 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.
- (58) The European Data Protection Supervisor has been consulted,

HAVE ADOPTED THIS DIRECTIVE:

- (1) [OJ C 51, 22.2.2014, p. 3.](#)
- (2) [OJ C 341, 21.11.2013, p. 40.](#)
- (3) Position of the European Parliament of 15 April 2014 (not yet published in the Official Journal) and decision of the Council of 23 July 2014.
- (4) 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 ([OJ L 319, 5.12.2007, p. 1.](#))
- (5) Commission Recommendation 2011/442/EU of 18 July 2011 on access to a basic payment account ([OJ L 190, 21.7.2011, p. 87.](#))
- (6) 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 924/2009 ([OJ L 94, 30.3.2012, p. 22.](#))
- (7) Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC ([OJ L 331, 15.12.2010, p. 12.](#))
- (8) Directive 2008/48/EC of the European Parliament and the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC ([OJ L 133, 22.5.2008, p. 66.](#))
- (9) 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 financing ([OJ L 309, 25.11.2005, p. 15.](#))
- (10) Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community ([OJ L 149, 5.7.1971, p. 2.](#))
- (11) Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents ([OJ L 16, 23.1.2004, p. 44.](#))
- (12) Council Regulation (EC) No 859/2003 of 14 May 2003 extending the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality ([OJ L 124, 20.5.2003, p. 1.](#))
- (13) Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC ([OJ L 158, 30.4.2004, p. 77.](#))
- (14) Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR) ([OJ L 165, 18.6.2013, p. 63.](#))
- (15) 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 data ([OJ L 281, 23.11.1995, p. 31.](#))
- (16) [OJ C 369, 17.12.2011, p. 14.](#)