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SUMMARY OF RESPONSES TO THE PUBLIC CONSULTATION ON ACCESS TO A BASIC PAYMENT ACCOUNT

1. INTRODUCTION

On 6 October 2010, the European Commission published a consultation document on access to a basic payment account and invited the stakeholders to respond by 17 November 2010. This document is a summary of the contributions received.

The results of the public consultation will help the European Commission to assess the scope and the content of its envisaged policy action on ensuring access to a basic payment account throughout the European Union.

2. CONSULTATION DOCUMENT

The objective of this consultation was to collect stakeholders' views on the envisaged measures on access to a basic payment account in order to strengthen and deepen the Commission services' understanding of the appropriate policy options in this field.

Stakeholders were invited to express their opinions and positions on the principle of a European harmonised framework aiming at guaranteeing the right for consumers to access to a basic payment account. Input was also welcome on the targeted aspects that this framework could regulate, namely the required characteristics of such an account, the principle of accessibility and its modalities of application including the cost of the account for the consumer, the need for general information on basic payment accounts and certain principles on monitoring and alternative dispute resolution.

3. RESPONSES TO THE CONSULTATION

The European Commission received 76 responses to the public consultation. This document provides a high level overview of the comments made by stakeholders.

The respondents can be classified into seven main categories: financial services industry federations, financial services providers, national public authorities, mediator, financial sector trade unions, consumer/user representatives/advocates and others.

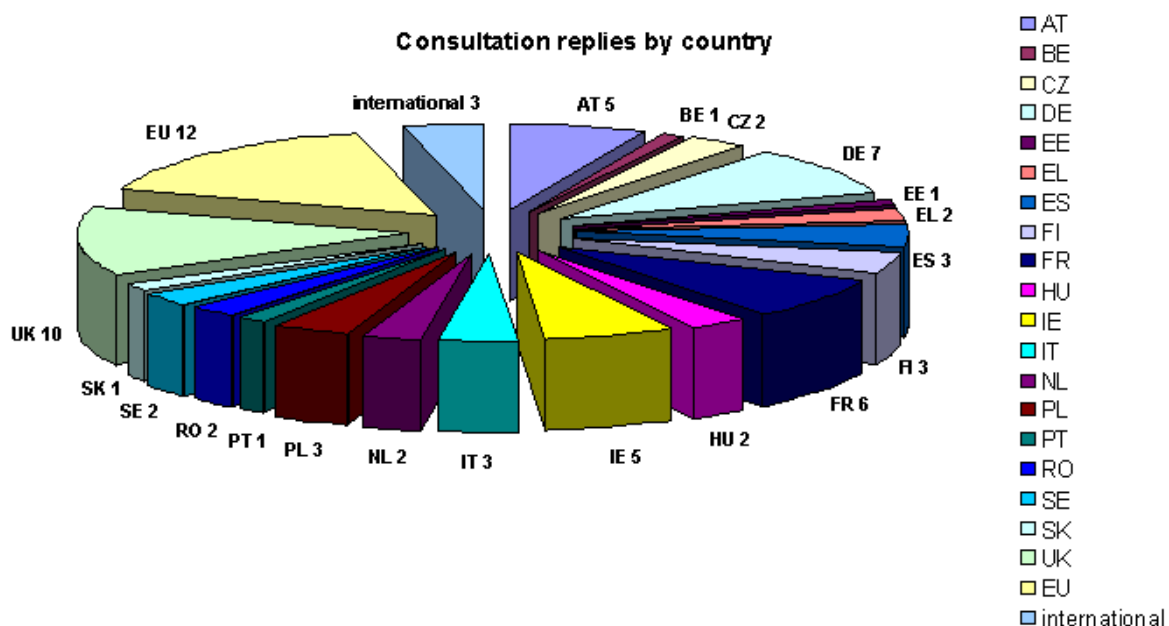
The table below shows how the responses are split between these different categories.

Table 1: Contributions received by stakeholder category

Stakeholder category	Number of replies	Percentage
Financial services industry federations	17	22.3 %
Financial services providers	11	14.4 %
National public authorities	20	26.3 %
Mediators	3	3.9 %
Financial sector trade unions	3	3.9 %
Consumer/user representatives/advocates	19	25.0 %
Other	3	3.9 %
Total	76	100.0 %

In total, contributions were received from stakeholders in 19 EU Member States as well as from representative bodies at EU and international level.

Graph 1: Numbers of contributions received by territorial origin



3.1. General comments

Stakeholders were invited to comment on the principle of a harmonised framework aiming at establishing the right of access to a basic payment account throughout the EU.

A harmonised framework could be established to guarantee the right of access to a basic payment account to any consumer.

This framework would be without prejudice to Community rules, in particular on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

Almost all **public authorities** mentioned that it was crucial for consumers to be able to access a payment account. Three public authorities (including two public authorities from the same Member State) were against the principle of an EU initiative in this field, arguing that there was no or little case for EU action. Two other public authorities objected to the envisaged initiative because they were not in favour of granting a 'right' to access a basic payment account. The other responses were split between (i) supporting a harmonised framework at EU level without calling for a non-binding instrument, (ii) supporting a non-binding instrument and (iii) waiting for the Commission services' impact assessment before expressing a clear-cut position. The reservations expressed by public authorities supportive of a harmonised framework were mainly about the scope of beneficiaries (i.e. an initiative targeted to certain categories of the population only), the consumer's place of residence (i.e. the right should be granted in the country of residence only), or the need for specifying the characteristics of a basic payment account (e.g. the EU initiative should be limited to granting a right). One public authority called for the initiative to target credit institutions only and not all payment service providers. They clarified that there should, in any event, be some flexibility for adaptations and implementation at national level.

Industry representatives, while generally acknowledging the importance for consumers to have access to a payment account, generally disagreed with the means envisaged in the consultation document. They had a number of concerns and objections (see details in Paragraph 3.3). According to them, action at national level would be more appropriate given national divergences, for instance in the level of economic development, level of exclusion, the development and structure of payment and banking systems, and the level of financial education. A majority of them think that action at the EU level would neither be justified nor proportionate. They argue that no serious distortion of the internal market is evident. They also maintain that bank accounts are not services of general economic interest and that granting an unconditional right to a basic payment account would be unacceptable.

Those who would be supportive of action at the EU level, if any, would prefer self-regulation, or even a Recommendation but not legislation. Should a binding instrument be introduced, measures should be very general and allow flexibility to Member States to enable them to take into account national specificities, habits and markets.

The question of which provider(s) would be responsible for providing a basic payment account raised two main concerns amongst stakeholders. The first concern was about the type of providers, with regard to their bank or non-bank status. The second issue was about the allocation of the duty among providers. Some questions were also raised about whether all providers would be responsible or only those who would have been 'chosen' at national level. A financial service industry federation asked whether all market operators would be affected, or only those with a wide coverage of the market. Another financial service industry federation asked whether the Commission was considering reverting to a publicly controlled market despite its long-standing goal of opening up the banking market to competition.

The consultation revealed very large support amongst **consumer/user representatives/advocates**. Many of them were in favour of a framework which would allow for national differences. Moreover, consumer/user representatives/advocates emphasise that such an EU framework should not lower or abolish existing schemes or initiatives at national level. Some stakeholders were supportive of an account being widely accessible for all consumers: for instance, irrespective of whether or not they already have an account or whether they are under the age of 18. A few respondents clarified that the right to a basic payment account should not lead to the obligation to have a payment account. A few stakeholders argued that basic payment accounts should be provided by all providers, including mainstream banks.

Financial sector trade unions and mediators were either supportive or did not object. The **other** respondents held divergent views on the principle of a harmonised framework, with one such respondent supporting actions by local operators focused on disadvantaged people, rather than EU action for every citizen.

Respective stakeholders' positions on the issue of the application of EU rules on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing are summarised in Section 3.3.

3.2. Characteristics of a basic payment account

Stakeholders were invited to comment on the list of services and functionalities that could be guaranteed at EU level, as part of a basic payment account.

A basic payment account could consist of the opening and the closing of a payment account; the means for the consumer to receive, place, transfer and withdraw funds, both physically and electronically; the provision of a debit card allowing for the withdrawal of cash and the carrying out of electronic payments.

The purpose of the list would be to guarantee a common base throughout the EU and would not per se prevent Member States or payment services providers – depending on the national systems – from extending the range of services or functionalities offered together with a basic payment account, provided that the latter is also offered on a stand alone basis. In any case, access to basic payment account could not be made conditional on the purchase of additional services.

An overdraft facility or overrunning would not be part of a basic payment account. Access to credit would not be considered as a component of or a right related to a basic payment account, whatever the purpose or the form of the credit.

Setting the characteristics of a basic payment account could require the development of more detailed technical guidance or clarification at a later stage.

The opinions of **public authorities** were split. About half of the respondents were in favour of or did not express any objections to the envisaged list of services and functionalities. A few public authorities, while supportive of the initiative, pointed out that it would be difficult to define a harmonised set of payment services at EU level because consumers' needs may vary from a country to another. Some public authorities emphasised the importance of access to online purchasing of goods and services. The other comments were mainly about the provision of a payment card, with one public authority strongly opposing such a facility. A few public authorities recommended allowing a payment card with limited functions at first – namely cash withdrawal – and extending the range of functionalities for the consumer who has successfully managed the account over a given period of time.

Some public authorities welcomed the exclusion of credit from the scope of the envisaged initiative. One of them specified that payment transactions should not be made in case they lead to a debit balance whereas two other public authorities mentioned the possibility of a 'buffer' overdraft of a small amount, available to cover withdrawals in certain circumstances.

Consumer/user representatives/advocates agreed with the envisaged list of services, with most of them suggesting a broader range of constituent services or functions, such as account management, account statements, a detailed list of services for transferring funds (i.e. mentioning expressly direct debits, credit transfers), the explicit possibility to access online banking, and a facility for savings. Some of them specified that accessibility in terms of physical access to counters and branches and/or the use of the debit card at any ATM or through a reasonable number of outlets were highly desirable. Moreover, consumer/user representatives/advocates considered it positive that access to a basic payment account should not be made conditional on the purchase of other products or services, e.g. insurance. In this respect, some of them highlighted that a bank's staff members should be appropriately trained. Finally, a number of them expressed their preference for a minimum harmonisation approach and some flexibility at national level to adapt the definition of such an account.

The majority of consumer/user representatives/advocates did not object to the exclusion of credit from the scope of an EU initiative. However a number of them argued that access to a limited, free or inexpensive overdraft facility – a 'buffer zone' – should be considered.

The majority of **industry stakeholders** emphasised the need for flexibility, offering a wide range of opinions. Many of them were against a detailed EU-level list of services and functionalities, considering that this should be entirely or partly dealt with at national level and thereby allow the potential for significantly different basic payment accounts from one country to another. Those respondents who were not opposed to an EU list mentioned however some reservations, mainly on the appropriateness of providing a payment card or allowing online payments and internet banking facilities with a basic payment account. One financial services industry federation stated that a debit card may be considered as an indispensable tool for consumers to operate their payment account across borders, while pointing out the fact that this would have an impact on the overall pricing of the account and that there may be a need for restricting the card functionalities at national level to mitigate against the risk of fraud. Some industry stakeholders mentioned that providers should be able to have the possibility to offer additional services with the basic payment account, such as a credit line.

Other stakeholders including **mediators** and **financial sector trade unions** generally agreed with or did not object to the listed services. Two respondents emphasised the importance of the provision of a debit card. One of them was of the opinion that the basic payment account should be linked to the clearing system so that the debit card could be used in every ATM.

The respondents who commented on the possibility to provide technical guidance largely considered it as a task which should be let to Member States in order to adapt or implement provisions with regard to local market's practices and specificities.

3.3. Access to a basic payment account

Stakeholders were invited to comment on the conditions of access to basic payment accounts, including possible restrictions to such access.

Any consumer could have the right to access to a basic payment account, whatever his nationality or the place of his residence in the European Union.

Criteria such as the level or regularity of income, employment, credit history, level of indebtedness, individual situation regarding bankruptcy or future activity of the account could not be taken into account for the opening a basic payment account.

Access to basic payment accounts could be restricted in the event that the consumer who chooses to open a basic payment account already has one payment account in the same Member State.

Access to basic payment accounts would be provided unless such access is contrary to public policy or public security obligations. The principle of access would be without prejudice to the European legislation on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, in particular regarding due diligence requirements concerning the identity of the client.

The majority of **public authorities** agreed fully or partly with the principles set forth in the consultation document. Several stakeholders pointed out that it is important that consumers continue to meet account opening conditions including anti-money laundering requirements. Those who disagreed with the consultation document argued that the

initiative should be limited to financially excluded consumers or that the Commission should further examine the basis for granting a right to open a basic payment account. One public authority suggested using the notion of 'natural persons legally resident in a Member State of the European Economic Area' instead of 'consumer'.

One respondent found that at least one other restriction should be added to the one mentioned in the consultation paper, namely consumers against whom there is an outstanding claim pertaining to the use of a basic payment account. One respondent considered that more detailed discussions would be required with regard to the issues of credit history, level of indebtedness, bankruptcy and future activity of the account. Another found that any regulation in this field should provide the broadest autonomy to Member States who should be able to assess whether the current supply of products on the national markets meets the requirements for access to a basic payment account.

All **consumer/user representatives/advocates** agreed with the consultation paper, albeit one only partly. One respondent was of the opinion that the notions of 'citizen or resident', 'nationality' and 'place of residence' were not appropriate, considering that the possession of a resident permit or a valid address should give the right to a basic payment account and that the issue of immigrants needs to be addressed. One respondent believed that children under 18 should also have access to a basic payment account. A suggestion was made to invite Member States to provide all people who legally reside on their territory an adequate document of proof of identity which could be used by service providers. A few respondents disagreed with the possibility to have only one account per Member State. Another respondent asked whether banks' practices such as refusing withdrawal of cash over-the-counter could be limited. A number of them were concerned that anti-money laundering requirements and precautions against terrorist financing would be used as an excuse for persisting discriminations and refusals of basic payment accounts.

Industry representatives generally disagreed or agreed only in part. Many respondents thought that granting a right to a basic payment account that they saw as almost unconditional would be disproportionate and restrict their freedom to contract, restrict the provider's ability and duty to perform risk assessment and hinder compliance with legal requirement of due diligence in respect of anti-money laundering and terrorist financing rules. The cross-border dimension of the right was questioned by a number of stakeholders: they notably pointed out that: (i) it would be much more difficult and costly to confirm information such as identity or residency; (ii) persons who would need access to a basic payment account would generally be home-based; (iii) financial exclusion is not *per se* a cross-border issue; (iv) the Single Euro Payment Area (SEPA) would make cross-border access unnecessary because one payment account in the place of residence of the consumer would be sufficient; (v) it would be unfeasible for banks to verify whether the consumer has already an account elsewhere in Europe. A number of contributions pointed out that non-'face-to-face' relations would expose providers to increasing risks and that the scale of access (i.e. the potential access to 27 basic payment accounts for the same consumer) would be disproportionate. Concerning the other criteria that could not be taken into account to be eligible to access a basic payment account, the criterion of 'future activity of the account' would need to be clarified because this very generic wording could also lead to excluding fraudulent or illegal activity of the account. One stakeholder stated that if the Commission envisaged introducing cross-border opening, then the client identification requirements should be further harmonised at the EU level. As to the reasons why a basic payment account may/should be refused, many respondents highlighted the importance of compliance with public policy and

public security obligations – for instance, in order to prevent fraud. In this respect, one financial services provider federation remarked that the rare denial of opening an account to a non-resident customer is generally not related to nationality but to difficulty in identifying him. Other respondents suggested being more explicit on the grounds for refusals to avoid the emergence of grey zones or/and extending the list of grounds for refusal to include 'not reasonable' applications, for instance, where the customer provides wrong or misleading information, where he has not paid account costs (or in case of doubt that he will), in case of harassment or threatening of staff, or where the account remains inactive for a long period.

The opinions of **trade union** stakeholders were split, with two of them mostly agreeing. One respondent felt that there should be no restriction on access a basic payment account in cases where a person already has one account in that Member State. Another mentioned that there is a need for careful case-by-case assessment when designing these criteria.

Among **other** stakeholders, one believed that any limitation in the number of accounts that the consumer can hold is a restriction of competition.

3.4. Issue of cost

Stakeholders were invited to comment on the envisaged principle on the provision of a basic payment account at a 'reasonable cost'.

A basic payment account should be available at a reasonable cost.

The notion of reasonable cost could require the development of more detailed technical guidance or clarification, at a later stage.

While almost all **public authorities** seemed to acknowledge that the cost should be reasonable – one of them used the term 'affordable' – for the consumer as a principle, they were broadly of the opinion that the notion of 'reasonable cost' was a wide, or even controversial notion and that it would need further analysis. One of them considered that cost was the most important issue in the decision on whether to introduce a right of access to a basic payment account and that it was crucial to clarify how/whether differences in actual costs and banks' business strategies including maintenance costs, potential losses and reasonable profits would be taken into account. Around a third of public authorities seemed to be of the opinion, directly or indirectly, that the price for the consumer should be low, with a number of them remarking that this could also mean an account offered free of charge, at least for certain categories of consumers. One public authority mentioned that the principle of a reasonable cost should not lead to the situation whereby other customers would have to pay additional costs. Around a third of public authorities emphasised that it would not be appropriate to define at EU level what a reasonable cost is: this issue should be dealt with at national level.

Many suggestions were made by **consumer/user representatives/advocates**, with a wide range of definitions: the option of no charge at all, the notions of affordable cost, low cost; a nominal cost; charges only for those services which imply extra costs for the provider, for instance, using the teller rather than the ATM; a price on a non-profit basis; a price whose level would not be dissuasive for people with low incomes; and a price that will allow the consumer to manage his budget and pay his bills. Other respondents suggested focusing on a 'fair' cost for the consumer, e.g. a cost which would not exceed the charges applied to other customers for a regular account and/or which excludes

double-charging practices. In addition, one respondent remarked on the possible counterproductive impact of stating that the cost should be reasonable for the consumer, in countries where 'regular' or similar accounts are currently available free of charge. One of the respondents argued that in any case, the charging structure should be clearly explained to the consumer. Another suggested that a maximum price should be set at national level to avoid any divergent interpretations.

Around a quarter of **industry representatives** agreed explicitly with the principle of a reasonable cost. In this respect, one financial services industry federation clarified that it was supportive because this requirement would mean that the basic payment account could be offered at a (reasonable) price, thus not for free. The main comments of those who did not disagree with the principle of a reasonable cost were about the need for more clarity and guidance – or, on the contrary, the necessity not to opt for prescriptive solutions – with respondents making reference to fixed or all-inclusive annual fees, the notion of accessible price, the need to find a balance between social objectives and market realities, the need for providers to recover their operational costs. The other respondents expressed some concerns about what they considered as price regulation: banks should be free to set their prices, with no public interference on product pricing in a competitive market. Some of the respondents pointed out that costs for basic payment accounts are likely to be higher, for instance, because a provision for non-residents would mean additional costs in terms of identity verification. A number of them mentioned the risk of cross-subsidisation. Many stakeholders, irrespective of their position towards the principle of a reasonable cost, were of the opinion that in any case, there should not be any obligation to provide the basic payment account free of charge to the consumer.

One **mediator** mentioned a national example where the level of costs related to a basic bank account must not exceed a given percentage of the national minimal wage. Another emphasised the importance of transparency of bank fees. **Financial sector trade unions** agreed with the principle of reasonable cost, with one mentioning that this should not reduce employees' remuneration. One **other** respondent recommended that fees applicable in case of incidents in the functioning of the account should be capped to avoid cumulative charges. According to another, the reasonable cost should comprise all the costs payable by the consumer.

3.5. General information concerning basic payment accounts

Stakeholders were invited to comment on the envisaged measures related to general information concerning basic payment accounts.

Measures to raise awareness among the public about the availability and the features of basic payment accounts could be required, thus contributing to a more effective access to basic payment accounts.

When choosing to open a payment account, consumers should be given understandable information by payment services providers on, at least: the availability and the features of a basic payment account; the content and the conditions of use of a basic payment account, in particular the fact that the purchase of any additional service is not required in order to obtain a basic payment account; the cost of the payment transactions.

Measures on general information should be without prejudice to the requirements laid down by Directive 2007/64/EC concerning the provision of information to consumers.

The majority of **public authorities** agreed with the envisaged measures, giving additional comments. Some authorities underlined the need for payment services providers to give general information to consumers. This information should be understandable, standardised and as simple as possible. One respondent gave an example from a national practice where basic payment accounts must be offered as a package including the mandatory functions established by the regulation and banks must advertise the annual all-inclusive cost of the package – nonetheless, banks are free to attach other functionalities to the basic account. One respondent argued that information requirements laid down in the Payment Services Directive are satisfactory.

Most **industry stakeholders** either agreed or had no comments. Some comments were about the possible redundancy of any provisions about general information on basic payment accounts: the right to information has already been addressed in the Payment Services Directive; national regulation on information on any type of bank accounts in most of the countries is already very detailed and stringent. Other contributions mentioned that the national level would be more appropriate to promote and enhance financial education programmes. The majority of financial services industry federations felt that no obligation to provide information on basic payment accounts should be imposed on providers – or not exclusively. One respondent argued that such an obligation may consequently cause higher costs on the side of financial services providers.

Consumer/user representatives/advocates were in favour of the measures envisaged in the consultation paper. Many stakeholders pointed out that general information concerning basic payment accounts needs to be clear, concise and understandable for the consumer. It was also stressed by three respondents that whenever a basic payment account is opened, the provider should inform that no purchase of any other product is required. One respondent was of the opinion that financial institutions should be required to assist excluded groups in understanding the features of a basic payment account through statutory codes of conduct. One stakeholder was in favour of a well designed publicity campaign and more training for bank staff.

Financial sector trade unions emphasised the role of employees in raising awareness in general. Bank staff should have the right to provide qualified advice and the time to properly inform and explain.

The **other** stakeholders including **mediators** welcomed campaigns aimed at raising awareness among consumers and fighting financial illiteracy in general.

3.6. Monitoring and out-of-court dispute resolution

Stakeholders were invited to comment on whether rules on monitoring and out-of-court dispute resolution mechanisms should be provided in order to ensure compliance with the initiative aimed at guaranteeing access to a basic payment account.

Competent authorities would be appointed and rules on penalties should be laid down at national level.

Transparent, non-discriminatory, simple and inexpensive out-of-court procedures should be available for dealing impartially with unresolved disputes between consumers and providers, without prejudice of any legal protection afforded by national law. These procedures could not hamper the establishment of complaint offices to facilitate access to dispute resolution by consumers.

In case such disputes involve parties in different Member States, Member States should coordinate their efforts.

The majority of **public authorities** had no comments or agreed with the consultation paper, giving additional comments. Some respondents raised the issue of alternative dispute resolution (ADR) mechanisms already existing in Member States, with no real necessity to set up a new mechanism to examine disputes. One respondent expressed concerns with regard to the respective competences of the envisaged competent authority on the one hand and existing banking supervisory and consumer protection authorities on the other hand.

The majority of **consumer/user representatives/advocates** agreed or had no comments. Some respondents stated that ADR needs to be independent, easily accessible and its services free of charge. Two respondents were of the view that ADR needs to be powerful in its decisions which must be legally binding. Two respondents mentioned that the use of ADR should remain optional and should not be an excuse to avoid judicial resolution of litigations. One respondent thought that competent authorities should be appointed to address derogation measures for banks and the issue of discrimination.

The majority of respondents from the **industry stakeholders** agreed or had no comments. Three respondents among financial services industry federations argued that monitoring should be left to Member States with no need for legal provisions at EU level, according to a strict application of the subsidiarity principle. Concerning the penalties, a few respondents stated that civil or criminal penalties at European or national level are already excessive and unnecessary. Many respondents also asked to avoid duplication given that ADR schemes already exist in most Member States. One respondent added that existing ADR schemes should be promoted rather than establishing new ones. As for the coordination in case of cross-border disputes, one stakeholder did not support any obligation on Member States to address cross-border cases beyond what FIN-NET already provides. Another one supported the idea of gathering and exchanging data.

The **other** stakeholders including **mediators** agreed on the need for ADR schemes and stressed the importance of an in-depth monitoring to assess the commitments of providers. One respondent suggested the appointment of national central banks and/or national public consumer protection authorities as competent authorities, the use of existing ADR mechanisms in each Member State and the use of FIN-NET to coordinate cross-border disputes.