

OVERVIEW OF DIRECTIVE 2014/92/EU [DR GABRIELLA GIMIGLIANO, UNIVERSITY OF SIENA]

Directive 2014/92/EU on *The comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features* (hereafter, the Directive) may be considered as one of the pillars of the European integration process for payment services.

On the one side, the Directive is applied to consumers, and on the other to payment service providers.

The definition of ‘consumer’ follows the traditional standards and covers “*any natural person who is acting for purposes which are outside his trade, business, craft or profession*” (art.2, n.1). Regarding the concept of payment services, the Directive draws a difference between the payment service providers (i.e.: the payment institutions as laid down under dir. 2007/64/EC) and the credit institutions providing that the provisions on transparency and comparability of payment services fees are generally applied while only credit institutions are bound to offer a payment account with basic features.

Generally speaking, the Directive aims to increase the level of competition in the single market and reach to a great extent the unbanked people who are legally resident in the Union, namely the European citizens and “*third country nationals who already benefit from rights conferred upon them by Union acts*” as well as people seeking asylum under Geneva Convention (1951).

The pro-competitive objective mostly deals with payment services fees in the execution of a payment account. A distinction is made between the fee information document and the statement of fees: while the former is handed or delivered to the consumer on paper or another durable device before entering into a contract for a payment account, the latter informs the consumers about the fees incurred yearly and free of charge. In comparison with the information duties laid down in directive 2007/64/EC (hereafter, PSD), this Directive not only raises the level of formalization in transparency rules and regulations, but also pays careful attention to the provision of trans-border payment services. Indeed, the Directive provides that

- Member States must establish a list of 10 to 20 of the most representative “*services linked to a payment account*” and subject to a fee to be included both in the fee information document and in the statement of fee. When the Directive refers to “*services linked to a payment account*”, it means “*all services related to the opening, operating and closing of a payment account, including payment services and payment transactions falling within the scope of the point (g) of Article 3*”

of Directive 2007/64/EC and overdraft facilities and overrunning”
(art. 2, n.6)

- When one or more payment services are offered as part of a package of services linked to a payment account, the fee information document must disclose not only the fee for the whole package, the services enclosed and their quantity but also the additional fee for any service exceeding the quantity covered by the package fee
- The consumers are informed in advance of the overdraft interest rate applied to the payment account and the total amount of interest charges relating to the overdraft during the relevant period
- Member States set up at least one website comparing fees charged by payment service providers free of charge

Furthermore, the Directive attempts to ease the switching service and no nationality discrimination is permitted. The “switching service” allows the consumer, upon individual request, to transfer from one service provider to another the information about all or some standing orders for credit transfers, recurring direct debit and recurring credit transfers executed on a payment account, as well as any payment account balance, with or without closing the former payment account. It is worthy of mention that, in order to increase cross-border customer mobility, the Directive allows consumers to switch for some of the standing orders. Indeed, according to the preamble (32) “*the consumer should be allowed to ask the new payment service providers to set up on the new payment account all or part of the standing orders for credit transfers, accept direct debits from the date specified by the consumer (...)*”. Finally, the Directive establishes that consumers – namely, people legally resident in the European Union – be guaranteed access to a range of basic payment services. To this end, the Directive establishes that credit institutions must largely offer payment accounts “*with basic features* in order to allow them to open, operate and close the payment account, to place and withdraw funds within the Union from a payment account or an automated teller machine, as well as being able to execute payment transactions by direct debit, payment cards and credit transfers (no credit card payment). This kind of service must be offered free of charge or for a reasonable fee.

Therefore, every consumer has the right to a “*payment account with basic features*”, but he is entitled to only one account: in fact credit institutions may be allowed to refuse an application for a payment account with basic features where a consumer already holds a payment account with a credit institution “*located in their territory*” (art. 16, para.5).

In conclusion, some observations and a couple of questions:

- The Directive increases the level of formalization of transparency duties, but it does not lay down Community-based legal consequences whenever the payment service providers do not comply with the rules
- The Directive excludes the notion of micro-enterprises from the definition of consumer despite the provisions of directive 2007/64/EC;
- Any person legally resident in the European Union has the right to a payment account: is this a way to equalize fiduciary money to currency in legal terms without any formal recognition?
- More than once, the European lawmaker has taken regulatory action (regulation or directive) to remove legal obstacles to building up a single market for payment services: maybe one should question whether the “market” works properly and whether payment services may be treated like financial or banking services in the European Union.