



July 2013
AK Position Paper

Directive Proposal (COM (2013) 266) on
the comparability of payment account fees,
switching between payment accounts,
access to payment accounts

About us

The Federal Chamber of Labour is by law representing the interests of about 3.2 million employees and consumers in Austria. It acts for the interests of its members in fields of social-, educational-, economical-, and consumer issues both on the national and on the EU-level in Brussels. Furthermore the Austrian Federal Chamber of Labour is a part of the Austrian social partnership.

The AK EUROPA office in Brussels was established in 1991 to bring forward the interests of all its members directly vis-à-vis the European Institutions.

Organisation and Tasks of the Austrian Federal Chamber of Labour

The Austrian Federal Chamber of Labour is the umbrella organisation of the nine regional Chambers of Labour in Austria, which have together the statutory mandate to represent the interests of their members.

The Chambers of Labour provide their members a broad range of services, including for instance advice on matters of labour law, consumer rights, social insurance and educational matters.

Rudi Kaske
President

More than three quarters of the 2 million member-consultations carried out each year concern labour-, social insurance- and insolvency law. Furthermore the Austrian Federal Chamber of Labour makes use of its vested right to state its opinion in the legislation process of the European Union and in Austria in order to shape the interests of the employees and consumers towards the legislator.

All Austrian employees are subject to compulsory membership. The member fee is determined by law and is amounting to 0.5% of the members' gross wages or salaries (up to the social security payroll tax cap maximum). 560.000 - amongst others unemployed, persons on maternity (paternity) leave, community and military service - of the 3.2 million members are exempt from subscription payment, but are entitled to all services provided by the Austrian Federal Chambers of Labour.

Werner Muhm
Director

Executive Summary

AK welcomes the proposed directive of the Commission because regulatory measures for payment accounts, particularly regarding access to a basic payment account and requirements for greater transparency, are in line with consumer policy demands AK has been advocating for years.

To ensure substantial progress in going beyond the long phase of self-regulation in the credit industry, AK believes several central points should be governed directly in the directive. Under certain circumstances, the possible limitation for Member States to just one bank that has to offer the basic payment account might result in a situation where the current unsatisfactory status quo could be maintained.

The AK position in detail

Chapter 1

Subject matter, scope and definitions

Article 2 Definitions

There is an observable and increasing tendency on the part of companies to bill consumers variously named charges in addition to the contractually agreed charges for covering expenses or to pass these costs on to consumers.

The billing of these charges and fees for payment services is an unclear practice by service providers in Austria. Charges for auxiliary services or for covering expenses are now allowed in only the three cases set forth in the Directive on Payment Services (PSD) owing to the standard definition of fees in the PSD. For this reason, the banks are no longer permitted to bill additional charges and expenses, some of which are also called fees.

Under (k) in the "Definitions" section of the proposed directive, "fees" are defined as "the charges, if any, payable by the consumer to the payment service provider for the provision of payment services or for transactions operated on a payment account." AK is against adopting any new terms or terms other than those used in the PSD for this proposed directive. **The term "charges" as uniformly applied in the PSD should also be applied exclusively to all regulations concerning payment services. To prevent further legal uncertainty, the term "fees" should be**

eliminated altogether or a clarification should be made that "charges" is a broadly defined term that takes in all charges, fees, expenses and costs. This step would prevent divergent term definitions in bank account agreements from virtually opening up the gates to additional expenses that are not transparent and often quite substantial.

Chapter II

Comparability of the fees connected with payment accounts

Article 4, paragraph 1

AK is in favour of using the specifications from the PSD as content for the "information about charges" (we propose this term instead of "fee information", refer to the comments above) so the payment service provider can provide them to the interested consumer **"in a timely manner prior to"** the consumer entering into the contract. Timeliness is a necessary prerequisite for conducting a price comparison.

In the German version of the proposed directive, **"provide"** is rendered as "an die Hand geben." This formulation is ambiguous and should be replaced with **"mitteilen", the word used in the German version of the PSD.** In Austria, the term "mitteilen" is interpreted to mean that the payment service provider must proactively provide the payment service user with the designated information. It does not suffice for the bank merely to have information on its website or printed on the account state-

ment. In these cases, the consumer is required to make proactive inquiries about the information. In actual practice in Austria, there have been repeated instances of major banks not communicating contract changes correctly in accordance with the PSD. AK therefore believes it best to avoid “an die Hand geben”, which it deems an unclear formulation, and to strive instead for a **terminology in accord with the PSD**.

For logical reasons and for the sake of completeness, the fee information should also indicate **which services are free of charge in the respective account model**. The service concerned should be named and marked with a price of “EUR 0.00” price. **Free postings to the accounts** are also problematic for price transparency and are common for certain payment services in Austrian account models. A given number of postings to the accounts are done free of charge per quarter. In these cases, there should be clear, transparent information on which postings are conducted absolutely free of charge.

AK expressly welcomes the provision in Article 4, paragraph 6 that the fee information document and glossary should be made available at bank premises and additionally on the bank website. A further matter still requires clarification, namely that a consumer interested in a bank account should be given a paper version of the price information and glossary directly during a personal consultation meeting.

Article 5 Statement of fees

The common practice at all banks in Austria is to settle accounts and issue an account statement on a quarterly basis. Nonetheless, it would be logical

to supplement the proposed directive by adding a provision **that a summary annual account statement be issued in each case even if interim statements are issued during the year**. This step would improve cost transparency in a sensible manner.

The annual statement of fees (annual account statement) would be exceptionally useful because it would allow the amounts charged to be compared on an annual basis in a comparison of charges with another account product. Annual account statements are substantially more meaningful because they rule out the possibility of fluctuations over the year or the like giving an incomplete picture. They also make it easier for bank customers to see cost elements in proportion to each other and subsequently to act more cost efficiently, e.g. by avoiding expensive transactions. The banks should provide this annual information free of charge.

A second essential issue in this context is the question of account interest, particularly interest on overdraft facilities, which the proposed directive does not address directly. **We explicitly favour this interest being recorded on the statement**, specifically, to the extent that each statement must contain the interest rate currently charged and an indication as to whether it is a variable or fixed interest rate. Interest charged on overdraft facilities is an essential and often highly non-transparent cost factor in practice. As such, it too should appear on the annual account statement as a total paid amount.

AK proposes that the general principles for the statement of charges already be drawn up in an annex to the directive.

Article 6 Contractual and commercial information

AK rejects the general exception enabling payment service providers to continue being able to use their own brand names in contractual and commercial information provided they additionally identify the standard term. This provision increases the complexity of the terminology employed. Since payment service providers are not allowed to use their own brand names in the fee information document and in the statement of fees, there is a fear that this arrangement will lead to further confusion and a lack of clarity for consumers. Banks will presumably utilize the exception and employ an increasing number of terms at the same time or even put them in a separate "term translation table." That would be counterproductive to the goal of transparency. If standard mandatory terms for payment services are found, they should be explained only in the glossary, as envisaged. It should be prohibited in any case to continue to allow an additional brand name to be used in the contract documents, because these documents must be handed out to the consumer, too. Nor is there any logic as to why this two-track approach should be required.

The formulation "where relevant" is unclear in Article 6 paragraph 1. This qualification is inexplicable, because all standard terms for payment services should presumably be used in all documents connected with the account contract.

Article 8 Packaged accounts

Analogous to Article 4, the information should be provided "in a timely manner prior to" entry into a contract.

As regards Article 8 paragraph 2, AK favours eliminating this exception. It is sensible to present the costs of individual services in a transparent manner for packaged products in any case.

Chapter III Switching

Article 10, paragraph 4a and paragraph 6a

The periods for switching accounts basically appears to be somewhat too long. A cross-border account switch, in particular, can take up to one month. As regular payments and incomings often occur monthly in actual practice, it would make sense in any case to set periods substantially shorter than 30 days.

Article 10, paragraph 4b

For account switching, a provision should be made for supplementary information on direct debits so that consumers are informed of their new rights under Regulation 260/2012/EU (Article 5 paragraph 3 letter d). That way, any desired restrictions on SEPA direct debits could be requested immediately during the switching of accounts.

Article 10, paragraph 7

Consumers in Austria sometimes complain that expenses are incurred to block a card because the card for the old account has not yet reached the payment service provider. To avoid this situation, it would be sensible to indicate a **concrete date for the return of ATM cards** when accounts are switched.

Article 11 Fees connected with the switching service

It is completely unclear as to which charges are addressed by paragraph 4. Apparently, the idea is to depart from the principle of a free switching service. To our knowledge, no charges are currently billed in Austria. **AK is of the opinion that switching accounts should continue to be free of charge.**

Article 12 Financial loss for consumers

AK additionally proposes that **any loss** caused by a breach of duty on the part of the payment service provider **should be refunded** to the consumer **immediately**.

Chapter IV Access to payment accounts

Article 15 Right of access to a payment account with basic features

AK is in favour of having **all banks be required to offer a basic bank account** pursuant to the directive. It is doubtful that one payment service provider can suffice, particularly from regional standpoints. A single provider might lead to the stigmatization of the pertinent consumers in certain circumstances such as if a special bank for social services were responsible because no “neutral” account would be available. AK welcomes the fact that there can additionally be a special bank – such as Zweite Sparkasse in Austria – that even views itself as a social project. However, this fact should not alter the obligation of the entire banking sector to provide this basic service.

It will not be **easy in each case to determine the need for opening a basic payment account** because even where there are already databases, they

do not indicate whether a consumer can still use an existing account. **The directive text should therefore clearly state that the consumer’s declaration suffices to open a payment account immediately in case of doubt.** AK believes this is the only way to avoid refusals due to a need for clarification or to the fact that an account formally exists and to avoid a subsequent unreasonable delay due to mediation proceedings, if any. A delay of this kind can be highly counterproductive, for example, when a person is soon starting a new job. It is not at all rare that an account might formally still exist but be practically unusable anymore because the bank refuses to pay-out any or some incoming salary payments or social benefits. The latter are offset against outstanding credit instalments or are meant to cover an overdrawn account. To ensure the affected individuals’ and their families’ subsistence, AK believes that the standards or evidence for verifying need should not be all too stringent. **The banks’ desire for information should not lead to the setup of a mandatory account register.** AK is categorically opposed to this idea.

To address a refusal to open a basic payment account, the text of the directive should expressly clarify that the refusal ensues “immediately in writing and free of charge” and that the consumer be **given the refusal in writing immediately in a personal meeting.** Otherwise, it is feared that processing could take several days and the consumer would not find out about the **refusal until a number of days later by mail. The refusal should in each case contain a mandatory notice about the fundamental legal right to a basic payment account** because many consumers are unfamiliar with their rights. The **refusal**

should also indicate the alternative dispute resolution (ADR) entity and its contact details.

Article 16 Characteristics of a payment account with basic features

The basic payment account **should have absolutely no limitations with regard to payments in comparison with usual consumer current accounts.** There is no objective justification for such limitations in our view.

Article 17 Associated fees

AK **considers a cost ceiling as a basically sensible approach in any event.** The basic payment account should in no case cost more than an inexpensive payment account at the given bank. The **criteria named for what constitutes a reasonable fee** for the competent authorities in the Member States should not be exhaustive, as provided for in the proposed directive. To our minds, a **declarative enumeration would be more useful**, because it would afford greater flexibility with regard to any additional criteria worth considering.

Article 18 Framework contracts and termination

The requirement for termination should be an inquiry from the bank of the account holder asking whether he no longer needs the payment account. The account should be closable only if the consumer does not respond or responds by consenting to termination. The period should be **extended from 12 to 24 months.**

Article 19 General information on payment accounts with basic features

There is no stipulation as to how the information is to be provided. AK favours an express provision that the information be made public in the **branch banks and additionally on the bank website.**

Should you have any further questions
please do not hesitate to contact

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