Launched in 1960, the European Banking Federation is the voice of the European banking sector from the European Union and European Free Trade Association countries. The EBF represents the interests of some 4,500 banks, large and small, wholesale and retail, local and cross-border financial institutions. Together, these banks account for over 80% of the total assets and deposits and some 80% of all bank loans in the EU alone.

EUROPEAN BANKING FEDERATION KEY CONSIDERATIONS REGARDING THE EUROPEAN COMMISSION'S PROPOSAL ON PAYMENT ACCOUNTS

The European Banking Federation (EBF) supports both the further development of a single market and the objectives of combating financial exclusion and facilitating the participation of consumers in the Internal Market. Nonetheless, the EBF has serious reservations regarding the European's Commission's proposal for rules on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features ("the Payment Accounts Directive").

Key Issues

1. EU competence:

- Greater consideration should be given to the principles of subsidiarity and proportionality.

2. Better regulation:

- A compelling impact assessment and proper cost benefit analysis are required.

3. Financial crime:

- Insufficient consideration has been given to existing Anti-Money Laundering (AML) and fraud prevention requirements.

4. Specific Concerns:

- **Access to payment accounts with basic features is a local issue:**
  - Social policy and, ultimately, financial exclusion, are Member States competencies[1] and should be addressed domestically.
  - The Directive, as drafted, creates a risk of substitution of existing payment accounts.
- **Cross border payment accounts switching – case unproven:**
  - There is no empirical evidence demonstrating demand, making development costs disproportionate.
- **Comparability of fees related to payment accounts – difficult practicalities:**
  - Language differences and interpretation are two practical challenges;
  - The proposal could have a negative impact on innovation ;
  - Bank fees are structured differently in different markets making a single list of 20 payment services inappropriate.

See annex for details.

[1] Article 3 of the Treaty on EU and Article 9 of the Treaty on the Functioning of the EU.

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ANNEX

1. EU Competence: greater consideration should be given to the principles of subsidiarity and proportionality

In the European Banking Federation's view, the European Commission's current proposal does not comply with subsidiarity and proportionality principles, as the issues it addresses should be covered at national level.

This lack of competence was stressed several times by the European Commissions' Impact Assessment Board in the procedure leading up the adoption of the Proposal[2]. The opinions of the Impact Assessment Board notably stated that the proposal should provide more in-depth analysis of the scale of trans-national aspects and provide more robust evidence of cross-border obstacles. It also highlighted that the report should strengthen arguments regarding the subsidiarity and proportionality aspects and added value of the options presented involving binding measures at EU level.

In addition, it is important to note that the impact assessment recognises that an EU intervention cannot easily address some of the more intangible features of cross-border take-up of banking services, such as language or distance (p.52).

Further, it appears that the Commission's proposal does not comply with Article 5 of Protocol 2 of the application of the principles of subsidiarity and proportionality of the Treaty on the functioning of the EU[3] which requires the need for any burden, whether financial or administrative, falling upon the Union, national, regional or local authorities, economic operators and citizens, to be minimised and commensurate with the objective to be achieved, to be taken into account.

a. Particularly in relation to cross-border access to payment accounts

Various studies conducted in different Member States have showed that there is extensive market penetration in the majority of EU countries and there are ultimately no major obstacles for consumers accessing a payment account.

The World Bank's study "*Measuring Financial Inclusion*, *Global Findex Database*" published in April 2012[4], shows that 70% to 100% of citizens in 25 out of 27 Member States have a payment account whereas only two countries have a lower ratio: Romania and Bulgaria (45% and 53% of consumers respectively have payment accounts). These differing levels of payment account penetration can be linked either to consumer's preference not to open a payment account or the level of banking infrastructure development in that particular countries.

In most Member States only a very low percentage of the population is unbanked: there is no clear evidence of pan-European market failure. The approach of the European Commission is therefore disproportionate as it imposes measures on all EU Member States to address an issue confined to a minority of Member States.

The figures provided by the European Commission[5] do not prove that financial exclusion is less of a problem in countries where a legal framework is in place compared with those that have a self-regulatory framework. Non-binding solutions (i.e. in Germany, the Netherlands) can be as effective in reducing the number of people with no account as those in line with the Recommendation (i.e. Belgium, France). Logically therefore the added value, as well as the proportionality of binding EU legislation, is not justified.

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[2] European Commission's Impact Assessment p.16

[3] Treaty on the functioning of the European Union (consolidated version), Protocol 2 on the application of the principles of subsidiarity and proportionality, OJEU 26.10.2012 C 326/206.

[4] Impact Assessment of the European Commission, p.4.

[5] European Commission's calculation based on data from the World Bank, 2012 Eurobarometer and Eurostat (p.28 of the impact assessment, Table 3 on the size of the problem (millions)).

b. Particularly in relation to cross-border switching

Given the very limited number of cross-border bank accounts being opened and low demand expressed by customers (Eurobarometer 373[6]), the EBF believes that imposing switching mechanisms at a cross-border level is totally disproportionate, given the high costs and complexity involved in relation to the lack of an obvious market for such a service. A pan-EU switching infrastructure would be very difficult to implement due to very high cost of setting up automated procedures throughout the EU (including non-euro zone countries), to practical challenges such as language barriers (in the case of Greece, Cyprus, Bulgaria, differences in respective alphabets), conversion of accounts and account mandates across multiple currencies (including non-Eurozone countries). These difficulties do not appear to have been costed and factored into the Commission's thinking.

2. Better regulation: a proper cost benefit analysis is needed

Banks are naturally eager to expand their client base but there is not sufficient cross border demand justifying EU action at this stage.

Presently there is very limited demand for cross-border access to payment accounts as well as cross-border switching: the Special Eurobarometer 373, Retail Financial Services[7] – Report published by the European Commission in 2012 showed that there was very limited demand for cross-border bank accounts and further results from a previous survey (2011)[8] showed that only 5% of bank account holders expressed small practical difficulties in switching their bank account in the past five years.

There is a lack of a proper cost-benefit analysis accompanying the proposal that demonstrates how the benefits will outweigh the resource requirements that the legislation will impose, especially given the lack of evidence for demand for the proposals set out in the Directive (as evidenced above).

3. Financial crime: insufficient consideration has been given to existing anti-money laundering (AML) and fraud prevention requirements

The EBF believes that the European Commission's proposal gives insufficient consideration to existing Anti-Money Laundering (AML) and fraud prevention requirements.

The current EU AML framework on the prevention of the use of the financial system for money laundering and terrorist financing[9] is based on a minimum harmonisation standard, allowing Member States to adopt or retain rules which could be less restrictive. It is important to note that the proposal for a 4th EU AML Directive issued in February 2013 maintains a similar level of minimum harmonisation for specific provisions related to record keeping, document storing and information used for customer due diligence. The EBF is therefore concerned that establishing cross-border access to payment accounts with basic features and cross- border switching could enable criminals to open up a bank account more easily due to less stringent AML legislation.

Under the European Commission's proposals, consumers who are legally resident in the Union will have the right to open and use a payment account with basic features irrespective of their place of residence. It is, however, not clear what documents will be required in order to assess a customers' proof of residency and how these will meet AML due diligence obligations.

Furthermore, the obligation to provide access to a payment account with basic features to a consumer who has no clear personal or professional link to the Member State in which they wish to open an account falls short of banks' individual 'Know Your Consumer (KYC)' practices (imposed at national level).

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[6] http://ec.europa.eu/internal_market/finservices-retail/docs/policy/eb_special_373-report_en.pdf
[7] http://ec.europa.eu/internal_market/finservices-retail/docs/policy/eb_special_373-report_en.pdf
[8] http://ec.europa.eu/consumers/strategy/docs/consumer_eurobarometer_2011_en.pdf
[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, OJEU 25.11.2005, L 309/15.

4. Specific concerns

a. Access to payment accounts with basic features is a local issue

i) Social policy and, ultimately, financial exclusion, are Member States competencies[10] and should be addressed domestically

The European Commission has pursued two different regulatory objectives in one measure: facilitating access to basic payment accounts to unbanked (national) consumers and ensuring that cross-border (banked) customers are not denied access to local payment services. The EBF would therefore argue that a distinction should be made between their social policy approach (access to payment account with basic features) on the one hand, which is a domestic issue, and, their internal market policy approach (cross-border access), which in this instance does not correspond to the broad needs of citizens operating within the EU's financial market.

- **Adopting a social policy approach to combat financial exclusion**

The EBF understands the European Commission's objective of financial inclusion for unbanked people. It is indeed important for vulnerable consumers to access financial services in order to enable them to participate in modern society. Indeed, the access to and use of a basic payment account, as well as the ability to carry out simple transactions are imperative to the integration of people into current European society.

The EBF is broadly supportive of granting financially excluded citizens access to a payment account with basic features at a reasonable cost. Nonetheless, this should remain a domestic issue.

Financial exclusion is closely linked with social exclusion and forms part of the EU's social policy objectives (Article 3 of the Treaty on EU [11]and Article 9 of the Treaty on the Functioning of the EU[12]).

In accordance with the principle of subsidiarity, the development and the implementation of social policies remains principally the responsibility of Member States. **In light of this, the appropriate actions concerning access to payment accounts with basic features should be taken at Member States level with the support of the European Platform against Poverty and Social Exclusion (a flagship initiative of Europe 2020), which is designed to combat social exclusion.**

- **Inappropriate assessment at cross-border level**

According to the European Commission's calculations, 56 million EU citizens do not have a payment account. In the European Commission's Impact Assessment[13] it is clearly stated that among 56 million, only 3 million were "mobile consumers" (moving cross-border) whereas 53 out of 56 million EU citizens were "vulnerable consumers" (citizens with few economic resources, victims of poverty and social exclusion). These figures clearly demonstrate that the cross-border aspect is not the main issue that needs to be targeted.

The rationale for a basic payment account is therefore to combat financial exclusion and this should be the focus.

- **No robust evidence of cross- border obstacles:**

The EBF recognises that in some Member States, some difficulties were identified regarding consumers' cross border access to a payment account. However, the EBF considers that these cases cannot be used

[10] Treaty of the European Union (consolidated version), OJEU 26.10.2012 C 326/1. and Treaty on the functioning of the European Union (consolidated version) 26.10.2012, C 326/53.
[11] Treaty on European Union (consolidated version), OJEU 26.10.2012 C 326/1.
[12] Treaty on the functioning of the European Union (consolidated version) 26.10.2012, C 326/53.
[13] Impact assessment of the European Commission p.23, table 2: Size of the problem (EUR, million, 2011 data).

to make a generalisation. In the EBF's view, there is no sufficient evidence of cross-border obstacles such as a bank denying access to a payment account on the grounds of residency. For example:

- There are only a few cases where access to bank accounts was denied due to the fact that the citizen was not an official resident: EU: 0%, Austria: 1%, Belgium: 10%, Estonia: 2%; France: 2% and Slovakia: 1%.[14]
- In March 2012, the European Commission published a consultation on access to a bank account by Erasmus and exchange students. 4 864 EU students, enrolled at foreign universities in another EU country, responded to the survey. According to the European Commission's impact assessment, the European Commission's survey on Erasmus and exchange students from EU Member States (March 2012) demonstrates that among the students who tried to open an account only 95 (3,8%) were rejected due to "not being a national resident"[15].

It is not clear to the EBF members why customers, who are not considered to be financially excluded, should be given the right to hold such an account when they can access an ordinary payment account or rely on the Single Euro Payments Area (SEPA).

ii) The Directive, as drafted, creates a risk of substitution of existing payment accounts

The European Commission's proposal promotes a payment account with basic features that does not have any distinguishing features from any other ordinary payment accounts. The requirements of this provision will inevitably impact the model, profitability and sustainability of ordinary payment account products and may result in the substitution of the existing ordinary payment account base. In addition, considering that the aim is to have a more standardised approach, the outcome of the proposal could also negatively impact innovation and competition within the market.

Furthermore, some might question the legality/constitutionality[16] of such far reaching price and product regulatory intervention, as the measures are indeed not strictly targeting a limited group of people and constitutes an unjustified limitation of the fundamental right of free market economy.

It is important to stress that in most Member States only a very low percentage of the population is unbanked: there is no clear evidence of pan-European market failure. The approach of the European Commission is therefore disproportionate as it imposes measures on all EU Member States to address an issue confined to a minority of Member States. Evidence of market failure should be examined first before considering another option.

b. Cross border payment accounts switching – case unproven

i) There is no empirical evidence demonstrating demand, making development costs disproportionate

In the EBF's view, the European Commission has failed to demonstrate sufficient proof of any negative impact on cross-border mobility as a result of the present lack of cross-border switching. It appears that the European Commission has adopted more of a theory-based approach as opposed to one supported by factual evidence (for more information, please see above).

Results from a Eurobarometer survey (Eurobarometer 299) conducted in 2011[17] showed that only 5% of bank account holders expressed small practical difficulties in switching their bank account in the past five years. In addition, according to the Special Eurobarometer 373[18], 85% of European current accounts holders have not tried to switch as they do not need to, while 7% say they switched and it was easy.

[14] European Commission factsheets "*Access to payment accounts*" published in May 2013 (based on the Special Eurobarometer on Retail Financial Services (p.26))
[15] European Commission's impact assessment p.111.
[16] See notably the decision of the Czech-Republic's Constitutional Court concerning a rent control situation 2006/02/28 - Pl. ÚS 20/05 which could be put into perspective with the European Commission's initiative on payment accounts with basic features.
[17] http://ec.europa.eu/consumers/strategy/docs/consumer_eurobarometer_2011_en.pdf
[18] http://ec.europa.eu/internal_market/finservices-retail/docs/policy/eb_special_373-report_en.pdf

3% say they have not tried to switch as it is too difficult. Only 1% switched and found it difficult, and 1% tried to switch but gave up.

On analysis of this data, the reason for low switching rates appears to be due to customer satisfaction rather than due to any problems with switching provisions. Furthermore, due to the recent increase in multi-banking trends, making a switching service easier does not necessarily translate into significant customer mobility. Taking these figures into account, it seems wholly disproportionate to impose switching mechanisms at the EU cross-border level.

ii) Coherence with the Single Euro Payment Area (SEPA)

The implementation of cross-border switching risks compromising the utility of the Single Euro Payments Area (SEPA)[19].

At present, consumers are able to exchange Euro payments between accounts within SEPA in the same fashion as they do within national borders. They therefore can rely on a single set of euro payment instruments covering 32 countries (one bank account, one bank card, one SEPA Credit Transfer (SCT) and one SEPA Direct Debit (SDD)) with no need of opening bank accounts in other Member States to carry out cross-border transactions.

It is important to reiterate that that the aim of SEPA is to make Europe more dynamic and competitive, to abolish barriers between domestic and cross-border Euro payments and progress fragmented, national markets for Euro payments into a single, domestic one.

In this context, it is important to highlight that currently the EU authorities, including the Council of the EU[20], are calling upon Member States and stakeholders to comply with the SEPA Regulation. The European Commission's proposal could therefore appear incoherent with the SEPA objectives and considered detrimental to the visibility of the benefits that SEPA can bring to all citizens in the EU.

iii) Implementation of an unjustified, costly and complex banking infrastructure is unnecessary

A pan-European switching infrastructure will be very difficult to accomplish due to practical challenges such as: the very high cost of setting up automated procedures throughout the EU (including non-euro zone countries), language barriers (i.e. in the case of Greece, Cyprus, Bulgaria, differences in respective alphabets), exchange rate risks, conversion of accounts and account mandates across multiple currencies (including non-Eurozone countries) as well as ensuring that insurance contract obligations are respected.

The EBF is convinced that the provisions proposed by the Commission are not suited to the objectives of the proposal and would ultimately be counter-productive for consumers.

iv) Therefore European Banking Industry Committee (EBIC)'s Common Principles on Bank Account Switching should be favoured

The EBF is committed to supporting bank account switching and with this, facilitating consumer mobility. However, the EBF believes that the focus should be on providing an efficient and effective solution to account switching at the national level as opposed to at EU level.

The EBF therefore believes that the EBIC Common Principles on Bank Account Switching (that received approval from both the European Commission and the European Council) constitutes the right approach (as further evidenced by the results of the Special Eurobarometer 373, Retail Financial Services – Report published in 2012[21]). This said, the EBF acknowledges that there is potential to improve efficiency of implementation of the principles through appropriate national initiatives.

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[19] http://ec.europa.eu/internal_market/payments/sepa/
[20] Conclusion of the ECOFIN, 14 May 2013
[21] http://ec.europa.eu/internal_market/finservices-retail/docs/policy/eb_special_373-report_en.pdf

c. Comparability of fees related to payment accounts – difficult practicalities

i) Language difference and interpretation are two practical challenges

The EBF does not consider that the use of identical terms for bank account services across Europe would be of substantial benefit for consumers due to their varying expectations. Agreeing on a list of standardised EU terminology would be equally as difficult as there will undoubtedly be subtle differences in the various services provided across the 27 Member States, as well as issues pertaining to translation of common terminology (i.e. translation of the term "charges" is unlikely to be precisely the same in every language and could result in major changes for smaller players, having to conform to UK, French, German and Spanish terminology).

ii) A negative impact on innovation

The EBF is also concerned by the fact that the approach of the European Commission could have a negative impact on innovation. Indeed, through the standardisation of the terminology, the European Commission's proposal will inevitably affect the nature and the content of the payment services and therefore restrain the development of the services. As a consequence, the new payment services developed by banks could be out of the defined list of standardised products and create also a risk to have a list of payment services which is not representative of all the services available.

iii) Bank fees are structured differently in different markets making a single list of 20 payment services inappropriate

The provision of information in relation to fees and charges at the national level is considered to be of benefit to customers as it will inform them of the various options available from payment service providers. However, different charging models have been adopted in different Member States, making a single requirement to list at least 20 payment services accounting for 80% of the most representative services subject to a fee in that Member State, impractical.