



## EACB Position Paper on European Commission Consultation on Access to a Basic Payment Account

Brussels, 19 November 2010

The **European Association of Co-operative Banks** (EACB) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 28 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks' business model. With 4.200 locally operating banks and 63.000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 160 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 50 million members and 750.000 employees and have a total average market share of about 20%.

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## I. General comments

The EACB welcomes the opportunity to comment on the objectives and principles outlined in the European Commission's *Consultation on access to a basic payment account*. Our comments contained herewith should be considered in conjunction with the 2009 EACB Position Paper concerning Commission's *Consultation on Financial inclusion: Ensuring access to a basic bank account*.

### Financial inclusion in co-operative business model

Financial inclusion has always been at the core of the co-operative business model. Traditionally, the central idea of a co-operative bank was to ensure that those financially excluded are self-reliant. Known as stakeholder value banks, as opposed to shareholder value banks, their objectives are to pursue stakeholder value and to establish specific longstanding relationships with their customers, based on trust and proximity. With decentralized networks and high degree of local presence, co-operative banks have a long experience of welcoming all types of clients. In this context, we would like to urge the Commission to focus its efforts on preserving the diversity of the banking sector, as it is an important factor contributing to ensuring access to a basic payment account.

### Objectives of considered measures

Having analysed the Commission's Working Document, the EACB is unsure as to what the real objective of the possible future initiative may be. While from reading the introduction to the Commission's Working Document we are under the impression that the main objective is to ensure access to a payment account for the most vulnerable consumers who for one reason or another were refused the possibility of opening a bank account, the analysis of the further part of the document suggests that measures could be aimed at any consumer who simply wishes to open a payment account. The EACB does not in particular support prescriptive actions to address the 'voluntary exclusion' of those citizens who choose not to have a bank account, or who already have access to an account which meets their needs. For example, with the introduction of the Single Euro Payments Area, there is no need for consumers to have several bank accounts in several Member States. This is particularly true for persons temporarily changing their residence, such as for example ERASMUS students, who – in our view incorrectly - seem to be one of the main target groups of the possible initiative identified by the Commission. Further, the EACB is convinced that an obligation imposed on banks to provide access to a basic payment account would not in any case lead to the inclusion of the 'voluntarily excluded' consumers. The EACB believes that financial education about benefits of having a bank account addressed to the unbanked citizens would be a more appropriate way forward. The same applies to citizens '*having difficulty in using payment services*'. The EACB urges the policy makers to address the issue of financial education with the necessary sense of priority.

### The effectiveness of voluntary provision of accounts

The EACB would like to emphasise that in many Member States where voluntary charters and codes of practice were developed by the banking industry, the results have been satisfactory. The EACB would therefore like to maintain, and hope that it is duly recognised, that such voluntary measures can bring comparable results, and sometimes provide even more practical solutions than legislation.

For example, the German banking industry implemented self-regulation on 'current accounts for everybody' (Girokonto für jedermann). Any consumer who for any reason could



not obtain access to a bank account can apply to open a basic bank account which allows for placing, receiving, transferring and withdrawing funds, and it does not include an overdraft facility. It is available to consumers regardless of their income, however, the bank can refuse opening/closing of the existing account for listed, justified reasons, including situations where the consumer: (i) abuses the account by using it for fraud or money laundering purposes, (ii) makes false statements necessary for contractual relationship, (iii) harasses or exposes to risk employees or other clients of the bank, etc. This measure has proven to be very successful, as it is demonstrated by the annual reports on the functioning of the self-regulation prepared by the industry, and by the 99% rate of banked citizens. In the Netherlands, where there is a 99%-rate of banked consumers, a *Code of Conduct on basic payment services* ensures that payment services are available to adults who have an address (or a postal address with an officially recognised social institution) in the country, and whose ID is identifiable in accordance with the anti-money laundering regulation. The services include credit transfers, special transfers forms (GIRO), direct debit, an ATM card, and an account. The access is not subject to purchasing any additional services. Direct debits and ATM withdrawals can be stopped by banks if they could lead to an overdraft. A consumer can be refused access to this service (or the contract may be terminated by the bank) if the consumer is involved in fraud or breaches anti-money laundering regulations, however, not if he/she is listed in the negative credit register. The out-of-court dispute resolution is ensured via the Dutch ADR. In Austria, where the rate of banked consumers is nearly 100%, many banks agreed on an individual basis with the Austrian Arbeitsmarktservice (employment agency) to provide on a voluntary basis access to an account to vulnerable consumers. These accounts grant limited and risk-reduced access, with no possibility for overdrafts, credit cards, cheques, etc.

As the above examples demonstrate, the provision of access to a basic bank account on a voluntary basis can, and already does work quite successfully in many Member States and results in very high rates of banked citizens (in many cases nearly 100%). Therefore, the EACB does not believe that there is merit in the introduction of a legal obligation at EU level to provide access to accounts. The provision of access on a voluntary basis exists and can function well. If, nevertheless, any measures were to be introduced, they should be limited to national level, subject to identifying an actual problem in the domestic market, and in such cases preference should be given to facilitating or encouraging voluntary, self-regulatory tools, as opposed to legal obligations. A proper cost-benefit analysis should precede any legislative initiative at EU level, as it could generate unnecessary cost for, in particular, those countries where the level of banked customers is already high.

### **Extensive national differences**

The EACB fully supports the concept of taking into account the specificities of national contexts, habits and markets in the context of designing principles governing access to a bank account, as stated in the Commission's consultation document (page 4). The national dimension is essential in this respect, since solutions depend on the existing public social policies and on the social and economic reality of each Member State. The levels of financial exclusion in various Member States vary significantly. According to the CSES study, in most Member States the percentage of citizens without a bank account is around 1-6%. Only in three Member States is the share of 'unbanked' citizens over 15%. It would seem logical to limit actions to address the issues of exclusion in those Member States where the percentage of unbanked citizens is the highest. The EACB considers that the national level should be the primary level of addressing the issue, if necessary. If any solution at EU level is nevertheless opted for, it should focus on encouraging the industry or Member States to adopt relevant solutions at national level, which would be adaptable to the specificities of the local situation.



## Lack of correlation between legal obligation and levels of inclusion

There is a clear correlation between the economic development in a Member State and the levels of access and regular usage of a bank account. Most of the Member States with lower rate of banked citizens include the EU12 Member States, with Bulgaria and Romania having the lowest rates of banked citizens. It is not without significance that the role of 'grey economy' and untaxed income in those countries forms a larger share of the economy than in the rest of the EU. At the same time, no evidence has been so far produced to demonstrate that there is a correlation between the existence of a legal obligation to provide bank accounts and the levels of inclusion. Austria, Spain or Germany, where regardless of no regulatory framework the percentage of population without a bank account is truly marginal (1%, 2% and 1% respectively), are the best examples of the lack of such correlation.

## II. Detailed comments

### 1. Principle

#### 1.1. Putting things in perspective

The EACB in general agrees that access to a payment account may be important to participate in many aspects of life. However, we feel that the potential costs for consumers of not having a bank account, as analysed in the CSES study, are sometimes overstated. For example, we do not consider that not having a bank account would prevent citizens from accessing jobs. Indeed, a consumer who just signed an employment contract will be considered as a viable potential client by any bank, and therefore the opening of a payment account should not be an issue, while providing bank details to the employer normally takes place after the employment contract has been signed, and not the reverse.

Furthermore, the percentage of those citizens who simply choose not to have an account is unknown. Initiatives, if any, should be focused mainly on ensuring access for the most vulnerable citizens, and should be preceded by relevant market study assessing the percentage of citizens who remain unbanked because they were denied access to a bank account, and who are 'voluntarily excluded'. This is prerequisite to correctly assess the impact and potential success of the future initiative.

#### 1.2. Why voluntary provision rather than obligatory

We wish to emphasize that it is within the very core of the co-operative business model to welcome all types of consumers. With the current account being considered as a "gateway product", and co-operative banks focused on a universal consumer-bank relationship, it is in the very interest of co-operative banks to make efforts to provide access to a bank account on a voluntary basis to all customers. The EACB is therefore opposed to the introduction of a legal obligation for banks to provide access to a basic payment account. The banks are the ones who bare the risks, costs and efforts of opening an account, and they should be able to make decisions based on the risks or company policies. It should be stressed that the banking business is based on mutual confidence, and the principle of contractual freedom must be always ensured. Further, as the example of Spain, Austria or Germany demonstrates, it is not a legal obligation (or even structured self-regulatory commitment) that leads to high levels of financial inclusion. In our view, these countries are testimony to the fact that it is rather the preservation of diversity in the banking model that contributes to the high level of financial inclusion.



Banks should always have the possibility of refusing access or of closing an account when it is justified by objective reasons, such as consumer's non-compliance with relevant rules, fraud, breach of money laundering regulations, etc.

### 1.3. Level-playing field

If any initiative was to be launched, and in order to ensure level playing field for all the actors on the market, it is of utmost importance that any possible measures are equally addressed and applicable not only to banks, but also to all non-banking payment services providers, as they are defined in the Directive 2007/64/EC on payment services (PSD).

### 1.4. Risk of spill-over

In addition, the EACB does not see the need for introducing special solutions for those citizens who in a natural way fully participate, or rather have the capacity to participate, in the financial services without specially targeted assistance. We would therefore propose that if the decision is made to propose any measures, those could possibly focus only on ensuring *"access to a basic payment account to any consumer" (...)* who was refused a bank account which lead to non-voluntary social exclusion. An obligation to provide a basic payment account to all consumers could otherwise lead to the contamination of the bank's offer, which should not be the final result

### 1.5. Need for thorough observance of anti-money laundering rules

Finally, the EACB welcomes the fact that some consideration is given to the rules on anti-money laundering and terrorist financing, however, would call the Commission to further elaborate on this issue.

## 2. Characteristics of a basic bank account

### 1.1. Duplication of the PSD

The analysis of the proposed by the Commission characteristics of a basic payment account leads to a question as to what distinguishes it from a 'payment account', as defined in the PSD. The list of services and functionalities of a basic payment account as defined by the Commission in its Working Document includes *'means for the consumer to receive, place, transfer and withdraw funds, and the provision of a debit card allowing for the withdrawal of cash and the carrying out of electronic payments'*. On the other hand, a 'payment account' is defined in Art. 4.14 as *'an account held in the name of one or more payment service users which is used for the execution of payment transactions'*. A payment transaction is defined as *'an act, initiated by the payer or by the payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and the payee'*. All this leads to questioning of the added-value of creating a new product called a 'basic payment account' over and beyond of what is already laid down in the PSD.

### 1.2. Different expectations in different Member States

Further, the EACB would like to emphasise that when defining the functionalities of a 'basic payment account' different national realities should be duly taken into account. For example, one of the functionalities of the 'basic payment account' proposed by the Commission would be a debit card. While in some Member States it seems to be considered by consumers as a basic functionality of a payment account, in others this may seem as a less standard feature, not sought after by the most basic users. Here too the PSD leaves



ample room for elaborating on what could be a basic service offer in accordance with the needs of consumers in individual Member States.

### 1.3. Basic bank account already on offer

Some of our members already offer payment accounts in the normal course of business, which already seem to meet the requirements of a basic payment account. The accounts include a possibility to deposit cash, withdraw money and make payment transactions. Services, such as debit cards, credit cards, online access codes, direct debit or overdraft facility are connected to such an account as extras, available to consumers depending on the contract signed between him/her and the bank. The development of the detailed characteristics of a basic bank account should take place at national level, and the EACB does not consider it appropriate to develop more detailed technical guidance on the characteristics of such an account at EU level.

### 1.4. Defining the functionalities of a basic payment account

The EACB would also like to comment on some selected, individual functionalities of the basic payment account as proposed by the Commission. It is not clear what is meant by 'electronically' in the context of receiving, placing, transferring and withdrawing funds: while using an ATM or electronic transfer/placing machines at the branches would make sense, internet banking should not in our view be included. In addition, transactions with the use of debit cards carry the risk of overrunning, and therefore their inclusion in the list of functionalities should at least be further assessed. Again, the consumer habits and traditions in different Member States make the consumer expectations somewhat different.

## 3. Access to a basic bank account

### 2.1. The workings of access

It is the EACB's observation that the Working Document does not seem to draw a clear picture of how exactly the access to a basic payment account was to be organised. In the Working Document, the objective is outlined as ensuring the right of consumers to access *'at least one payment account in the EU'*. However, from the wording of the section proposing solutions, we read that *'any consumer could have the right to access to a basic bank account, whatever his nationality or the place of residence in the European Union'*. This leads to several observations and concerns.

*Firstly*, it is not clear if the initiative is to be aimed at vulnerable, socially excluded citizens who wish to have a payment account but for some reason were denied access, or at 'any consumer' at all. It is a strong conviction of the EACB that the initiative, if any, should focus only on the first group of citizens.

*Secondly*, the wording *"whatever his (...) residence"* is a problematic issue for the EACB, as it oversimplifies the access to a basic payment account for non-residents and ignores the developments of the Single Euro Payments Area. In this context, we believe that the following should be carefully considered:

- (i) Access to a bank account for non-residents is strictly regulated by EU legislation on anti-money laundering and terrorist financing, and is closely linked to fiscal questions.
- (ii) The provision of accounts to non-residents could lead to substantial legal costs and difficulties. According to the Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Article 16.2) *"proceedings may be brought against a consumer by the other party to the contract only in*



*the courts of the Member State in which the consumer is domiciled.*" If banks have to open accounts for every customer, whatever his residence, the bank may be forced to initiate proceedings in any country of the EU. This would lead to huge legal costs and difficulties which would be particularly burdensome for small co-operative banks.

(iii) The issue of the relevant types of documents required for client identification would need to be resolved prior to any consideration given to cross-border provision of bank accounts. For example, in some Member States, on-line access codes are commonly used as means of strong electronic authentication, which is an electronic method of identifying a person and verifying the authenticity and correctness of the identifier. These are used for instance in many services provided by the state. Valid identification documents which are required when granting a strong electronic authentication are defined by national laws, and vary from country to country.

(iv) If the right to access to a basic bank account is ensured in all 27 Member States, there is no case for cross-border provision of such accounts to non-residents, as every consumer who is resident in the EU would be able to open an account in the Member State where he/she is domiciled.

(v) With SEPA Credit Transfer and SEPA Direct Debit having been launched, there seems little need for customers to have multiple accounts in multiple places. On the contrary, the opening of accounts in multiple places will put a break on the migration to SEPA.

Consequently, we consider that the results of the cost-benefit analysis of the proposed analysis are overall negative.

*Thirdly*, if all residents have access to a basic payment account in their country of residence, the mention of *"whatever his nationality"* seems to be redundant. It is already the case that discrimination based on nationality in the provision of financial services is prevented by heavy body of EU and national legislation, and is being currently addressed in a framework of a dialogue between the industry and the European Commission. In addition, it is not clear if EU nationals who are resident outside of the EU should also have the right of access to a basic payment account.

## 2.2. Restrictions of access

With the Single Euro Payments Area having become a reality, the proposed restriction of access allowed in a situation where the consumer *'already has one payment account in the same member state'*, should rather be allowed when the consumer already has one payment account **in the EU**. Otherwise every resident or national of the EU would have the right to at least 27 basic payment accounts in 27 Member States. It would seem that the mentioned restriction would make sense only if the right of access was limited to the country of residence. In addition, the proposal to restrict access to consumers who already have one payment account in the same member states is inconsistent with the rationale imposed upon banks through the SEPA project. With SEPA, banks were asked to make the European cross-border market into one large domestic market. Indeed, the concept of national markets was supposed to disappear. This is evidenced by Regulations 2560/2001 and 924/2009 which force banks to no longer discriminate in their pricing for domestic and cross-border payment services, as well as by Regulation 1781/2006 which specifically considered the EU as one single jurisdiction for the transposition of FATF Special Recommendation VII on credit transfers. Formulation of the provision under consideration should therefore be adjusted as proposed above: *"already has one payment account in the EU"*. In fact, the Commission itself mentions earlier on the same page of its consultation document (page 8), that consumers should have the right to *"at least one payment account in the EU"*.

The EACB considers that the list of restrictions of access as presented by the Commission is not complete. The list should also include other forms of misconduct by consumers, including for example situations where they misuse the account or knowingly tolerate legal



blocking of their account. This could result from the attachment/garnishment initiated by consumer's creditors requests. In such cases, in some Member States, the bank must not allow withdrawals from the account apart from small amounts free from garnishment. This is cost intensive but is not charged to the consumer's account. Therefore a bank should have the right of closing an account which has been blocked for considerable time.

It would be highly worrying if an economic relationship, i.e. a contract for provision of a banking service, was to be seen only from the social perspective. A situation where the person who is not trustworthy, and has access to business operations only thanks to the obligation to contract should be avoided. Certain incentives for consumers to act responsibly should be developed if a society of economically responsible consumers is to be promoted, and the bank should always have the possibility of terminating the contract in case of non-compliant behaviour of the consumer. This is also relevant in the context of considering sanctions that could be imposed on banks. On the other hand, the EACB concurs in the Commission's decision to exclude from the initiative access to credit, overdraft and overrunning.

### 2.3. Identifying responsible providers in individual case

In the view of the EACB, the key should be creating a structure of right incentives where banks can develop flexible strategies for ensuring financial inclusion, drawing from their specific business models and traditions. The EACB does not consider the introduction of a legal obligation for banks to provide such basic payment accounts to be an appropriate solution. However, should this option be nevertheless chosen by the Commission, it is important to define who is to be responsible for assigning a consumer who experienced difficulties with opening a bank account to a particular bank.

## 2. Issue of cost

All co-operative banks provide their services to retail clients at reasonable, not-excessive price. However, the structural framework, day-to-day operation costs and over-regulation in other fields would not allow free of charge offer of bank accounts. Although socially responsible, co-operative banks are not utility companies and must charge for their services for the benefit of their members. The EACB concurs therefore in the recognition that basic bank account could only be provided *'at a reasonable cost'*. In this context, the EACB would like to comment on the proposal made by Prof. Mario Monti in his report *"A new strategy for the Single Market: At the service of Europe's economy and society"* to base the future Commission proposal on Art. 14 TFEU. The EACB would like to caution the Commission about confusing the concept of a basic bank account with the concept of the service of general economic interest. The EACB does not consider that banks, which are not utility companies, should be obliged to provide such accounts below costs, which could be implied by the choice of the above legal basis.

In addition, price is not one of the main obstacles for access to a payment account. There is no proven link between the cost of a payment account and the rate of inclusion. In fact, in the 2009 Study *Data collection for prices of current accounts provided to consumers*, Bulgaria was the country which was identified as the one with the cheapest current accounts in the EU, but scores highest in terms of unbanked citizens. The EACB wishes to express its decided opposition to any steps which could eventually lead to price standardisation or interfere with the contractual freedom, and as such considers any detailed technical guidance or clarification on the notion of 'reasonable cost' to be unnecessary and unwise. Finally, suitable safeguards should be introduced to ensure that charges required from consumers are paid effectively. One way of achieving this could be through 'pre-payment'.



### 3. General information concerning basic payment accounts

The EACB is convinced that the problem of financial exclusion is a result of multiple factors, also on the consumer side. The Commission rightly identifies those factors as psychological, cultural and educational. In this context the need for structured, long term commitment to financial education in all Member States is necessary. Co-operative banks are actively engaged in enhancing the levels of financial literacy in their local communities. However, it is unavoidable that some fraction of the population will never choose to have his/her own payment account. This should be duly considered by policy makers when setting the targets.

The EACB supports measures to raise awareness amongst the public of the availability and the benefits of having own bank accounts. However, the EACB does not consider that it should be the obligation of the payment services providers to inform those consumers who decided to open a payment account with a bank and have no difficulties in doing so, about the basic bank account. Such an obligation would lead to the contamination of the bank's offer, and could make sense only in case of consumers who were already denied access to a payment account.

The information requirements concerning the cost of payment transactions or the conditions of use of a payment account are already provided for in the relevant European and national legislation, including the PSD.

### 4. Monitoring and out-of-court dispute resolution

As mentioned before, the EACB does not consider that a legal obligation to provide access to a basic payment account should be introduced. However, if penalties are to be applied, it should be ensured that they are limited to cases where banks that were assigned to provide a basic payment account failed to do so without reasonable justification. A case-by-case assessment of the reason of refusal should be always performed.

All consumer complaints related to financial services can already be addressed to FIN-Net and the existing alternative dispute resolution schemes. We would encourage the Commission to fully coordinate the currently considered initiatives with the ones aimed at revising the ADR system, and in particular in the financial services sector, which we understand are planned for 2011. At the national level, the existing self-regulatory measures are already closely linked to the existing ADR services.

### 5. Additional remark

On a final note, the EACB wishes to express its regret that the results of the *Study on the costs and benefits of policy actions in the field of ensuring access to a basic bank account*, commissioned to the Centre for Strategy & Evaluation Services and to which the EACB actively contributed, were published only after the consultation had been launched. This made the time available to analyse and fully comment on the findings somewhat limited.

## III. Conclusions

Based on the above argumentation, the EACB's position can be summarised as follows:

(1) The EACB does not consider that there is a proven case for the introduction of an obligation for financial services providers to provide a basic bank account to all



consumers. Banks should have the right to decide whether they feel confident in entering into a contract with a particular consumer.

(2) Should any measures be introduced:

- (a) those should be limited to national level only,
- (b) they should be limited to those consumers who have already been refused access to a payment account, and have a risk of non-voluntary social exclusion,
- (c) providers should retain the right to refuse an account based on certain serious non-compliant behaviour by a consumer (e.g. fraudulent misuse of an account), and
- (d) a relevant authority should be responsible for assigning consumers who need a basic payment account equally between all payment services providers.