



Financial Services User Group's (FSUG)

Bruxelles, 09.01.2015

FSUG Response on Consultation on EBA/CP/2014/34 on “Draft Guidelines on national provisional lists of the most representative services linked to a payment account and subject to a fee”

General Comments

The Financial Services User Group (FSUG) welcomes the opportunity to comment on the EBA Consultation Paper 2014/34 on Draft Guidelines on national provisional lists of the most representative services linked to a payment account and subject to a fee.

The FSUG welcomes this first mandate for the EBA derived from the PAD – to issue Guidelines to ensure the sound application of the criteria set out in Article 3(2) for the Member States to establish provisional lists of the most representative services linked to a payment account.

These provisional lists will include at least 10 and no more than 20 of the most representative services linked to a payment account that are subject to a fee offered by at least one payment services provider (PSP) at national level.

These Guidelines have a strategic importance for consumers, because following the application of them at national level the PAD mandates the EBA to develop regulatory technical standards to set out the Union standardised terminology for those services that are common to at least a majority of Member States, on the basis of the provisional lists notified.

The FSUG supports the Cost/Benefit Analysis and the Impact Assessment of the Guidelines and the options preferred by the EBA. The FSUG also generally supports the draft version of the Guidelines, but considers useful to make some comments and proposals which are detailed below.

Replies to Questions

1. Do you agree with the proposed guidelines?

The FSUG generally agrees with the proposed guidelines, but has some comments, proposals and remarks which could contribute to a better form and substance of those guidelines – please see our reply to Question 2.

2. Are there any additional requirements that you would suggest adding?

As stated in Recitals 15-17 of the Directive, “it is vital for consumers to be able to understand fees so that they can compare offers from different payment service providers and make informed decisions as to which payment account is most suitable for their needs. Consumers would benefit most from information that is concise, standardised and easy to compare between different payment service providers. The fee terminology should be determined by Member States, allowing for considerations of the specificities of local markets. In order to insure sufficient homogeneity of the national lists, the EBA should issue guidelines to assist Member States to determine the services which are most commonly used and which generate the highest cost to consumers at national levels”.

The PAD defines ‘services linked to a payment account’ as all services related to the opening and closing of a payment account, including payment services and payment transactions falling within the scope of point (g) of Article 3 of Directive 2007/64/EC and overdraft facilities and overrunning. This implies that not only ‘real services’ such as direct debit, credit transfer, debit card. etc., but also all kinds of fees and penalties linked to the use of a payment account fall under the definition. Therefore, EBA Guidelines should explicitly stipulate that when establishing the provisional lists of the most representative services linked to a payment account and subject to a fee, national competent authorities will also take into account all kinds of fees and penalties linked to the use of a payment account.

This is crucial to make sure there will not be hidden high fees applied by PSPs, especially in countries where the retail banking business model is largely based on overrunning penalties, while PSPs advertise cheap or free-of-charge payment services to gain new customers. For example, when shopping around for a payment (bank) account, the level and the different types of penalties for unarranged overdraft is not considered by most consumers among essential account features, while it is paid by many of them. For instance, 61% of French consumers have their bank account overdrawn at least once a year, and the discussions related to the Moscovici Law proved that the only “commission d’intervention” fee, one of the 6 or 7 existing fees related to overdraft, cost more than 3 billion euros per year to consumers. This refers to behavioural biases – most people tend to overestimate their financial capability and self-discipline, and underestimate the likelihood of their account being overdrawn in future. Thus, any penalties that generate high cost for consumers must be included in the lists of the most representative services to draw the consumer’s attention to them.

More generally, the lists of the most representative services linked to a payment account and the fee information documents should be developed by competent authorities using behavioural insight principles to ensure that the qualification of “representativeness” of a service is based on the consumer perspective and that those information documents are an effective prompt for consumers to compare fees and potentially switch accounts to the best product which suits their personal circumstances.

Taking into account the word “and” used in Recital 17, the FSUG is of the opinion that the criteria mentioned in Article 3 (2) – the services most commonly used and which generate the highest cost to consumers at national levels - should be, as much as possible, used cumulatively.

The FSUG especially supports point 7 of the draft Guidelines:

7. “When establishing the provisional list, competent authorities should give priority to those services that satisfy both criteria”.

Regarding point 8: “In a second step, competent authorities should also consider for inclusion into provisional list services that only satisfy one of the criteria”, the FSUG considers it beneficial to include a clear recommendation to the competent authorities to prioritise in the list those services that generate the highest cost to consumers, even if they are not very often used by consumers.

This is because the number of representative services identified at national level and included on the provisional list are limited (at least 10, but no more than 20). And if national competent authorities do not include on the list the services which generate the highest cost to consumers, this would not be fully in line with the philosophy of the PAD: whilst some of the services included on the list will probably be frequently used, but they will not necessarily be the most representative in terms of the highest cost to consumers.

The EBA should also encourage national competent authorities to include in the list as many as possible representative services (a number close to 20, not to 10). This would be relevant especially for Member States with complex and relatively expensive tariffs.

For instance, in France, while the standardised list of the most representative services currently contains 11 services, that number can be higher if the bank uses different pricing for the same service (for example, service provided at the counter or on the internet). Furthermore, the recent Moscovici Law on banks has also imposed the standardisation of 48 fees, including overdraft fees. In this country, on average, around 300 fees are included in fee information documents of banks.

It is also important to make sure that consumer-friendly measures already in place at national level are not undermined by the partial standardisation exercise mandated by the PAD. This is the case in Portugal: since 2010 all banks have to provide standardised fee information documents that include all bank fees. Also in Slovenia, the national supervisor is publishing comparative tables on payment services costs in order to improve transparency for consumers, with 57 different fees being included.

Regarding point 9, the FSUG considers that, in order to avoid different interpretations by competent authorities, the term ‘exception’ should be clarified by the EBA. This can be done through concrete examples.

The FSUG is very supportive with the recommendation made by the EBA that factors such as the risk of consumer detriment may be borne in mind by competent authorities when considering whether to include certain fees or services in their provisional list.

The FSUG strongly agrees with the points made in page 8 of the Consultation Paper about this topic and we are favorable with the inclusion of a new point into the Guidelines, into the section “Exercising judgement when establishing the provisional list”: “The risk of consumer detriment may be borne in mind by competent authorities when considering whether to include certain services in the provisional list”.

The FSUG considers very useful the suggested methodologies included in Annexes, especially the examples of services under different types provided by the EBA. But in the same time, it should made more clear to national competent authorities that this is just an indicative list of examples and it cannot be seen as an exhaustive list of services.

As the Guidelines aim to assist Member States in implementing the PAD, they must be as concrete and practical as possible. It would therefore be very useful if the Guidelines included a number of country case studies, focusing on Member States where the payment account fees are most not transparent/incomparable and high. The case studies would not

be mandatory to be applied by national competent authorities, but would rather be useful to demonstrate how the Guidelines can be implemented practically.

Paragraph 12 of the draft Guidelines provides that “Competent authorities should base their decisions on relevant data. Competent authorities may collect and rely on data from a wide range of sources, provided that they are statistically robust”.

The Guidelines should stipulate that the “wide range of sources” should in no case be limited to the financial industry representatives, but should also include consumer organisations. Similarly, competent authorities could invite all relevant stakeholders to suggest their lists of the most representative services and use this as a basis for their own assessment.

Additional issues to be taken into consideration

Temporary promotions and conditional offers

Payment account providers often promote teaser offers for new customers, such as “no account management fees first year” or “free of charge credit card during...” Conditional offers are also a common practice, e.g. “free of charge payment account if certain amount of money is deposited on the account each month”. Yet, the normal tariff after the initial teaser period is over or penalty in case the condition is not fulfilled by the consumer, are usually not clearly communicated by providers. Also, there are some discounts on fees available just on certain days in the week or just for some categories of consumers (pensioners, students, etc).

When considering services to be included in the lists of the most representative services, competent authorities should take into account the above factors. Thus, the standardised list should disclose the normal tariff of a service, while the promotional tariff, if any, could be indicated alongside.

Legality/illegality of fees related to payment accounts

The EBA Guidelines and national lists of the most representative services linked to a payment account and subject to a fee must be without prejudice to the legality or illegality of those fees. Any fees included in the standardised lists and fee information documents provided by PSPs are only indicative, in the sense that they are charged by the PSPs, but those fees are not legally acknowledged.

For example, in some recent cases the German highest civil court ruled that e.g. the need to calculate a fee concerning a loan within the APRC does not indicate in itself that the fee is actually legal. In another recent judgement, the application of lump sum fees in addition to overdraft interest has been considered illegal by a high court in Germany.

3. Do you agree with the analysis of the cost and benefit impact of the guidelines?

Yes, the FSUG agrees with the analysis provided by the EBA.

We are in favor of options suggested by the EBA:

A1 – only exceptionally consider other criteria when market specificities justify it;

B2 – allow competent authorities to decide from themselves what data is necessary for this decision and whether existing available data might suffice;

C2 – Member States to respond using a standardised template.

About FSUG

The Financial Services User Group (FSUG) was set up by the European Commission to improve the level of user representation in the EU policymaking process.

Our task is to advise the Commission in the preparation of legislation or policy initiatives which affect retail users of financial services and provide insight, opinion and advice concerning the practical implementation of such policies.

We proactively seek to identify key financial services issues which affect users of financial services and liaise with and provide information to financial services user representatives and representative bodies at the European Union and national level.

The FSUG has 20 members, who are individuals appointed to represent the interests of retail users such as consumers, retail investors or micro-enterprises, and individual experts with expertise in financial services from the perspective of the financial services user.