



DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT **A**
ECONOMIC AND SCIENTIFIC POLICY



Economic and Monetary Affairs

Employment and Social Affairs

Environment, Public Health and Food Safety

Industry, Research and Energy

Internal Market and Consumer Protection

Ensuring Access to Basic Banking Services

WORKSHOP



DIRECTORATE GENERAL FOR INTERNAL POLICIES
POLICY DEPARTMENT A: ECONOMIC AND SCIENTIFIC POLICY

Ensuring Access to Basic Banking Services

COMPILATION OF WORKSHOP DOCUMENTS

13 April 2011, BRUSSELS

Abstract

The workshop was organised to prepare the discussion of the expected European Commission proposal on access to a basic payment account which was at the time announced for May or June 2011 in view of the subsequent report of the Committee on Economic and Monetary Affairs (ECON). However, in 2011 the Commission finally opted for issuing a Recommendation, the ineffectiveness of which it evaluated first before coming forward with a legislative proposal two years later in May 2013; in fact a proposal for which the European Parliament had called already in July 2012 in a report.

This workshop was requested by the European Parliament's Committee on Economic and Monetary Affairs.

AUTHORS

Olivier JÉRUSALMY, Member of the steering bureau of the European Financial Inclusion Network, Brussels

Georges GLOUKOVIEZOFF, Director of G2 Research, Dublin

Katarína KLAMKOVÁ, Czech member of the Social Inclusion Working Group of the European Anti-Poverty Network (EAPN)

Peter O. MÜLBERT, Professor for banking law and director of the Centre for German and International Law of Financial Services at the University of Mainz

Manfred WESTPHAL, Verbraucherzentrale Bundesverband, Berlin

Luisa ANDERLONI, Professor, University of Milan

Peter DYRBERG, Schjødt Brussels, Brussels

RESPONSIBLE ADMINISTRATORS

Doris KOLASSA, Eike BALLON, Stephanie HONNEFELDER and Rudolf MAIER

Policy Department Economic and Scientific Policy

European Parliament

B-1047 Brussels

E-mail: Poldep-Economy-Science@ep.europa.eu

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To contact the Policy Department or to subscribe to its newsletter please write to:

poldep-economy-science@ep.europa.eu

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WORKSHOP PROGRAMME



DIRECTORATE GENERAL FOR INTERNAL POLICIES
POLICY DEPARTMENT A: ECONOMIC AND SCIENTIFIC POLICY

WORKSHOP
Ensuring Access to Basic Banking Services
- Programme -

13 April 2011, European Parliament Brussels
Room JAN 6Q2; 9:00 - 12:30 hrs, interpretation into FR, DE, EN, ES, CS, RO

Chair: José Manuel GARCÍA-MARGALLO Y MARFIL, ECON Vice-Chair

09.05 - 10.45 hrs: Session I - Problems of financial exclusion

Introductory remarks by Jürgen KLUTE, MEP

Guest speakers

Olivier JÉRUSALMY	Member of the steering bureau of the European Financial Inclusion Network, Brussels
<i>Topic</i>	<i>Knowledge about and levels of financial exclusion in the EU</i>
Georges GLOUKOVIEZOFF	Independent researcher, Director of G2 Research, Dublin (was not present)
<i>Topic</i>	<i>Over-indebtedness and financial exclusion</i>
Katarína KLAMKOVÁ	Czech Member of the Social Inclusion Working Group of the European Anti Poverty Network (EAPN)
<i>Topic</i>	<i>Situation of financial exclusion in the Czech Republic</i>
Peter O. MÜLBERT	Professor for banking law and director of the Centre for German and international Law of Financial Services at the University of Mainz
<i>Topic</i>	<i>Legal aspects of financial exclusion</i>

10.45 - 12.25 hrs: Session II - Possible solutions and essential elements for a European initiative

Introductory remarks by Jürgen KLUTE, MEP

Guest speakers

Manfred WESTPHAL

Topic

Verbraucherzentrale Bundesverband, Berlin

Best practice - recommendations for a European initiative

Olivier JÉRUSALMY

Topic

Member of the steering bureau of the European Financial Inclusion Network, Brussels

The Belgian solution ('Belgian Basic Bank Account')

Luisa ANDERLONI

Topic

Professor, University of Milan

Access to a basic bank account and mobility in Europe

Peter DYRBERG

Topic

Schjødt Brussels, Brussels

Possible links to universal service obligations (services of general economic interest)

12.25 - 12.30 hrs: Concluding remarks by Jürgen KLUTE; MEP

1. INTRODUCTION

Having payment services at your disposal via a bank account is an essential tool for citizens and consumers in order to fully take part in society and facilitate day-to-day life as a consumer, e.g. by ordering goods by internet, receiving a salary or paying rent and electricity. So if EU citizens do not have access to payment accounts today, life becomes more expensive and difficult for them. However, according to recent studies, around 58 million consumers over the age of 15 in the EU do not have a payment account. Therefore, policy makers discussed the necessity to ensure that bank accounts are available to all citizens in the EU.

Ongoing political discussion on whether a legal measure was needed and how it might look like was the background of the **workshop 'Ensuring Access to Basic Banking Services'** held by the Economic and Monetary Affairs Committee (ECON) taking place on 13 April 2011 in the European Parliament. It provided expert input to ECON Members and the interested public. At the time of the workshop, the approach to be taken at the European level addressing basic payment accounts was still undecided; however, the Commission representative hinted at a proposal to come in May or June 2011.

In the end the European Commission issued a '*Recommendation on access to a basic payment account*' on 18 July 2011.¹ But this **Recommendation** based on commitments by the banking industry failed to produce the expected results - which was evidenced by the Commission's own **evaluation** of the Recommendation's application in Member States ending in July 2012.² Therefore, the European Parliament adopted a **Resolution**³ on 4 July 2012 asking the Commission to report on the state of play in Member States until September 2012 and to submit a legislative proposal until January 2013. Finally, on 8 May 2013 the European Commission adopted a **proposal for a Directive** on payment accounts, comparability of fees, account switching and access to accounts with basic features'.⁴

In the meantime, the ECON stated its position, tabled amendments, and negotiated in numerous trilogues with the Council and the Commission. This triggered the present **updated publication of the workshop document**. Many of the points and suggestions made in the workshop of 13 April 2011 fed into the debate and the Parliament's position.

1.1. Workshop Context

In April 2011, The ECON Committee held a workshop entitled '*Ensuring Access to Basic Banking Services*'. At that time, the ECON reasonably expected a legislative European approach which would be taken to address the matter.

The following provides an overview of the main points discussed at the workshop and summarises the subsequent Parliamentary report outlining recommendations for legislation.

¹ 2011/442/EU Commission Recommendation of 18 July 2011 on access to a basic payment account (C(2011)4977), OJ L 190 of 21.07.2011, p. 87; <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:190:0087:01:EN:HTML>; see also press release IP/11/897 http://europa.eu/rapid/press-release_IP-11-897_en.htm.

² Commission Consultation on Bank Accounts, 25.07.2012, see http://ec.europa.eu/internal_market/consultations/2012/bank_accounts_en.htm; Commission Staff Working Document 'National measures and practices as regards access to basic payment accounts, Follow-up to the Recommendation of 18 July 2011 on access to a basic payment account' SWD(2012) 249 final of 22.8.2012; http://ec.europa.eu/internal_market/finservices-retail/docs/inclusion/swd_2012_249_en.pdf.

³ 2012/2055(INI), see <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P7-TA-2012-0293+0+DOC+PDF+VO//EN>.

⁴ COM(2013)266: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0266:FIN:EN:PDF>.

A brief analysis is provided of the extent to which the requests of the Parliament were taken into account in the Commission's proposal for a directive in 2013 as well as a summary of the amendments adopted at the European Parliament's partial first reading.

1.2. Workshop Overview

Presentation by Olivier Jérusalmy

In his opening presentation '*Ensuring access to basic banking services*' Oliver Jérusalmy examined the **reasons why people in various EU countries fail to have bank accounts**. He explored definitions needed and background such as the structure of the banking market as well as the capacity to live without a bank account and concluded by looking at how legislative measures can be optimised to be efficient.

Presentation by Georges Gloukoviezoff

Georges Gloukoviezoff dealt in the second workshop presentation with the concept of '*Over indebtedness and financial exclusion*'. He set out **how impoverishment leads to stigmatisation and then exclusion**. The idea of how the 'financialisation' process⁵ is a cause of potential exclusion was also addressed.

Presentation by Katarína Klamková

A **case study of financial exclusion** in the Czech Republic was presented by Katarína Klamková. She found barriers to impoverished people (particularly those with little or no education and/or low income, as well as rural area groups and other such minorities) to be a key concern regarding access to basic banking services. Internal (or psychological) barriers were then discussed, with the conclusion focusing on possible solutions.

Presentation by Peter O. Mülbert

Peter O. Mülbert addressed the **legal aspects of financial exclusion**, with particular reference to the German self-regulatory approach. Article 114 of the TFEU⁶ was cited as a possible legal basis for measures in the context of completion of the Internal Market. He put a question mark over the issue of whether Internal Market integration is the main target of the provision. Otherwise, Article 149(2) Point 2 TFEU was suggested. The limitations of the lack of complete standardisation of Member States' policies were also flagged. EU consultations were proposed as the starting point for banking services progression. Also mentioned was the burden of proof in relation to verifying the non-existence of bank accounts, a point later referred to in the Parliament proposals. The presentation concluded with reference to the importance of sanctions in ensuring compliance. Time periods, language problems and the question of whether monetary compensation would be paid according to national law, were all raised as issues for consideration.

The **second part of the workshop** examined possible solutions for dealing with transparency, account-switching and accessibility to bank accounts, as well as some of the essential elements for a European initiative.

⁵ The presentation defined the financialisation process as the process which '*influences the way people (or firms, or State) meet their needs through the rules and norms applying to access to and use of money, banking services and financial services*'.

⁶ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0047:0199:en:PDF>.

Presentation by Manfred Westphal

Manfred Westphal referred to a European Commission study⁷ on the costs and benefits of policy action in this area showing that banks were already bound to make basic accounts available in Belgium, France, Denmark, Sweden and Finland, whilst there was specific industry charters in the United Kingdom, Germany and Slovenia and general industry charters in Ireland, Italy and Hungary. But there was no framework in 14 Member States.

Some of the key **costs** identified included specific charges for account operation, potential fraud losses if account details are lost or stolen and easier legal seizure of funds by court judgment. Among the main and substantial **benefits** was the ability to take jobs and pay rent, access to money transmission services, as well as access to funds and increased choice of goods and services through the internet, where electronic payment is required. Belgium and France were cited as good examples where benefits were already realised by legislation. The presentation concluded with possible solutions, recommendations pertaining to fair and affordable prices, transparency and providing information. Lastly, it emphasised the importance of simple savings products so that consumers have an alternative to moneylenders and shadow banks which are often unsupervised and subject to high costs.

Presentation by Olivier Jérusalmy

A case study about the **Belgian** Basic Bank Account (BBA) followed. Olivier Jérusalmy noted that a non-judicial and independent claim organisation had been implemented. There were also sanctions for non-compliance. In addition, there was reference to the compensation fund for banks that have proportionally more basic bank accounts than their economic importance on the Belgian market.

Presentation by Luisa Anderloni

The penultimate presentation by Luisa Anderloni investigated issues surrounding **migrants** and their access to bank accounts. She emphasised the fact that migrants often have specific needs which may not be addressed by the supply side.

Presentation by Peter Dyrberg

Peter Dyrberg's final presentation was about **possible links to Universal Service Obligations** (Services of General Economic Interest, SGEI). He set out how Article 36 of the Charter of Fundamental Human Rights recognises and respects access to services of general economic interest, as provided for in national laws, in accordance with the Treaties. The presentation also explored the relevance of Article 114 TFEU, in providing the legal basis for a European initiative in the form of a directive, on the matter of basic banking services. Some issues to be clarified were flagged: the definition of banking services, applicability of the directive (to one account in the EU or more), and contracting obligations - possibly coupled with to be imposed on banks.

1.3. European Parliament Recommendations of 2012

On 8 June 2012, the European Parliament adopted a legislative initiative Report with recommendations to the Commission on Access to Basic Banking Services (2012/2055(INI)).⁸ Members recalled that access to basic payment services is one of the preconditions for consumers to benefit from the Internal Market. It is essential for

⁷ 'Study on the Costs and Benefits of Policy Actions in the Field of ensuring access to a Basic Bank Account – Final report' by the Centre for Strategy and Evaluation Services, published by DG MARKT, July 2010; http://ec.europa.eu/internal_market/finservices-retail/docs/inclusion/abba_cses_en.pdf.

⁸ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A7-2012-0197+0+DOC+PDF+V0//EN>; the summarising text is partly taken from: <http://www.europarl.europa.eu/oeil/popups/summary.do?id=1214600&t=d&l=en>

consumers to reap the benefits of e-commerce and is increasingly becoming a prerequisite for social inclusion in terms of access to employment, healthcare and housing.

In order to be effective, a basic payment account needs to be straightforward to open and to provide a specified range of core services, and there need to be measures in place for effective supervision and settlement of conflicts and for facilitating access to such an account for consumers with no fixed address.

Against the background that (i) in its 2011 work programme, the Commission announced its intention of publishing a proposal for a legislative instrument concerning access to a bank account, but on 18 July 2011 it instead merely published a recommendation on access to a basic payment account; and (ii) despite that recommendation, 15 Member States still have no legal or voluntary provisions requiring banks to offer basic banking services the Parliament requested that the Commission:

- put forward a detailed assessment of the state of play in all Member States by September 2012;
- submit, by January 2013, on the basis of Article 114 TFEU, a proposal for a directive ensuring access to basic payment services to all consumers legally residing in the Union, unless that detailed assessment demonstrates that there is no need for such a proposal.

Members recommended the following points:

1.3.1. Scope

The first recommendation of Parliament related to **definition of the term 'basic payment account'** which should be defined as a payment account offered in line with the provisions of the proposed legislation. Member States should ensure access to basic banking accounts by obliging, in principle, all payment service providers that offer payment accounts to consumers as an integral part of their regular business to provide basic payment accounts. In order to avoid undue burdens on payment service providers, it was recommended that certain payment services providers⁹ be exempt from the obligation to provide a basic payment account. Additionally, it was recommended that Member States be permitted to exempt other payment service providers from the obligation to provide a basic payment account, but on condition that any such exemptions be based on 'very restrictive criteria'.

1.3.2. Access and Identification

The second recommendation asked that **legislation should ensure that any consumer¹⁰ has the right to open and use a basic payment account** with a payment service provider operating in a Member State provided that the consumer does not already hold a payment account in that Member State (evidenced e.g. by declaration of honour). Other criteria should not be taken into account. The Parliament emphasised the importance of ensuring that payment service providers act transparently in relation to any decisions to deny or close a basic payment account, in compliance with anti-money laundering and terrorist financing legislation. It was further recommended that providers act rapidly when verifying whether the consumer has a right to an account or not.

⁹ Payment service providers referred to in Directive 2007/64/EC, Article 1(1) (e): *'the European Central Bank and national central banks when not acting in their capacity as monetary authority or other public authorities'* and (f) *'Member States or their regional or local authorities when not acting in their capacity as public authorities'*.

¹⁰ Defined as any natural person who is acting for purposes other than his trade, business, craft or profession, legally resident in the Union.

1.3.3. Functionalities and Costs

The user of a basic payment account should be able to **make any essential payment transactions** such as receiving income or benefits, paying bills or taxes and purchasing goods and services via both physical and remote channels using mainstream national systems. Member States could allow payment service providers to provide small overdrafts as a buffer to cover temporary negative balances. Access to basic payment accounts should be free of charge. If fees are charged, they should be transparent and subject to an upper limit with the Commission assessing a Union-wide upper limit which might be adapted to national circumstances. Penalty charges were likewise recommended to be reasonable and at least as favourable as the provider's usual pricing policy. Payment service providers should be permitted, at their own initiative, to enlarge the range of functionalities, such as facility for savings or international money remittance, to or from accounts outside the EU.

1.3.4. Information

The availability of basic payment accounts should be communicated in clear and targeted terms towards the specific needs of unbanked people. The Parliament also recommended that Member States encourage banks to develop arrangements for advising their most vulnerable customers. It was further recommended that the legislative proposals stipulate **adequate training of the staff who will be dealing with basic payment account holders**.

1.3.5. Supervision, Settlement of Conflicts, Statistics and Compensation

The Parliament recommended that Member States should be obliged to designate **independent competent authorities to ensure and monitor compliance**. Principles should be specified for sanctions to be imposed on providers for non-compliance with the basic payment accounts framework, including for infringements on statistical requirements. It was recommended that Member States be compelled to ensure effective complaints and redress procedures are established for the out-of-court settlement of disputes by independent, easily accessible and free of charge Alternative Dispute Resolution bodies. In relation to statistical requirements, Member States should be required to ensure that payment service providers provide competent national authorities with information on accounts opened and closed, as well as those refused and the underlying reasons.

1.3.6. Implementation and Review

Parliament recommended implementation of the new measure - once adopted - within a year. It was also suggested that the Commission should publish a **report on the application** of the directive,¹¹ within three years after its entry into force and every five years thereafter.

1.4. Commission Proposal for a Directive COM(2013)266

On 8 May 2013, the European Commission published a proposal for a Directive on the transparency and comparability of payment account fees, payment account switching and access to a basic payment account, COM(2013)266 final.¹² Its aim is to facilitate consumers' participation in the Single Market, whilst promoting and increasing the number of transactions within the European Union and thus contributing to the attainment of economic growth. The proposal targeted the harmonisation of fee terminology and presentation, and contained quality standards for information tools to facilitate comparison

¹¹ See page 12 for further detail on what the Report should evaluate.

¹² Proposal for a Directive of the European Parliament and of the Council on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features, see <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1397061010364&uri=CELEX:52013PC0266>.

between payment accounts. It also contained a procedure for the effective switching of payment accounts as well as guaranteeing access to basic services. Hence, the proposal addressed many of the European Parliament's recommendations.

1.5. Assessment of Similarity between Parliament Recommendation and Commission Proposal

The compromise reached between the Parliament recommendations and the Commission proposal is positive for the most part. For example, the proposal ensures that the legislation is not overly burdensome to prospective bank account holders, whilst requiring the adequate provision of information to consumers and emphasising the issue of transparency. The costs and fee recommendations of the Parliament are also reflected in the proposed directive. Likewise, the Parliament recommendation for the designation of competent authorities to ensure and monitor compliance is taken into consideration, as is the suggestion for payment service providers to make information on accounts opened and closed available to the national competent authorities. The recommendation on the 12-month implementing period is also contained.

Notwithstanding this, there are still some recommendations of the Parliament which remain unaddressed. One such issue is the request to have the principle of subsidiarity¹³ mentioned, dealt with in the explanatory memorandum by justifying EU intervention as being needed *'to improve the proper functioning of the internal market and avoid distortion in the field of retail banking'*. Furthermore, in relation to scope, the Parliament recommendation for Member States to exempt certain payment providers, from the obligation to provide a basic account, is also unaddressed.

Other recommendations which remain an issue are the request for providers to act rapidly in verifying whether a consumer has a right to an account and the recommendation that payment service providers be permitted to enlarge the range of functionalities of an account, on their own initiative. In relation to the operation of payment services institutions, the Parliamentary request for a stipulation on adequate training of staff is also neglected the directive proposal. This issue may stay at the fore, particularly given that the Commission's Impact Assessment¹⁴ explicitly cited a lack of assistance by the staff of payment service providers, in relation to the switching of accounts. While the reasoning behind this lack of assistance is not given, what is certain is that the Parliament expressed a clear request to address the issue and close the potential for staff failing to facilitate consumers' access to bank accounts in the future.

With regard to supervision and settlement of conflicts, the proposal provides for compliance monitoring by the competent authorities, as well as the out-of court settlement of disputes, as advised by the Parliament. However, it is worth noting that the proposal stops short of expressing that such alternative dispute resolution procedures be independent, accessible and free of charge.

The proposal went beyond Parliament's calls as regards the Commission report on application of the directive. In line with the Parliament recommendations, this shall to be done three years after the initial entry into force of the new legislation and then every two years thereafter - while the Parliament asked for every five years. The concluding articles of the proposed directive also provide for the initial report on the application of the directive to be accompanied, if appropriate, by a proposal.

¹³ According to the principle of subsidiarity, EU action may only be taken if the envisaged aims cannot be achieved by the Member States alone.

¹⁴ http://ec.europa.eu/internal_market/finservices-retail/docs/inclusion/sec_2011_906_en.pdf.

1.6. Assessment of Similarity for adopted Amendments

On 12 December 2013 the European Parliament adopted amendments to the proposal for a directive of the European Parliament and of the Council on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features.¹⁵ However, it did not adopt the relevant resolution, but referred the file back to the competent ECON Committee for re-consideration pursuant to Rule 57(2), second subparagraph; the vote on the legislative resolution was moved to a later plenary session (foreseen for 15 April 2014). The main amendments were as follows:

Fee information document: in order to help consumers compare payment account fees throughout the Internal Market easily, payment service providers should provide consumers with a comprehensive fee information document that states the fees for all services linked to the payment account contained in the list of the most representative services and any further fees that can be applied to the account. The fee information document should use the standardised terms and definitions established at Union level, where possible; should be accessible at all times, and be published by providers in an electronic format on their website, including for persons who are not clients.

Payment service providers must make available to consumers **a glossary of all services** linked to the account and the related definitions and explanations. The glossary must be drafted in clear, unambiguous and non-technical language that is not misleading. The Commission will have the power to adopt delegated acts relating to a **standardised terminology at EU level** for payment services common to a majority of Member States.

Furthermore, banks should provide consumers, free of charge, with a **statement of all fees and the interest rates applied** to their payment account on an annual basis.

Comparison websites at national level: Parliament proposed that an independent and free website shall be established in each Member State allowing comparison of fees charged and interest paid by banks, as well as their level of service. By three years after the entry into force of this Directive, the European Banking Authority (EBA) shall provide a publicly accessible Union comparison website that enables consumers to compare payment accounts offered within the Internal Market.

Switching accounts: clients should be able to switch banks within the EU at reasonable costs. The costs incurred by a customer during a change of bank due to a payment service provider's failure to fulfil its obligations must be reimbursed within three days from the establishment of non-compliance.

Access to a basic account: holding a basic payment account shall be **in no way discriminatory**. Making any discrimination visible through, for example, a different appearance of the card, a different account or card number, shall be prohibited. Member States shall ensure that a payment account with basic features is offered to consumers by all payment service providers that operate in general retail payment services. This right should apply regardless of the place of residence of the consumer and the exercise of the right should not be made excessively difficult or binding on the customer.

An amendment adopted in plenary stipulates that a Member State may decide to exempt payment service providers from this obligation subject to the approval of the Commission and on objective and restrictive criteria. The Commission shall approve the exemptions where: (i) a level playing field among all payment service providers is guaranteed, (ii) the right of access for consumers is not undermined and (iii) the exemption does not lead to a

¹⁵ See procedural files in OEIL: [http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2013/0139\(COD\)](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2013/0139(COD)) and PreLex: http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=202640 as accessed in April 2014.

situation in the Member State concerned where basic account customers face the risk of being stigmatised.

The banks must process applications for access to a payment account with basic features within seven business days of receiving a complete application including proof of identity.

Member States must also guarantee that a mechanism is in place:

- to assist consumers with no fixed address, asylum seekers and consumers who are not granted a residence permit but whose expulsion is impossible for legal reasons to meet the requirements of Chapter II of Directive 2005/60/EC;
- to ensure that unbanked, vulnerable consumers as well as mobile consumers are informed about the availability of payment accounts with basic features.

To open and use a payment account with basic features consumers shall be required to have a genuine link to the Member State where they wish to open an account. That link shall include at least citizenship, family ties, centre of interests, place of work, internship or apprenticeship, pursuit of job opportunities or other professional links, place of study or vocational training, residence, property and any outstanding asylum or migration application.

Payment accounts with basic features **shall not include any overdraft facilities other than a temporary buffer facility for small amounts**. Payment service providers may offer overdraft facilities and other credit products as clearly separated services.

General information on basic accounts: Parliament requested that Member States:

- require educational establishments to develop services for the most vulnerable customers providing them with guidance and assistance in the responsible management of their finances; encourage financial education, including at schools;
- ensure that the competent authorities publish, including on their website, an audit of the performance of each payment service provider in terms of its compliance with the right of access requirement.

Alternative dispute resolution: Parliament suggests that Member States establish adequate and effective out-of-court complaint and redress procedures for the settlement of disputes between consumers and payment service providers concerning rights and obligations established under this Directive. For those purposes, Member States shall designate existing bodies and, where appropriate, set up new bodies.

2. CURRICULA VITAE OF THE SPEAKERS

Olivier JÉRUSALMY

Olivier Jérusalmy is a senior research analyst and project leader at Réseau Financement Alternatif (RFA) asbl (Belgium). By education, he is Master in Economics and Master in Political Science, International relations.

Georges GLOUKOVIEZOFF

Georges Gloukoviezoff is Doctor in Economics (2008, University Lumière Lyon2). He specialises in financial inclusion. He is a Board member of the National Observatory of Poverty and Social Exclusion in France. He has intervened several times as an expert in financial inclusion (basic banking services, over-indebtedness, microcredit, financial education etc.) at the French national level (Ministry of Employment and Social Cohesion, Caisse des Dépôts et Consignations; Conseil Economique et Social) as well as at international level (International Labour Organisation, European Economic and Social Committee, European Commission).

Since 2010, he is an expert advisor for the Social Finance Foundation (Dublin, Ireland) on the issue of Basic Banking Account within the framework of the Steering group on financial exclusion established by the Irish Ministry of Finance.

Katarína KLAMKOVÁ

Since 2004, Katarína Klamková is Director of IQ Roma Service (Czech Republic). She holds a degree of Social Pedagogy and Counselling (University of Brno) and is Master in Management and supervision of social and health institutions (Charles University of Prague).

Peter O. MÜLBERT

Peter O. Mülbert is Professor of Corporation Law, Capital Market Law and Banking Law, and Director of the Centre for German and International Law of Financial Services, Johannes Gutenberg-Universität, Mainz. He is also a Member of the Administrative Protest Committee of the Federal Financial Supervisory Authority and Research Fellow, European Corporate Governance Institute. He is on the Management Board and Co-Editor of several trade associations and journals.

Manfred WESTPHAL

Since 2001 Manfred Westphal has been head of the financial services department in the Verbraucherzentrale Bundesverband (vzbv), the federation of German consumer organisations, in Berlin. The department deals with the whole range of retail financial services and with the topics financial supervision, education, inclusion and out-of-court and collective redress. Up to this year he has been member of several European committees and panels including the Financial Services Consumer Group and FIN-USE (both led by the European Commission) and the CEBS Consultative Panel. He is co-chair of the Financial Services Committee of the Transatlantic Consumer Dialogue (TACD).

Luisa ANDERLONI

Luisa Anderloni is a Full Professor of Corporate Finance and Financial Markets and Intermediaries, Milan University. In the past, she has lectured at Naples University, at Trento University, at Genoa University and at Bocconi University - Milan. She graduated at Bocconi University (1981) in Business Administration. She is a Member of Newfin -

Research Center on Financial Innovation, Bocconi University, since its foundation, Director of 'Lettera Newfin', Four-monthly review on financial innovation (1995- 2002) and Coordinator of the Survey on Financial Innovation. She is Director of undergraduate and postgraduate degrees in: European Economy, Economics and International Finance, Economics and Political Science at University of Milan. She has participated and coordinated international research groups funded either with private or public funds (MIUR-CNR-European Parliament, European Commission). She has published widely (main fields of interests: Corporate banking and finance; Banking Regulation and Supervision; European integration; Banks, consumers and financial exclusion).

Peter DYRBERG

Peter Dyrberg is a practicing lawyer with Schjødt and a director of the European Law Institute at the University of Reykjavik. He has a long career behind him in European institutions - amongst others, European Parliament, European Court of Justice and EFTA Surveillance Authority - and has published widely on European law matters. His core field is regulatory matters pertaining to the Internal Market.

3. COMPILATION OF THE PRESENTATIONS

3.1. Knowledge about and levels of financial exclusion - Presentation by Olivier JÉRUSALMY

Ensuring Access to Basic Banking Services

Knowledge about and levels of financial exclusion in the EU
Committee on Economic and Monetary Affairs
Brussels, 13 April 2011

 European Financial Inclusion Network

Financial inclusion definition

Financial inclusion = the right for each citizen to access/use financial services and products in the mainstream market that are appropriate to their needs and enable them to lead a normal social life in the society in which they belong
(European commission, financial services provision and prevention of financial exclusion, March 2008)

Financial services includes :

- bank account
- savings and investments
- insurance

The following presentation is only focused on « bank account » access.

 European Financial Inclusion Network

Mutual learning project - methodological presentation

- Based on expert reports
- 12 countries covered:
Belgium, Bulgaria, Germany, Greece, Spain, France, Ireland, Italy, Netherlands, Poland, Slovakia and Norway
- Data collection:
Due to the lack of direct, precise and comparable data regarding financial inclusion, the questioning developed was focused on the elements having a direct influence on quality of the banking offer and thus on its capacity of being able to satisfy in an adequate way the demand (level of administrative prerequisites, legislative framework, structure of the market, responsible practices, use of the databases and measurement of solvency...).



Key learnings: Access to bank account

Level of access to bank accounts for people who want it

We have considered that a lack of use can not be understood as an exclusion measure. For this reason, the data from the Eurobarometer 60.2 has not been used.

•**Level of exclusion:** lack of comparable European data - only some comments were collected

- Rate of access to a bank account of the adult population is higher than 95%: BE, ES, FR, NO, SK
- Rate of access to a bank account ranges between 80% and 95% of the adult population: BG, EL, IT
- Rate of access to a bank account is lower than 70% of the adult population: PL
- Rate of access to a bank account is uncertain, taking into account the discordance of the estimates available: DE. The results seem to be between 3% and 12%.

Some experts underlined the problems of access to banking which remains difficult for migrants as well as for those in debt.



Supply side elements that can impact financial inclusion

- **Structure of the banking market**
 - It is very useful, in order to understand the level of financial inclusion of a country, to study how the offer is structured. **The presence of certain operators can be revealing of banking exclusion** (e.g.: Credit Unions which are implemented where communities are excluded, public or para-public operators dedicated to the excluded people...) insofar as the excluded people constitute all or part of their target. **The presence of co-operative banks, savings banks or postal banks, whose missions are sometimes to satisfy the broader demand, can impact the quality of banking inclusion significantly.**
 - This is to be put in parallel with the existence of a **right to a bank account**, which can, in some cases, give to each operator the mission to serve everyone.



Identified reasons why people do not use bank accounts (1/2)

We knew, by putting this question in a very structured way (18 precise reasons were proposed plus one open answer known as “others”), that we would only collect, with some exceptions, information based on the general knowledge of the experts, due to lack of thorough studies available on this subject. **Our will was at the same time to underline the lack of investigations carried out with the public all the while enabling us to get a round-up, in each country, of the existing opinions on these questions.** These opinions are indeed sometimes carried at the political level and can be at the origin of original answers or good practices. Moreover, there were many experts who provided precise comments on questions that are a problem in their country.



2/2

The answers and comments collected underlined:

- **Exclusion and/or misuse by elderly people** (worsened if they are living in rural areas): BG, ES, IE, IT, NL, PL... This validates the data collected relating to the preferences of people to use cash.
- **Fees related to a bank account**: BE, DE, IT, PL, SK. For IT and PL, this point is regarded as very problematic. At the time of the workshop of December 11, a British participant insisted on the existence of this problem in the UK.
- Issues with migrants, related at the same time to the cultural differences and the **difficulty in providing proof of identity**: BG (problem specific to the Roma communities), IT (where the problem was studied). We know in addition that in ES, interesting answers were developed by co-operative and savings banks.
- **The weakness of income** as a cause to deny opening or closing accounts: BG, EL, IE, IT, PL, SK. This reason is not really justified for accounts not integrating an overdraft facility. On this point, in IE, it was stressed that customers can be offered accounts with "reduced" services.
- The **fear of seizure of sums paid on an account** (in the event of debts): BE, ES, IE, NO, SK.
- Among the very specific information collected: IE: where **auto-exclusion** seems strong, because some people in precarious situations do not see themselves as prospective bank customers. This phenomenon was the subject of many studies.



Potential capacity to live a normal life without a bank account

- The phenomena of exclusion being very often of a relative nature, it seemed necessary to approach what one can regard as being the intensity of financial exclusion. **Our assumption being that the lack of access to a bank account is all the more a source of exclusion, when the banking penetration is important and the use of banking services is necessary in many daily acts.** With this intention, we used the average number of bank accounts, ATM and agencies, the level of use of consumer credit (for which it is often necessary to have a bank account) as well as the rate of use of wages payment on a bank account. Many more data is likely to back up this indicator, but one must note that the reporting ways of working can be very thorough in some countries, but very sparse in others.
- When compiling the preceding answers, it seems that banking exclusion can make everyday life particularly difficult in the following countries: BE, DE, FR, NO, ES, and this, which ever public concerned. Regarding the public concerned (old people, inhabitants of rural zones...), it is possible that banking non-access is not always the origin of difficulties in everyday life in BG, EL, PL, and SK.



Conclusions/recommendations relating to the access to and the use of a bank account

Implement a basic bank account, offered by all players, allowing current financial transactions. This account must be proposed at a reasonable annual cost (fixed price?) and should not have an overdraft facility.

A basic bank account allows to solve, if it is well conceived:

- the non-access related to the excessive costs;
- the non-access related to the complexity of management;
- the non-access on a geographical level, as suggested by all active operators, when the preceding point is filled out;
- the non-access related to a history of problematic debt: refusal is not justified for an account without overdraft facilities.



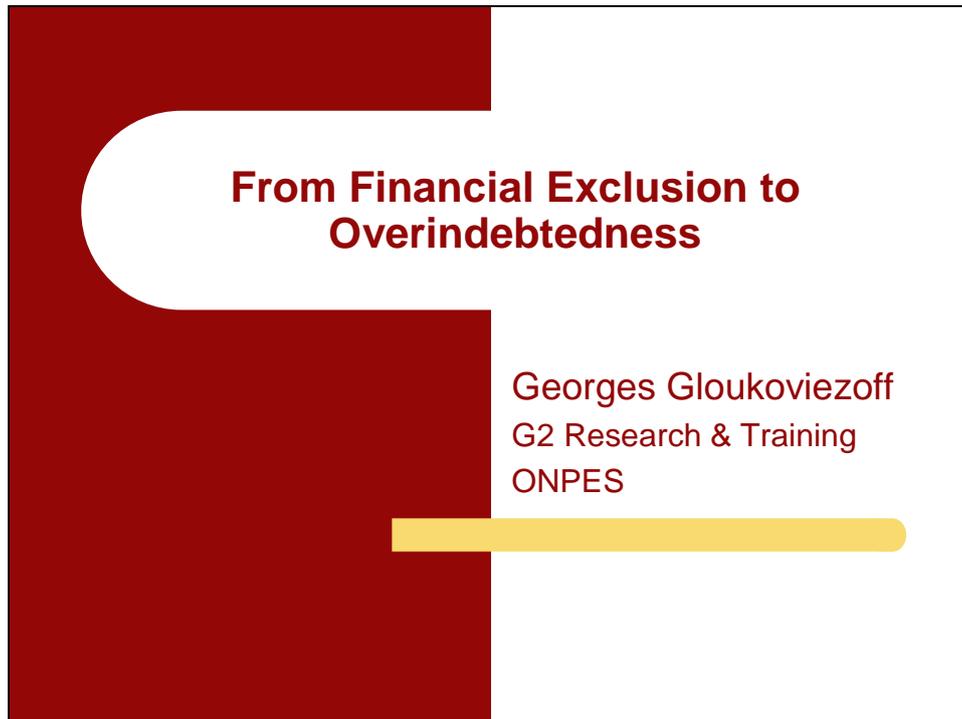
The efficiency of a law or self regulation establishing a basic bank account depends on

the following dimensions :

- apply to all the operators;
- rely on a specific definition of suggested banking services and fix a maximum cost for them;
- have a control mechanism easily accessible by the consumer;
- be constraining in the event of non-compliance;
- communicate efficiently to reach the target public.



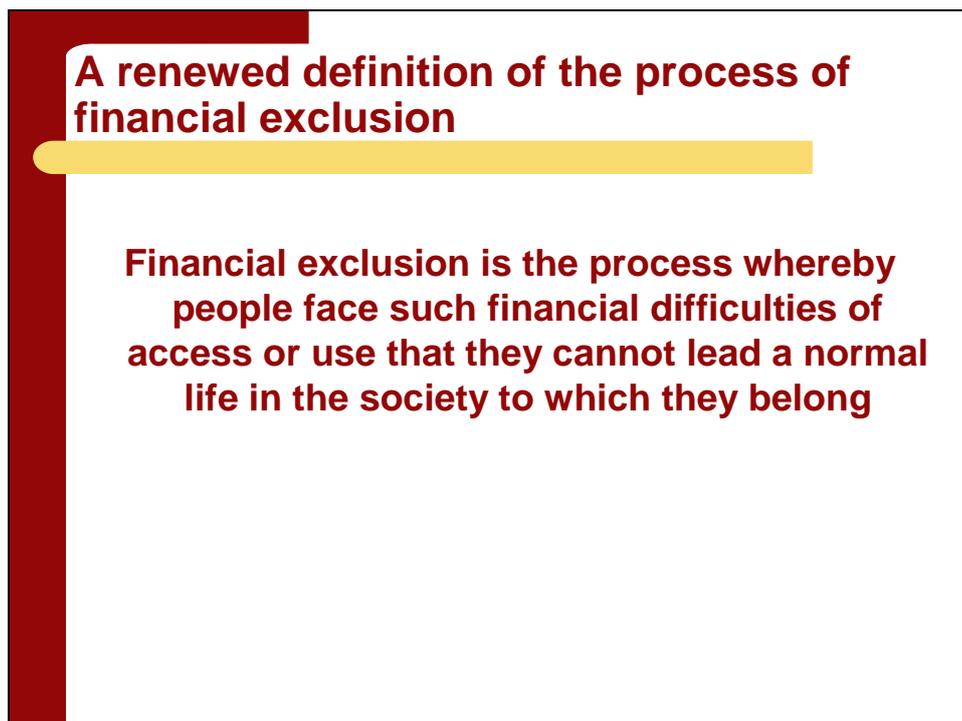
3.2. Over-indebtedness and financial exclusion - Presentation by Georges GLOUKOVIEZOFF



From Financial Exclusion to Overindebtedness

Georges Gloukoviezoff
G2 Research & Training
ONPES

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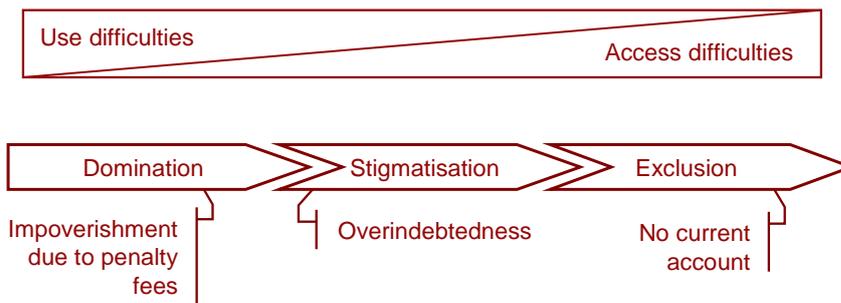
A renewed definition of the process of financial exclusion

Financial exclusion is the process whereby people face such financial difficulties of access or use that they cannot lead a normal life in the society to which they belong

This slide has a dark red background on the left side that transitions into a white rounded rectangle containing the title. The definition of financial exclusion is presented in a white rounded rectangle below the title. A yellow horizontal bar is positioned below the title.

Key improvements of the definition

- Consequences: the reason to act
- Difficulties: Access & Use
- A process



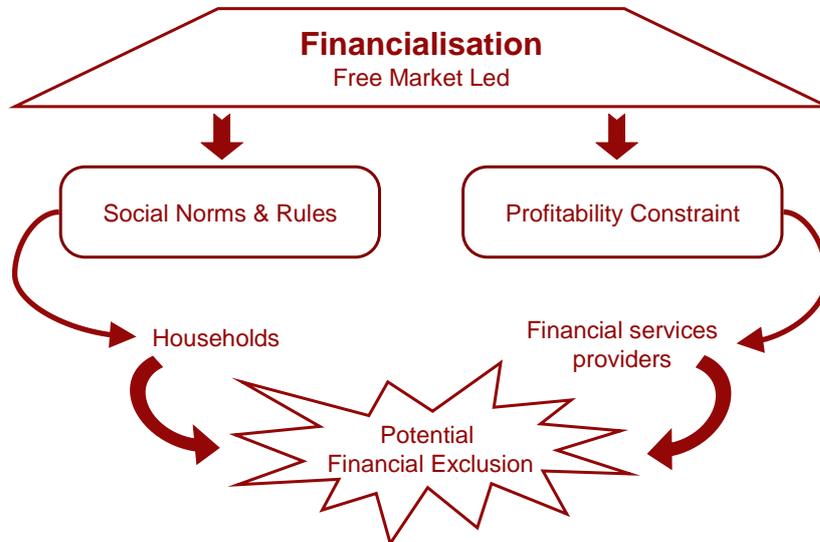
A Cause: the Financialisation

The financialisation process influences the way people (or firms, or State) meet their needs through the rules and norms applying to access to and use of money, banking services and financial services

These rules and norms reflect the dominant logic of the financialisation process:

- Free market
- Redistribution
- Reciprocity

A Cause: the Financialisation



More information

- <http://gloukoviezoff.wordpress.com>
- 2g.recherche@gmail.com

3.3. Situation of financial exclusion in the Czech Republic - Presentation by Katarína KLAMKOVÁ

iqr.s.cz jaktovidimja.cz ethnic-friendly.eu

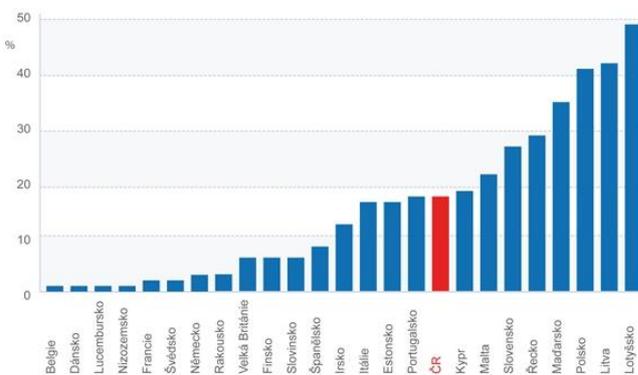
The situation of financial exclusion in the Czech Republic

13. 04. 2011 Brussels




17% OF CZECHS DO NOT HAVE BBS

- ACCOUNT, C. CARD, SAVINGS, ACCESS TO STANDARD LOAN/MORTGAGE...
- DIFFICULT OR IMPOSSIBLE ACCESS



Country	Percentage (%)
Belgie	1
Dánsko	1
Lucembursko	1
Nizozemsko	1
Francie	2
Švédsko	2
Německo	3
Rakousko	3
Velká Británie	6
Finsko	6
Slóvensko	6
Španělsko	8
Irsko	12
Itálie	16
Estonsko	16
Portugalsko	17
ČR	17
Kypř	18
Malta	21
Slovensko	26
Řecko	28
Maďarsko	34
Polsko	40
Litva	41
Lotyšsko	48

Zdroj: Evropská komise

EC Report Spring 2008: Comparison in EU 25: ↓ 8 MS
= 5 from Eastern EU (+ Bulgaria, Romania not included?)



THE MOST AFFECTED

- ⦿ individuals in threat of social exclusion, in social crisis
- ⦿ Roma, people from socially excluded areas
- ⦿ people with low quality or little education
- ⦿ low-income groups, the unemployed (esp. long-term)
- ⦿ single mothers, the disabled
- ⦿ seniors
- ⦿ residents of rural areas
- ⦿ individuals with debts/shorter credit history
- ⦿ ...



IQ ROMA SERVIS TARGET GROUP/SPECIALIZATION

- ✓ individuals, families, children and youth in social crisis or threat of social exclusion, esp. Roma - *complex social and pedagogical services*
- ✓ + conceptual and system work, campaigns
- ✓ + large focus on individual direct *field work*
- ✓ **the total number of clients in 2010: 1.800**
- ✓ **496 clients address the issues of debts and financial exclusion: 35.3% of adult clients**
- ✓ the most increasing area of our work in time



NON-AVAILABILITY OR DIFFICUL ACCESS TO BBS IN CZECH REPUBLIC

External barriers

Internal barriers

Possible solutions



EXTERNAL BARRIERS I

- ◉ **Low income, social benefits income** = direct cash spending, debts
- ◉ **Debts and the fear of seizure of property** (+ deduction of social and health insurance underpayment)
 - seizure of property is very commonly imposed = unlogical to establish any account!!!
- ◉ **Decrease or non-payment of wages in cash**
 - fear of risk of seizure of property = non employment or risky use of someone elses account
 - decreased creditbility in the eyes of the employer
- ◉ **High banking fees**
 - favourable conditions offered to people with regular and relatively large movements of money (eg. min. monthly income of ± 600 €)
 - "stone" banks = higher user fees
 - free or low cost accounts = rather electronic =
- ◉ **Bad or no access to electronic systems, internet, PC**
 - low computer literacy and safe PC/internet access
 - vs. unstable or low quality or over-crowded housing
 - = *Higher costs of any other transaction - eg. post money orders*
- ◉ **Increase of less stable working conditions** vs. bank risk managers
- ◉ **Informal/grey market economy** - cash



EXTERNAL BARRIERS II

- ◉ **Low orientation on the financial market**
 - low or poor quality education
 - lack of financial education, financial literacy (see PISA, for CZR)
- ◉ **High complexity of business conditions, complicated contracts, accompanying documents, legal texts** (vs. little skill and ability to read and understand all the context)
 - social workers explain content and documents to clients
 - (voluntary NGO service - no direct cooperation with banks)
- ◉ **Rural areas**
 - often without ATMs, branches
 - vs. usage of post, more risky physical savings etc.



EXTERNAL BARRIERS III

- ◉ **Impaired access to standard financial products (loans, mortgage, possibility of taking a flexible fast overdraft or debit)**
 - **Absence of central register of debtors** - usage of more different registers to verify solvency = not always 100% accurate information
 - (Impact on IQRS client: non-payment of 3 CZK ± 0.12 € caused 3 years entry - some banks withheld loan, without examining content - can eg. prevent successful „privatisation“ of council flat: 200,000 CZK ± € 8,000 mortgage = stable housing...)*
 - „Bad address“ = less favorable loan
 - Czech banks created maps of areas with the largest number of borrowers = more complicated to obtain a standard credit (eg. higher interest rates)
 - Increased stigma and exclusion
 - Giving false information (criminal offense)
- ◉ = leads to the fact that socially disadvantaged people are generally more offered **risky loans on informal or non-banking markets**
 - high penalty fees and fines = permanent life-long instalments
 - = every loan is ultimately much more expensive or unpayable,
 - „good business group“ for the „loan sharks“, speculators
 - heavy and targeted marketing, conventionalized communication and addressing (unlike the banking sector)!

INTERNAL BARRIERS I

MAINLY PSYCHOLOGICAL ASPECTS..

- ◉ **contact with the bank as an official institution**
 - socially disadvantaged people are often confronted with dismissive and discriminatory acts of official institutions (offices, banks, etc.)
 - it also may be a professional appearance of the bank officials that raises the internal barriers and blocks to use services of a bank
 - fear of failure, rejection, etc.
 - feeling it is not „for us“
- ◉ **communication and accessibility**
 - non-banking sector adapted to the target group
 - more "low-threshold" services
 - offering products at home or in the location of choice
 - repayment in the form of personal visits of the agent
 - attractive and simple presentations
 - more informal/familiar performance (*based on "friendship", „kindness"*)
(CCC eg. Home Credit, Provident, Cofidis, also the less credible companies)



INTERNAL BARRIERS II

- ◉ **still popular Bankbooks** = the oldest form of savings in the CR, more „physical“, long-term tradition from Austrian-Hungarian Empire
 - + simplicity, it is free, mandatory legal insurance
 - low interest rates, inflation, handling only through branch
- ◉ **decreased proactivity** to seek up to date information on effective strategies
 - common for people living in conditions of social exclusion
- ◉ **fear, distrust, conservatism** in general
- ◉ **too transparent?/informal/grey market economy**

POSSIBLE SOLUTIONS I

- ◉ intermediate and facilitate communication, also in cooperation with social services, social field workers, accredited NGOs
- ◉ more accessible and targeted information about products and services (positives towards the non-banking sector)
- ◉ financial education and counselling, also in field
- ◉ low or no charge accounts (CZR has one of the highest banking charges/user fees)
- ◉ increased safe internet/electronic access
 - stable/social housing
- ◉ development of specific skills (eg. math skills, complex text analysis, communication skills etc.), electronic banking competencies, financial literacy programmes mandatory in school curricula
- ◉ also offered and promoted by s. services, NGOs and others
- ◉ *particularly in schools in socially excluded localities - providing a less demanding, lower level of education to its students*
 - elimination of low quality schools for „socially excluded“



POSSIBLE SOLUTIONS II

- ◉ accessible debt relief programmes and social loans (eg. microcredits - ETP Slovakia)
 - ability to consolidate debts without their disproportionate increase
 - available long-term instalments vs. fast execution
 - in CZR current debt relief is available to people of middle and upper classes, on a condition of employment (the higher the debt, the higher wage required)
- ◉ eradication of predatory loans targeted at socially disadvantaged groups
 - setting legislative measures to avoid legal opportunities to create a „sustainable debt“
 - tightening advertisement and credit conditions for non-bank companies
 - eg. Predator Index - People in Need and Consumer Affairs jointly created a system that would encourage non-banking institutions to ethical behavior when providing consumer loans. Index of „predatory lending“ is based on an analysis of the largest companies that offer loan products to clients and do publish terms and conditions on their web sites.
- ◉ promoting stable employment possibilities vs. grey economy



www.iqrs.cz www.jaktovidimja.cz www.ethnic-friendly.cz

Mgr. Katarína Klamková
director
IQ Roma servis, o. s. (NGO)
Hybešova 41 Brno
Czech Republic

www.iqrs.cz
www.ethnic-friendly.eu



3.4. Legal aspects of financial exclusion - Presentation by Peter O. MÜLBERT

Legal aspects of financial exclusions

Peter O. Mülbert

Ensuring Access to Basic Banking Services
European Parliament Brussels
13 April 2011

Outline

- I. Some Data
- II. Germany: Self Regulatory Approach
- III. Legal Basis for Legislation
- IV. Legal Aspects of an Entitlement to a Basic Bank Account

13.04.2011

Peter O. Mülbert

2

I. Some Data

Percentage of persons without a bank account	./.	Entitlement to a bank account
Belgium – 2 %		Entitlement
Denmark – 0 %		Entitlement
France – 1 %		Entitlement
Sweden – 1%		Entitlement
Germany – 1 %		Self regulatory approach of the German banking associations
Austria – 1 %		No entitlement
Spain – 2 %		No entitlement

- Source: CEPS, Study on the Costs and Benefits of Policy Actions in the Field of ensuring access to a Basic Bank Account – Final report, 2010

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II. Germany: Self Regulatory Approach

- Recommendation of the Zentrale Kreditausschuss* (ZKA) of 1995
 - Content:
 - Account management on basis of credit balance
 - Checklist with reasons for refusal
 - voluntary, non binding arbitration process
 - No commitment of individual bank institutions
- Evaluation controversial:
 - Faction of DIE LINKE of the German Bundestag: entitlement by law of a bank account
 - See Bundestagsdrucksache 16/731
 - German Federal Government: 4th Report on the Implementation of the Recommendation of the ZKA
 - See Bundestagsdrucksache 16/11495
 - Evaluation:
 - Reliable data missing
 - Legally binding commitment required
 - Legal entitlement would be in accordance with constitutional law, if exception for unacceptability is included

*Committee of German Banking Associations

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III. Legal Basic for Legislation

- Article 114/169 Paragraph 2 Point 1 TFEU
 - but: internal market integration as main target of the provision?
 - German federal government:
 - Social protection of the consumers
 - Relief of the budget on social expenditures
 - Reference to the internal market only because of the Union-wide entitlement?
- Article 169 Paragraph 2 Point 2 TFEU
 - measures, which main target is not the completion of the internal market
 - Limits:
 - No complete standardisation of the policies of the Member States
 - Specification of minimum standards

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IV. Legal Aspects of an Entitlement to a Basic Bank Account (1/3)

- Starting point: EU-consultations
- Entitlement to a basic bank account opening
 - Only to a single (!) bank account:
 - Limitation as economic incentive. But:
 - Burden of proof for non-existence of a bank account
 - Establishment of a central registration office for basic bank accounts
 - Language matter
 - Account files in the language of the account managing bank?
 - Banking institutions with branches in several Member States
 - Centralisation of the account management with a single branch of the bank
 - List of limitations for the access is up to now too narrow. Additionally,
 - Harassment of employees of a bank institution

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IV. Legal Aspects of an Entitlement to a Basic Bank Account (2/3)

- Entitlement to a debit card
 - Protection against debiting an account without coverage
 - Automated teller machine: always online
 - Shopping with debit card and PIN: always online
 - Risk sharing of debit card misuse
- Appropriateness of fees for basic bank account
 - Insignificant in respect to costs of basic account management
 - Examples of costs
 - Seizure of the account (occurs very often in practice)
 - Germany: no entitlement to damages of the institute against the bank
 - Misuse of debit card

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IV. Legal Aspects of an Entitlement to a Basic Bank Account (3/3)

- Possibilities of termination by bank
 - If bank customer had no entitlement of account opening
 - Other banking accounts
 - Harassment of employees
 - also: Overdraft of basic bank account?
- Sanctions
 - Pivotal because of entitlement (instead of pure obligations)
 - Legal enforcement of entitlement?
 - Time period/language problems
 - Monetary compensation according to national law?

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3.5. Best practice - recommendations for a European initiative - Presentation by Manfred WESTPHAL

verbraucherzentrale Bundesverband

**Ensuring Access to Basic Banking Services
Workshop ECON 13.04.2011**

Session II: Possible Solutions and essential elements in a European initiative

Best practice recommendations for a European initiative

Manfred Westphal, Verbraucherzentrale Bundesverband (vzbv) (westphal@vzbv.de)

The Voice of the Consumer

verbraucherzentrale Bundesverband

Problems with financial services

- Complex products
- Complex and intransparent product and contract information, esp. price and risk information
- Products often don't fit the consumer's needs because of the hidden unappropriateness or because intermediaries/advisers (who have got their own financial interests) sell or recommend them
- Unfair contract terms
- Unfair commercial practices
- Access to basic financial services at fair conditions is not guaranteed

1 Die Stimme der Verbraucher

Basic banking services

- **Access**
- **Reduced complexity of products and information:**
 - Simple, standardised products with fair contract terms and pricing
 - Simple, comparable product information
- **Important products to start with (pension?)**

Access to a basic payment account

- **Importance of a bank account**

A payment account today is an indispensable means to be able to handle payment transactions responsibly and cost-effective. It was conceded in the EC consultation (even by most public authorities) that it was crucial for consumers to be able to access an account. Problems here leads to a serious distortion of the internal market; this gets even more important when considering that payment services with an account belong to the services of general economic interest.
- **Member States** have dealt with the problem in quite different ways: binding law, voluntary Code of Conduct, no provisions at all.

EC Study on the Costs and Benefits of Policy Action

- Published in July 2010 by CSES for DG MARKT
- The number of EU population without access to a bank account at all was estimated to 30 million citizens.
- Banks are bound by law to make basic bank accounts available in Belgium, France, Sweden, Denmark and Finland.
- There are six countries with a specific Industry Charter (Germany, UK, Slovenia) or a general Industry Charter (Italy, Ireland, Hungary)
- There is no framework whatsoever in 14 Member States.

1

Die Stimme der Verbraucher

EC Study Results

- Regulatory frameworks exist only in EU15 while the majority of EU12 has no framework at all and no EU12 Member State provides binding access requirements on its banks.
- The six EU15 countries that work under binding requirements have the highest level of average account penetration and the lowest level of average financial exclusion.
- Average costs for the basic bank account: 61,47 € per year
- Costs/disbenefits identified: specific charges for account operation, potential charges for inappropriate use, potential fraud losses if access details are lost or stolen, easier legal seizure of funds by court judgment

1

Die Stimme der Verbraucher

EC Study Results II

- Benefits identified:
 - Ability to take jobs, rent property etc where a bank account is a requirement
 - Access to money transmission services
 - Lower transaction costs on payments and receipts
 - Access to discounts for electronic payment
 - Quicker access to funds
 - Increased security through lower level of cash transactions
 - Increased choice of goods and services through internet where electronic payment is required
 - Reduced sense of financial exclusion

EC Study examples for legal solutions working well

- Belgium: many functionalities (deposits, crediting cheques, debit card, cash withdrawals, credit transfers, standing orders, direct debits, electronic transactions), fair maximum annual fee of 13,60 € (2010) linked to the price index and covering almost all operations.
- France: If a consumer can show that he has been refused a bank account he can ask the Banque de France to nominate a bank that is required to open an account for him. This account is offering a whole range of services; charges have to be the same as for any other customer in France.

What does access mean?

- The precondition of having no account is too restrictive: there are many cases where an account exists that is however not functioning as it should (overdrawn, seizures/ attachments etc.) Also in these cases there should be access to a basic payment account.
- In principle all banks and payment service providers have to be treated alike and provide access.
- There should be a legal right to have such an account (no obligation too).
- For being refused there should be clear, exclusive reasons to be monitored in order to avoid unjustified refusal. The rules on preventing money laundering and terrorist financing must not serve to exclude consumers against the rules' intentions.

Coverage and functionalities

- Cash deposits and withdrawals
- Credit transfers
- Direct debits
- Debit card
- Without additional services (tying)
- Standardised information obligations
- Overdrafts? At least liquidity protection by a small buffer zone (if wished and if creditworthy)
- Different national specifications to be taken into account

Pricing

- There should be an overall charge/flat fee covering all the main costs for the account
- The costs must not exceed the costs for a normal payment account
- The costs must not exceed the costs involved for the provider.
- Best practice example: Belgium.

1

Die Stimme der Verbraucher

Example P-Account Germany (higher price for less account)

- In July 2010 Germany introduced the „Pfändungsschutzkonto“ = P-Konto; it's no separate account, but an option for the account holder to add to his account the special function of being protected against attachments/ seizures (granting him at least the poverty level to remain on the account).
- Many German banks started right away to give this added function a special high price up to 15-20 € a month (although it is a legal obligation for them to grant the new function and although the Government wanted the P-Konto to be introduced without new costs).
- Not only did the price rise substantially but also were the account management functions diminished: online banking or standing orders or direct debits or debit cards were not available any more (one or even more of them).
- The effects of this illegal practice are fatal: the ones needing such protection pay more; they can do less with their account, and far distance and cross-border shopping is not possible any more in most cases.

1

Die Stimme der Verbraucher

Solution and its elements in short

- Consumer's legal right to access a payment account
- Without having to buy additional services (tying)
- All banks and payment providers obliged to offer such accounts
- All the important functionalities must be granted to the account (including a debit card; online banking must also be possible); there have to be rules on that.
- Although the basic payment account should not give general access to credit/overdraft, a small overdraft facility is important to many low income consumers for liquidity reasons and should be part of the package in case of request and creditworthiness.
- The price must be fair, affordable and not higher than for an ordinary account. It should also not exceed its actual costs.
- Aware raising information and promotion methods must be foreseen.
- ADR mechanisms must be available, monitoring of the rules be foreseen.
- National specificities and existing, well-functioning laws should be taken into account (minimum harmonisation approach).

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Die Stimme der Verbraucher

Access to credit and savings

- Important: preventing illiquidity problems
- Access to alternative forms of credit (microfinance)
- Access to simple savings products
- Instead of giving ground to private moneylenders and shadow banks without any supervision and with usury rates and high costs

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Die Stimme der Verbraucher

3.6. The Belgian solution ('Belgian Basic Bank Account') - Presentation by Olivier JÉRUSALMY

Ensuring Access to Basic Banking Services

Knowledge about and levels of financial exclusion in the EU
Committee on Economic and Monetary Affairs
Brussels, 13 April 2011

 European Financial Inclusion Network



Belgian Basic Bank Account (BBA)

The 24 March 2003 Belgian law : create a right to access a basic bank account, which offers specific provisions.

Objective : provide to every citizen a protected access to a bank account which limit administrative, renting, financial difficulties and therefore reduce the perception of being socially excluded .

 European Financial Inclusion Network



Belgian context

- A study for the Belgian Ministry of Economy revealed that in 2001, more than 40.000 people were affected by transaction banking exclusion. They were most of the time low income people, less educated and most of the time on social benefits. The main problems identified by the study were the following: the Bank self-regulation did not work, the minimal guaranteed income revenue was no longer protected from seizures once transferred on a bank account and the money-laundering regulation excluded people with administrative status issues from opening a transaction bank account.
- Since January 2007, the law regarding seizures has been changed in order to protect minimal guaranteed income from seizures during 30 days once it is transferred on bank account has also probably encouraged more people to use transaction bank accounts in general... and not BBA specifically



Target population

The right is offered to all consumers with residence permit that have no transaction or basic bank account, no “linked products” in a bank (savings account, security accounts, placements funds), no ongoing credit for more than 6,000€ and a yearly cumulated creditor balance not higher than 6,000€ .



Financial Services included in the BBA

- Bank account opening, management and closing;
- Paper-based and/or electronic transfer order
- Standing order and direct debit (energy, phone bills...)
- Cash deposit capacity
- Cash withdrawal (bank branches or ATM)
- Free access to account statements via electronic way, or, minimum twice a month in the Bank branch

The maximum annual fee for the BBA is 12,62 € (future adjustment to inflation).



BBA guaranteed provision

- **A non judicial and independent claim organism has been implemented**, composed of the Banking sector and consumer protection organisation representatives (only 13 claims have occurred so far).
- **Sanctions in case of non respect of the law have been foreseen**: the Minister of Economic Affairs and consumer organisation can go to commercial court to claim irregularities and banks not respecting the law can be fined from 500 to 20.000€.
- Moreover, the law creates a **compensation fund**, managed by National Bank of Belgium and financed by all retail banks. Banks that have proportionally higher numbers of basic bank accounts than their economic importance on the Belgian market could ask for a compensation from the fund. The part of the law regarding the compensation fund has never been implemented, but remains a tool that could be activated if some banks become more active in offering basic bank accounts than others.

Effective in Belgium ? The assessment implemented shows that the impact of the law impact is globally satisfying



3.7. Access to a basic bank account and mobility in Europe - Presentation by Luisa ANDERLONI



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FACOLTÀ DI SCIENZE POLITICHE

Migrant and Access to a Basic Bank Account

Prof. Luisa Anderloni - University of Milan
Brussels, April 13th 2011

Mobility in Europe and migration from third countries are manifold and diversified phenomena.

An analysis of public consultation documents on access to a basic payment account promoted in February 2009 reveals that there is, generally, little concern about potential difficulties in opening basic bank accounts cross border, while a greater concern is expressed for migrants

Migrants are often mentioned among disadvantaged and vulnerable people, i.e. those on low incomes, old, young, unemployed, geographically isolated, homeless, and so on.



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Luisa Anderloni

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In fact, immigrant groups often show characteristics and attitudes typical of other socially excluded groups, such as low income, low skills levels, a lack of language knowledge and of technical – i.e. legal and financial - aspects, mistrust of suppliers, and also psychological barriers including lack of confidence.

However, these characteristics are partially related to migration phases and levels of integration in the host country, as well as to economic, social and educational levels, as well as to the type of banking system existing in the country of origin.

Moreover, immigrant groups may differ, under certain conditions, from other socially excluded groups.



The standing point is that not all migrants are poor people; nevertheless they often face difficulties to access and/or use financial services.

We have to consider, then, that they often have specific needs that may be not properly addressed by the supply side.

The literature on migrants' access to financial services in Europe is scarce or, better, it is often focused on specific issues, mainly related to remittances and microcredit.



The issues of migrants' access to banking services is not indeed a priority compared to other livelihood needs and to their aspects of their economic and social integration.

However in recent years, this concern has become more important, for various reasons.

Some of these reasons are specifically related to migrants, and others are more generally related to the attention paid to all persons who find it difficult to access the banking system and to establish financial relationships and consequently risk to be financially excluded



As far as remittances are concerned, the body of the literature is quite robust with reference to both theoretical issues and empirical evidence.

Different theories have been used to study models of behaviour behind remittances:

- *altruism;*
- *exchange;*
- *implicit family contract: family loan arrangements;*
- *loan repayment;*
- *insurance;*
- *investments.*

Different theories predict different flows of remittances over time → different needs → different channels/remittance services providers:

- *mainstream financial providers → banks*
- *specialised operators → money transfer agencies*
- *informal transaction channels → family members, friends, unlicensed service providers*



Behaviours are differentiated in relation to:

- countries of origin and countries of destination;
- ethnic groups;
- personal attitudes, social integration and life styles.

It is therefore difficult/inappropriate to generalise.

However surveys reveal that the reasons for choosing the remittances service providers (*banks versus money transfers*) are :

- *security*
- *rapidity*
- *ease of access and ease of delivery*
- *costs*



Remittances: The cost puzzle

Transfer costs are difficult to estimate due to various circumstances: they vary widely and depend on a range of factors including not only the institutions/channels used, but also the amount involved, the means of payment and the delivery solution.

In general there is no clear evidence that fees for channelling remittances through money transfer operators are higher than for bank transactions.

... and criteria for choosing the remittance channel do not place COSTS in first place.



Indeed, key elements of banking and/or financial needs are :

- *migration phases and*
- *personal variables*

Migration phases:

The implementation of plans to move from one country to another can be divided into a succession of phases, each of which has differing priorities in terms of basic needs and in terms of financial needs.

Keeping this in mind leads to considering migrants needs in a dynamic way – instead of static – and thus better elaborate appropriate responses (both at the institutional level and industrial levels).



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Luisa Anderloni

I - INITIAL SETTLEMENT

SURVIVAL – DEBT RUN UP

II - LEGALISATION

**REMITTANCES
PAYMENT SERVICES
LATENT DEMAND OF CONSUMER CREDIT
AND – for a few - MICROCREDIT**

III – STABLE SETTLEMENT

**REMITTANCES
SAVINGS and PAYMENT SERVICES
LOANS for:
Consumption
Start up of economic activities (for a few)
Mortgages
NON LIFE INSURANCES "BASIC DAMAGES"**

IV – CONSOLIDATION

**REMITTANCES (reducing importance)
BASIC SERVICES AND MORE
SOPHISTICATED FINANCIAL NEEDS
including
Loans and mortgages
Electronic payment services
Investment and asset management
Life and non life insurances
*Pension schemes***

FURTHER STAGES ...



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FURTHER STAGES

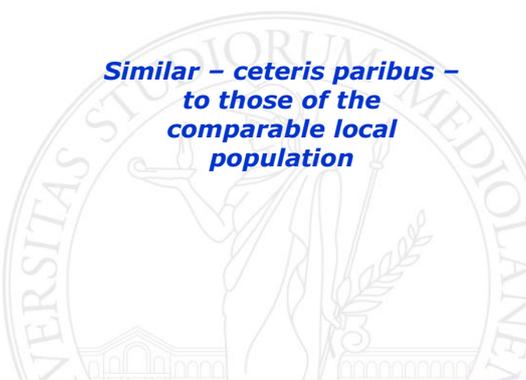
DEPENDING ON THE INDIVIDUAL MIGRANT'S PLAN

"TRANSIT"
going back to the country of origin
If well marketed with tailored products:

"FINAL SETTLEMENT"
future generation (s)

Savings and transferable pension schemes
Formation of deferred annuities

Similar – ceteris paribus – to those of the comparable local population



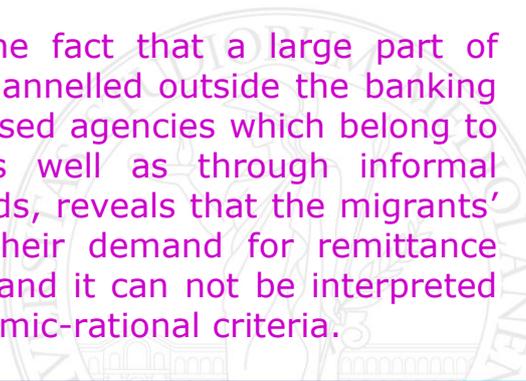
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Luisa Anderloni

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Adopting this approach, remittances are, on one hand, a service that represents an exclusive need for the migrant market segment, even though their importance in the immigrants' portfolio of services and products generally changes throughout their life cycles.

On the other hand, the fact that a large part of remittance flows are channelled outside the banking system both by specialised agencies which belong to the official system as well as through informal channels of various kinds, reveals that the migrants' objective function in their demand for remittance services is variegated, and it can not be interpreted only according to economic-rational criteria.



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Although, as said, remittance services are among the basic needs and although their importance varies along the life cycle of migrants, there is probably general consensus about the fact it is not essential that remittance services are included in the basic bank account services.

Considering how various needs and behaviours are, and taking into account that there is an objective difficulty for banks – or for some banks – to be competitive in this market, I believe that the other side of the coin of its eventually inclusion in the basket of basic services would introduce rigidities in the supply and, de facto, would prevent an adequate satisfaction of customers' needs.

Moreover, compared to the recent past, Directive 2007/64/EC on payment services in the internal market creates the new category of service providers - named "*payment institutions*" - and establishes a modern and common legal framework for payment services that includes a set of rules in order to ensure transparency of conditions and information requirements for payment services. All these provisions would improve functionality and migrants protection against unfair and misleading practices.



Coming back to the other banking services included in a Basic Bank Account offer, we should consider that, in some cases and contexts, various barriers may keep immigrants away from the financial system.

Some - such as language barriers, cultural differences, location inconvenience and banking service hours - relate particularly to migrant population.

Others relate more to the unbanked in general, such as low levels of financial literacy, lack of information about appropriate product and services, and a general distrust of banks.

This means that complementary initiatives in offering basic banking accounts are necessary.



Providing immigrants with basic bank accounts is not only per se useful in order for them to have access to basic services, it is also useful for starting a relationship that can facilitate mutual understanding and trust and, then, access also to credit and other more sophisticated products and services.

However, in order to overcome the various barriers above mentioned, the offer of basic bank accounts to migrants implies developing strategies to reducing barriers.



These strategies include:

• *reinventing customer relations (successful initiatives include :*

- *multilanguage informational material,*
- *the use of multilingual and multiethnic staff,*
- *dedicated branches and community partnership*

• *product innovations (in the area of payment services and "mirror accounts", of loans and mortgages, and also pension schemes).*



I strongly recommend, for example, to develop products aimed at building savings for buying a home. These asset-building tools enable a number of objectives to be reached:

- *the creation of a credit history that facilitates evaluation of immigrant creditworthiness or more generally that improves their credit-risk profiles, thus lowering the cost of payment services;*
- *building up funds needed to meet the expenses connected with starting a mortgage;*
- *financial education, since these programmes are usually accompanied by programs of financial capability improvement;*
- *further asset-building programmes involve saving plans and restrictions on withdrawing deposits, thus “teaching” migrants how to save, with positive effects on subsequently meeting for deadlines in the mortgage repayment plan.*



Obviously, the cited products/services are not in the range of services included in the basic bank offer, but a bank - in order to be really trustworthy when making an offer aimed at promoting financial inclusion - should be also prepared to offer more sophisticated services which are coherent with the above said evolution of migrants' needs along the various phases of the migration process.

This complementary offer strengthens and makes more credible the bank's wish to engage itself in a durable customer relationship.

Indeed, I noticed that the migrant market segment has been used - in some cases - like a flagship, as a tool to promote the image of a social responsible actor, a consumer-oriented bank.

However, in some cases, this offer is only a facade offer: sometimes, I suppose, we can count more minutes spent at conferences and workshops by banks to present their special products for migrants or unbanked people, than the numbers of accounts actually opened and functioning in these marginal market segments!



Concluding

The offer of a basic bank account certainly meets needs of a segment – in some contexts a large segment – of migrant customers, otherwise financially excluded.

This segment is likely formed by people in the early phases of their migratory process and by people – that are not generally the majority of migrants – that for cultural approach, educational level, personal attitudes and other circumstances remain during their life among the category of persons socially weak, economically disadvantaged, therefore at risk of social and financial exclusion.

This offer should be a first step, designed as a part of a wider range of services offered, which can more easily evolve step by step toward a more complete offer, tailor made to migrants.



Moreover, whatever the policy option adopted for ensuring access to a basic bank account – *be it regulation, soft regulation, self regulation or simply promotion of best practices* - it is essential that tools be introduced in order to monitor the factual diffusion and real responsiveness to the needs of the basic bank accounts.

These monitoring tools should help avoid the above mentioned risk of only a facade offer which would have a counter-productive effect of leading to a further lack of confidence in the banking system and a consequent withdrawal from the market.



3.8. Possible links to universal service obligations (services of general economic interest) - Presentation by Peter DYRBERG

Ensuring Access to Basic Banking Services

Possible Links to Universal Service Obligations (Services of General Economic Interest (SGEI))

Presentation for the workshop held by the European Parliament's Committee on Economic and Monetary Affairs on 13 April 2011, Session II: Possible Solutions and Elements in a European Initiative

Peter Dyrberg

SGEI in the Treaty

- Article 106 TFEU
- Article 14 TFEU
- Protocol 26

Article 106 TFEU

1. In the case of public undertakings and undertakings to which Member States grant special or exclusive rights, Member States shall neither enact nor maintain in force any measure contrary to the rules contained in the Treaties, in particular to those rules provided for in Article 18 and Articles 101 to 109.

2. Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in the Treaties, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Union.

3. The Commission shall ensure the application of the provisions of this Article and shall, where necessary, address appropriate directives or decisions to Member States.

Article 14 TFEU

Without prejudice to Article 4 of the Treaty on European Union or to Articles 93, 106 and 107 of this Treaty, and given the place occupied by services of general economic interest in the shared values of the Union as well as their role in promoting social and territorial cohesion, the Union and the Member States, each within their respective powers and within the scope of application of the Treaties, shall take care that such services operate on the basis of principles and conditions, particularly economic and financial conditions, which enable them to fulfil their missions. The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall establish these principles and set these conditions without prejudice to the competence of Member States, in compliance with the Treaties, to provide, to commission and to fund such services.

PROTOCOL NO. 26 (ON SERVICES OF GENERAL INTEREST)

Article 1

The shared values of the Union in respect of services of general economic interest within the meaning of Article 14 of the Treaty on the Functioning of the European Union include in particular:

the essential role and the wide discretion of national, regional and local authorities in providing, commissioning and organising services of general economic interest as closely as possible to the needs of the users;

the diversity between various services of general economic interest and the differences in the needs and preferences of users that may result from different geographical, social or cultural situations;

a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights.

Article 2

The provisions of the Treaties do not affect in any way the competence of Member States to provide, commission and organise non-economic services of general interest.

The Charter of Fundamental Rights

Article 36

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Treaties, in order to promote the social and territorial cohesion of the Union.

SGEI in secondary law

- SGEI in market opening, liberalising acts
- Network industries:
electricity, gas, public transport, postal services, telecommunications

Legal basis for a European initiative in the form of a directive

- Article 114 TFEU?

ARTICLE 114 TFEU

1. *Save where otherwise provided in the Treaties, the following provisions shall apply for the achievement of the objectives set out in Article 26. The European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market.*

.....

Issues in a European initiative

- Define basic banking services
- One account in the Union or more accounts
- Impose on banks an obligation to contract *or* impose on banks an obligation to contract at a reasonable/affordable price

4. BRIEFING NOTE BY PETER DYRBERG

ENSURING ACCESS TO BASIC BANKING SERVICES - POSSIBLE LINKS TO UNIVERSAL SERVICE OBLIGATIONS

4.1. Introduction

This briefing note is made for the workshop that the European Parliament's Committee on Economy and Monetary Affairs held on 13 April 2011. The topic of the workshop is access to basic banking services and this note forms part of session II of the workshop: Possible solutions and essential elements in a European initiative.

A European initiative would mean a binding legal act in the form of a directive or regulation, although a non-binding act such as a recommendation is also under consideration.

There is no common definition of the term 'basic banking services'. In this note the term will largely be understood as equivalent to access to a bank account without going further into what specific services should be associated with such an account.

This note deals first with services of general economic interest; it sets out the place of those services in the Treaty and in secondary law to enable an assessment whether that notion is helpful for a European initiative (point 1-3). The note then addresses the question what could be the legal basis for a European initiative and what could be problematic legal 'technical' issues (point 4-5).

4.2. The position of services of general economic interest in the Treaty

In the original Treaty, services of general economic interest (SGEI) were only mentioned in the provision which is now Article 106 TFEU (old Article 86 TEC). The provision is located in section 1 of the chapter of the Treaty that concerns competition policy. The section first lays down the fundamental prohibitions on cartels (Article 101 TFEU) and abuse of dominant position (Article 102 TFEU). Thereupon follows Article 106 which provides (emphasis added):

'1. In the case of public undertakings and undertakings to which Member States grant special or exclusive rights, Member States shall neither enact nor maintain in force any measure contrary to the rules contained in the Treaties, in particular to those rules provided for in Article 18 and Articles 101 to 109.

2. Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in the Treaties, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Union.

3. The Commission shall ensure the application of the provision of the Article and shall, where necessary, address appropriate directives or decisions to Member States.'

Thus, under Article 106 TFEU the legal starting point is that the services of general economic interest are subject to the Treaty's rules such as those on free movement and competition. That standing point is modified when the following contributions are met:

- To the extent that the application of the Treaty rules will obstruct the performance of the SGEI, the rules can be deviated.
- Cross-border trade must not be disproportionately affected.

Putting it in a nutshell, SGEIs were an exemption from the Treaty rules that required a justification.

Developments during the 1990-ies made Member States unsecure about this legal situation. The Treaty of Amsterdam brought a provision on the importance of SGEI and a Protocol on a particular kind of SGEI, namely Public Service Broadcasting, into the Treaty.¹⁶

The Treaty provision was further supplemented in the Lisbon Treaty, which added a Protocol on Services of General Interest.¹⁷ Article 14 TFEU in its current text and entangled wording which reflects the complexity of the interests at issue is without prejudice to Article 106 TFEU. Article 14 TFEU establishes (emphasis added):

*'Without prejudice to Article 4 of the Treaty on European Union or to Articles 93, 106 and 107 of this Treaty, and given the place occupied by services of general economic interest in the shared values of the Union as well as their role in promoting social and territorial cohesion, **the Union and the Member States, each within their respective powers and within the scope of application of the Treaties**, shall take care that such services **operate** on the basis of principles and conditions, particularly economic and financial conditions, which enable them to fulfil their missions. The European Parliament and the Council, acting by means of **regulations** in accordance with the ordinary legislative procedure, shall establish these principles and set these conditions **without prejudice to the competence of Member States**, in compliance with the Treaties, **to provide**, to commission and to fund such services.'*

Protocol 26 to the Lisbon Treaty provides (emphasis added):

Article 1

The shared values of the Union in respect of services of general economic interest within the meaning of Article 14 of the Treaty on the Functioning of the European Union include in particular:

— *the essential role and the wide discretion of **national, regional and local authorities in providing, commissioning and organising services of general economic interest as closely as possible to the needs of the users**;*

— *the diversity between various services of general economic interest and the differences in the needs and preferences of users that may result from **different geographical, social or cultural situations**;*

— *a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights.*

Article 2

The provisions of the Treaties do not affect in any way the competence of Member States to provide commission and organise non-economic services of general interest.

Here it must be noticed that the wording of the provisions quoted leave the impression that it is for the Member States to provide for SGEIs. Undoubtedly, there will be lawyers who

¹⁶ Article 16 TEC and Protocol 27 on the System of Public Broadcasting.

¹⁷ Protocols have same place in the legal hierarchy as the Treaty.

consider that the Union is not competent to establish SGEIs which is an issue that must be addressed in the further works of the Committee.

The Charter on Fundamental Rights also contains a provision on SGEIs in its Article 36. The essence of the provision is that the Union respects the SGEIs laid down by Member States.

4.3. What is a service of general economic interest in the context of the Treaty?

The Court of Justice has acknowledged a vast number of services as SGEIs.¹⁸ In general Member States, in fields not regulated by secondary law (see below) have a vast discretion to qualify a service as a SGEI.¹⁹ Nonetheless, there are limits; e.g. dock works have not been accepted as SGEIs,²⁰ and aid to housing, in the form of inexpensive mortgages, that go beyond social housing are not accepted either.²¹

4.4. Services of general economic interest in secondary law

A number of acts of secondary law contain provisions on SGEIs, namely in the area of certain network industries such as electricity, gas, postal services, transport and telecommunications. The background is that within each Member State incumbent operators – often monopolies – performed such SGEIs, ensuring that citizens in rural or remote areas would also have access to this kind of services. The market opening of these sectors of the economy that the Union carried out over the last two decades had to be made taking due account of such SGEIs.

It must be noted that the activity of the Union has not been confined to laying down self-standing SGEIs. Provisions on SGEIs have been laid down to accompany market liberalisation measures. The legal basis for the acts adopted has normally been the general provision for harmonising legislation, i.e. the provision that allows the European Union to legislate for the establishment and functioning of the Internal Market, now Article 114 TFEU.²²

Thus, there appears to be no legislative precedent. Here there is one more issue that the Committee may take into account in its further works.

4.5. The legal basis of a possible European initiative

So far it appears that the envisaged form for a binding legal act of the European Union in this matter would be a directive. Article 14 TFEU, quoted above, foresees only that regulations can be adopted. Thus, even if Article 14 TFEU were to be considered as a legal basis for the European Union establishing a SGEI, the provision would have to be excluded as a legal basis because of the kind of legal act that it foresees.

¹⁸ See for instance Case C-53/00 *Ferring SA v Agence centrale des organismes de sécurité sociale (ACOSS)* [2001] ECR I-9067, Case C-205/99 *Asociación Profesional de Empresas Navieras de Líneas Regulares (Analir) and Others v Administración General del Estado* [2001] ECR I-1271, Case C-280/00 *Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH, and Oberbundesanwalt beim Bundesverwaltungsgericht* [2003] ECR I-7747, Case C-155/73 *Giuseppe Sacchi* [1974] ECR 409, Case C-222/08 *Commission v Belgium* [2010] I-0000, Case C-439/06 *citiworks AG* ECR [2008] I-03913, Case C-220/06 *Asociación Profesional de Empresas de Reparto y Manipulado de Correspondencia v Administración General del Estado* ECR [2007] I-12175, Case C-320/91 *Corbeau* ECR [1993] I-2533.

¹⁹ 2004 Commission's White Paper on services of General Interest.

²⁰ Case C-179/90 *Merci conventionali porto di Genova SpA v Siderurgica Gabrielli SpA* [1991] ECR I-5889.

²¹ See for instance Commission Decision 2005/842 on the application of Article 86(2) of the EC Treaty to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest.

²² In the transport sector, the specific Treaty provisions on transport have provided the legal basis.

Furthermore, in the debate on financial exclusion and thus on the access to basic banking services the social aspect of the exclusion is often predominant or at least largely emphasised: citizens are experiencing hardship or difficulties because they do not have access to basic banking services.²³ That warrants this observation: If the general harmonisation provision²⁴ is to be used as legal basis for a directive there must be a connection to the establishment and functioning of the Internal Market.

Some will consider that such a connection is established by the fact that access to basic banking services is a pre-condition for fully benefiting from the Internal Market.²⁵ It can be argued that for instance engaging in e-commerce will for many consumers in practice require that they have a bank account, or that citizens making use of their right to free movement encounter problems in opening a bank account in the host state. Others will argue that such a connection is too tenuous to allow the European Union to legislate: there are multiple pre-conditions for fully benefiting from the Internal Market without that entailing necessarily a Union competence to legislate, e.g. access to a computer or computer literacy. Here is one more issue that the Committee may consider in its further work.

The competence under Article 114 TFEU must be exercised in accordance with the principles of subsidiarity and proportionality. It could be argued that Member States are better placed to address the issue of financial exclusion than the Union. Here is another issue that the Committee may consider in its further work.

It must also be noted that the way that one reasons the need for European Union action in the matter will have an impact on the details of the provisions to be adopted: if the focus is on financial exclusion as such, provision for a right to one bank account would appear to suffice; if the focus is on cross-border situations, provision must be made for a right to at least one more bank account – namely in the host state – than the one the citizen holds in his/her home state.

4.6. Technical issues of a possible European initiative

It appears that some Member States have legislation in place that ensures a right to basic banking services in the form of a bank account. Therefore it can be assumed, that possible 'technical' problems can be overcome; i.e. the subject matter can be regulated satisfactorily. The legislation must of course specify what the basic bank account is, i.e. what services that must be associated with it (for instance debit card or not).

However, legislating at the European Union level and taking into account the different legal landscapes in 27 Member States is complex. There are two matters that are worth being noted:

- First: Will there be a right to one bank account in the Union, or is there going to be a right to **one bank account in each Member State**? In any case, it may be quite difficult to verify whether the person claiming the right already has an account. If there is a right in each Member State, the proportionality of the Union's action could be questioned.

²³ See for instance Commission Staff Working Document SEC(2007) 1520 'Initiatives in the Area of Retail Financial Services': '*In many Member States, citizens are not guaranteed access to a basic bank account. This ... is an important factor of social exclusion.*' Such a view appears also reflected in Regulation No. 215/2007 that for statistical purposes defines financial exclusion *inter alia* as reasons why the household does not have and *needs* a current bank account.

²⁴ N.B. This means Article 114 TFEU - which has been chosen as legal basis for the proposal.

²⁵ See for instance Mario Monti's Report 'A New Strategy for the Single Market', May 2010, p. 74.

- Second is the right to basic banking services in the form of a bank account (provided that legal requirements are complied with, e.g. money laundering, anti-terrorism) a right to be paid for under market conditions? Or is it a right that is protected in the sense that a certain body – probably a public one – has to determine the price for those banking services. In other words: Should the enacted right be a right to have access to banking services or should the enacted right be a right to have **access to banking services at a reasonable/affordable price**? Is the market failure that no bank account is offered or that it is offered at an unacceptable price? If the price is set below the market price, who should 'pay' for it? If the state is going to pay, compliance with the State aid rules must be ensured. Moreover, in contrast to network industries where consumers by necessity may only have access to one or a few operators with a public service obligation, consumers may change banks more easily, if prices are set by a public authority. As a consequence, distortions of competition may arise, in particular if the bank has an obligation to contract with them.

These questions are first and foremost to be addressed in political and economic terms. However, the answers must comply with the Treaty and must be suitable to be converted into operational provisions. Here there is one more issue that the Committee may consider in its further works.

4.7. Conclusions

It seems possible to at least distil one clear conclusion: The notion of SGEI does not appear particularly helpful for a European initiative; Member States may be the masters of defining SGEIs; there is no legislative precedent; the Treaty provision at issue, Article 14 TFEU, is very complex and does not allow for a directive.

If the European Union legislates in the matter, their interest must be defined precisely and the principle of subsidiarity must be considered. The Treaty provisions assume a primary role for Member States in the field of providing for SGEIs.

One argument in favour of European legislation would be to overcome the current shortcomings that financial exclusion means for the establishment and functioning of the Internal Market.

Given the number of open questions a non-binding legal Union instrument, addressed to the Member States might not be an adequate solution. If such a latter instrument is without effect, the European Union may come back to the matter, vested with the legitimacy that the matter is not sufficiently dealt with.

ANNEX: WORKSHOP POSTER



ΕΒΡΟΠΕΪΣΚΙ ΠΑΡΛΑΜΕΝΤ ΠΑΡΛΑΜΕΝΤΟ ΕΥΡΩΠΕΟ ΕΥΡΩΠΣΚΪ ΠΑΡΛΑΜΕΝΤ ΕΥΡΟΠΑ-ΠΑΡΛΑΜΕΝΤΕΤ
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PARLEMENT EUROPEËN PARLAIMINT NA HEORPA PARLAMENTO EUROPEO EIROPAS PARLAMENTS
EUROPOS PARLAMENTAS EURÓPAI PARLAMENT IL-PARLAMENT EWROPEW EUROPEES PARLEMENT
PARLAMENT EUROPEJSKI PARLAMENTO EUROPEU PARLAMENTUL EUROPEAN
EURÓPSKY PARLAMENT EVROPSKI PARLAMENT EUROOPAN PARLAMENTTI EUROPAPARLAMENET

WORKSHOP

POLICY DEPARTMENT A - ECONOMY & SCIENCE

ENSURING ACCESS TO **BASIC BANKING SERVICES**

CHAIR:
SHARON BOWLES, MEP

RAPPORTEUR:
JÜRGEN KLUTE, MEP

Wednesday 13 April 2011
09:00 - 12:30
European Parliament Brussels
Room: JAN 6Q2

The workshop is open to all interested parties .
Participants needing a badge must register providing names, date of birth,
nationality, ID/passport number to poldep-economy-science@europarl.europa.eu
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