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Royal Decree-Law 19/2017 of 24 November
on basic payment accounts, account switching
and comparability of payment account fees

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On 24 November 2017, the Spanish Council of Ministers (*Consejo de Ministros*) approved Royal Decree-law 19/2017 on basic payment accounts, account switching and comparability of payment account fees (the “RD”)¹.

The RD transposes Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to basic payment accounts. This Directive supplements Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market, which will be replaced by Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, that will repeal the first one as of 13 January 2018.

Provisions of the RD which are referred to basic payment accounts apply only to credit institutions. However, the rest of the rules in the RD are applicable to any payment service provider, including credit institutions (“PSP”).

We summarise below the main updates introduced by the RD.

BASIC PAYMENT ACCOUNTS

Right to access and refusal

- Credit institutions offering payment accounts to their clients must offer basic payment accounts to potential clients who (i) are legally resident in the Union, but have no fixed address; (ii) are asylum seekers, or (iii) have not been granted a residence permit, but cannot be deported for legal or factual reasons.

¹ <http://www.boe.es/buscar/pdf/2017/BOE-A-2017-13644-consolidado.pdf>

- Credit institutions are only allowed to refuse to open or terminate a contract for a basic payment account under certain circumstances (e.g. non-compliance with the legislation on money laundering and terrorist financing).

Associated services to a basic payment account

- Users must be able to unrestrictedly operate and close basic payment accounts, place funds in and withdraw cash from them, and execute direct debit, credit transfer by a debit or prepaid card, including online payments, and transfers, including standing orders and online transactions, if available.

Maximum fees

- The Ministry of Economy, Industry and Competitiveness will set the maximum fees that credit institutions may charge to users of payment services on the basis of different criteria, such as national income level in relation to other Member States or average fees charged by credit institutions, among others.

General information requirements

- Credit institutions, through their distribution network, must provide clients and potential clients information on (i) the features of each of the services which their basic payment accounts include, (ii) the cost of each service, of some services or all the services together, and (iii) the conditions for operating each service.

ACCOUNT SWITCHING

- PSP must enable their clients to switch effectively and nimbly their payment accounts to other PSP in Spain.
- The initial PSP may only refuse to allow a client to switch the credit balance in a payment account to another provider when the client still owes in such payment account any amount to the PSP or to a third party. Moreover, the initial PSP must not block payment instruments before the date specified in the client's authorisation to avoid any transactions being disrupted while the switch is being processed.

Procedure

- For the ease of the switching, RD contains maximum deadlines to make effective the switching. In this regard, the client must state the date on which the switch is to take effect. However, this date cannot be earlier than six days after the date on which the new PSP receives all the relevant information from the initial PSP.
- Two business days after the client's authorisation has been received, the new PSP must request the initial PSP to supply all the information required to transfer the account. Likewise, the initial PSP must supply such information within five business days following the new PSP's request.
- The PSP must reimburse any economic losses (including expenses and interest) suffered by the client as a direct result of a PSP's failure to comply with its obligations during the switch.

COMPARABILITY OF FEES RELATED TO PAYMENT ACCOUNTS

Fee information document

- The PSP should provide their clients (and their potential clients before the granting of the payment account agreement) with a fee information document which sets out the most representative services linked to a payment account and their cost.
- This fee information document, whose content and format will be standardized once the relevant delegated regulations will be published ² should comply with the following requirements, among others: (i) titles "Documento informativo de comisiones" (fee information document) on the first page and include a common symbol to distinguish the document from other documentation; and (ii) states that it contains fees for the most representative services related to the payment account and that complete pre-contractual and contractual information on all the services is available in other documents.
- Where are offered as part of a package of services linked to a payment account, the fee information document must state the cost of the entire package.

² <https://www.eba.europa.eu/documents/10180/1837359/Final+draft+RTS+and+ITSs+under+PAD+%28EBA-RTS-2017-04%2C%20EBA-ITS-2017-03%2C%20EBA-ITS-2017-04%29.pdf/2efce54a-5ea4-46cd-a31b-8ab69c4b8be5>

Statement of fees

- PSP must also provide their clients with a free yearly document setting out all the charges for the services provided under the payment account.
- The content and format of the statement of fees will be also standardized in accordance with the abovementioned delegated regulations. Furthermore, in similar terms as the fee information document, the RD states that the statement of fees shall, among other requirements, title “Estado de comisiones” (statement of fees) on the first page and include a common symbol to distinguish the document from other documentation.
- The statement of fees should include, among other information: (i) the unit price for each service (or a service package) and the number of times the service (or a service package) was used during a specific period, (ii) the total fees incurred during the specific period for each service (or a service package), and (iii) the credit interest rate applied to the payment account and interest generated during the specific period, where applicable.

Comparison websites

- The Bank of Spain’s website may offer free access to comparative analyses of the fees charged by several PSP. In this regard, the commissions applied by the PSP are subject to the checking rules of the Bank of Spain.
- Other operators may provide similar services after the submission of a responsible statement before the Bank of Spain of compliance with, among other, the following requirements: (i) be functionally independent by ensuring that PSP are given equal treatment, (ii) set out clear, objective criteria on which the comparison is based, and (iii) provide accurate and up-to-date facts and state when the information was last updated.

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