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Bestrijden witwassen en terrorismefinanciering

I BRIEF VAN DE MINISTER VAN FINANCIËN

Aan de Voorzitter van de Eerste Kamer der Staten-Generaal

Den Haag, 20 maart 2025

Hierbij stuur ik u het non-paper toe dat ik aan de Europese Commissie heb gestuurd om in Europees verband de problemen aan te pakken die zakelijke klanten ervaren bij het openen en behouden van een betaalrekening.

De Minister van Financiën,
E. Heinen

Non-paper on Facilitating Payment Accounts for Business Customers

Prepared by the Ministry of Finance of the Netherlands for discussion purposes / for informal consultation

In principle, all bona fide business customers¹ should have equal access to financial services i.e. payment accounts, subject to certain (legal) exceptions. Access should be provided without discrimination to enable full participation in the economy.

Business customers experience different problems with regards to opening and maintaining a payment account. Therefore, the Netherlands and Finland call on the European Commission to propose legislation to facilitate access to financial services, in particular access to a payment account to all customers (i.e. business customers).

I. Introduction

Business customers should have the ability to participate in the economy and therefore society. In the current economic landscape, access to a payment account is crucial for doing business and benefits a well-functioning internal market.

«Business customers» refers to businesses, foundations, associations and other legal entities, including not-for-profit organisations (NPO's). This definition requires additional refinement. Access to a payment account for business customers is not always guaranteed. Currently, different reasons for the difficulties in accessing payment services faced by businesses customers exist. Although Article 16 of the Payment Accounts Directive (PAD) grants natural persons the right to a basic payment account, business customers do not enjoy this right on a EU-level. The Netherlands and Finland consider it essential to resolve access issues with payment accounts, while ensuring that financial institutions (e.g. banks) do not face excessive regulatory pressure.

The Netherlands and Finland are pleased that the Commission has recently shown efforts to discuss the problems business customers face when opening bank accounts in the Single Market Enforcement Taskforce (SMET) by collecting good practices. However, based on past experiences, we believe that additional action is needed to fully address the issue. Therefore, we call on the new European Commission to prepare legislation on facilitating basic payment accounts for business customers across the EU, by broadening the scope of the PAD.

This non-paper intends to contribute to ongoing discussions and consultations with regards to facilitating opening of bank accounts for business customers. This non-paper highlights some challenges followed by suggestions for the technical details.

II. Problem analysis

It is in the best interest of the EU to facilitate access to financial services for business customers, enabling active participation in the European economy. Moreover, the spillover effects on the internal market, such as enhanced economic fluidity and competitiveness contribute to greater market efficiency.

¹ Henceforth, the term «business customers» will be used under the condition that the definition and scope of «business customers,» and thus who qualifies for the right to a basic payment account, is yet to be determined.

Currently, business customers in various member states experience difficulties with fully participating in the economy due to difficulties in opening or maintaining a payment account. This potentially disrupts economic fluidity. The process of opening a payment account can often be time-consuming, leading to significant consequences. For instance, start-ups may miss out on valuable business opportunities, possibly decreasing the EU's competitiveness, while non-profit organisations (NPO's) could face obstacles in funds for critical humanitarian aid.

The challenges faced by business customers stem from various factors, with the primary reason being the freedom of contract enjoyed by financial institutions. Currently, some business customers are declined due to commercial considerations, corporate responsibility concerns, or reputation risks for the institution. Financial institutions have the discretion to choose which business customers to accept or to refuse. This poses no issue as long as the customer is ultimately able to open a payment account elsewhere. However, this is not yet ensured by legislation. Refusals also stem from the improper application by financial institutions of the risk based approach required under the Anti Money Laundering Directive (AMD) and its national implementation. Business customer group may be classified as higher risk under AMLD; however, not every individual business customer poses a ML/TF risk. Despite this, some customers are still declined solely due to the group's classification (i.e. certain groups of business customers are unable to access financial services based on a generalised group-based risk approach). Research by the Dutch National Bank (DNB) indicated that Dutch financial institutions, i.e. banks, do not apply a proper risk-based approach, as a result, terminated relationships with 3600 business customers (including financial institutions) for «Wwft reasons» in 2021. The DNB report indicates that approximately 80% of business customer relationships terminated with the bank in 2021 for Wwft reasons were assessed as low to moderate ML/TF risk, signifying inaccuracy in AML-regulation application. AMLD is often used as a justification to refuse business customers (18% in the Netherlands) when the due diligence process is considered too burdensome or cost-intensive for financial institutions. Thus, the remaining 82% of refusals are unrelated to AML regulations.

A lack of information exists making it difficult to determine the scale of the issue. It is important to facilitate business customers to participate in economic traffic, whilst at the same time ensuring that institutions do not experience disproportionate regulatory pressure. Because access to financial services for business customers is mostly unregulated in the EU, it remains difficult to obtain more figures of rejections and their substantiation. We received signals that financial institutions do not fully disclose the details on the reason(s) of refusal to the business customer. In addition, opening a payment account can take months due to the absence of a defined maximum processing time for opening a payment account. Therefore, it often remains unclear if rejections relate to AML concerns (including costs of client due diligence), driven by commercial interests, shaped by general risk appetite, or attributable to other reasons. Due to the limited disclosure provided by financial institutions to both business customers and supervisory bodies, neither party has sufficient insight into the detailed reasons for refusal. In order to effectively monitor activities and establish accurate legislation, access to this detailed information is crucial.

Business customers that experience difficulties may see no other option than to resort to using their private payment accounts (often against company rules), to cash money, or unregulated

(underground) alternatives for payments. Besides access issues experienced by business customers, this also hampers the transaction monitoring performed by banks with the aim to fight money-laundering and terrorist financing. Therefore, it is of the utmost importance to facilitate access to payment accounts. This ensures that gatekeepers can effectively monitor their clients, safeguarding the trustworthiness of EU financial markets.

Different regulations across the EU may lead to a uneven playing field and a concentration of financial activities in some member states. Some member states introduced certain initiatives to address the difficulties business customers face in accessing financial services. Consequently, business customers in a member state without a legal basis might face difficulties in accessing financial services, while business customers in a member state with a legal base can have easier access. Some business customers in certain countries without a legal base could experience competitive disadvantage compared to business customers operating in countries with a legal base. For instance, Belgium introduced the «*Basic bank service*» and France has the *droit au compte* that facilitate payment accounts for business customers.² In such cases, business customers denied access elsewhere in the EU may turn to member states that do provide (basic) payment services, such as Belgium or France. Consequently, this could lead to a concentration of activities, unfair competitive edges, and administrative burdens particularly in those member states with specific legislation or policy addressing the issue.

The banking landscapes differs across the EU, leading to a fragmented EU financial market and inconsistent access to financial services, such as payment accounts. The banking landscape in the EU is signified by some member states hosting a greater number of financial institutions than others. When access to financial services, such as payment accounts or loans, is inconsistent, it creates inefficiencies. For example, business customers operating in multiple countries may face different requirements for opening accounts or securing financing, leading to delays, higher costs, and operational complications. As a result, business customers find themselves operating in grey zones or bending the rules, causing transparency issues. This may lead to a «waterbed effect,» displacing a problem from one member states to another.

III. Suggestions for Improvement and Technical Details

We call on the Commission to propose legislation for facilitating opening payment accounts for business customers, extending the scope of the existing PAD to business customers, reviewing the modalities of the PAD in order to ensure they meet the needs of businesses and including best practices of member states.

An individual ML or terrorist financing (TF) risk should be an exception when it comes to accessing a payment account. If an individual client poses a ML/TF risk for the financial institution, the financial institution must take mitigating measures. If measures are not sufficient to mitigate the risk, the business customer must be rejected. However, we must ensure that this does not lead to the rejection of entire business groups solely due to an inherently higher sector risk. It is

² Basisbankdienst voor ondernemingen en diplomatieke zendingen | FOD Economie; Interdit bancaire et droit au compte professionnel | Banque de France; Faire valoir votre droit au compte bancaire; Section 1 : Droit au compte et relations avec le client (Articles L312-1 à L312-1-8) – Légifrance.

important to make sure that financial institutions do not misuse AMLD as a basis for rejections.

Broadening the scope of the PAD would be most fruitful. This would enhance the efforts of the new Commission to strengthen the EU's internal market, competitiveness, and transparency. In addition, it would enhance the resilience of Europe's defence(industry) and security. Expanding the scope of this existing directive ensures alignment with current regulations for natural persons, avoids adding more complexity to the regulatory framework of payments overall, and offers a time-efficient approach. We consider it to be important that the possibility for dispute resolution exists, as provided in the PAD as well. In addition, the Netherlands is exploring potential improvements to the PAD and we will inform the European Commission on our outcomes.

Technical details

We would like to highlight that, the following technical details are necessary to consider when establishing the right for a (basic) payment account for business customers:

- The definition and scope of «business customers,» and therefore, who qualifies for the right on a basic payment account;
- who should be the providers of these accounts;
- whether a business customer should be able to demonstrate a *genuine and substantive interest* in the European (internal) market;
- a business customer must be transparent in its activities;
- making sure that TF and ML rejections are individually substantiated and not misused by institutions;
- grounds on which the payment account could and should be refused/terminated;
- how to include non-discrimination (online and physical);
- time limits to processing time of an application for financial institutions;
- the functionalities of the payment account (e.g. deposit cash, withdraw cash, make transfers to and receive from other bank accounts, make standing orders, direct debits, pay with a debit card or similar means, batch payments);
- service level of the payment services provided;
- transparency and proportionality in pricing;
- other functionalities that might be necessary such as: overdraft, possibility to obtain a credit card, holding more than two debit cards;
- possibility of administrative burdens, both for business customers and financial institutions;
- competent authority for dispute resolution;
- a supervisory authority;
- how to evaluate the legislation.

We look forward to the opportunity to further discuss these ideas and collaborate on potential solutions.