

In case of discrepancies between the French and the English text, the French text shall prevail.

Luxembourg, 19 October 2018

To all payment service providers offering payment accounts in Luxembourg which are subject to the supervision of the CSSF

**CIRCULAR CSSF 18/700**

**Re: Law of 13 June 2017 on payment accounts and**

- 1. transposing 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 payment accounts with basic features; and**
- 2. amending the Law of 15 December 2000 on postal financial services, as amended, (hereinafter: “Law”)<sup>1</sup>**

Ladies and Gentlemen,

The purpose of this circular is to outline the specific provisions of the Law that will enter into force on 1 November 2018. The other provisions of the Law entered into force on 19 June 2017.

As a reminder, Article 37 of the Law reads as follows: “*Subparagraph 1 of Article 5(1), Article 5(2) to (7) and Articles 6, 7 and 9 shall enter into force nine months after the entry into force of the delegated act referred to in Article 3(4) of Directive 2014/92/EU<sup>2</sup>*”.

<sup>1</sup> <http://legilux.public.lu/eli/etat/leg/loi/2017/06/13/a559/jo>

<sup>2</sup> 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 payment accounts with basic features (hereinafter: “Directive 2014/92/EU”):  
<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0092&from=en>

By mentioning the delegated act referred to in Article 3(4) of Directive 2014/92/EU, Article 37 of the Law refers to Commission Delegated Regulation (EU) 2018/32 of 28 September 2017 supplementing Directive 2014/92/EU of the European Parliament and of the Council with regard to regulatory technical standards for the Union standardised terminology for most representative services linked to a payment account (hereinafter: “Delegated Regulation (EU) 2018/32”)<sup>3</sup>.

Delegated Regulation (EU) 2018/32 establishes the Union standardised terminology for the eight services linked to a payment account (cf. below for the definition of payment account) that are common to at least a majority of the Member States.

Grand-ducal Regulation of 6 June 2018 on the establishment of the standardised list of the most representative services linked to a payment account within the meaning of the Law of 13 June 2017 on payment accounts (hereinafter: “Grand-ducal Regulation of 6 June 2018”)<sup>4</sup> entered into force on 15 June 2018. Grand-ducal Regulation of 6 June 2018 introduced into Luxembourg legislation the “standardised list” which is the (national) list of the most representative services linked to a payment account (the standardised list counts ten services, including the eight Union standardised services).

As Article 37 of the Law provides that the articles mentioned therein enter into force nine months after the entry into force of Delegated Regulation (EU) 2018/32, which entered into force on 1 February 2018, the articles referred to in Article 37 of the Law will enter into force on 1 November 2018.

In this regard, it should be noted that the articles and paragraphs referred to in Article 37 of the Law are all part of Chapter 2 of the Law titled “Fees related to payment accounts” and that the payment account is defined in point 7 of Article 1 of the Law as follows:

*“an account held in the name of one or more consumers which is used for the execution of, at least, the following payment transactions:*

- a) placing funds in another payment account;*
- b) withdrawing cash; and*
- c) executing and receiving payment transactions, including credit transfers, to and from a third party.”*

The consumer is defined in point 4 of Article 1 of the Law as: “any natural person who is acting for purposes which are outside his trade, business, craft or profession”.

The different provisions entering into force on 1 November 2018 will be presented hereinafter, following the order set out in the Law.

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<sup>3</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R0032&from=EN>

<sup>4</sup> <http://legilux.public.lu/eli/etat/leg/rgd/2018/06/06/a475/jo>

**A) Fee information document and glossary (first subparagraph of Article 5(1) and Article 5(2) to (7) of the Law)**

The first subparagraph of Article 5(1) of the Law provides that before entering into a contract for a payment account with a consumer, payment service providers must provide the consumer with a fee information document informing on the fees related to the most representative services linked to a payment account. These services are listed and defined in Grand-ducal Regulation of 6 June 2018 (cf. above) as follows:

1. *“Online banking”*: An online access to the account is made available to the customer by the account provider;
2. *“Arranged overdraft”*: The account provider and the customer agree in advance that the customer may borrow money when there is no money left in the account. The agreement determines a maximum amount that can be borrowed, and whether fees and interest will be charged to the customer.
3. *“Direct debit”*: The customer permits someone else (recipient) to instruct the account provider to transfer money from the customer's account to that recipient. The account provider then transfers money to the recipient on a date or dates agreed by the customer and the recipient. The amount may vary.
4. *“Account statement”*: An account statement is made available to the customer by the account provider;
5. *“Providing a credit card”*: The account provider provides a payment card linked to the customer's payment account. The total amount of the transactions made using the card during an agreed period is taken either in full or in part from the customer's payment account on an agreed date. A credit agreement between the provider and the customer determines whether interest will be charged to the customer for the borrowing;
6. *“Providing a debit card”*: The account provider provides a payment card linked to the customer's account. The amount of each transaction made using the card is taken directly and in full from the customer's account;
7. *“Standing order”*: The account provider makes regular transfers, on the instruction of the customer, of a fixed amount of money from the customer's account to another account.
8. *“Cash withdrawal”*: The customer takes cash out of the customer's account;
9. *“Maintaining the account”*: The account provider operates the account for use by the customer;
10. *“Sending money”*: The account provider transfers money, on the instruction of the customer, from the customer's account to another account.

The consumer must be in a position to easily compare payment account offers with this fee information document, which is, in principle, a short and stand-alone document following a specific standardised presentation format.

The Law also requires (Article 5(6) of the Law) payment service providers to ensure that the fee information document is available to consumers (customers or prospects) at any time and it defines the format (paper or other durable medium) in which the fee information document shall be made available to consumers.

As regards the presentation format of the fee information document, it should be noted that Commission Implementing Regulation (EU) 2018/34 of 28 September 2017 laying down implementing technical standards with regard to the standardised presentation format of the fee information document and its common symbol according to Directive 2014/92/EU of the

European Parliament and of the Council (hereinafter: “Implementing Regulation (EU) 2018/34”)<sup>5</sup>, entered into force on 1 February 2018.

Implementing Regulation (EU) 2018/34 includes in its annex a fee information document template to be used by payment service providers and provides instructions on how to complete the fee information document.

Article 1(2) of Implementing Regulation (EU) 2018/34 notably sets out that payment service providers shall not modify the template for the fee information document in completing it otherwise than provided for in said Implementing Regulation. In particular, payment service providers must follow the order of information, headings and sub-headings laid down in the template.

It should also be noted that, in accordance with Article 1(3) of Implementing Regulation (EU) 2018/34, a payment service provider must provide a separate fee information document in respect of each of the payment accounts offered to consumers.

Article 7 of Implementing Regulation (EU) 2018/34 includes detailed information for completing the fee information document.

When drawing up the fee information document, particular attention should be paid to packages of services. In this context, Article 5(4) of the Law should be mentioned:

*“Where one or more services are offered as part of a package of services linked to a payment account, the fee information document shall disclose:*

- 1. the fee for the entire package;*
- 2. the services included in the package and their quantity;*
- 3. the additional fee for any service that exceeds the quantity covered by the package fee and included in the fees applicable to the package.”*

As far as the procedure for the presentation of packages of services in the fee information document is concerned, reference should be made to Articles 8 and 9 of Implementing Regulation (EU) 2018/34. Article 8 refers to the presentation of packages of services charged as part of the fees under the sub-heading “*General account services*”. Article 9 refers to the presentation of packages of services charged separately from the fees under the sub-heading a “*General account services*”. It should thus be noted that packages may be presented in two different sections of the fee information document, i.e.: either under the sub-heading “*General account services*” (if they fall under Article 8), or under the sub-heading “*Package of services*” (if they fall under Article 9).

Article 10 of Implementing Regulation (EU) 2018/34 sets out the presentation procedure of the fee information document (referred to in Articles 8 and 9 of Implementing Regulation (EU) 2018/34) as regards the additional fees for services exceeding the quantity covered by packages of services linked to a payment account.

Reference should also be made to recital (4) of Implementing Regulation (EU) 2018/34 which provides that the payment service provider should be able to produce more than one fee information document in respect of a payment account, provided that at least one package is

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<sup>5</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R0034&from=EN>

included in each document. The payment service provider may define a fee information document established based on a package of services targeting a specific customer base (for example: students or retired people) or based on a package of services including a specific insurance product (for example: an offer including a travel or house insurance).

It should be noted that pursuant to Article 8 of the Law, when a payment account is offered as part of a package together with another product or service which is not linked to a payment account, *“the payment service providers shall inform the consumer whether it is possible to purchase the payment account separately and, if so, provide separate information regarding the costs and fees associated with each of the other products and services offered in that package that can be purchased separately”*.

Article 5(5) of the Law is also worth mentioning as it provides for the obligation for payment service providers to make available to consumers a glossary of *“at least the standardised list and the related definitions”*. The glossary and all the definitions that payment service providers make available to consumers must be drafted in clear, unambiguous and non-technical language and must not be misleading.

Article 5(6) of the Law provides that payment service providers must ensure that the glossary is available to consumers (customers or prospects) at any time and sets out how the glossary must be made available.

## **B) Statement of fees (Article 6 of the Law)**

Article 6(1) of the Law sets out the obligation for payment service providers to provide the consumers that are their customers, at least annually and free of charge, with a statement of all fees incurred.

This statement must indicate all fees incurred as well as, where applicable, information regarding the overdraft interest rates and credit interest rates applied to the payment account for the services linked to a payment account.

Article 6(2) of the Law indicates the minimum information the statement of fees shall specify.

Article 6(4) of the Law sets out that the communication channel used to provide the statement of fees shall be agreed upon between the consumer and the payment service provider. The statement of fees must be provided on paper if the consumer so requests.

As regards the presentation format of the statement of fees, it should be noted that Commission Implementing Regulation (EU) 2018/33 of 28 September 2017 laying down implementing technical standards with regard to the standardised presentation format of the statement of fees and its common symbol according to Directive 2014/92/EU of the European Parliament and of the Council (hereinafter: “Implementing Regulation (EU) 2018/33”)<sup>6</sup> entered into force on 1 February 2018.

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<sup>6</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R0033&from=EN>

Implementing Regulation (EU) 2018/33 includes in its annex a statement of fees template to be used by payment service providers and provides instructions on how to complete the statement of fees.

Article 1(2) of Implementing Regulation (EU) 2018/33 notably sets out that payment service providers shall not modify the template for the statement of fees document in completing it other than provided for in said Implementing Regulation. In particular, payment service providers must follow the order of information, headings and sub-headings laid down in the template.

When drawing up the statement of fees, particular attention should be paid to packages. As regards the presentation format of packages in the statement of fees, reference should be made to Articles 12 and 13 of Implementing Regulation (EU) 2018/33. Article 12 refers to the presentation of packages of services charged as part of fees under the sub-heading “*General account services*”. Article 13 refers to the presentation of packages of services charged separately from fees under the sub-heading a “*General account services*”. It should thus be noted that packages may be presented in two different sections of the statement of fees, i.e. : either under the sub-heading “General account services” (if they fall under Article 12), or under the sub-heading “Package of services” (if they fall under Article 13).

As regards the frequency of provision of the statement of fees to client consumers, it should be mentioned that, as from 1 November 2018, payment service providers must provide the statement of fees to their customers that are consumers and that the latter must receive the statement of fees at least annually. The frequency of the statement of fees may be freely determined by the payment service providers as long as it is provided at least once a year. Moreover, payment service providers must provide the first statement of fees at a date lying necessarily between 1 November 2018 and 1 November 2019.

When a payment account is offered as part of a package together with another product or service which is not linked to a payment account, the payment service providers must inform the consumer, in accordance with Article 8 of the Law, whether it is possible to purchase this payment account separately (*cf. supra* point A).

### **C) Use of the terms set out in the standardised list in the relation with the consumer (Article 7 of the Law)**

Article 7(1) of the Law, which enters into force on 1 November 2018, sets out that payment service providers must use in their contractual, commercial and marketing information to consumers the terms set out in the standardised list. In addition, payment service providers may also use brand names to designate their services in their contractual, commercial and marketing information to consumers, provided that they clearly identify, where applicable, the corresponding terms set out in the standardised list (*cf. supra* point A).

In accordance with Article 7(2) of the Law, payment service providers may use brand names in the fee information document (*cf. supra* point A) and in the statement of fees (*cf. supra* point B), provided such brand names are used in addition to the terms set out in the standardised list and as a secondary designation of those services.

#### **D) CSSF comparison website (Article 9 of the Law)**

Article 9 of the Law provides for the CSSF to establish and operate a comparison website allowing to compare, at least, the fees charged for the services included in the standardised list (*cf. supra* point A).

As from 1 November 2018, the comparison website will be accessible at: [www.frais-compte-paiement.lu](http://www.frais-compte-paiement.lu).

According to Article 9 of the Law, the comparison website lists, as a minimum, the fees charged to consumers by the payment service providers meeting the criteria set out in Article 23(1) of the Law (have at least 25 agencies in Luxembourg and hold at least 2.5% of the deposits covered).

It should also be noted that the payment service providers that do not meet the criteria laid down in Article 23(1) may request the CSSF to list the fees charged to consumers by them for the services set out in the standardised list. These payment service providers may request this publication in the form of a signed letter sent to the following postal address:

Commission de Surveillance du Secteur Financier  
Legal Department JUR-CC  
Postal address: L-2991 Luxembourg.

The comparison website is updated on a monthly basis by the CSSF on the first business day of the month.

In view of the monthly update of the comparison website on the first business day of the following month (month X), the payment service providers that want to modify the fees published on it must notify the CSSF at the latest on the 15th day of the previous month (X-1)(if the 15th is a business day, otherwise the first business day after the 15th) of the fees applicable as from the first business day of month X. The fee modifications received by the CSSF after the 15th day of the month X-1 (if the 15th is a business day, otherwise the first business day after the 15th) will, in principle, be considered by the CSSF for the update of the comparison website of the first business day of the following month (X+1).

#### **E) Information requests by the CSSF**

The CSSF will collect data on payment accounts every two years in order to allow Luxembourg to provide the European Commission with the information requested for drawing up an assessment report on the implementation of Directive 2014/92/EU in the various Member States.

For this reason, the institutions falling within the scope of the Law may from now on receive information requests from the CSSF concerning the payment service providers' compliance with their requirements on the provision of a fee information document, statement of fees, glossary and on the use of the terminology set out in Grand-ducal Regulation of 6 June 2018 in their communication with their customers.

The information request by the CSSF will also focus on the following items:

- the number of account switching requests which have been made in application of the mechanism provided for under Chapter 3 of the Law;
- the number of account switching requests addressed to the professional pursuant to Chapter 3 of the Law which have not been executed;
- the number of credit institutions offering payment accounts with basic features;
- the number of payment accounts with basic features that have been opened;
- the number of refused applications for payment accounts with basic features;
- the reasons justifying the refused applications for payment accounts with basic features.

Finally, the CSSF informs that this circular repeats Circular CSSF 10/479 on Bank Account Switching.

Yours faithfully,

COMMISSION de SURVEILLANCE du SECTEUR FINANCIER

Marco ZWICK

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