



Letter from the European Ombudsman to the European Commission concerning the query from the Office of Ombudsman of the Republic of Latvia concerning the right to access basic banking services, such as a basic bank account and payment facilities, notably where an individual is unable to comply with the provisions of the EU Anti-Money Laundering Directive

Correspondence - 22/06/2020

Case Q4/2020/MHZ - Opened on 22/06/2020 - Decision on 27/07/2020

Mr Christian Linder

Secretariat^αGeneral

Head of Unit ^α C2

European Commission

Strasbourg, 22/06/2020

Query Q4/2020/MHZ

Dear Mr Linder,

On 29 April 2020, we received a query from the Office of the Ombudsman of the Republic of Latvia (Latvian Ombudsman).

In essence, the query concerns the right to access basic banking services, such as a basic bank account and payment facilities, notably where an individual is unable to comply with the provisions of the EU Anti-Money Laundering Directive [1] .

The Ombudsman has asked me to deal with this query on her behalf.



Following our exchanges with the Latvian Ombudsman, we have rephrased the query.

According to the EU Payments Account Directive [2], a bank may refuse to open/provide a basic account to a person only in exceptional circumstances [3], such as where they do not comply with the provisions of the Anti-Money Laundering Directive [4]. In particular, a bank cannot refuse to open an account merely because it is unable to verify whether a person complies with the Anti-Money Laundering Directive. [5]

To this end, could the Commission please clarify how paragraph 47 and Article 1(7) of the Payment Accounts Directive should be interpreted in conjunction with Article 14(4) of the Anti-Money Laundering Directive [6] ?

In addition, the Latvian Ombudsman would like to know whether banks are obliged to refuse to open accounts with basic features on the basis of non-compliance with the Anti-Money Laundering Directive. If so, based on which provisions of that Directive?

In the case where a person cannot open a bank account due to the conditions raised above, the Latvian Ombudsman would like to know by what alternative mechanisms that person can access basic payment services. Access to such services are essential for participating in economic life, notably enabling individuals to receive a wage or welfare payments, pay bills or taxes, and purchase goods and services.

We would appreciate it if the Commission could respond to this query by 16 July 2020, so that we can forward the information to the Office of the Ombudsman of the Republic of Latvia.

A copy of this letter will be made available on the Ombudsman's website.

Yours sincerely,

Marta Hirsch-Ziembińska

Head of Inquiries and ICT - Unit 1

[1] Directive 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing:
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015L0849>.

[2] Directive 2014/92 on the compatibility of fees related to payment accounts, payment account switching and access to payment accounts with basic features:
<https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32014L0092> .



[3] Paragraph 47 of the preamble of Directive 2014/92 states that: "*Credit institutions should refuse to open or should terminate a contract for a payment account with basic features only in specific circumstances, such as non-compliance with the legislation on money laundering and terrorist financing or on the prevention and investigation of crimes.*"

[4] Article 1(7) of Directive 2014/92 states that: "*The opening and use of a payment account with basic features pursuant to this Directive shall be in conformity with Directive 2005/60/EC.*" Directive 2005/60/EC was repealed by Directive 2015/849.

[5] Paragraph 47 of the preamble of Directive 2014/92 continues that refusal to open a bank account "*can only be justified where the consumer does not comply with [the Anti-Money Laundering Directive] and not because the procedure to check compliance with the legislation is too burdensome or costly*".

[6] Article 14(4) of Directive 2015/849 states that: "*Member States shall require that, where an obliged entity is unable to comply with the customer due diligence requirements laid down in point (a), (b) or (c) of the first subparagraph of Article 13(1), it shall not carry out a transaction through a bank account, establish a business relationship or carry out the transaction, and shall terminate the business relationship and consider making a suspicious transaction report to the FIU in relation to the customer in accordance with Article 33*".