

## **Report of the European Ombudsman closing query Q4/2020/MHZ from the Office of the 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**

Decision

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

### **Facts and background**

According to recital 47 of the Payment Accounts Directive [1] (PAD), 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.

In addition, Article 1(7) of the PAD states that the opening and use of a payment account with basic features shall be in conformity with the Anti-Money Laundering Directive [2] (AMLD).

Under the provisions of the AMLD, in particular Article 14(4), 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.

From the above, the Office of the Ombudsman of the Republic of Latvia (Latvian Ombudsman) understood that, when opening and using a payment account with basic features, a credit institution must comply with provisions of the AMLD, in particular, article 14(4) thereof. However, the Latvian Ombudsman was of the view that article 14(4) of the AMLD provides a broader set of reasons for refusing to open an account with basic features, than recital 47 of the PAD.

Therefore, on 29 April 2020, the Latvian Ombudsman submitted a query to the European Ombudsman's Office.



## Query

On 22 June 2020, the European Ombudsman's Office asked the Commission to elaborate on:

(i) how recital 47 and Article 1(7) of the PAD should be interpreted, in conjunction with Article 14(4) of the AMLD?

(ii) whether banks are obliged to refuse to open accounts with basic features on the basis of non-compliance with the AMLD, and if so, based on which provisions?

(iii) possible alternative mechanisms that would allow consumers, who cannot open a bank account with basic features due to non-compliance with the AMLD, to undertake essential payment transactions.

## Commission's reply

In its reply of 20 July 2020, the Commission was of the opinion that there is no contradiction between recital 47 and article 1(7) of the PAD. According to the Commission, both clearly set out that no provisions in the PAD can allow an infringement of the provisions of the AMLD. The Commission also noted that recital 47 of the PAD is in line with the AMLD, which requires an obliged entity to refrain from establishing a business relationship when it is unable to comply with the customer due diligence requirements. Thus, recital 47 of the PAD only clarifies the limited scope, under AMLD rules, to refuse opening a bank account, including one with basic features.

The Commission also stated that it is not aware of any EU legal mechanism that would allow consumers, who cannot open a bank account with basic features due to non-compliance with the AMLD, to undertake essential payment transactions. Nevertheless, the Commission pointed out that this issue was raised by the European Banking Authority in its Opinion of 12 April 2016. [3]

Finally, the Commission thanked the Latvian Ombudsman for raising this very relevant issue, and undertook to consider whether any measures are necessary in the framework of the ongoing reviews of both the AMLD and the PAD.

## Feedback

On 21 July 2020, the European Ombudsman forwarded the Commission's reply to the Latvian Ombudsman, and invited it to submit comments.

Following this, on 23 July 2020, the Latvian Ombudsman thanked the European Ombudsman and the Commission for their assistance, and confirmed that the Commission's reply was very



helpful.

## Closing procedure

In view of the content of the Commission's exhaustive reply, and given that the Latvian Ombudsman was satisfied with that reply, it was concluded that the issue raised in the query had been adequately addressed. Therefore, the European Ombudsman's Office decided that the query was successfully completed.

The European Ombudsman thanked the Commission for its excellent co-operation in this query procedure and its efforts to send a reply within a short period of time.

[1] Directive 2014/92/EU of the Council and of the European Parliament of 23 July 2014 on the comparability 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/PDF/?uri=CELEX:32014L0092&from=en> [Link].

[2] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing:

<https://eur-lex.europa.eu/legalcontent/EN/TXT/?qid=1585644719072&uri=CELEX:02015L0849-20180709#E0015> [Link].

[3] Opinion of the European Banking Authority of 12 April 2016 on the application of customer due diligence measures to customers who are asylum seekers from higher-risk third countries or territories:

<https://eba.europa.eu/eba-publishes-opinion-on-the-application-of-customer-due-diligence-measures-to-customers-> [Link].