



21.5.2019

## NOTICE TO MEMBERS

**Subject: Petition No 1094/2018 by M. K. (Polish) on alleged discrimination by banks in Poland against clients based on their place of residence**

### 1. Summary of petition

The petitioner points to the alleged incompatibility of Polish law with 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. He draws particular attention to Article 15 of the Directive, according to which Member States should ensure that consumers legally resident in the EU are not discriminated against by credit institutions on the basis of their nationality or place of residence, and refers to available information published by the European Commission on this subject. The petitioner then draws attention to Polish legislation, including the Payment Services Act of 19 August 2011 (Journal of Laws 2011 No 199 item 1175), which states that a service provider may refuse to conclude a basic payment account agreement if the consumer has not provided a residential address or correspondence address in the territory of Poland. This, in the petitioner's view, means that banks may refuse to open or operate a basic account for a person who is not resident in Poland. This is discriminatory against consumers living in other Member States. The petitioner calls for the Polish Government to be required to respect the provisions of the Directive, so that banks in Poland cannot refuse to open a basic account for consumers residing abroad.

### 2. Admissibility

Declared admissible on 26 February 2019. Information requested from Commission under Rule 216(6).

### 3. Commission reply, received on 21 May 2019

The Commission's observations

Article 16(1) of the Payment Accounts Directive (PAD)<sup>1</sup> gives Member States a choice between requiring all the credit institution present under their jurisdiction to offer a payment account with basic features (PABF) or merely that a sufficient number of credit institutions offer such a service. Poland has chosen the latter option.

In those Member States including Poland, which require that only a sufficient number of credit institutions have to offer a PABF, the fact that some of the credit institutions present in that Member State do not provide other EU residents with the possibility to open a PABF cannot be considered a breach of the PAD.

Indeed, pursuant to Polish law, banks in general can refuse to open a PABF for a consumer who failed to provide either a residential address or an address for correspondence in Poland (Article 59ic of the Payment Services Act quoted by the petitioner). However, there is a particular cooperative bank - “Krajowa Spółdzielcza Kasa Oszczędnościowo-Kredytowa” – which under Article 4.2 of this Payment Services Act is required to accept the opening of such accounts.

Moreover, it should be noted that, while there has indeed been no specific transposition in Poland of Article 15 PAD, there is a general rule that could be considered to cover the situation referred to in Article 15 PAD: the Equal Treatment Act<sup>2</sup>, which contains a general principle of non-discrimination and equal treatment, including on the basis of nationality, and with regard to access to, inter alia, services.

## Conclusion

In view of the foregoing, it appears that, considering Poland’s choice to ensure that consumers can at least access a PABF at *Krajowa Spółdzielcza Kasa Oszczędnościowo-Kredytowa*, the conditions for access to a PABF in Poland are, contrary to the petitioner’s allegation, not in breach of Article 15 PAD

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<sup>1</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 Text with EEA relevance, *OJL* 257, 28.8.2014, p. 214–246.

<sup>2</sup> Law of 3 of December 2010 on the implementation of some European Union provisions in relations to equal treatment (O.J. 2010 nr 254 poz. 1700, as amended), (*Ustawa z dnia 3 grudnia 2010 r. o wdrożeniu niektórych przepisów Unii Europejskiej w zakresie równego traktowania*), Equal Treatment Act, available at: <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20102541700>