

Asylum seekers' access to financial services

Summary

Under certain circumstances, a credit institution is entitled to offer an asylum seeker who is lacking identification documents limited services compared to what is otherwise set forth in the Payment Services Act (2010:751) if it is necessary to ensure that the institution can manage the risk of money laundering or financing of terrorism associated with the customer relationship.

Question

In this document, we state our position on asylum-seeking refugees' access to financial services in the event that the asylum seeker is lacking identification documents. In this situation, is it possible for a credit institution to offer the customer a limited range of services than what is otherwise set forth in the Payment Services Act to ensure the institution can manage the risk of money laundering and terrorist financing?

¹ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012.

² Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for credit institutions.

Governing law

In accordance with Chapter 4a, section 1 of the Payment Services Act, for a consumer who legally resides in the European Economic Area (EEA), a credit institution may not refuse to open a payment account with such basic features as the institution provides other consumers specified in section 2 of the same chapter. An exception to this obligation is a situation in which opening such an account would violate the Act on Measures against Money Laundering and Terrorist Financing (2017:630) (Anti-Money Laundering Act). This is the case, for example, when an institution does not have sufficient knowledge of its customer to manage the risk associated with the customer relationship (see Chapter 3, section 1 of the Anti-Money Laundering Act).

An important aspect of an undertaking's customer due diligence measures is verifying a customer's identity. It is set out in Chapter 3, section 2, second paragraph of Finansinspektionen's regulations (FFFS 2017:11) regarding measures against money laundering and terrorist financing (anti-money laundering regulations) that if a natural person is entirely lacking identification documents, the undertaking must verify the person's identity through other reliable documents and other verification procedures according to the risk-based procedures the undertaking is required to have as set out in Chapter 2, section 8 of the Anti-Money Laundering Act.

Assessment

One of the overall purposes of the Payment Services Act's provisions on the right to a payment account with basic features is to promote financial inclusion by enabling the greatest possible number of consumers to gain access to a basic level of financial services. At the same time, the supply of services that the credit institutions are obligated to offer customers entails, in certain cases, that the risk of money laundering associated with a particular customer relationship cannot be managed satisfactorily. This can result in the customer being denied the opening of an account. This may be the case for asylum-seeking refugees who are fully lacking identification documents and whose identities cannot initially be verified reliably more than by checking the validity of the LMA card from the Swedish Migration Agency issued to prove that the holder is a refugee and is entitled to remain in Sweden while their case is being processed.

To avoid entirely excluding asylum-seeking refugees who are lacking identification documents from the regulated financial system, an institution has the possibility of reducing the risk associated with a particular customer relationship by offering asylum seekers more limited services than those set out in Chapter 4a of the Payment Services Act.

Finansinspektionen makes the assessment that such an approach is in line with the risk-based approach that characterises the anti-money laundering regulatory framework and that it is supported not only by the preparatory works for the Payment Services Act (see Bill 2016/17:129, p. 32 ff.) but also the European Banking Authority's statements on the relationship between the directives the different legislations are founded on (see EBA Opinion on the application of customer due diligence measures to customers who are asylum seekers from higher-risk third countries or territories, EBA-Op-2016-07, 12 April 2016, p. 9 f.).

Finansinspektionen wishes to emphasise that such procedures entail restrictions to the right to payment accounts with basic features that are otherwise set forth in the legislation. The limitation is justified by the obligations a credit institution is under according to the Anti-Money Laundering Act. This means that applying the restriction presumes *that* the credit institution applies these limitations in a risk-based manner on a clearly defined customer group, *that* the credit institution makes individual assessments of each customer in this group, and *that* every decision resulting in such a restriction is clearly documented and reassessed when there is reason to do so.

This legal position applies until further notice.