

## Quddiem l-Arbitru ghas-Servizzi Finanzjarji

Kaz ASF 016/2023

EY ('Ilmentatur')

v

Bank of Valletta plc  
(C2833)  
(‘Provditur tas-Servizz’ jew ‘Bank’)

Seduta tat-8 ta’ Gunju 2023

L-Arbitru,

L-Ilment

L-ilment jittratta l-kaz fejn il-Bank informa lill-Ilmentatur li ried itemm ir-relazzjoni li kellu mal-Ilmentatur ghax **“Il-Klijent jaqa’ barra r-risk appetite tal-Bank”** peress li l-Bank kien jaf li kien hemm Ordni ta’ Qbid, iffrijar ta’ beni u proceduri kriminali li kienu infethu fil-konfront tal-Ilmentatur fuq allegazzjonijiet ta’ korruzzjoni.

Il-Bank isostni li ma setax itemm ir-relazzjoni qabel ghax kellu assi tal-Ilmentatur li kienu gew milquta bl-ordni ta’ iffrijar. Izda, meta fit-30 ta Marzu 2022, il-Bank gie infurmat mill-Ufficcju ghal Irkupru tal-Assi<sup>1</sup> b’varjazzjoni ghall-Ordni ta’ Qbid, fis-sens li gew depozitati bizzejjed assi fil-kustodja tad-Direttur tal-Ufficcju ghall-Irkupru tal-Assi u b’hekk l-assi l-ohra kollha setghu jigu rilaxxati, il-Bank ipproceda mill-ewwel billi ta xahrejn zmien lill-Ilmentatur biex jaghlaq il-kontijiet kollha li kellu, kemm kurrenti kif ukoll *savings*.

Fil-fatt, il-Bank ipproceda biex jaghlaq l-erba’ kontijiet li kellu l-Ilmentatur nhar it-23 ta Gunju 2022, u l-bilanci li kienu jammontaw ghal madwar Euro 2,700 ghadhom mizmuma mill-Bank ghax l-Ilmentatur ma tax dettalji ta’ kont bankarju f’ismu fejn xtaq li dawn il-flus jigu trasferiti.

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<sup>1</sup> Asset Recover Bureau - <http://assetrecovery.mt/>

L-Ilmentatur isostni li ma kellux kontijiet bankarji ohra f'ismu ghax l-HSBC, li kien il-bank principali tieghu, kien digà ghalaqlu l-kontijiet kollha, u l-ebda bank iehor ma kien lest jiftahlu kont. Ghalhekk dawk tal-*Bank of Valletta* kienu l-ahhar kontijiet bankarji li kellu l-Ilmentatur, u llum l-Ilmentatur lanqas biss ghandu *a Basic Payment Account*<sup>2</sup> fejn tal-anqas jista' jircievi l-pensjoni tal-gvern u juza *debit card* biex jigbed xi flus mill-ATM jew ihallas ghall-htigijiet ghall-hajja ta' kuljum bla ma jgorr flus kontanti.

L-ilmentatur isostni li bhala l-ahhar bank li kellu kont bankarju mieghu, il-*Bank of Valletta* ma setax ihallih bla facilità ta' *Basic Payment Account*. U ghal dan il-ghan fetah Ilment formali mal-Ufficcju tal-Arbitru fl-14 ta' Frar 2023, fejn bhala rimedju talab li l-Bank jirrestawra l-erba' kontijiet li kellu mieghu jew tal-anqas jiftahlu *a Basic Payments Account* u jpoggi i-bilanc tal-erba' kontijiet li kellu f'dan il-kont.

## **Il-Process tas-Smigh**

L-Arbitru deherlu li dan kien kaz b'aspetti socjali ta' persuna ta' età avanzata li minkejja l-proceduri legali kollha li ghaddejjin kontrih ma jistax jigi mnezza' mid-drittijiet bazici u, ghalhekk, sema' dan il-kaz b'urgenza f'zewg sessjonijiet li saru fit 30 ta' Mejju 2023 u l-5 ta' Gunju 2023.

F'dawn is-sessjonijiet il-Bank spjega fid-dettall ghaliex il-proceduri kriminali li kienu ghaddejjin kontra l-Ilmentatur kienu poggewh 'il barra mir-*risk appetite* tal-Bank; u ma kienx gust li la fil-passat il-Bank ma kienx il-bank principali tal-Ilmentatur, il-*Basic Payments Facility* kellha tkun offruta lilu mill-bank principali tal-Ilmentatur u mhux mill-*Bank of Valletta*.

L-ilmentatur spjega li hu ressaq il-kaz biss kontra l-*Bank of Valletta* ghax meta l-bank principali tieghu ghalaqlu l-kontijiet tal-anqas kien fadallu l-kontijiet mal-*Bank of Valletta* u, peress li kien ilu klient tal-Bank 'il fuq minn ghoxrin sena, haseb li seta' jinqeda minn hemm.<sup>3</sup>

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<sup>2</sup> [Opening a basic bank account within the EU - Your Europe \(europa.eu\)](https://europa.eu/european-council/en/press-releases/15448)

<sup>3</sup> P. 61

## **X'inhu *Basic Payments Account*?**

Kif gie spjegat mill-Bank stess,<sup>4</sup> kull resident li jghix Malta ghandu dritt ghal kont bankarju li jkun jista' jaqdi funzjonijiet bazici, u dan l-obbligu jorbot lill-banek li ghandhom aktar minn erba' ferghat u li l-Bank jista' jirrifjuta biss li jiftah kont bhal dan ghal dawn ir-ragunijiet:

- Jekk l-individwu ma jobdix ir-regolamenti tal-Unjoni Ewropea dwar hasil ta' flus u finanzjament tat-terrorizmu.
- Jekk digà ghandu kont ma' bank iehor.
- Jekk l-individwu ma jkunx residenti fil-pajjiz fejn jopera l-bank.

Il-Bank of Valletta stess fuq il-website tieghu ([BOV Basic Payment Account - Bank of Valletta - BOV Group](#)) jinforma hekk:

***'The BOV Basic Payment Account is a bank account, for personal use, offering a set of basic banking products and services.***

***It will help you keep track of your expenses, pay your bills and receive money. You will receive statements at regular intervals and you can manage your account using any of the Bank's self-service banking channels including ATMs, BOV Internet Banking and BOV Mobile.***

***The BOV Basic Payment Account can only be used for your personal purposes. You can use it to receive your salary/pension and pay expenses, but you cannot use it for a business or for a charity, club, society or other organisation.***

***You cannot opt for a BOV Basic Payment Account if you already hold another bank account in Malta, even if it is with another bank.'***

Anke l-MFSA fuq il-website taghha ([Consumer Awareness and Campaigns - MFSA](#)) tinforma hekk:

***'MFSA Payment Account with Basic Features***

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<sup>4</sup> P. 50

*A Payment Account with Basic features is a basic bank account that allows, when legally residing in Malta or in another EU Member State that do not have other bank accounts in Malta, to have access to a set of banking services considered as essential, free of charge or at a reasonable cost.*

*Am I eligible to apply for a Payment Account with Basic Features?*

*If you are a legal resident of the EU country you are entitled to open a "Payment Account with Basic Features". Banks cannot refuse your application for such account just because you don't live in the country where the bank is established. If you are legally residing in Malta or in another EU Member State and you do not have other bank accounts in Malta and/or:*

- have no fixed address;*
- have no permanent identification documents;*
- have been resident in a correctional facility and/or any rehabilitation centre.*

*This right does not apply to other types of bank account, such as savings accounts.*

*What are the features of a Payment Account with Basic features?*

*Applying for a Payment Account with Basic Features facilitates you to:*

- Open, operate and close the account;*
- Place funds in the account;*
- Withdraw cash at the counters of the bank or at ATMs within Malta and other Member States;*
- Make payments using a payment card, including online payments;*
- Make credit transfers, including standing orders at terminals and counters and via any online facilities provided by the bank;*
- Execute direct debits within the European Union.'*

Wiehed jinnota li dan id-dritt ghal *Basic Payments Account* jinghata wkoll lil min ma ghandux indirizz fiss, jew ma ghandux dokumenti ta' identifikazzjoni anke jekk kien residenti f'xi habs jew centru ta' rijabilitazzjoni.

### **Konsiderazzjoni**

L-Arbitru jifhem li persuna li tinsab ghaddejja minn proceduri kriminali bhalma huwa ghaddej l-Ilmentatur probabbli jaqa' barra mir-*risk appetite* ta' kull bank licenzjat. Ghalhekk, l-Arbitru ma jlumx lill-*Bank of Valletta* li jqis lill-Ilmentatur bhala persuna li ma jixtieqx li jkollu relazzjoni bankarja maghha minkejja li ghandu storja ta' relazzjoni ta' hafna snin bla problemi ta' xejn.

Izda l-punt krucjali huwa li persuna fil-kundizzjoni tal-Ilmentatur ma ghandux jigi mcahhad mid-dritt ta' kont bankarju baziku. Wiehed jifhem li huwa perikoluz ghal anzjan ta' XX sena li jrid igorr flus kontanti biex jaghmel ix-xiri tieghu spezialment jekk dan ikun fatt maghruf ghax l-akkuzi kontrih kienu pubblici.

Ghalhekk l-Arbitru jifhem li l-Ilmentatur ma jistax u ma ghandux jigi mcahhad minn facilità ta' kont bankarju baziku kif provdut mir-regolamenti tal-Unjoni Ewropea u li gew addottati mill-awtoritajiet lokali u mill-*Bank of Valletta* stess u anke mill-banek l-ohra spezialment dawk li ghandhom aktar minn erba' ferghat.

Ghalhekk il-punt krucjali huwa liema bank ghandu l-obbligu li joffri dan is-servizz ta' kont baziku lill-Ilmentatur? Il-*Bank of Valletta* jghid li dan l-obbligu ghandu jgorku bank iehor, li ma hux parti minn dan l-ilment, u li kien il-bank principali tal-Ilmentatur ghal hafna snin u li fih l-Ilmentatur kien jircievi il-pensjoni tal-gvern.

L-Arbitru ma jaqbilx ma' dan. Meta l-bank l-iehor li mieghu l-Ilmentatur kellu relazzjoni twila ghalaqlu l-kontijiet bankarji, dan ma kellux obbligu li joffri lill-Ilmentatur *a Basic Payments Account* ghax dan kien fadallu kont bankarju mal-*Bank of Valletta*. Ghall-kuntrarju, izda, meta l-*Bank of Valletta* ghalaq il-kontijiet, l-Ilmentatur spicca bla kont bankarju ta' xejn u, allura, hija l-fehma tal-Arbitru li l-*Bank of Valletta* ghandu jgork l-obbligu li joffri *a Basic Payment Account* lill-Ilmentatur.

L-Arbitru jifhem li dan l-obbligu jgork mieghu responsabbilità ta' *transaction monitoring* qawwija u ddahhal lill-Bank fi spejjez mhux zghar u, ghalhekk, ser jaghmel provvedimenti biex il-*monitoring* mehtieg ikun relattivament semplici u ma jinvolvix spejjez.

## Decizjoni

L-Arbitru huwa fid-dover li jaghti gudizzjoni fuq l-ilment b'referenza ghal dak li, fil-fehma tieghu, ikun gust, ekwu u ragonevoli fic-cirkostanzi partikolari u merti sostantivi tal-kaz.<sup>5</sup> Ghandu wkoll l-obbligu li jittratta l-ilment b'mod procedurali gust, informali, ekonomiku u mhaffef.<sup>6</sup>

Ghalhekk l-Arbitru ma jkunx qed jilhaq l-obbligi tieghu jekk jordna li jiddahhal fl-ilment ukoll il-bank li mieghu l-Ilmentatur kellu relazzjoni principali u li ghalaqlu l-kontijiet qabel il-*Bank of Valletta*.

Ghalhekk, ghar-ragunijiet spjegati qabel, jordna lill-*Bank of Valletta* li joffri lill-Ilmentatur servizz ta' *Basic Payment Account* bil-provvediment li, salv ghall-eccezzjoni msemmija aktar tard, f'dan il-kont ikun jista' jigi kkreditat fih biss il-pensjoni tal-gvern u xejn izjed. L-ilmentatur irid jigi pprovdut b'*debit card* li biha jkun jista' jigbed il-flus mill-ATM u jhallas spejjez ghall-htigijiet normali tal-hajja.

L-unika eccezzjoni li ghandha tigi kkonsidrata hija dik rigward il-madwar EUR 2,700 li l-Bank ghandu f'idejh li jappartenu lill-Ilmentatur mill-kontijiet li digà inghalqu. L-ammont huwa relattivament moderat u ma jaghtix problemi dwar sorsi ta' provenjenza, speċjalment peress li EUR 1,066.52 minn dawn il-fondi kienet fil-fatt pensjoni li dahlet fil-kont f'Gunju 2022 fl-istess gurnata li l-kont gie maghluq.<sup>7</sup>

Ghalhekk hija l-fehma u d-decizjoni tal-Arbitru li jekk ma hemmx xi ordni superjuri mill-Awtoritajiet regolatorji li ma setghetx tigi spjegata, li tipprojbixxi lill-Bank milli jirrilaxxa dawn il-flus, allura, dawn jistghu b'eccezzjoni jigu kkreditati wkoll fil-*Basic Payments Account* kif ordnat fil-paragrafu precedenti.

Kull parti ghandha ggorr l-ispejjez taghha dwar dan il-kaz.

**Alfred Mifsud**

**Arbitru Ghas-Servizzi Finanzjarji**

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<sup>5</sup> Kap 555 Art 19(3)(b)

<sup>6</sup> Kap 555 Art 19(3)(d)

<sup>7</sup> P. 10