

Assessment of creditworthiness, authority, direct multiple discrimination, gender, language, age, place of residence, financial reasons, conditional fine

NATIONAL NON-DISCRIMINATION AND EQUALITY TRIBUNAL OF FINLAND / Plenary session (voting)

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### *Summary*

The Non-Discrimination Ombudsman requested the National Non-Discrimination and Equality Tribunal to investigate whether a credit institution company was guilty of discrimination prohibited in section 8 of the Non-Discrimination Act by having refused to grant credit to A in connection with A making online purchases, based on matters classified as grounds of discrimination, such as gender, age, language and their combined effect. The Ombudsman requested that the Tribunal prohibit the credit institution company from continuing such discrimination and repeating its discriminatory practices in its service operations, and impose a conditional fine to enforce the prohibitive decision, of an amount the Tribunal considers sufficiently effective, proportionate and cautionary.

The Non-Discrimination Ombudsman considered that even if an individual score is made up of statistical variables, the score in question was not an individual assessment based on the income level and financial status of the person in question, but a case of statistical profiling, which was mainly based on reasons related to grounds of discrimination.

The credit institution company considered that its decision not to grant credit to A did not result in the arising of a assumption of discrimination and that it has not discriminated against the credit applicant nor used discriminatory criteria in its credit extension. Even if a specific criterion may as such seem discriminatory, the company states that pursuant to section 11, subsection 1 of the Non-Discrimination Act, different treatment does not constitute discrimination if the treatment is based on legislation and has an otherwise acceptable objective and the measures to attain the objective are proportionate. According to the company, the methods it uses in the extension of credit to consumer clients for the purpose of attaining the acceptable objectives stated in the said Act as well as the use of statistical assessment methods for the purpose of assessing the financial standing of credit applicants as a part of the overall assessment have been unambiguously accepted.

Based on section 3 of the Non-Discrimination Act and its drafting history, the National Non-Discrimination and Equality Tribunal considered that the case of multiple discrimination at hand is within the scope of application of the Non-Discrimination Act, even though one of the criteria used in the assessment system for creditworthiness was gender. Furthermore, the Tribunal stated that it could not issue a decision on the matter without adopting a position on the interpretation of the Act on Equality between Women and Men, as this is a case of multiple discrimination in which gender is one of the grounds of discrimination. The Tribunal considered that the drafting history of the Non-Discrimination Act reveals that the Tribunal has the required authority to give its decision on the matter, also as regards its interpretation of the Act on Equality between Women and Men, even though the matter was not initiated by the Ombudsman for Equality or a central labour market organisation, as stated in section 20 of the Act on Equality between Women and Men.

According to the substantiated report presented by the Non-Discrimination Ombudsman, the grounds for the scores in the scoring system used by the company for the assessment of creditworthiness, the purpose of which is to decide whether or not to extend credit to individuals, included several factors related to the person of the applicant, such as gender, language, place of residence and age, all of which have been prohibited as grounds for discrimination in the Constitution of Finland, the Non-Discrimination Act and the Act on Equality between Women and Men. This resulted in A being put in an unfavourable position in the assessment of creditworthiness and in the decision following the assessment on extending credit, which was based on a schematic assessment using prohibited discriminatory grounds. The National Non-Discrimination and Equality Tribunal considered an assumption of direct multiple discrimination to have arisen in the matter.

Based on the information it has received, the National Non-Discrimination and Equality Tribunal considered the scoring system-based assessment used by the credit institution company to have used statistical data and payment default information related to other people, based on which assumptions regarding the financial standing of A were made. The company, on the basis of prohibited grounds of discrimination such as gender, first language, age and residential area, assumed that the financial standing of A was weaker than it would have been if measured with other properties. At the same time, the company ignored the information regarding A's own credit behaviour and creditworthiness even though these factors would have favoured extending credit to A. Disregarding such information about A by using formal and abstract statistical credit data based on the credit behaviour of others, without performing an individual assessment of A's financial standing, was disproportionate and therefore not acceptable as intended by section 11 of the Non-Discrimination Act.

Therefore, the method used by the company for the assessment of A's creditworthiness was not based on an individual assessment of A's creditworthiness but a statistical assessment method that was essentially based on prohibited grounds of discrimination as defined in the Act on Equality between Women and Men and in section 8 of the Non-Discrimination Act.

As the method used in the assessment of the creditworthiness of the credit applicant was based on grounds of discrimination expressly prohibited in the Non-Discrimination Act, the Act on Equality between Women and Men and subsection 2, section 6 of the Constitution of Finland, the National Non-Discrimination and Equality Tribunal has taken the view that financial reasons could not be considered reasons that meet such particularly high requirements justifying different treatment based on the prohibited grounds of discrimination in credit extension.

The National Non-Discrimination and Equality Tribunal concluded that the credit institution company was not able to rebut the assumption of discrimination that had arisen, and that the behaviour of the company toward A was a case of multiple discrimination as prohibited in the Non-Discrimination Act and the Act on Equality between Women and Men based on reasons related to the gender, first language, age and place of residence of A.

The National Non-Discrimination and Equality Tribunal prohibited the credit institution company from renewing the procedure, targeted at A or anyone else, which the decision of the Tribunal found to be contrary to section 8 of the Non-Discrimination Act and section 8e of the Act on Equality between Women and Men.

The National Non-Discrimination and Equality Tribunal imposed a conditional fine of 100,000 euros to enforce its prohibitive decision and decided, considering subsection 3, section 6 of the Act on Conditional Fines (*Ulkasakkolaki*, 1113/1990), that the decision of the Tribunal must be observed within six months of notification of the decision (vote on the sum of the conditional fine).

(The decision is now final)

## ***Decision of the Tribunal***

### **Background of the matter**

The petition made by the Non-Discrimination Ombudsman on behalf of the party concerned in the matter regards the alleged discrimination in the extension of credit services to the concerned party. The concerned party had applied for credit in order to pay for the building supplies the party was purchasing from an online store in July 2015. The amount of credit applied for for the purchases was X and XX euros. However, the credit company did not grant the credit to the party concerned. Having received the credit rejection decision, the credit applicant requested the reason for the rejection from the credit company. On 8 July 2015, the party concerned first received a reply in which the credit company stated that the credit decision required no justification, and later on, on 16 July 2015, that the decision had been based on a credit rating made by credit surveillance services using statistical methods, which do not take the solvency of individual credit applicants into account and which may differ significantly from the profile of the credit applicant and may seem unfair to the credit applicant.

The grounds for the credit decision were the data regarding the applicant obtained from the internal records of the credit company, information from the credit data file, as well as the score from the scoring system by an external service provider used by the credit company and scaling of the amount of credit based on the obtained score. The credit applicant did not have any payment defaults in the internal records of the credit company nor in the credit data file. The credit company had not investigated the applicant's income or financial situation, and neither was this information required on the credit application.

The scoring system used by the credit company gives a certain score to factors such as the place of residence, gender, first language and age of the applicant. The scoring system calculates, based on population information, the percentage of people in each group with a bad credit history and awards points proportionate to how common bad credit records were in the group in question. As men have more payment defaults than women, men are awarded fewer points in the scoring system than women and similarly, those with Finnish as their first language receive fewer points than those with Swedish as their first language. Had the applicant been a woman whose first language is Swedish, the applicant would have met the criteria of the credit company for the credit the applicant had sought.

For the party concerned, who is a man with Finnish as his first language, the points from the scoring system would have been sufficient for a maximum amount of credit of X euros when calculated with the scaling used by the credit company. Had the credit applicant been a woman, she would have earned the score required for granting the credit applied for in the scoring system scaling. In the same vein, had the applicant had Swedish as his

first language, the applicant would have gained a sufficient score for attaining the applied credit. Similarly, the place of residence and age of the credit applicant had an impact on the applicant's score.

The scoring system used cannot be used to obtain precise information about the actual situation of individual applicants, as the scoring system can only provide a statistical evaluation of how likely, on average, it is for an applicant fitting the profile of the credit applicant to have bad credit.

The scaling used by the credit company for the kind of score required for credit of certain amounts is based on the company's own principles of credit extension.

### **Claims of the petitioner**

The Non-Discrimination Ombudsman requests that the National Non-Discrimination and Equality Tribunal investigate whether Svea Ekonomi AB, Filial i Finland (hereinafter referred to as Svea Ekonomi AB) is guilty of prohibited discrimination as defined in section 8 of the Non-Discrimination Act by having refused A the extension of credit for the payment for A's online store purchases, based on A's place of residence and other properties of A, classified as prohibited grounds of discrimination, such as gender, age and first language as well as their joint impact, and forbid Svea Ekonomi AB from renewing discrimination in its service operations and set a conditional fine to enforce the prohibitive decision, of an amount the Tribunal consider efficient, proportionate and cautionary.

Should the Tribunal consider the processing of the matter to involve issues related to the institution of the matter or the authority, in terms of the gender dimension of the case, the Ombudsman requests that the Tribunal make an interim decision in order to decide upon the interpretation of the procedural provisions and reserve a possibility for the Non-Discrimination Ombudsman to complement the petition.

### **Grounds of the petitioner**

Based on the prohibition of discrimination in the Constitution of Finland and the Non-Discrimination Act and the obligation of the creditor to investigate the consumer's credit rating and financial status in accordance with the Consumer Protection Act (*Kuluttajansuojlaki*, 38/1978), the Non-Discrimination Ombudsman considers it problematic that the procedure used by Svea Ekonomi AB would seem to stress the general financial status of residents in the consumer's residential area and not the financial standing or the ability to pay back the credit of the individual applying for the credit. Based on the information received by the Non-Discrimination Ombudsman, there is a concern that the individual creditworthiness of A had not been investigated prior to issuing the negative credit decision.

The Non-Discrimination Ombudsman is of the view that even if an individual score is made up of statistical variables, the score in question is not an individual assessment based on the income and financial status of the person in question, but a case of statistical profiling mainly based on reasons related to grounds of discrimination. The customer is not treated as an individual, but as a representative of statistical profiling based mainly on variables related to grounds of discrimination, which the creditor applies to all persons who fit the

profile, such as men living in a certain residential area, having a certain first language and being of a certain age.

The Non-Discrimination Ombudsman is of the view that the customer had been refused credit based primarily on the joint impact of properties that can be classified as prohibited grounds of discrimination, and therefore, the matter can be regarded as a case of multiple discrimination. The Ombudsman is of the view that the customer was clearly put in an unfavourable position based on his place of residence, even if the credit decision was not solely based on a prohibited ground for discrimination, as the place of residence and the related factors had a significant weighting in the creditworthiness score used by Svea Ekonomi AB and to such effect that the customer's place of residence had in fact rendered him ineligible for credit. In this case, the scoring related to grounds of discrimination alone had led to A not having been granted the credit he had applied for.

As such, the Non-Discrimination Ombudsman considers Svea Ekonomi AB's objective of extending credit to creditworthy, solvent persons acceptable. The Ombudsman considers that the criteria used by the respondent cannot in this case achieve the objective of only extending credit to persons assumed to have a solid financial standing. Even if the criteria in question could result in screening out persons who, in the light of the said criteria, do not seem to possess the required financial standing, the statistical generalisation in question does not necessarily reveal anything of the customer's actual solvency at the moment of extending the credit. The customer's actual situation may differ greatly from what the generalisation might suggest of their situation. The absence of payment default, which was investigated in the matter, only indicates that the person in question pays their bills. The use of the method may lead to persons with a steady income and indicators that support their ability to pay back the credit not being granted credit.

The Non-Discrimination Ombudsman considers it understandable that the criteria for the extension of credit are different depending on the amount of credit applied. However, the criteria or the conclusions they afford should not lead to a discriminatory end result. The selected method does not promote the achieving of the acceptable objective in such a way that the credit rating system used by the respondent could be considered a proportionate means of obtaining an acceptable objective.

Furthermore, the Ombudsman states that the other prohibited grounds of discrimination defined in the legislation or the drafting history, such as a gender, language or age, also should not prevent the extension of credit, unless for example a certain age limit can be justified by the protection of minors. The Ombudsman considers that in the scoring based on statistical assessment of creditworthiness, significance has been given to several grounds of discrimination, which has resulted in the arising of a assumption of multiple discrimination.

The Non-Discrimination Ombudsman states that had the official first language of A been Swedish, he would have received a sufficient score for granting of the loan. Regardless of the individual financial standing of a person, it is more difficult for those do not speak Swedish as their first language to get a loan due to the lower score. Those who speak Swedish as their first language receive X points in the scoring system used by Svea Ekonomi AB, while those speaking Finnish as their first language receive X points and those speaking any other language as their first language receive X points. Ethnic minorities with an official first language other than Finnish or Swedish are put in a unfavourable position in the granting of credit.

The Non-Discrimination Ombudsman finds that the scoring of the official first language in the extension of credit will result, *de facto*, in the segregation on ethnic lines, the justification for which does not include compelling arguments that could be deemed acceptable from the point of view of the system of fundamental rights.

Furthermore, the age of the credit applicant affects the total score awarded; in the age group of 31–40 years, A received X points, while had he been at least 51 years old, he would have received X points, which would have been sufficient for the loan he had applied for.

Based on his place of residence, A received X points, as he lives in a sparsely populated area, the low population density of which renders the statistical information useless in the system. A has been awarded X points precisely for the reason that he has indicated a certain address as his place of residence. According to Svea Ekonomi, the score is the result of a constant term for unknown areas used in the system. Therefore, it is the view of the Ombudsman that A was clearly treated unfavourably in relation to all of those who would have earned a higher score in the part of the credit rating process based on the place of residence of the applicant. The Non-Discrimination Ombudsman considers that the scoring related to the place of residence of the credit applicants clearly has a significant effect on whether the applicant is granted the credit applied for. If A had lived in a densely populated area considered to be of high value, it is likely that he would have earned a higher score. On the other hand, a less appreciated area might have reduced A's chances of getting the credit even further from the current situation. Svea Ekonomi AB has not proven that providing a certain constant term in the credit rating system to A based on his address would demonstrate anything of A's solvency or the lack thereof. Svea Ekonomi has not presented statistics or any other material that would indicate that an assumption made on the basis of the general data of residents in a certain area would prove anything of the loan repayment capacity of an individual resident in that area.

The Non-Discrimination Ombudsman states that the scoring of gender in the scoring system involves similar problems as the previously presented grounds of discrimination prohibited by the Non-Discrimination Act. In the assessment of creditworthiness, a male applicant receives X points and a female applicant X points. Had A been a woman, he would have been granted the credit he had applied for. In connection with this, the Ombudsman would like to highlight the judgment in case C-236/09 by the Court of Justice of the European Communities, in which the Court of Justice forbids the use of gender as an actuarial factor. Even though the issues related to gender-based discrimination fall under the authority of the Ombudsman for Equality, the Non-Discrimination Act can be applied in cases of multiple discrimination, even if gender is one of the grounds of discrimination (Government proposal HE 19/2014 vp, p. 57).

The Non-Discrimination Ombudsman states that factors that would clearly limit the realisation of the equality of the applicants less than those used would be available in this case. For example, a credit applicant could be asked to provide their personal income information in the credit application. The Ombudsman considers that Svea Ekonomi AB would be able, with a relatively small effort, to investigate the information related to the income level and financial status of the customer if the applicant is not considered creditworthy based on the credit rating system. Svea Ekonomi AB could, for example, request the information directly from the customer and require that the customer submit sufficient clarification. Another issue to consider is that subsection 1, section 14 in chapter 7 of the Consumer Protection Act expressly obliges the creditor to assess the ability of the

applicant to pay back the loan based on information related to the income of the applicant. Therefore, businesses granting consumer credit must have the required capacity to investigate such information relating to the income of credit applicants. This assessment is not changed by the fact that the investigation of the income information may increase the respondent's costs. The purpose of the legislator was clearly to ensure that the assessment of creditworthiness is carried out individually, based on information related to the income and financial status of individual applicants.

The Non-Discrimination Ombudsman states that with the Non-Discrimination Act, the legislator has deliberately limited the possibilities of the different operators, credit institutions included, to treat individuals less favourably due to prohibited grounds of discrimination than others in a similar situation and restricts the unfavourable effects a seemingly impartial procedure may have on individuals who represent the said grounds of discrimination. Even though freedom of contract applies to the respondent, the selection of clients must be non-discriminatory.

The Non-Discrimination Ombudsman states that the creditor is solely responsible for its credit policy and the justification of its credit decisions. When evaluating Svea Ekonomi AB's responsibilities in relation to the Non-Discrimination Act, it is insignificant whether it carries out the selection of clients within the company or whether it has outsourced the scoring of clients. The discrimination prohibited by the Non-Discrimination Act does not require the prohibited discrimination to have been wilful or done with intent.

The Non-Discrimination Ombudsman states that the prevalence of the currently used assessment criteria in the field cannot be used to reach the conclusion that the said criteria are proportionate and non-discriminatory, as required by the Non-Discrimination Act. As the Constitutional Law Committee has stated (PeVL 31/2014 vp.), even if an act issues direct provisions regarding different treatment, this does not necessarily signify that such treatment could not constitute prohibited discrimination, as the issue of non-discrimination may not have been detected at the moment of the enactment of the law. The reform of chapter 7 of the Consumer Protection Act entered into force before the current Non-Discrimination Act, and in its statement concerning the act, the Constitutional Law Committee did not discuss the statistical method or assess its acceptability from the point of view of non-discrimination. The Consumer Protection Act clearly requires the creditworthiness of each credit applicant to be assessed individually. Relying solely on statistical data in the assessment of creditworthiness is not sufficient.

The Non-Discrimination Ombudsman is of the view that the procedure used does not meet the criteria set for the individual assessment of the credit applicant's personal income information and financial situation as required by the Consumer Protection Act, and therefore, cannot be considered proportionate from the perspective of the Non-Discrimination Act. Simply investigating whether or not the applicant has poor credit history does not provide any information about the income of the applicant in question. Even though A does not have payment defaults, he was not granted the credit he had applied for due to statistical reasons. It appears that statistical data was more significant than A's personal credit record for the credit decision in question.

## **Response of the respondent**

Svea Ekonomi AB considers that not granting credit cannot result in the arising of a assumption of discrimination and denies having discriminated against the petitioner or having used discriminatory criteria in its credit extension.

## **The respondent's statement of reasons**

The operations of Svea Ekonomi AB consist of credit extension as a business activity, the purpose of which is to generate turnover and to avoid credit loss. The business strives to mitigate credit loss risks by using certain criteria for measuring the solvency of consumers. Furthermore, the legislator requires that a creditor assess the solvency of consumer credit applicants.

As a part of its credit granting process, Svea Ekonomi AB always performs an individual assessment of the creditworthiness of each credit applicant by inspecting the information concerning the applicant in the customer and credit registers, by checking the personal credit history of the applicant, by assessing the individual criteria of the applicant with the help of their score from the scoring system and by assessing the applicant's creditworthiness in relation to the scoring scale defined in advance and individually by Svea Ekonomi AB. The final credit decision is always based on an overall assessment in which the factors investigated in the credit extension procedure, the credit history and the amount of the applied credit in particular, are taken into account. This process is an essential part of the credit risk strategy and credit loss management of Svea Ekonomi AB.

The credit decision process of Svea Ekonomi AB is not solely based on the applicant's area of residence, and one of the factors in assessing the solvency and credit risk of the applicant, the statistical prediction model, does not emphasise the area of residence of the applicant. The area of residence is one assessment criterion of creditworthiness among others. The credit decision is always based on an individual assessment of creditworthiness performed by Svea Ekonomi AB itself. Svea Ekonomi AB is obliged by law and the legislator to assess the solvency of consumers with sufficient methods, and in this task, it has the right provided by the authorities to define its customer structure for instance, by targeting credit extension at certain target groups. The legislator has expressly approved the use of statistical methods as a part of credit extension, as it is a method that treats consumers equally (Government proposal HE 241/2006, p. 12). The claim of the use of statistical methods being discriminatory is unfounded and contrary to the opinion of the legislator.

Even if a specific criterion may as such seem discriminatory, it should be noted that pursuant to section 11, subsection 1 of the Non-Discrimination Act, different treatment does not constitute discrimination if the treatment is based on legislation and it otherwise has an acceptable objective and the measures to attain the objective are proportionate. The methods used in the extension of credit to consumer clients for the purpose of attaining the acceptable objectives stated in the said Act as well as the use of statistical assessment methods for the purpose of assessing the financial standing of credit applicants as a part of the overall assessment have been unambiguously accepted, including in the drafting history of the act.



In granting credit, Svea Ekonomi AB always assesses the credit risk itself, and the assessment is based on the criteria determined by Svea Ekonomi AB for each online store, such that the applicant and the amount of credit applied for is measured against set criteria in the making of the final credit decision. The credit in question is intended for funding purchases in an online store, and the amount of credit applied for may vary from dozens of euros to thousands of euros. Credit is applied for electronically online, round the clock. The application process also requires the credit decision to be made swiftly and smoothly. As the Financial Supervisory Authority has stated in its response to the Non-Discrimination Ombudsman, the financing of simple, small-scale online store purchases can be carried out with a simple credit process.

The scoring system used by Svea Ekonomi AB is essentially a statistical assessment of risk, the end result of which is a score that reflects the level of risk. A risk assessment cannot be used to obtain precise information about the situation of specific applicants, as the system can only provide a statistic evaluation of how likely on average an applicant fitting the profile of the credit applicant is to have a payment default. Using language as an assessment criterion is directly based on statistical data, according to which X % of those who have Finnish as their first language (X points in the scoring system) have a payment default; X % of those who have Swedish as their first language (X points in the scoring system) have a payment default; and X % of those with another language as their first language (X points in the scoring system) have a payment default. A applied for credit to the amount of X euros, which would have required at least X points, and to the amount of XX euros, which would have required at least X points. For A, the X points from the scoring system would have been sufficient for granting a maximum credit amount of X euros. Clearly the criteria for granting larger sums of credit in such a simple credit process are more stringent on the applicant. Furthermore, it should be noted that the online trader or Svea Ekonomi AB may have initially set a certain maximum amount of credit in order to prevent attempted fraud.

In the scoring model, the likelihood of the applicant paying back the credit is verified with individual information about the applicant. The criteria measure characteristics of the credit applicant known to be typical of bad or good payers and that are, for example, directly related to unemployment.

Svea Ekonomi AB is of the view that similar applicants are processed similarly in its credit process, using objective indicators in the assessment. The fact that a criterion would alone result in the refusal of credit is possible, but the avoidance of such situations in a statistical model is difficult, or even impossible. Even if a specific criterion may as such seem discriminatory and result in a different score and therefore, result in a different credit decision in the overall assessment of creditworthiness, this does not constitute a case of discrimination, as pursuant to section 11, subsection 1 of the Non-Discrimination Act, which states that different treatment does not constitute discrimination if the treatment is based on legislation and it otherwise has an acceptable objective and the measures to attain the objective are proportionate.

Furthermore, the likelihood of applicants paying back the credit is measured based on statistical variables. The use of such variables is based on statistical data on the creditworthiness of the residential area.

The scoring system used by Svea Ekonomi AB provides the applicant with a score that reflects the applicant's likely solvency and is based on both statistical variables and personal criteria related to each individual applicant.

If the score from the scoring system is not sufficient for the credit applied for, Svea Ekonomi AB does not grant the credit, in which case the online trader notifies the customer that credit cannot be granted. If the customer's credit application is rejected, the customer has the opportunity to apply for a smaller amount of credit, provided the customer does not have payment defaults. This applies should the customer purchase a less expensive product from the online store and select the same payment alternative offered by Svea Ekonomi AB. The scoring system determines the amount of credit granted to the applicant, not whether or not the applicant is granted credit in the first place.

The score provided by the scoring system used in the assessment of the likely payment ability of A was not sufficient for the credit applied for and for fulfilling the online trader's predetermined credit-granting criteria of the score scaling, which resulted in A being notified by the online trader that a purchase credit could not be granted to him.

The applicant may also always contact the customer service department of Svea Ekonomi AB in order to process the credit application manually or to apply for a smaller amount of credit. In the future, Svea Ekonomi AB will improve its communications with the customers by letting them know about the possibility to apply for less credit or to have their application processed manually, if their application for credit is initially rejected.

Svea Ekonomi AB considers in particular that the fact that the use of statistical assessments as a part of credit extension is a completely accepted, generally used method, should be taken into account. Credit institutions generally use statistical methods, such as the scoring models for the area of residence and payment ability of credit applicants, in the measuring of their credit risk status. The drafting history (Government proposal HE 241/2006 vp, p. 12) of the Credit Data Act (*Luottotietolaki*, 527/2007) states that the use of scoring models is recommended particularly for the reason that such models treat the customers equally. According to the drafting history of the act, the realisation of responsible crediting is not solely dependent on information available in the credit information register. The information obtained from the customer may be used to predict the customer's future behaviour with the help of different assessment methods. In the drafting history of the Credit Data Act, the use of statistical models is considered to be of particular significance to financing companies who have outsourced their credit extension operations. This is the case for instance with credit granted in connection with online store purchases, in which a third and external party, i.e. the online trader, offers the credit granted by the financial company as one of the payment options available to the customer.

As the supervisory authority of credit institutions, the Financial Supervisory Authority does not have any objections to the case at hand or the statistical assessment methods used by Svea. On the contrary, it requires that as a part of their credit risk management, credit institutions define their credit strategies, targeted customer structure, and division of credit by form of credit, field of business and geography. The Financial Supervisory Authority has stated that the supervised entity may, as it desires, make certain restrictions, and for instance, restrict its target groups or targeted clients or make geographical restrictions or refrain from granting credit to certain areas or target groups.

In the credit extension operations of online stores, the significance of factors measuring creditworthiness obtained with statistical methods as a part of the credit decision is particularly important. As a credit type, online store financing is purchase-bound, fast and automated crediting offered by an external online operator. From the point of view of the credit granting process, the credit type is very different from the so-called regular

consumer credit. The individual investigation of the credit-worthiness of customers using personal information and documents, such as salary and tax certificates, is not suitable for this type of financing process. The invoice or instalment credit is applied for immediately in connection with the purchase decision, and the credit decision must be given with the information available at that moment, as submitted by the credit applicant. The credit applied for by the consumer in each situation is also always bound to the purchase and the value of the purchase, which means that it is more difficult, or even impossible, to get back to the consumer for the purpose of re-evaluating the credit decision. In such a case, the potential applicant of purchase credit has normally already moved on to another online store or another financing option or changed their mind about the purchase altogether. Requesting more information or other forms of background checks in order to make the credit decision would also increase the costs of the financing option.

In this type of credit, the online store financier does not have a separate opportunity to assess the applicant's documents related to their income level and financial status or other documents related to the income level of the applicant. In order to fulfil the requirements of responsible crediting as provided for in the Consumer Protection Act, it is necessary for Svea Ekonomi AB to use a statistical scoring model to support credit decisions made in the online store as a part of its credit process, as it is for other credit institutions as well. This is a way of trying to fulfil the requirement of individual assessment as required by law in the best possible way, while at the same time protecting the consumer. Statistical methods are quite successful at screening out those with the highest statistical risk of not being able to pay back the credit. However, a certain error rate cannot be avoided in statistical modelling. The risk assessment used cannot be used to obtain precise information about the actual situation of individual applicants, as the scoring system can only provide a statistical evaluation of how likely an applicant fitting the profile of the credit applicant is to have a bad credit record.

Svea Ekonomi AB states that it shall not comment on any issues of authority, but shall leave the matter to be resolved by the Tribunal.

Svea Ekonomi AB states that language has not been used as an assessment criterion in the scoring system used in the assessment of creditworthiness by Svea Ekonomi AB since 31 May 2016.

### **The proposal of the referendary**

1. The National Non-Discrimination and Equality Tribunal does not consider it necessary to issue a separate interim decision about the authority of the tribunal, but shall make the decision about the authority in connection with the matter of substance.
2. The National Non-Discrimination and Equality Tribunal considers that it has the required authority to investigate the matter by virtue of the Non-Discrimination Act, as the matter is about multiple discrimination, which falls under the scope of application of the Non-Discrimination Act, even though one of the criteria used in the assessment system of creditworthiness is gender.

3. The National Non-Discrimination and Equality Tribunal prohibits Svea Ekonomi AB from renewing the procedure contrary to section 8 of the Non-Discrimination Act and indicated in the decision, targeted at A or anyone else.
4. To enforce its prohibitive decision, the National Non-Discrimination and Equality Tribunal shall issue a conditional fine of 100,000 euros.
5. The National Non-Discrimination and Equality Tribunal states that its prohibitive decision must be observed within six months of notification of the decision and that it must be observed pursuant to section 13, subsection 4 of the Act on the National Non-Discrimination and Equality Tribunal (*Laki yhdenvertaisuus- ja tasa-arvolautakunnasta*, 1327/2014) regardless of any appeal, unless otherwise ordered by an Administrative Court.

### **Issues under consideration**

The issue is whether Svea Ekonomi AB has discriminated against A in the provision of credit services based on language, place of residence, age or gender by not granting A the credit he applied for in connection with online store purchases. The issue has arisen as the scoring system used by Svea Ekonomi AB, which is based on grounds of discrimination prohibited pursuant to section 8 of the Non-Discrimination Act and section 7 of the Act on Equality between Women and Men, did not award A the score required for the amount of credit he had applied for in accordance with the scaling of credit extension of the creditor's scoring system.

Furthermore, the matter brings out the issue of the authority of the National Non-Discrimination and Equality Tribunal in situations similar to the one described above.

### **Statement of reasons**

#### *Applicable rules of law*

Pursuant to section 6 of the Constitution of Finland (731/1999), no one shall, without an acceptable reason, be treated differently from other persons on the grounds of gender, age, origin, language, religion, conviction, opinion, health, disability or other reason that concerns his or her person.

Pursuant to section 2, subsection 1 of the Non-Discrimination Act (1325/2014), the law is applicable to both public and private activities. Pursuant to section 4, subsection 4 of the said act, a provider of goods and services means an organisation that professionally offers goods or services for general availability.

Pursuant to section 8 of the Non-Discrimination Act, no one may be discriminated against on the basis of age, origin, nationality, language, religion, belief, opinion, political activity, trade union activity, family relationships, state of health, disability, sexual orientation or other personal characteristics.

Pursuant to section 10 of the Non-Discrimination Act, discrimination is direct if a person, on the grounds of personal characteristics, is treated less favourably than

another person was treated, is treated or would be treated in a comparable situation. Pursuant to section 11, subsection 1 of the act, different treatment does not constitute discrimination if the treatment is based on legislation and it otherwise has an acceptable objective and the measures to attain the objective are proportionate. Pursuant to section 11, subsection 2 of the act, different treatment is however justified even in the case that justifications for the treatment have not been provided for, if the treatment has an acceptable aim in terms of basic and human rights, and the measures to attain the aim are proportionate.

Pursuant to section 28 of the Non-Discrimination Act, the person instituting the proceedings must present an account of facts, which the claim is based on, in the proceedings of the matter concerning discrimination or victimisation in a court or other authority. If it can be assumed on the basis of the clarification provided in the proceedings of the matter that the prohibition of discrimination or victimisation has been violated, in order to rebut the assumption, the adverse party must prove that the prohibition was not violated.

Pursuant to section 7, subsection 1 of the Act on Equality between Women and Men (1329/2014), direct and indirect discrimination based on gender is prohibited. Pursuant to section 8e, subsection 1 of the act (1023/2008), the action of a provider of goods or services shall be deemed to constitute discrimination prohibited under this Act if a person is treated less favourably than others on the basis of gender in the provision of goods and services available to the public in the public or private sector, or if the person is otherwise treated in the manner referred to in section 7. Pursuant to subsection 2 of the provision, the provision of goods and services exclusively or mainly to representatives of one gender is, however, allowed if it is justified in order to achieve a legitimate objective and this objective is sought to be achieved by appropriate and necessary means.

### *The authority of the National Non-Discrimination and Equality Tribunal*

The petitioner's claimed grounds of discrimination were, at first, the place of residence of the credit applicant, and with further clarifications by the Tribunal, it was discovered that among other grounds also gender had been used as a criterion in the assessment system of creditworthiness used by the respondent.

Pursuant to section 21, subsection 1 of the Act on Equality between Women and Men, the National Non-Discrimination and Equality Tribunal may prohibit anyone who has acted contrary to the prohibition of discrimination in the provision of goods and services of section 8e from continuing or repeating the practice, under the threat of imposition of a fine, if necessary. As the Non-Discrimination Ombudsman states in its application, gender-based discrimination is within the scope of application of the Act on Equality between Women and Men (609/1986, hereinafter referred to as the Equality Act).

Section 3 of the Non-Discrimination Act issues provisions on the relationship of the Act to other legislation. Pursuant to section 3, subsection 1 of the Non-Discrimination Act, provisions on prohibition of discrimination based on gender and the promotion of gender equality are laid down in the Act on Equality between Women and Men. However, the drafting history of the Non-Discrimination Act

(Government proposal HE 19/2014 vp., p. 57) states that the Non-Discrimination Act may also be applied to situations in which the issue is not only discrimination based on gender, but also other forms of discrimination prohibited in the Non-Discrimination Act (multiple discrimination). According to the drafting history, an example of such a situation could be for instance when a person is without acceptable cause treated differently to others both based on the person's age and gender. Furthermore, the drafting history reveals that the Equality Act is not applicable to situations in which the issue is not discrimination based on gender. According to the drafting history of the act, the scope of application of the Non-Discrimination Act therefore includes all situations of different treatment, including cases of multiple discrimination in which two or more factors relating to the person of the party concerned result, only together, in the treatment of the person being deemed discrimination prohibited by law (intersectional discrimination). In such cases, gender as such may be one of the factors.

Pursuant to section 3 of the Non-Discrimination Act and its drafting history, the National Non-Discrimination and Equality Tribunal is of the view that the case of multiple discrimination at hand is within the scope of application of the Non-Discrimination Act, even though gender has been used as a criterion in the assessment system of creditworthiness.

Furthermore, the Tribunal however states that it could not decide the matter without giving its opinion on the interpretation of the Act on Equality between Women and Men, as this is a case of multiple discrimination in which gender is one of the grounds of discrimination. The Tribunal considers that the drafting history of the Non-Discrimination Act reveals that the Tribunal has the required authority to issue an opinion on the matter, also as regards its interpretation of the Equality Act, even though the matter was not initiated by the Ombudsman for Equality or a central labour market organisation, as stated in section 20 of the Equality Act.

Based on the statement of reasons presented above, the Non-Discrimination and Equality Tribunal is of the view that it has the required authority to investigate the matter at hand.

### *Arising of an assumption of discrimination*

The Non-Discrimination Ombudsman has presented a substantiated clarification indicating that Svea Ekonomi AB has used several factors prohibited as grounds of discrimination in the Constitution of Finland, the Non-Discrimination Act and the Act on Equality between Women and Men, such as gender, language, place of residence and age, as variables in the scores of the scoring system used by Svea Ekonomi AB for the assessment of creditworthiness, the purpose of which is to decide whether or not to extend credit to individuals and which, in the case of A, has resulted in credit not being granted to A and as a consequence A has been put in an unfavourable position in the assessment of creditworthiness and in the following decision on extending credit, based on a schematic evaluation using prohibited discriminatory grounds.

As the respondent has clarified, the provision of credit to customers is a business, the purpose of which is to gain profit. This means the provision of monetary

property included within the sphere of the constitutional protection of property to the customer in accordance with jointly agreed terms. It is clear that no-one has a subjective right to obtain credit from private operators, and private operators have no obligation to grant such credit.

The National Non-Discrimination and Equality Tribunal states that the extension of consumer credit as a business is a case of provision of services to the public, and acting in a discriminatory manner in the operation of such a business is prohibited in the Non-Discrimination Act. The respondent's appeal to the freedom of contract or to the fact that it is not obliged to grant credit does not prevent the arising of the presumption of discrimination, as these grounds do not constitute the right to legal action contrary to legislation or accepted principles of morality. (Statements of the Constitutional Law Committee: PeVL 3/1982 vp., PeVL 26/2008 vp. and PeVL 31/2014 vp.)

Furthermore, the Tribunal states that Svea Ekonomi AB has, in its additional clarification submitted to the Non-Discrimination Ombudsman on 12 February 2016, noted unambiguously that in making the credit decision, it has used an overall assessment of the consumer credit rating provided by an external service provider, and that Svea Ekonomi AB has not carried out a separate credit information inspection itself or in any other way assessed the individual payment ability of A. Further, according to the clarification submitted to the Non-Discrimination Ombudsman by the external service provider used by Svea Ekonomi AB on 10 August 2016, the external service provider only had the role of data provider and it could not influence the credit policy or credit decisions of Svea Ekonomi AB.

The drafting history of section 8 of the Non-Discrimination Act (Government proposal HE 19/2014 vp p. 71) also shows that whether the intent of the actor was to discriminate or not is irrelevant as regards the direct discrimination prohibited in the provision. According to the drafting history, the actions of the party can be considered direct discrimination even if the actor has not understood that its actions are discriminatory as intended by the law, if the actions can with objective grounds be considered discriminatory.

In addition, the tribunal states that according to the respondent, the question is expressly about assessing the creditworthiness of A based on his characteristics.

Based on the previously presented grounds, the National Non-Discrimination and Equality Tribunal considers that the petitioner has presented, when evaluated objectively, a clarification based in which an assumption of discrimination of direct multiple discrimination in credit extension has arisen and that the burden of proof has been reversed.

Therefore, the respondent must prove that it has not acted contrary to the prohibition of discrimination in section 8 of the Non-Discrimination Act.

### *Rebuttal of the assumption of discrimination*

The assumption of direct discrimination can be rebutted pursuant to section 11, subsection 1 of the Non-Discrimination Act by demonstrating that the treatment is based on legislation and it otherwise has an acceptable objective and the measures

to attain the objective are proportionate. Pursuant to section 11, subsection 2 of the Non-Discrimination Act, different treatment is however justified even in the case that justifications for the treatment have not been provided for, if the treatment has an acceptable aim in terms of basic and human rights, and the measures to attain the aim are proportionate.

Pursuant to section 8e, subsection 2 of the Equality Act, the provision of goods and services exclusively or mainly to representatives of one gender is allowed if it is justified in order to achieve a legitimate objective and this objective is sought to be achieved by appropriate and necessary means.

#### *Assessment of the method used in the evaluation of the creditworthiness of A*

The matter at hand pertains to credit granted to consumers, in connection with the granting of which the creditworthiness of the applicant is investigated with the objective of protecting the consumer and preventing of credit loss, in accordance with the Consumer Protection Act.

Pursuant to Article 8, paragraph 1 of the directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers, the member states shall ensure that, before the conclusion of the credit agreement, the creditor assesses the consumer's creditworthiness on the basis of sufficient information, where appropriate obtained from the consumer and, where necessary, on the basis of a consultation of the relevant database.

Pursuant to chapter 7, section 14 of the Consumer Protection Act (38/1978), the creditor is obliged to assess the creditworthiness of the consumer. Prior to making the credit agreement, the creditor must assess whether the consumer is able to fulfil his or her obligations under the credit agreement. The assessment must be made on the basis of sufficient information about the consumer's income and other financial circumstances.

The National Non-Discrimination and Equality Tribunal is of the view that the investigation of creditworthiness is as such based on law and that it has the acceptable and justified objective as defined in section 11 of the Non-Discrimination Act and in section 8e, subsection 2 of the Equality Act.

However, the tribunal now has the task of evaluating whether the actions of Svea Ekonomi AB in the assessment of the creditworthiness of A were acceptable and proportionate in regard to section 11 of the Non-Discrimination Act. The requirement of appropriate and necessary means as provided for in section 8e, subsection 2 of the Equality Act includes a substantively similar assessment in accordance with the principle of proportionality as the previously mentioned section 11 of the Non-Discrimination Act.

In accordance with the drafting history of the Consumer Protection Act (Government proposal HE 78/2012 vp. p. 18–19), the aim is that creditors would clarify the creditworthiness of consumers better than they currently do even for credit of lesser monetary value. The information required for the assessment of consumers' debt



security and therefore the ability to pay back the credit are, in addition to the information regarding the level and source of the income, the expenditure, debt and assets as well as any guarantee liabilities the consumer may have. In investigating the debt security, attention should be paid to the matters that affect the continuity of income, such as the type of employment or permanent post, as well as matters that are likely to significantly increase expenditure, such as increases in the interest payable of the credit. In order to verify the income information, the consumer should be asked, depending on the situation, to submit a payslip or pension certificate. The larger the loan, the more detailed the required investigation.

The National Non-Discrimination and Equality Tribunal states that Svea Ekonomi AB has not investigated the matters referred to in the drafting history of the act when making the credit decision.

The increase in the required score in proportion to the increase of the applied amount of credit, as indicated by Svea Ekonomi AB, means that the significance of the statistical, schematic assessment method used by Svea Ekonomi AB in the assessment of the creditworthiness of an individual also increases in proportion, without taking into account the factors that affect the individual financial standing of the credit applicant, such as an assessment of the actual assets and debts of the applicant. Therefore, the assessment of the solvency of the credit applicant is increasingly based on assumptions made with data collected from statistical information of other people. However, such assumptions cannot be used to give acceptable reasons for not granting credit to a credit applicant, particularly when the credit applicant is not given the opportunity to present a clarification of their actual ability to pay and the factors that affect it.

Furthermore, pursuant to the drafting history of the Consumer Protection Act the creditor may, in addition to the information pertaining to the consumer's financial standing, at its discretion, also assess the creditworthiness of the consumer with other methods, such as methods based on statistical data. However, using only this information would not be sufficient as such.

In addition, the drafting history of the Consumer Protection Act reveals that the assessment of the creditworthiness of consumers cannot be based solely on calculations made with statistical methods. The National Non-Discrimination and Equality Tribunal states that whilst credit companies may use statistical methods in strategic planning, definition of solvency and the assessment of a credit portfolio, the individual assessment required by the legislation means expressly the assessment of an individual's credit behaviour, credit history, income level and assets, and not the extension of the impact of models formed on the basis of probability assessments created with statistical methods using the behaviour and characteristics of others, to the individual applying for the credit in the credit decision in such a way that assessment is solely based on such models.

Svea Ekonomi AB has presented the view that the scoring system it has used in the assessment of creditworthiness would have entailed an individual assessment of the credit applicant.

Based on the clarification it has received, the National Non-Discrimination and Equality Tribunal states that Svea Ekonomi AB, in making the credit decision regarding A, first used credit information regarding A available in its own and external credit registers, which did not contain any payment defaults related to A.

The National Non-Discrimination and Equality Tribunal considers that the pieces of information obtained in this manner are such objective facts about the credit applicant, the use of which in the assessment of A's creditworthiness and in the ensuing credit decision was appropriate and necessary, and that the information does not include an assessment of A using any grounds of discrimination prohibited in the legislation. The information obtained regarding the credit behaviour of A would have favoured the granting of credit to A.

When the registers of the credit company or external operators did not reveal any payment defaults related to A, the credit company has used, in addition to the information related to A's credit behaviour, a scoring system based on statistical data provided by an external service provider. In the scoring system, women received a higher score than men, those with Swedish as their first language received a higher score than those with Finnish as their first language, and those living in sparsely populated areas received a lower score than those living in densely populated areas. Similarly, age affected the score.

In so far as women and men are put in a different position in the scoring system, the tribunal states the following. The prohibition laid down in section 8e of the Equality Act preventing the treating a person less favourably than others on the basis of gender in the provision of goods and services available to the public also applies to financial services, such as credit and banking services (Government proposal HE 153/2008 vp p. 11). The provision of goods and services exclusively or mainly to representatives of one gender may be allowed in limited circumstances only in the ways indicated in the Government proposal (p. 12).

In the interpretation of the provision, the Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, as well as the case-law of the Court of Justice of the European Union related to the interpretation of the directive, must be taken into account.

Pursuant to Article 5, paragraph 1 of the Directive, the member states shall ensure that in all new contracts concluded after 21 December 2007 at the latest, the use of gender as a factor in the calculation of premiums and benefits for the purposes of insurance and related financial services shall not result in differences in individuals' premiums and benefits. Pursuant to Article 5, paragraph 2 of the Directive, the member states may, notwithstanding paragraph 1, decide before 21 December 2007 to permit proportionate differences in individuals' premiums and benefits where the use of gender is a determining factor in the assessment of risk based on relevant and accurate actuarial and statistical data. The member states concerned shall inform the Commission and ensure that accurate data relevant to the use of gender as a determining actuarial factor are compiled, published and regularly updated. These member states shall review their decision five years later, in the manner defined in more detail in the Article in question.

Recital 18 in the preamble to the Directive states that the use of actuarial factors related to gender is widespread in the provision of insurance and other related financial services. In order to ensure equal treatment between men and women, the use of gender as an actuarial factor should not result in differences in individuals' premiums and benefits. To avoid a sudden readjustment of the market, the implementation of this rule should apply only to new contracts concluded after the date of transposition of the Directive.

The Court of Justice of the European Union in its judgment in case *Test-Achats* (C-236/09, EU:C:2011:100) stated that Article 5(2) of Council Directive 2004/113/EC is invalid with effect from 21 December 2012.

As the use of gender-based actuarial calculations leading to a discriminatory result is no longer allowed pursuant to Article 5 and as the Directive does not allow for any exceptions in the use of mathematical calculations used in crediting, the National Non-Discrimination and Equality Tribunal considers that using similar probability calculations is not allowed in the assessment of creditworthiness. (See also the decision of the Supreme Administrative Court of Finland on the workplace accident compensation calculation criteria in accordance with the Employment Accidents Insurance Act, KHO 2015:8.)

The method used in the scoring system, with which applicants who had Finnish as their first language were set in a less favourable position by giving them a significantly lower score than credit applicants with Swedish as their first language, is particularly reprehensible, as in addition to language being expressly defined as a prohibited grounds for discrimination, Finnish and Swedish are both national languages of Finland, as is defined in section 17, subsection 1 of the Constitution of Finland, and therefore, have an equal official status. Svea Ekonomi AB has announced that it no longer uses language as an assessment criterion as of 31 May 2016.

In the statistical method used by Svea Ekonomi AB based on a grid of residential areas, A only earned the lowest score as he lives in a sparsely populated area that has not yielded any statistically significant information. Had he lived in a population centre, he would have earned more points based on his residential area. By exercising his right to freely move within the country and to choose his place of residence pursuant to section 9, subsection 1 of the Constitution, he has been treated less favourably in the assessment of the credit company, even though neither his nor anyone else's ability to pay back his credit or any other matter related to credit payment can be deduced from his place of residence, even with statistical methods.

Taking into account the age of the credit applicant may be acceptable in the assessment of creditworthiness mainly when applied to young persons. In this case, the use of age in the assessment of creditworthiness cannot be justified with consumer protection, in view of the age of the credit applicant.

Based on the information it has received, the National Non-Discrimination and Equality Tribunal considers that the scoring assessment used by Svea Ekonomi AB focused on statistical information on and the credit history of other people, based on which assumptions on the creditworthiness of A were made. With prohibited grounds of discrimination related to the person, such as gender, first language, age

and place of residence, Svea Ekonomi AB has assumed the creditworthiness of A to be less than it would have been with other characteristics. At the same, Svea Ekonomi AB has ignored the individualised information regarding A's credit behaviour and financial standing even though these factors would have favoured extending credit to A. Disregarding such information about A by using formal and abstract statistical payment default information created from the credit behaviour of others, without performing an individual assessment of A's financial standing, is disproportionate and therefore not acceptable as intended by section 11 of the Non-Discrimination Act.

Therefore, the method used by Svea Ekonomi Ab for the assessment of A's creditworthiness was not based on any individual assessment of A's financial standing but on a statistical assessment based on prohibited grounds of discrimination as defined in the Equality Act and in section 8 of the Non-Discrimination Act. The Tribunal also draws attention to the fact that many of the grounds for differentiating between the applicants have been defined in section 6, subsection 2 of the Constitution of Finland prohibiting discrimination. Particularly high requirements must be set for the acceptability of such segregation based on personal grounds listed in the provision of the Constitution prohibiting discrimination (see for instance, the statements of the Constitutional Law Committee PeVL 31/2013 vp and therein mentioned PeVL 1/2006 vp, p. 2/1, PeVL 38/2006 vp, p. 2).

Svea Ekonomi AB has also justified the method it used in the assessment of creditworthiness with financial reasons.

As the method used in the assessment of the creditworthiness of the credit applicant was based on grounds of discrimination expressly prohibited in the Non-Discrimination Act, the Equality Act and section 6, subsection 2 of the Constitution of Finland, the National Non-Discrimination and Equality Tribunal takes the view that financial reasons cannot be considered grounds that fulfil such particularly high requirements which would justify different treatment based on the prohibited grounds for discrimination in credit extension.

## *Conclusion*

In the light of the foregoing considerations, the National Non-Discrimination and Equality Tribunal concludes that Svea Ekonomi AB filial i Finland has not been able to rebut the assumption of discrimination that has arisen in the matter and that Svea Ekonomi AB filial i Finland's treatment of A was a case of direct multiple discrimination as prohibited in the Non-Discrimination Act and Act on Equality between Women and Men, based on the reasons related to the gender, first language, age and place of residence of A.

The National Non-Discrimination and Equality Tribunal prohibits Svea Ekonomi AB filial i Finland from renewing the activity, targeted at A or anyone else, which the decision of the Tribunal finds to be contrary to section 8 of the Non-Discrimination Act and 8e of the Act on Equality between Women and Men.

### *Imposition of a conditional fine*

The petitioner has demanded the imposition of an effective, proportionate and cautionary conditional fine to enforce the decision by the National Non-Discrimination and Equality Tribunal.

Pursuant to section 8 of the Act on Conditional Fines (1113/1990), the nature and scope of the primary obligation, the payment ability of the obliged party and other matters pertaining to the case must be taken into account when assessing the amount of the conditional fine.

As the authority responsible for monitoring compliance with the Non-Discrimination Act, the Non-Discrimination Ombudsman between 18 August 2015 and 11 January 2017 strove to provide advice to the respondent so that it might change its activities to comply with the Non-Discrimination Act, but without success.

The turnover of Svea Ekonomi AB filial i Finland was approximately X million euros per annum in 2015–16, and in 2017, over X million euros. In 2015–16, the business profit of the company was more than X million euros per year, and in 2017, over X million euros.

In view of the foregoing, the National Non-Discrimination and Equality Tribunal shall issue a conditional fine of 100,000 euros to enforce its prohibitive decision.

Pursuant to section 6, subsection 3 of the Act on Conditional Fines, the nature and scope of the primary obligation, the possibility of the obliged party to observe the period for implementation and other matters pertaining to the case must be taken into account when considering the length of the period for implementation.

Taking into account the previous considerations, the prohibitive decision issued by the National Non-Discrimination and Equality Tribunal must be observed within six months of the notification of this decision.

The prohibitive decision of the National Non-Discrimination and Equality Tribunal must be observed pursuant to section 13, subsection 4 of the Act on the National Non-Discrimination and Equality Tribunal (*Laki yhdenvertaisuus- ja tasa-arvolautakunnasta*, 1327/2014) regardless of any appeal, unless otherwise ordered by an Administrative Court.

### **The decision of the National Non-Discrimination and Equality Tribunal**

The National Non-Discrimination and Equality Tribunal has decided to accept the proposal of the referendary.

## Legal provisions

Act on the National Non-Discrimination and Equality Tribunal (*Laki yhdenvertaisuus- ja tasa-arvolautakunnasta*, 1327/2014), sections 1, 7, 12, 13

Non-Discrimination Act (*Yhdenvertaisuuslaki*, 1325/2014), section 2, subsection 1; section 8; section 10; section 11, subsections 1 and 2; section 18, subsection 1; section 20, subsection 3; section 21, subsection 2; section 28

Act on Equality between Women and Men (*Naisten ja miesten tasa-arvosta annettu laki*, 609/1986), section 7, section 8e, section 21, subsections 1 and 2

The Constitution of Finland (*Perustuslaki*, 731/1999), section 6; section 9, subsection 1; section 15; section 17; section 22

Consumer Protection Act (*Kuluttajansuojalaki*, 38/1978), chapter 7, section 14

Act on Credit Institutions (*Luottolaitostoiminnasta annettu laki*, 610/2014), chapter 15, section 18

Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, Article 5

Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC, Article 8(1)

Act on Conditional Fines (*Uhkasakkolaki*, 1113/1990) sections 4, 5, 6, 7, 8, 22, 23 and section 24, subsection 1

## Appeal

Attached

The matter has been decided by Tuomas Ojanen (chairperson), Outi Anttila, Paula Ilveskivi, Riitta-Maija Jouttimäki, Juha Lavapuro, Katja Leppänen (dissenting opinion), Jukka Lindstedt (dissenting opinion), Pirkko Mahlamäki, Liisa Nieminen, Husein Muhammed (dissenting opinion), Jukka Siro, Niina Mäntylä (dissenting opinion), Henrik Gustafsson and Raija Meriläinen. Referendary: Juhani Kortteinen.

## The dissenting opinion of members Leppänen, Lindstedt, Muhammed and Mäntylä:

We are otherwise in agreement with the majority of the tribunal, but we consider the correct sum of the conditional fine to be 70,000 euros.