A more accessible and simplified statute for e-money institutions

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Introduction

Directive 2009/110/EG of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC, also known as the second e-money directive, was recently transposed into Belgian law by the law of 27 November 2012. The goal of this directive is to create a true single market for electronic money services through the removal of barriers to market entry and facilitating the taking up and pursuit of the business of electronic money issuance.

I. Statute for e-money institutions

Until recently, e-money institutions qualified as credit institutions. Under the revised legal framework, the scope of the law 21 December 2009 on the statute on payment institutions has been expanded to include a specific framework for e-money institutions as a result of which they no longer qualify as credit institution. With a view to encouraging new players to emerge on the e-money market, the provisions regarding the statute and prudential oversight for e-money institutions are less stringent than previously. The main features of the new framework are:
- The required initial capital is lowered to 350.000 EUR (instead of 1.000.000 EUR);
- The possibility to engage in other business activities without the need to create a separate legal entity (under approval of the National Bank of Belgium (NBB));
- The possibility for the e-money institution to make use of distributors or agents;
- E-money institutions also no longer need to contribute to the financing of the Protection Fund for Deposits and Financial Instruments;

To compensate for the simplification in the e-money institutions statute, new rules regarding the minimum available own funds have been issued to ensure the solvability of the institutions. Additionally, the funds received by the e-money institutions in exchange for the e-money need to

be identified separately in the accounts of the institutions. If these funds are still being held the working day after the day on which they were received, they must be placed on a separate account. The held funds may be invested, but only in secure, low-risk assets.

The specific statute is not applicable when the monetary values on electronic or magnetic carrier is used for:

1° services based on instruments that can be used to acquire goods or services only in the premises used by the issuer or under a commercial agreement with the issuer either within a limited network of service providers or for a limited range of goods or services;

2° payment transactions executed by means of any telecommunication, digital or IT device, where the goods or services purchased are delivered to and are to be used through a telecommunication, digital or IT device, provided that the telecommunication, digital or IT operator does not act only as an intermediary between the payment service user and the supplier of the goods and services.

These cases are not new, but where before issuers had to ask for an exemption from the statute, these are now automatically excluded and do not require any administrative procedure. One possibility to ask the NBB to be exempted from the licencing obligations has been kept: when the total business activities generate an average outstanding electronic money that does not exceed EUR 5.000.000 the e-money institutions can request to be exempted from the licence requirement.

II. A new concept "issuers of e-money"

In line with the second e-money directive, the issuing of e-money is reserved to a group of entities which is wider than pure e-money institutions. In addition to the Belgian and foreign e-money institutions the following entities are allowed to issue e-money in Belgium:

1° the Belgian credit institutions;

2° the credit institutions licensed in EER member states to issue e-money and offer their services in Belgium with the help of a branch office or through exercising their freedom of services, and branches of non-EER licenced credit institutions that are established in Belgium;

3° the persons that are exempted from the licence obligation by the NBB;

4° bpost;

5° the NBB and the ECB, though not when operating as monetary or other public authority;

6° the Belgian federal, regional and local authorities, and the authorities of the communities in Belgium, when they act as public authority.

III. Issuing and redeemability of e-money

The law of 27 November 2012 also introduced a new chapter in the law of 10 December 2009 concerning the payment services on the modalities of issuance and redemption of e-money. Certain of these provisions existed already before. New is the inclusion of an explicit prohibition of interest. The other rules include the obligations to issue e-money at par value on the receipt of funds and to redeem, at any moment and at par value, the monetary value of the e-money held under the agreed clear and prominently stated conditions of redemption.

IV. E-money distributors

As mentioned earlier, the new statute allows the possibility for e-money institutions to use distributors to transfer or redeem e-money. This would be the case where a person would simply load or redeem e-money for the e-money institution. E-money institutions may also make use of agents which may provide payment services in name and for the account of the e-money institution. These intermediaries may however not issue e- money. Use of distributors in another member-state of the EEA is subject to the notification procedure applied to branches. For the use of agents the registration procedure for agents of payment institutions applies. E-money institutions remain fully liable for the acts of their distributors or agents.

It is to be noted that this possibility is specifically foreseen for e-money institutions and not for the other electronic money issuers. Thus the question rises whether other issuers of e-money, such as a credit institution active in the business of e-money issuance may or not benefit from this regime.

V. Know your costumer

The Belgian e-money issuers and the representatives of foreign e-money institutions established here are submitted to the provisions on the prevention on money laundering. This implies, in certain cases, a series of client identification and verification obligations, failing which the relationship may not start with the concerned client. However, specifically regarding the issuance of e-money certain exceptions are foreseen:
- When it is not possible to recharge the e-money product and the maximum amount stored electronically in the device is no more than EUR 250;
- When it is possible to recharge the e-money product but a limit of EUR 2,500 is imposed on the total amount transacted in a calendar year.
This exception is disregarded when an amount of EUR 1.000 or more is redeemed in that same calendar year upon the e-money holder's request. In that event the identification and identification verification obligations are to be fulfilled by the issuer.

Conclusion

The limited amount of e-money institutions that came into being after the first e-money directive was seen as an indication that the prior regime was too cumbersome. The second e-money directive attempts to make the statute more accessible, lowering the entry barrier and giving more options to electronic money institutions to increase their competitiveness. It remains to be seen if this new statute indeed causes the emergence of more players on the e-money market.