COMMISSION de SURVEILLANCE du SECTEUR FINANCIER

In case of discrepancies between the French and the English text, the French text shall prevail

Luxembourg, 5 July 2011

To all the persons concerned.

CIRCULAR CSSF 11/517

Re: Electronic money - Entry into force of the law of 20 May 2011

Ladies and Gentlemen,

We are pleased to draw your attention to the publication, in *Mémorial* A-104 of 24 May 2011, of the law of 20 May 2011 (the "Law") the purpose of which is notably to transpose into national law Directive 2009/110/EC 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 (the "Directive"), amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC.

The Law transposes the provisions of the Directive into Title II of the law of 10 November 2009 on payment services (the "Law on payment services"). A coordinated version of the law of 10 November 2009 is available on the CSSF's website (www.cssf.lu).

The purpose of the Directive is to revise the rules governing the business of electronic money issuance as introduced by Directive 2000/46/EC on electronic money, since some of its provisions were considered to have hindered the emergence of a true single market for electronic money services, notably by imposing disproportionate prudential rules. Indeed, more than ten years following its introduction, electronic money has not been able to impose itself as an alternative payment means to cash. This is reflected in the small number of electronic money institutions authorised in the European Union in the last ten years.

The purpose of the new rules transposed by the Law are therefore to promote the creation of new innovative and secure electronic money services, to facilitate market entry of new actors, to promote a level playing field for all market players, to ensure the public confidence in electronic money and to guarantee a high level of consumer protection.

The main changes brought about by the Law may be summarised as follows:

- new definition of electronic money (i);
- new prudential regime for electronic money institutions (ii);
- abolition of the exclusive principle of the activity (iii);
- clarification of the obligations regarding the redemption of issued electronic money (iv);
- new exemption regime applicable to electronic money institutions (v);

(i) New definition of electronic money

The new point 29 of Article 1 of the Law on payment services defines electronic money as "*a monetary value as represented by a claim on the issuer, which is i) electronically, including magnetically, stored, and ii) issued on receipt of funds for the purpose of making payment transactions, and iii) accepted by a natural or legal person other than the electronic money issue*r".

The definition of electronic money has thus been simplified and toned down from a technical point of view in order to cover all situations where the issuer of electronic money issues a pre-paid stored value in exchange for funds, which can be used for payment purposes and which is accepted by third persons as a payment.

Thus, the new definition of electronic money covers electronic money whether it is held on a payment device in the electronic money holder's possession, such as pre-paid or account-linked credit cards, or stored remotely at a server and which is called network money.

(ii) New prudential regime for electronic money institutions

The Law introduces a new prudential regime modelled on that governing payment services.

The relevant provisions governing payment institutions apply *mutatis mutandis* to electronic payment institutions except some very limited points where the Law lays down other provisions.

It follows that **electronic money institutions are now a fully-fledged category of financial players and do not have the status of credit institution any more.**

However, it is important to specify that, conversely, credit institutions are authorised *ipso jure* to issue electronic money and, to that end, are not required to obtain an authorisation as electronic money institution. The same applies in Luxembourg to the *Entreprise des Postes et Télécommunications.*

Electronic money institutions do not carry out a banking activity. Indeed, the issuance of electronic money does not constitute an activity of taking deposits or other repayable funds within the meaning of Article 2(3) of the law of 5 April 1993 on the financial sector. Electronic money is an electronic surrogate for coins and banknotes, which is to be used for making payments, usually of limited amount. It is not a means of saving. Furthermore, electronic money institutions are not allowed granting credit from the funds received or held for the purpose of issuing electronic money.

The new prudential regime for electronic money institutions imposes on these institutions qualitative requirements, which are already applicable to payment institutions. Articles 24-3 to 24-14 of the new Chapter II of the Law on payment services thus cover the authorisation procedure and the authorisation requirements to which electronic money institutions are submitted.

The new prudential rules for electronic money institutions also result in a decrease of initial capital requirements from EUR 1 million to EUR 350,000 (Article 24-11). This should henceforth allow smaller players to enter the market and to be authorised as electronic money institution. The new rules also result in a new simplified method to calculate own funds that takes better account of the nature and the risks incurred by electronic money institutions.

(iii) Abolition of the exclusive principle of the activity

Electronic money institutions are henceforth allowed carrying out, besides the provision of payment services listed in the Annexe to the Law on payment services, other activities than the activity of issuing electronic money (e.g. telecommunication, transport, retail, etc.). The purpose is to facilitate the development of innovating services in the payment market (Article 24-6).

This diversification of the electronic money institutions' activities, which exceeds the framework of the financial sector and the prudential supervision carried out by the CSSF, imposes new requirements as regards the protection of the funds received from customers in exchange for electronic money. These requirements and the supervision procedure, notably as regards reporting, will be covered in specific circulars.

(iv) Specification of the obligations regarding the redemption of issued electronic money

Electronic money institutions are required to redeem, upon request by the electronic money holder, at any moment and at par value, the monetary value of the electronic

money held. The purpose of the redemption obligation is to preserve the confidence of the electronic money holder in this payment instrument. Redemption is granted free of charge, except in the cases specifically listed in the new Article 48-2(4) of the Law on payment services.

(v) New exemption regime applicable to electronic money institutions

The new Chapter 3 of the Law on payment services entitled "Common provisions to payment institutions and electronic money institutions", now includes rules relating to the operating conditions (including professional obligations concerning the fight against money laundering and terrorist financing), supervision, insolvency procedures and sanctions that apply henceforth to both payment institutions and electronic money institutions. Moreover, Article 48-1 defines the conditions under which the legal persons issuing only a limited amount of electronic money may be waived from the application of all or part of the provisions applicable to electronic money institutions.

In this context, it should also be noted that the monetary value stored on instruments exempted as specified in Article 3(k) of the Law on payment services, i.e. payment 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, are explicitly excluded from the scope of the Law on payment services. Consequently, no waiver needs to be sought any more for the services based on such instruments in accordance with the new Article 2(2b) of the Law on payment services. The same applies to monetary value used to make payment transactions exempted as specified in Article 3(l) of the Law on payment services.

In order to be exhaustive, it should be noted that the Law also transposes Directive 2009/44/EC of the European Parliament and of the Council of 6 May 2009 amending Directive 98/26/EC on settlement finality in payment and securities settlement systems and Directive 2002/47/EC on financial collateral arrangements as regards linked systems and credit claims. The consequences of the transposition of that Directive into national law is not dealt with in this circular.

Yours faithfully,

COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER

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