

**COMMISSION de SURVEILLANCE
du SECTEUR FINANCIER**

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

Luxembourg, 2 March 2012

To all the persons concerned

CIRCULAR CSSF 12/534

Re: Exemption regime applicable to electronic money institutions

Ladies and Gentlemen,

Article 48-1 of the law of 10 November 2009 on payment services (the "Law") establishes an exemption regime according to which legal persons wishing to issue electronic money can do so under a less restrictive procedure and in compliance with less restrictive conditions.

This circular aims to lay down the terms and conditions of this exemption regime.

The two substantive conditions to be fulfilled are set out in points a) and b) of Article 48-1(1) of the Law. They relate to the business volume and probity of the persons responsible for the management and operation of business:

"Article 48-1 – Conditions for exemption relating to electronic money institutions

(1) Notwithstanding Article 36, the Minister responsible for the CSSF may, after investigation by the CSSF on the conditions required under this paragraph, exempt, on the basis of a written request, legal persons from the application of all or part of the procedure and conditions set out in Section 1 of Chapter 2 and in Article 27 and the CSSF may register these legal persons with the register of electronic money institutions provided for in Article 36, if both of the following requirements are complied with:

- a. the total business activities generate an average outstanding electronic money¹ that does not exceed EUR 5 million; and*
- b. None of the natural persons responsible for the management or operation of the business has been convicted of offences relating to money laundering or terrorist financing or other financial crimes.*

¹ Article 1(30)(a) of the Law.

Where an electronic money institution carries out any of the activities referred to in Article 24-6(1), point (a), that are not linked to the issuance of electronic money or any of the activities referred to in Article 24-6(1), points (b) to (e), and the amount of outstanding electronic money is unknown in advance, the CSSF shall allow the electronic money institution to apply point (a) above on the basis of a representative portion assumed to be used for the issuance of electronic money, provided such a representative portion can be reasonably estimated on the basis of historical data and to the satisfaction of the CSSF. Where an electronic money institution has not completed a sufficiently long period of business, that requirement shall be assessed on the basis of projected outstanding electronic money evidenced by its business plan subject to any adjustment to that plan having been required by the CSSF.

A legal person registered in accordance with this paragraph may provide payment services not related to electronic money issued in accordance with this article only if conditions set out in Article 48 are met. "

Where an electronic money institution carries out payment services that are not linked to the issuance of electronic money or any of the activities referred to in Article 24-6(1), points (b) to (e) of the Law and the amount of outstanding electronic money is unknown in advance, the CSSF shall allow that electronic money institution to apply the requirement provided for in point (a) of Article 48-1(1) on the basis of a representative portion assumed to be used for the issuance of electronic money, provided that such a representative portion can be reasonably estimated on the basis of historical data and to the satisfaction of the CSSF.

Where the completed period of business is not sufficiently long, the requirement provided for in point a) of Article 48-1(1) of the Law is assessed on the basis of projected outstanding electronic money evidenced by the business plan of the person concerned, unless the CSSF requires an adjustment to this plan.

Once the two substantive conditions are met,

- the activity must be actually carried out in Luxembourg and the central administration must be situated in Luxembourg, and
- electronic money institutions benefiting from an exemption are not authorised to set up branches in another EU Member State or in a third country, to use agents or to make use of the freedom to provide services in such countries, so that the services may only be provided to Luxembourg customers, and
- an annual report on the activities, on the average amount of outstanding electronic money, must be provided to the CSSF, and
- they must comply with Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing as well as with the relevant national provisions on combating money laundering and terrorist financing.
- payment services that are not linked to electronic money must be exercised in compliance with the conditions of Article 48 of the Law.

For the purpose of processing the exemption request, the following documents and information shall be sent to the CSSF insofar as they are applicable:

- a programme of operations;
- a business plan;
- a description of the internal governance and the simplified internal control mechanisms;
- a detailed description of the project to use agents and branches in Luxembourg;
- the identification of the managers, shareholders and the *réviseur d'entreprises agréé* (approved statutory auditor)
- a detailed description of any intended outsourcing project;
- the procedures demonstrating compliance with the national and international provisions concerning the fight against money laundering and terrorist financing;
- A description of the measures taken in order to safeguard the funds received in exchange for electronic money issued in accordance with Article 24-10 of the Law as well as information on the safeguarding method chosen,
- where appropriate, the definition and description of operational services and ancillary services referred to in Article 24-6(1) of the Law.

The CSSF will proceed with the investigation provided for in Article 48-1(1) of the Law on the basis of these documents and information, together with the duly completed form for the registration in the register of electronic money institutions attached hereto.

The registration in the register of electronic money institutions laid down in Article 36 of the Law will only take place after the requested exemption has been granted by the competent Minister.

Electronic money institutions benefiting from an exemption must inform the CSSF of any change in their situation which is relevant the conditions laid down above. Where the conditions are no longer fulfilled, the person concerned shall seek authorisation within 30 calendar days in accordance with the procedure laid down in Article 24-3 of the Law.

Yours faithfully,

COMMISSION de SURVEILLANCE du SECTEUR FINANCIER

Claude SIMON
Director

Andrée BILLON
Director

Simone DELCOURT
Director

Jean GUILL
Director General

Annexe: Form for the registration in the register of electronic money institutions benefiting from the exemption under Article 48-1 of the law of 10 November 2009 on payment services