

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

Luxembourg, 28 July 1995

Circular IML 95/120

To all electronic money institutions,
payment institutions and PFS other than
investment firms¹

Re: Central administration

Ladies and gentlemen,

The purpose of this circular is to clarify the application of Articles 11 and 24-7 of the law of 10 November 2009 on payment services for electronic money institutions and payment institutions and Article 17(1) of the law of 5 April 1993 on the financial sector for the professionals of the financial sector concerned.

1. Content of Articles 11, 24-7 and 17

Articles 11 and 24-7 of the law of 10 November 2009 and Article 17 of the law of 5 April 1993 first provide that the authorisation of an electronic money institution, payment institution or professional of the financial sector concerned (hereinafter referred to as "PFS") is subject to the production of evidence in Luxembourg of the central administration of the applicant. This requirement means that an electronic money institution and a payment institution or a PFS cannot only have a registered office ("Zulassungssitz") in Luxembourg. It shall also have its central administration, which includes its decision-making centre and its head

¹ Circular IML 95/120 does no longer apply to credit institutions and investment firms. For these entities, the circular was replaced by Circular CSSF 12/552, as amended

office ("effektiver Sitz"). These concepts are described in items 3.1. and 3.2. of this circular.

Moreover, paragraph 2 of Articles 11 and 24-7 of the law of 10 November 2009 and paragraph 2 of Article 17 of the law of 5 April 1993 provide that the applicant for authorisation (bank or PFS) shall also produce evidence of a sound administrative and accounting organisation as well as adequate internal control procedures. These quality requirements will be the subject of separate circulars.

2. Scope

Articles 11 and 24-7 of the law of 10 November 2009 and 17 of the law of 5 April 1993 are applicable to electronic money institutions, payment institutions and PFS, respectively, which are legal persons governed by Luxembourg law.

As regards branches of electronic money institutions and payment institutions having their registered office outside the EC as well as branches of EU or non-EU PFS, Articles 22(4) and 24(16) of the law of 10 November 2009 and Article 32(4) of the law of 5 April 1993 provide that these branches shall "instead of fulfilling the condition regarding central administration, shall be required to produce evidence of the existence of a satisfactory administrative infrastructure in Luxembourg". Item 4 outlines, in general terms, the specific requirements applying to these branches as regards the management and the administrative infrastructure in Luxembourg.

3. Content of the concept of central administration

The concept of central administration includes two elements:

- the "administration" which includes, in a broad sense, the managerial, executive and supervisory functions.
- the "centre" which means the place the various elements of the whole undertaking come to and from which they radiate.

3.1. The administration

a) The administration does not only include the activity of the persons (at least two) which, from a legal point of view (Articles 13(2) and 24-9(2) of the law of 10 November 2009 and Article 19(2) of the law of 5 April 1993) are in charge of the management of the institution and shall be empowered to effectively direct the business, but also that of the managers of the various business and administrative functions or the various departments or divisions existing within the institution, such as for example the credit, treasury, market activities, private banking department.

In the case where the management decision are taken by committees, as for example a credit committee as regards credit granting, the persons in charge of the management of the Luxembourg institution shall, regardless of the composition of these committees, be part of them and the voting procedures shall grant them a right of veto.

The persons referred to in this item shall have an on-site execution infrastructure necessary to allow them to assume their responsibilities.

b) The persons responsible for the management the persons responsible for the functions referred to in item a) above shall, in principle, be permanently based on the site. As regards the persons responsible for the management and authorised pursuant to Articles 13(2) and 24-9(2) of the law of 10 November 2009 and Article 19(2) of the law of 5 April 1993, it may be accepted during a transitional period that one of these persons is not on site permanently, provided however that it is a small institution and which is a wholly-owned subsidiary of a foreign institution falling within the consolidated supervision of the home country. Such a derogation to the general rule is not possible if the Luxembourg institution is also the parent company of a financial sub-group.

c) The persons responsible for the management in Luxembourg must be reachable directly by the Institut Monétaire Luxembourgeois. These persons shall be able to provide in respect of any transaction all information that the supervisory authority deems essential

for its supervision in particular information on the *raison d'être* and the purpose of the transaction.

d) Where the institution in Luxembourg carries out its activities abroad through branches, the daily management of these branches is carried out by managers assigned to these branches. Pursuant to Circular IML 93/99, the institution shall clearly define and specify the powers which it agrees to delegate to these managers in order to make sure that the bodies of the registered office can monitor the activity of the branches on an ongoing basis and that they are involved in any transaction of a certain importance.

3.2. The centre

In order for the institution to constitute a structured whole, there shall be at the registered office where the administration is located an infrastructure which focuses all transactions and which enables to reach from this centre all elements of the institution. In this respect, the institution shall have in Luxembourg the necessary and sufficient human and technical resources to carry out the activities that it wishes to perform. This implies that it shall have on site

- its own competent and sufficient executing personnel to enforce the decisions taken;
- its own execution systems, i.e. procedures and technical infrastructure;
- documentation relating to the transactions;
- support functions in the fields of accounting, IT and internal control.

4. Cases of branches of banks having their registered office outside the EC and branches of EU or non-EU PFS

Pursuant to Article 35(4), the branches concerned shall, instead of the condition relating to the central administration, produce evidence of an adequate infrastructure in Luxembourg.

They shall have on-site not only the management which, from a legal point of view, is in charge of the management of the institution and which acts on the basis of a delegation of powers granted by the senior management of the registered office and in accordance with the rules and instructions set out by it. The same shall apply to the managers of all business and administrative functions which exist within the branch. Moreover, the branch shall have in Luxembourg sufficient human and technical resources to carry out the activities that it wishes to perform.

Yours faithfully,

INSTITUT MONETAIRE LUXEMBOURGEOIS

Jean GUILL
Director

Jean-Nicolas SCHAUS
Director