

Cover article: "The Electronic Money Issuance Activity"

by Adriana Sandu, Associate

This month's cover article focuses on the electronic money issuance activity, as regulated by Law no. 127/2011, which law lays down the rules for the taking up and the pursuit of the electronic money issuance activity, the conditions for electronic money issuers to perform payment services activities, the prudential supervision of the business of electronic money institutions, as well as the redeemability of electronic money.

Legislative Retrospective

Voicu & Filipescu is a full service law firm, covering all legal areas relevant to your company's activity. This issue of our monthly newsletter provides you with a brief description of some of the recent legal amendments in the following areas:

- Banking and Finance
- Dispute Resolution



+ VF News

- Voicu & Filipescu was awarded for its Competition and its Corporate/Mergers & Acquisitions activity in 2010 at the 2011 Avocati de Top gala and awards ceremony organized by Finmedia on June 29, 2011. This valuable recognition of the firm's general practice was awarded by the jury following a competitive assessment of the most important players on the Romanian market.
- Recruitment process: Voicu & Filipescu is currently looking for experienced business lawyers, as well as for young law school graduates, interested in joining our team.

THE ELECTRONIC MONEY ISSUANCE ACTIVITY

Law no. 127/2011 on the taking up of the electronic money issuance activity was published in the Official Gazette of Romania, Part 1, no. 437 of June 22, 2011, which law transcribes Directive 2009/110/EC of the European Parliament and of the Council.

According to said law, electronic money means electronically, including magnetically, stored monetary value as represented by a claim on the issuer which is issued on receipt of funds for the purpose of making payment transactions, and which is accepted by a natural or legal person other than the electronic money issuer.

The law also lays down the rules for the taking up and the pursuit of the electronic money issuance activity, the conditions for electronic money issuers to perform payment services activities, the prudential supervision of electronic money institutions, as well as the redeemability of electronic money.

Thus, the electronic money issuance activity can be taken up by the following electronic money issuers:

- (a) credit institutions;
- (b) electronic money issuance institutions;
- (c) mail services suppliers which issue electronic money as per the relevant national legal framework;
- (d) European Central Bank and national central banks, when not acting in their capacity as monetary authority or other public authorities;
- (e) Member States and their regional or local authorities, when acting in their capacity as public authorities.

ELECTRONIC MONEY ISSUANCE INSTITUTIONS

Authorization of Electronic Money Issuance Institutions

As regards the electronic money issuance institution mentioned under letter b) above, said need to be authorized by the National Bank of Romania ("NBR"). NBR shall only authorize legal entities incorporated under Law no. 31/1990, the initial share capital of which is not less than the RON equivalent of EUR 350,000, and only providing that NBR is secure of the fact that, considering the need of ensuring prudential and healthy management of the electronic money issuance institution, the persons to whom the issuer's management and administration is designated are of sound reputation and hold relevant knowledge and experience that meet the nature, length and complexity of said activity.

In addition to issuing electronic money, electronic money institutions shall be entitled to engage in any of the following activities:

- (a) payment services under the Government Emergency Ordinance no. 113/2009;
- (b) operational services and ancillary services and ancillary services related to the electronic money issuance activity and payment services, such as: ensuring the performance of payment operations, currency exchange operations, trust or data storage and processing;
- (c) administration of payment systems;

- (d) business activities other than issuance of electronic money and provision of payment services, having regard to the applicable legislative framework.

If the electronic money issuance institution is also involved in other business activities, other than issuance of electronic money and provision of payment services, then NBR is entitled to request for a distinct entity to be set up for the purpose of issuing electronic money and providing payment services.

Electronic money issuance institutions can also grant certain loans related to payment services referred to in the Government Emergency Ordinance no. 113/2009, however in the case of other types of loans they are under the obligation to comply with the provisions of Law no. 93/2009 on non-banking financial institutions. The loans granted by the electronic money issuance institutions cannot be granted from the funds received in exchange of electronic money.

Law no. 127/2011 details the conditions for obtaining the authorization for issuing electronic money.

Operational Prerequisites

By its Regulations 8/2011, published in the Official Gazette of Romania, Part 1, no. 508 of July 18, 2011, NBR set forth the prerequisites regarding the own funds of the electronic money issuance institutions afferent to electronic money activity, the method for identifying the need thereof, the elements to be considered and other aspects regarding the calculation modality.

Electronic money issuance institutions shall have at all times own funds available the level of which cannot be less than either the minimum level of the initial share capital provided for authorization purposes or the value resulting from summing up the identified levels as per the above prerequisites, whichever of the two is higher.

Outsourcing the Activity of Electronic Money Issuance Institutions

Electronic money issuance institutions are forbidden from entirely or partially outsourcing the electronic money issuance activity.

Said electronic money issuance institutions are allowed to use individuals or legal entities for the purpose of distributing and redeeming electronic money.

Register of Electronic Money Institutions

The National Bank of Romania organizes and manages the register of electronic money institutions, in which the electronic money institutions are mentioned, either Romanian legal entities, subsidiaries thereof in other State Members and other states, as well as the agents of the electronic money institutions, Romanian legal entities.

Said register is public, accessible online, permanently updated and provides information on the activities for which every electronic money institution is authorized.

Relevant Supervisory Body

The National Bank of Romania ensures the prudential supervision of the authorized electronic money institutions which are Romanian legal entities, including for the activity of issuing electronic money and providing payment services of their respective subsidiaries and agents.

ISSUANCE AND REDEEMABILITY OF ELECTRONIC MONEY

Electronic money issuers are under the obligation to issue electronic money at par value on the receipt of funds. The granting of interest or any other benefit the value of which is directly related to the length of time during which an electronic money holder holds the electronic money is forbidden.

The electronic money issuers are under the obligation that, upon request by the electronic money holder, they redeem, at any moment, free of charge and at par value, the monetary value of the electronic money held.

Redemption may be subject to a fee only if stated in the contract, which fee needs to be proportionate and commensurate with the actual costs incurred by the electronic money issuer (in connection with such redemption) and only in any of the following cases:

- (a) where redemption is requested before the termination of the contract;
- (b) where the contract provides for a termination date and the electronic money holder terminates the contract before that date; or
- (c) where redemption is requested more than one year after the date of termination of the contract.

The Law also sets forth the modalities and cases when the contract can be terminated.

OTHER PROVISIONS

Consumers, consumers' associations including, can file complaints with the National Consumers' Protection Agency, while legal entities can file complaints with the Financial Police Office (Romanian: Garda Financiara) regarding the breach by electronic money issuers of the legal provisions; alternatively, said parties can file legal actions against the electronic money issuers who fail to comply with the law.

The Law lays down the deeds which represent minor offences and afferent sanctions, as well as two criminal offences, i.e. the unlawful issuance of electronic money, punishable by six months to 3 years in prison or by fine, and the unlawful obstruction of the NBR to perform its supervision activity, punishable by one month to one year in prison or by fine.

banking - legislative retrospective

Information regarding the declaration and payment of annual contributions to the special deposit guarantee fund. The Regulation no. 3/2011 issued by the Deposit Guarantee Fund regarding the setting, declaration and payment by credit institutions of annual and additional contributions to the special compensation fund administered by the Bank Deposit Guarantee Fund, was published in the Official Gazette of Romania, Part I, no. 386 of June 2, 2011.

According to this regulation, credit institutions must pay the annual contributions for the setting up of financial resources related to the special compensation fund by June 30 of each year. The percentage share used for determining the annual contribution may not exceed 0.1 % computed based on the value of the unsecured liabilities of each credit institution. If the financial resources cumulated for compensations are not sufficient, each credit institution may pay an additional contribution. The Fund will review the method of establishing the value of the unsecured liabilities and of determining the outstanding contribution.

Information regarding the payment institutions' capacity of reporting entities with the central credit register. The Regulation no. 5/2011 issued by the National Bank of Romania regarding the payment institutions' capacity of reporting entities with the Central Credit Register was published in the Official Gazette of Romania, Part I, no. 400 of June 8, 2011.

The regulation provides that non-banking financial institutions which are reporting entities with the Central Credit Register at the time they are authorized by NBR as payment institutions will maintain this status, however, if, upon the expiry of 3 reporting periods, NBR ascertains that they do not register a significant crediting level, they will no longer be reporting entities with the Central Credit Register.

The other payment institutions must report no later than 6 months as of the date on which the National Bank of Romania ascertains that they register a significant crediting level.

Methodological norms regarding the drafting of reports which include statistical financial and accounting information. The Order no. 2/2011 issued by the National Bank of Romania regarding the approval of the Methodological Norms related to the drafting of periodical reports containing statistical financial and accounting information, applicable to branches in Romania pertaining to credit institutions from other member states, was published in the Official Gazette of Romania, Part I, no. 418 of June 15, 2011.

The Order sets forth the obligation of the branches in Romania pertaining to credit institutions from other member states to draft periodical reports regarding statistical financial and accounting information, which are to be sent to the National Bank of Romania via the Information System.

The current regulation annuls the Order of the National Bank of Romania no. 14/2008 on the approval of the Periodical Reports Templates containing statistical financial and accounting information and of the methodological norms regarding their drafting and use, applicable to the branches in Romania pertaining to credit institutions from other member states, published in the Official Gazette of Romania, Part I, no. 15 of January 8, 2009.

Drafting of the FINREP financial statements. The Order no. 3/2011 issued by the National Bank of Romania regarding the approval of the Methodological Norms related to the drafting of the FINREP individual financial statements, compliant with the International Financial Reporting Standards, applicable to the credit institutions for prudential supervision purposes, was published in the Official

banking - legislative retrospective

Gazette of Romania, Part I, no. 418 of June 15, 2011.

The Order approves the methodological norms regarding the drafting of the FINREP individual financial statement, compliant with the International Financial Reporting Standards, applicable to the credit institutions for prudential supervision purposes, the norms being an integral part of the Order.

The provisions of the order apply to the Romanian legal entities credit institutions, as well as to the branches in Romania pertaining to credit institutions headquartered in a non-member State, as of the beginning of the financial year 2012.

The credit institutions must draft the FINREP individual financial statements and send them to NBR via the Information System.

The FINREP individual financial statements drafted for the end of the financial year will also be audited by persons in charge of the statutory auditing.

The new regulation annuls the Order no. 13/2007 issued by the National Bank of Romanian regarding the FINREP individual financial statements, applicable to the credit institutions, which was published in the Official Gazette of Romania, Part I, no. 703 and 703 bis of October 18, 2007.

Assessment of operational risks. The Regulation no. 6/2011 issued by NBR for the amendment and supplementation of NBR's Regulation no. 25/2009 regarding the use of an advanced assessment approach and the approval of using such approach by credit institutions for operational risks was published in the Official Gazette of Romania, Part I, no. 438 of June 22, 2011.

In the Regulation no. 6/2011, definitions of the following terms/phrases: "operational risk transfer techniques", "rating", "risk profile" and "efficiency" may be found, and 3 new subsections are included regarding (i) the general requirements related to the operational risk transfer techniques, (ii) the special requirements for using the insurance contracts on operational risk and (iii) the special requirements for using other operational risk transfer mechanisms.

dispute resolution - legislative retrospective

Case C-52/10 pending before the Court of Justice of the European Union (CJEU), in which the court ruled on June 9, 2011 that **the failure to perform the payment of an amount of money does not exclude the deliberateness of surreptitious advertising**, as shown in a press release published by the European Commission. The resolution of the Court is the result of a request submitted by the State Council in Greece for the interpretation of the "Television without Frontiers" Directive, the normative deed which institutes minimum regulations and standards regarding television advertising. According to the Court, to consider that the payment of an amount of money is compulsory for the determination of such deliberateness of surreptitious advertising could compromise the protection of the viewer's interests. The resolution issued by CJEU provides a response to the request of the State Council of Greece for the interpretation of the "Television without Frontiers" Directive which institutes minimum regulations and standards regarding television advertising. Thus, the State Council of Greece requested CJEU to clarify whether the payment of an amount of money or a similar kind of compensation constitutes an element required for determining the deliberateness of surreptitious advertising, upon encountering such case.

Order of the Ministry of Labor, Family and Social Protection no. 1616/2011 regarding the amendment and supplementation of the framework model of the individual employment agreement (IEA), provided in the appendix to the Order of the Minister of Labor and Social Solidarity no. 64/2003, published in the Official Gazette of Romania, Part I, no. 415, of June 14, 2011. The rights of the employer, according to the new normative deed, include the setting of the employee's individual performance objectives. In this sense, Law no. 40/2011 on the amendment and supplementation of Law no. 53/2003 – the Labor Code has instituted for the employer both the opportunity to set the employee's individual performance objectives, and the their assessment criteria. Thus, the assessment criteria for the employee's activity will be included in the IEA, in a new section. Furthermore, in the new framework model of IEA, the employer's obligation to provide the employee with a copy of the individual employment agreement, prior to commencing his/her activity, is included. In addition, the employer must issue, on the employee's request, a document which certifies the capacity of employee, respectively the activity conducted by him/her, the activity's duration, the salary, and the length in service, job and specialty.

For more information about the above, please contact:

Daniel Voicu: daniel.voicu@vf.ro
Mugur Filipescu: mugur.filipescu@vf.ro

26-28 Stirbei Voda Street
Union International Center II
5th floor, 010113 Bucharest
ROMANIA
Tel: +40 21 314 0200
Fax: +40 21 314 0290
www.vf.ro

