

New Money Laundering Act

A Considerable Challenge for the Pre-Paid Market!



On 29 December 2011, amendments to the German Money Laundering Act with partially serious ramifications became effective. In August 2011, we reported on the on-going legislative proceedings in Germany regarding the so-called Money Laundering Prevention Act. After numerous and intense debates, especially in the committees, and a large number of amendment applications, these proceedings finally came to a close in December 2011. Pre-paid card issuers and other electronic money issuers shall have to immediately adjust to the new legal situation; the amendments took immediate effect.

History: Implementation Act regarding the Second Electronic Money Directive

With the Implementation Act regarding the Second Electronic money Directive in May 2011, the pre-paid card industry began to experience some upheaval. Under this act, the provisions regarding money laundering prevention have become considerably stricter for both electronic money institutes and their agents (i.e., especially for individual retail stores or petrol stations assuming the distribution for said institutes and agents).

These stricter provisions were initially applicable neither to credit institutes issuing electronic money nor to their distribution agents. The Money Laundering Prevention Act is also an attempt to treat equal all electronic money issuers (whether electronic money institutions or credit institutions) and their respective distribution agents, in that all of them have now - generally speaking - become subject to the customer due diligence regimes prescribed by the German Money Laundering Act.

All Issuers and Agents Equal Under the Law – Four Different Categories for Electronic Money Devices

The German law maker is now distinguishing between four different categories of electronic money devices: (i) non-rechargeable electronic money devices with a credit limit of 100 Euro or less per electronic money holder, (ii) rechargeable electronic money devices with a credit limit of 100 Euro per month or with a credit limit of 100 Euro or less per electronic money holder, (iii) (other) low risk electronic money devices (if approved by the BaFin), and (iv) other electronic money devices.

Two Electronic money Device Types with a 100 Euro Limit

Both the non-rechargeable and rechargeable electronic money devices, provided that they cannot exceed 100

Euro per month, are in principle exempted from the identification obligations (recording of personal data and verifying such by means of an official document).

The requirements to be fulfilled by issuers are quite considerable: issuers have to assure that the applicable limit for each calendar month is not exceeded; that any and all issued electronic money is not pooled together with electronic money of another electronic money holder or with electronic money of another issuer, thus making it possible that the one can be technically connected with the other; and that any exchange in consideration of cash is effected at a value of 20 Euro or less. For rechargeable electronic money devices, the issuer must also (technically) assure that the 100 Euro amount cannot be exceeded in any month. The same obligations pertain to any electronic money agents engaged in distribution; in practice, the agents must contractually oblige the issuer to integrate such security measures.

Here, comprehensive measures are to be guaranteed by the issuers. Yet, the interpretation of the law, especially regarding the interpretation of the term “to assure”, is still in need of further explanation, and the statutory material is helpful only to a limited extent.

Beyond the 100 Euro Limit – Low Risk Electronic Money Devices

For pre-paid cards and other electronic money devices permitting a one-time charge or several charges, identifying the customer is in principle necessary before any electronic money can be issued to the customer. The BaFin can, however, permit issuers to apply a simplified customer due diligence regime if a low risk exists regarding money laundering, the financing of terrorism, or any other criminal action.

Here an administrative guideline in the interpretation of the concept “low risk” will be necessary. It will be a requirement - and this is shown by the cross-reference of the act - that an internal control system and appropriate risk management measures are implemented - as banks have had in place for some time now. The interpretation could, moreover, borrow from the previous provision § 25d para. 1 no. 1 KWGⁱⁱ (150 Euro and 2,500 Euro threshold), which is now no longer effective; nevertheless, this

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provision is based upon the definition of low risk as such is set forth in the EU Money Laundering Directive.

The concept of a simplified customer due diligence regime permitting a simplified way of verifying someone's identity is also in need of explication. It is here that the key to an application of the new provisions, both simple and agreeable to the industry, may lie. Here, the BaFin has the de facto sole authority to interpret this concept.

Other Electronic Money Devices

For all other electronic money devices, all identification, monitoring, and retention obligations of the German Money Laundering Act are to be fulfilled regardless of the deposit limit. This would also apply for charging electronic money devices with only 10 cents, if the issuer cannot (technically) assure that the 100 Euro limit must be adhered to.

These obligations pertain to both issuers and electronic money agents (individual retail stores, petrol stations). In the materials of the law making process, the German law maker has rightly pointed out that electronic money agents can, by (reverse) outsourcing, use the issuer of the emoney device to fulfil their customer due diligence obligations.

No Money Laundering Officer

Here, the industry has successfully opposed the law maker's original request. Electronic money distribution agents do not have to install a money laundering officer.

Our Advice

- Issuers of pre-paid cards and other electronic money devices must review their present products and, above all, the distribution of their products whether they are in compliance with the amended anti money laundering laws.
- Here, a meaningful evaluation of the various possibilities offered by the new legal framework is necessary

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ⁱ BaFin = *Bundesanstalt für Finanzdienstleistungsaufsicht* (the Federal Financial Supervisory Authority)

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