

[UNOFFICIAL ENGLISH TRANSLATION]

BELGIAN HOUSE OF REPRESENTATIVES

15 October 2020

LEGISLATIVE BILL

introducing provisions on the basic banking service for companies in book VII of the Code of economic law

ARTICLES ADOPTED AT THE PLENARY SESSION

CHAPTER 1

General provision

Article 1

This law regulates a matter as referred to in article 74 of the Constitution.

CHAPTER 2

Amendments to book VII of the Code of economic law

Art. 2

In book VII, title 3, chapter 8, of the Code of economic law, inserted by the law of 19 April 2014 and amended by the law of 22 December 2017, a section 1 is inserted which covers the articles VII.57 to VII.59/3, reading:

"Section 1. Payment accounts and basic banking service for consumers".

Art. 3

In the same chapter 8, a section 2 is inserted, reading :

"Section 2. Basic banking service for companies".

Art. 4

In section 2, inserted by article 3, article VII.59/4 is inserted, reading :

“Art. VII.59/4. § 1. Every company established in Belgium which is registered in the Crossroads Bank for Enterprises as per article III.17 or which applies for such registration, and which’s application to open at minimum the payment services referred to in article I.9, 1°, a, b or c has been refused, is entitled, under the conditions prescribed by this section, to the basic payment service offered by a credit institution referred to in paragraph 3, fifth clause, hereinafter referred to as the basic banking service provider.

The King can, by a decree adopted after consultation in the Council of Ministers, declare the provisions of this section applicable to other persons than companies.

§ 2. The basic banking service for companies entails at minimum the payment services as referred to in article I.9, 1°, c) and the payment services in article I.9, 1°, a) and b) to the extent that these services take place in one or more member states.

The basic banking service is offered in euros or, for the services referred to in article I.9, 1°, c), and at the request of the company, in US dollars.

Without prejudice to the provisions of the law of 18 September 2018 on the prevention of money laundering and terrorist financing and on the restriction of the use of cash, the basic banking service is available at the counter or at ATMs during or after opening hours of the credit institution and offers the company the possibility to execute an unlimited number of electronic transactions with regard to the services referred to in paragraph 1 via the internet platform of the basic banking service provider.

§ 3. The refusal of the payment services referred to in article I.9, 1°, a), b) or c) to a company referred to in paragraph 1, is explicitly and duly motivated in writing, without delay and at the latest within 10 working days after receipt of the application, unless this would be in violation of the objectives of national security of public order, or of article 55 of the law of 18 September 2018 on the prevention of money laundering and terrorist financing and on the restriction of the use of cash.

In addition, the complaint and out-of-court appeal procedures which are available to the company to contest the decision are mentioned, and in particular the complete name, address, phone number and electronic address of the competent body, referred to in article VII.216 and of the competent supervising administration within the FPS Economy.

The company to which the payment services referred to in the first clause have been refused, can address an application to obtain the basic banking service to the basic banking service chamber referred to in the seventh clause.

After receipt of the application, the basic banking service chamber requests a confidential advice on the company to the Financial Intelligence Unit introduced in the law of 18 September 2018 on the prevention of money laundering and terrorist financing and on the restriction of the use of cash.

In case the advice referred to in the fourth clause is positive, or the Financial Intelligence Unit has not responded within sixty calendar days, the basic banking service chamber appoints a credit institution established in Belgium as basic banking service provider, selected from the list of system-relevant institutions as defined in article 3, first clause, 29°, of the law of 25 April 2014 on the form and supervision of credit institutions and stock exchange companies, with exception of the institutions referred to in articles 36/1, 13°, 14° and 25° and 36/26/1, §§4 and 6 of the law of 22 February 1998 establishing the organic form of the National Bank of Belgium, which is to offer the basic banking service to the applying company.

The applying company provides the required information and documents in view of compliance with the obligation to identify and verify as per book II, title 3, chapter 1, section 2 of the law of 18 September 2018 on the prevention of money laundering and terrorist financing and on the restriction of the use of cash. At the latest within the month following the month in which the application file can be considered complete, the basic banking service chamber appoints the eligible basic banking service provider in a spread manner.

The King establishes the basic banking services chamber within the FPS Economy, which is charged with appointing a basic banking service provider for companies. He determines the method of spreading the appointment among the eligible basic banking service providers as well as the method of control of the identification and the identification verification duty.

§ 4. The basic banking service provider, appointed as per paragraph 3, fifth clause, can neither explicitly nor tacitly offer or allow a credit opening linked to the basic banking service.

The access to the basic banking service cannot be made subject to the conclusion of an ancillary service agreement.

A payment transaction executed in the framework of the basic banking service cannot be executed when this results in a debit position.

§ 5. For companies acting in the context of their professional activities as referred to in article 5 of the law of 18 September 2018 on the prevention of money laundering and terrorist financing and on the restriction of the use of cash, a basic banking service provider as referred to in paragraph 3 can only be appointed when the King has determined specific additional risk mitigating measures or when the King has endorsed a code of conduct between the industry at stake and the representative professional association of the financial industry.

The King determines, for the payment services referred to in article I.9, 1°, a) and b), provided within the framework of the basic banking service, granted as per paragraph 3, the conditions and limitations which are required to limit the risks related to the use of cash.

In case the basic banking service offers transactions in US dollars, additional conditions or limitations can be imposed which are necessary to limit the specific risks related to payments in that currency. The applicant complies with all limitations related to the use of that currency, including embargoes or sanctions. The King will determine the additional conditions or limitations.”.

Art. 5

In the same section 2, an article VII.59/5 is inserted, reading :

“Art. VII.59/5. The application with the basic banking service chamber to open a basic banking service is done in writing, through a form that is made available by the credit institution in paper or electronically.

The application form comprises a declaration on honor of the company that it does not already have a basic banking service or a payment account with which it can make use of the services referred to in article VII.59/4, § 2, nor at a credit institution as per Belgian law, nor at a credit institution established in another member state.

The application form also comprises a confirmation, supported by all necessary pieces of evidence, of the fact that the company's application for payment services as referred to in article VII.59/4, § 1, has been refused at least three times and, if applicable, that it has been informed that its accounts will be suspended.

The King determines the details to be included in the application form."

Art. 6

In the same section 2, an article VII.59/6 is inserted, reading :

"Art. VII.59/6. § 1. The credit institution refuses the application to open at minimum the payment services referred to in article VII.59/4, § 1:

1° in compliance with the law of 18 September 2018 on the prevention of money laundering and terrorist financing and on the restriction of the use of cash

2° under the circumstances listed in paragraph 2.

The credit institution can refuse the application if the company has another payment account in Belgium or in another member state with which it can make use of the payment services referred to in article VII.59/4, § 1, except when it demonstrates on the basis of specific pieces of evidence that it does not receive the services required for its professional activities with that account.

When the company can demonstrate on the basis of specific pieces of evidence that it has been informed that this other payment account will be suspended, this other account will not be considered.

The credit institution can also refuse the application if the company has canceled its payment accounts itself with the objective to be able to make use of the basic payment service.

§ 2. The basic banking service provider, appointed as per article VII.59/4, § 3, fifth clause, can cancel the basic banking service when at least one of the following conditions is fulfilled :

1° a member of the legal governing body of the company or a person in charge of the effective management of the company or, if applicable, a member of the executive committee, has been convicted for fraud, abuse of trust, deceptive bankruptcy, forgery, or the company has abused the payment account in the framework of the basic banking service for illegal purposes;

2° there has been no payment transaction on the payment account at stake in the framework of the basic banking service in the period of more than twelve consecutive months;

3° the company has provided incorrect information to obtain the basic banking service or in response to the questions of the credit institution in the framework of its vigilance duty as per the law of 18 September 2018 on the prevention of money laundering and terrorist financing and on the restriction of the use of cash;

4° the company has opened another payment account in Belgium or in another member state with which it can make use of the payment services referred to in article 59/4, § 1. The company informs the credit institution where it has obtained a basic banking service of this without delay;

5° the termination is in compliance with the law of 18 September 2018 on the prevention of money laundering and terrorist financing and on the restriction of the use of cash.

Without prejudice to other legal provisions or other instructions or recommendations of any government body, the credit institution which terminates the framework agreement, respects a notice period of at least two months. In deviation, in cases of termination as referred to in the first paragraph, in the provisions under 1°, 3° or 5°, the termination takes effect immediately.

The decision to terminate is done in writing and free of charge. It explicitly mentions the specific grounds and the justification of the decision, unless this would be in violation of the objectives of national security or public order, or with the law of 18 September 2018 on the prevention of money laundering and terrorist financing and on the restriction of the use of cash.

§ 3. The basic banking service provider, appointed as per article VII.59/4, § 3, fifth clause, can refuse the basic banking services when at least one of the following conditions is fulfilled :

1° a member of the legal governing body of the company or a person in charge of the effective management of the company or, if applicable, a member of the executive committee, has been convicted for fraud, abuse of trust, deceptive bankruptcy or forgery;

2° the company has, after its application, opened another payment account in Belgium or in another member state with which it can make use of the payment services referred to in article 59/4, § 1. The company informs the credit institution where it has obtained a basic banking service of this without delay.

The refusal decision is done in writing and free of charge. It explicitly mentions the specific grounds and the justification of the decision, unless this would be in violation of the objectives of national security or public order, or with the law of 18 September 2018 on the prevention of money laundering and terrorist financing and on the restriction of the use of cash.”.

Art. 7

In the same section 2, an article VII.59/7 is inserted, reading :

“Art. VII.59/7. § 1. The body referred to in article VII.216 rules on the disputes which are presented to it. This body can nullify the decision of the credit institution. The decision is binding for the credit institution and is communicated both to the credit institution and to the company involved.

§ 2. Every credit institution annually provides the competent supervisory body within the FPS Economy and the Financial Intelligence Unit, information about the number of accounts opened within the framework of the basic banking service for companies, the number of refusals and the terminations as well as the motivation thereof. The information relating to the past calendar year is submitted at least on the last day of the month of February of the consecutive year.

Art. 8

In the same section 2, an article VII.59/8 is inserted, reading :

“Art. VII.59/8. The credit institutions which offer a basic banking service beyond the application of article VII.59/4, §3, fifth clause, provide information about the basic banking service in a clear manner and in a clearly visible place to the companies and at least provide this information on their website.

The information covers the specific characteristics of the offered basic banking service, the related costs and the conditions related to the use of it, the procedures to be entitled to obtain access to the basic banking service and the methods to obtain access to alternative dispute settlement procedures.

From this information, it should be clear that the access to a basic banking service is not dependent on the purchase of additional services.”.

CHAPTER 3

Evaluation and entry into force

Art. 9

This law is evaluated one year after its entry into force, by the Minister of Economy. The evaluation is communicated to the House of representatives.

Art. 10

This law enters into force on the first day of the sixth month after it has been published in the Belgian Official Gazette.

Brussels, 15 October 2020

The president of the House of representatives,
Eliane TILLIEUX

The registrar of the House of representatives,
Marc VAN der HULST