

Yesterday, 24 November 2020, the new law on basic banking services for businesses has been published in the Belgian Official Journal. This law voted on 22 October 2020 by the Belgian Parliament introduces a right to basic banking services for companies in Book VII of the Economic Law Code.

This new regime aims at providing basic banking services for businesses that would otherwise have been denied access to such services.

BACKGROUND

Up to now in Belgium, mandatory basic banking services were only available for consumers. The new law will extend this type of services to companies (legal entities) and self-employed physical persons (in the document commonly referred to as “businesses”).

This contribution is the first part of a series of two articles on basic banking services. This first part analysis the main provisions of the new law while the second one will address the issue of basic banking services for business and de-risking.

WHAT DO THESE BASIC BANKING SERVICES INCLUDE?

The basic banking services for businesses will include the most common banking services. In particular the opening of a bank account, the possibility to make deposits and withdrawals as well as all payment related operations such as the execution of payment transactions, direct debit orders and card payments.

The services will be provided for an unlimited number of electronic operations via web banking. By default, the currency would be the Euro. However, at the request of the business concerned, executions of payment transactions could also be made in American dollar (in which case, additional

NEW LAW ON BASIC BANKING SERVICES FOR BUSINESSES IN BELGIUM

conditions and restrictions may apply to mitigate certain additional risks (i.e. of money laundering) related to payments in such currency).

Banks will not be allowed to impose additional conditions for accessing the basic banking services, such as the obligation to subscribe to ancillary services.

HOW DOES IT WORK?

In order to trigger the right to basic banking services, businesses must have been denied access to banking services (at least including payment services) by three different banks.

Regarding this denial to access, banks will have to comply with conditions on both the content and the form of such refusal decisions:

- the refusal must be explicitly and sufficiently motivated in writing unless the refusal is based on anti-money laundering reasons in which case no motivation should be provided (it is to be expected that this exception will indeed play an important role in practice) ;
- the refusal must be communicated within ten business days following receipt of the request; and,
- the refusal must mention the complaints procedures and alternative dispute resolutions means.

Once being denied by three different banks, an eligible business will have to submit a request to the Chamber of basic banking services, a newly created department within the Federal Public Service Economy (the “Chamber”) and provide this Chamber with relevant information and documents for anti-money laundering checks.

Furthermore, the Chamber will ask the CTIF/CFI (the Belgian Financial Intelligence Unit) to provide an opinion on the applicant.

Provided that (i) the CTIF/CFI has delivered a positive opinion or that it has not answered within 60 calendar days, and that (ii) the Chamber considers the application file from the business to be complete (meaning that it has received all the relevant information and documents regarding anti-money laundering obligations), the Chamber will appoint a bank, among the major/systemic credit institutions in Belgium, to provide basic banking services to that business.

WHO WOULD HAVE ACCESS TO THESE SERVICES?

To be eligible to have access to basic banking services, a business must meet the following conditions:

- be (i) a legal entity, (ii) a natural person carrying out a professional activity in a self-employed capacity, or (iii) certain specific organisations without legal personality (however excluding NPO, public authorities, etc.).
- be established in Belgium and registered with the Belgian Crossroads Bank for Enterprises.
- not already benefit from the same type of basic banking services in another Member State.
- being denied by at least three different credit institutions a request to access relevant basic banking services (i.e. including payment services).

However, additional conditions apply for businesses that are themselves subject to the requirements of the anti-money laundering law (such as diamond dealers, payment service providers, etc., the so-called obliged entities). The law will only apply to this type of businesses after the adoption of a Royal Decree which will either implement additional risk mitigation measures or ratify a code of conduct agreed between the sector concerned and the organisation representing the financial sector (Febelfin). In other words, until such a Royal Decree is passed, this type of businesses will not yet have access to basic banking services.

HOW WILL THE BANK OBLIGED TO PROVIDE THE BASIC BANKING SERVICES BE APPOINTED?

For now, the exact details on how eligible businesses be allocated between major banks remain to be clarified by a Royal Decree. One important element is, however, already disclosed: banks will be appointed based on the needs of the applicant (for example, if a business requires to execute transactions in USD, only banks that actually provide transactions in USD can be appointed).

REPORTING OBLIGATION

Finally, each bank will be required to submit a yearly report to the Federal Public Service Economy and the CTIF/CFI, on the (i) number of accounts opened within the framework of the new basic banking service, (ii) the number of refusals, (iii) terminations of such accounts opened within the framework of the new basic banking services as well as their motivation to do so.

WHEN WILL THE LAW ENTER INTO FORCE?

The law will enter into force on 1 May 2021, exception made of businesses subject to anti-money laundering obligations (obliged entities) for which an additional Royal Decree must be adopted.

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