
STATUTORY INSTRUMENTS

2011 No. 99

The Electronic Money Regulations 2011

PART 3

PRUDENTIAL SUPERVISION AND PASSPORTING

Exercise of passport rights

Notice of intention

28.—(1) An authorised electronic money institution (other than an institution mentioned in regulation 6(4)(b)) may exercise passport rights.

(2) Where an authorised electronic money institution intends to exercise its passport rights for the first time in a particular EEA state it must give the Authority, in such manner as the Authority may direct, notice of its intention to do so (“notice of intention”) which—

- [^{F1}(a) states the name and address of the institution, and any authorisation or reference number;
- (b) identifies the EEA States in which it intends to operate;
- (c) identifies the electronic money issuance, redemption, distribution or payment services which it seeks to carry on in those States;
- (d) if the institution intends to use an agent to provide the services in any of those States, includes the information referred to in regulation 34(3) (requirement for agents to be registered);
- (e) if the institution intends to use an EEA branch to provide the services in any of those States, includes—
 - (i) the information referred to in paragraphs 2 and 5 of Schedule 1 in relation to the services to be provided through each EEA branch;
 - (ii) the names of those responsible for the management of each proposed EEA branch; and
 - (iii) details of the organisational structure of each proposed EEA branch;
- (f) if the authorised payment institution intends to enter into a contract with a person in another EEA State under which that person will carry out any operational function relating to the issuance, distribution or issuance of electronic money or the provision of payment services in that EEA State, includes notification of that intention; and
- (g) identifies the distributors, if any, whom the institution intends to engage to distribute or redeem electronic money in exercise of its passport rights in that State.]

[^{F2}(3) If any of the information provided by an authorised electronic money institution in a notice of intention changes, including by the addition of a further branch, the institution must give the Authority notice of such changes in a further notice of intention.

Status: Point in time view as at 13/08/2017.

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(4) The Authority must, within one month beginning with the date on which it receives a complete notice of intention, inform the host state competent authority of the information contained in the notice of intention.]

Textual Amendments

- F1** Reg. 28(2)(a)-(g) substituted for reg. 28(2)(a)-(d) (13.8.2017 for specified purposes) by [The Payment Services Regulations 2017 \(S.I. 2017/752\)](#), reg. 1(2)(c)(iii)(3)(f)(i)(6), **Sch. 8 para. 5(18)(a)** (with reg. 3)
- F2** Reg. 28(3)(4) substituted (13.8.2017 for specified purposes) by [The Payment Services Regulations 2017 \(S.I. 2017/752\)](#), reg. 1(2)(c)(iii)(3)(f)(i)(6), **Sch. 8 para. 5(18)(b)** (with reg. 3)

[^{F3}Decision following notice of intention

29.—(1) If the Authority, taking into account any information received from the host state competent authority, proposes to determine that an authorised electronic money institution is not permitted to exercise passport rights in an EEA State as notified in a notice of intention, the Authority must give the relevant institution a warning notice.

(2) The Authority must, within the period of three months beginning with the date on which it receives a notice of intention and having considered any representations made in response to the warning notice—

(a) if it decides

- (i) that the authorised electronic money institution is not permitted to exercise passport rights in the EEA State, not to register an EEA branch, or to cancel the registration of an EEA branch, give the institution a decision notice; or
- (ii) that the authorised electronic money institution is permitted to exercise passport rights in the EEA State, to register an EEA branch, or not to cancel the registration of an EEA branch, give the institution notice of its decision; and

(b) notify the host state competent authority of its decision, providing reasons for that decision if the Authority does not agree with the assessment of the host state competent authority.

(3) If the Authority decides that the authorised electronic money institution is not permitted to exercise passport rights in the EEA State, not to register an EEA branch, or to cancel the registration of an EEA branch, the institution may refer the matter to the Upper Tribunal.

(4) If the Authority decides to register an EEA branch, it must update the register as soon as practicable.

(5) If the Authority decides to cancel the registration of an EEA branch, the Authority must, where the period for a reference to the Upper Tribunal has expired without a reference being made, as soon as practicable update the register accordingly.

(6) The authorised electronic money institution may commence activities as notified in its notice of intention only after the Authority has notified the institution of its decision under paragraph (2)(a)(ii) and, in the case of services to be provided through an EEA branch, after entry of the branch on the register.

(7) After registration, the authorised electronic money institution must notify the Authority of the date on which it starts to provide payment services in the other EEA State through the EEA branch, and the Authority must notify such date to the host state competent authority.]

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Textual Amendments

F3 Regs. 29, 29A substituted for reg. 29 (13.8.2017 for specified purposes) by [The Payment Services Regulations 2017 \(S.I. 2017/752\)](#), reg. 1(2)(c)(iii)(3)(f)(i)(6), **Sch. 8 para. 5(19)** (with reg. 3)

[^{F3}Notice of intention from an EEA authorised payment institution

29A.—(1) If a home state competent authority sends information to the Authority about an EEA authorised electronic money institution which intends to provide services in the United Kingdom, the Authority must, before the end of the period of one month beginning on the day which the Authority receives all the required information—

- (a) assess the information; and
- (b) provide relevant information to the home state competent authority in connection with the intended provision of payment services in the United Kingdom, including in particular any reasonable grounds for concern with regard to money laundering or terrorist financing within the meaning of the money laundering directive in connection with the intended appointment of an agent or establishment of a branch in the United Kingdom.

(2) The EEA authorised electronic money institution may provide services in the United Kingdom in accordance with the information it has provided to the home state competent authority upon entry of the branch or agent in the register maintained by the home state competent authority.]

Textual Amendments

F3 Regs. 29, 29A substituted for reg. 29 (13.8.2017 for specified purposes) by [The Payment Services Regulations 2017 \(S.I. 2017/752\)](#), reg. 1(2)(c)(iii)(3)(f)(i)(6), **Sch. 8 para. 5(19)** (with reg. 3)

Supervision of firms exercising passport rights

30.—(1) Without prejudice to regulation 71, the Authority must co-operate with the relevant host state competent authority or home state competent authority, as the case may be, in relation to the exercise of passport rights by any authorised electronic money institution or EEA authorised electronic money institution.

(2) The Authority must, in particular—

- (a) notify the host state competent authority, whenever it intends to carry out an on-site inspection in the host state competent authority's territory; and
- (b) provide the host state competent authority or home state competent authority, as the case may be—
 - (i) on request, with all relevant information; and
 - (ii) on its own initiative with all essential information^[F4], including on compliance with the conditions at regulation 6(4)(a) and (4A)],

relating to the exercise of the passport rights by an authorised electronic money institution or EEA authorised electronic money institution, including where there is an infringement or suspected infringement of these Regulations, or of the provisions of the electronic money directive, by a distributor, agent, branch or any other entity carrying out activities on behalf of such an institution.

(3) Where the Authority and the home state competent authority agree, the Authority may carry out on-site inspections on behalf of the home state competent authority in respect of electronic money

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issuance or payment services provided by an EEA authorised electronic money institution exercising passport rights.

[^{F5}(4) The Authority may direct that an EEA authorised electronic money institution exercising its passport rights to services in the United Kingdom through a branch or an agent in the United Kingdom must report to the Authority on such activities, for information and statistical purposes and, where the institution has exercised its right of establishment in the United Kingdom, to monitor compliance with Part 5 of these Regulations.

(5) Reports required under paragraph (4) must be given at such times and in such form, and verified in such manner, as the Authority may direct.

(6) An agent in the United Kingdom appointed by an EEA authorised electronic money institution or a branch of an EEA authorised electronic money institution in the United Kingdom must maintain the confidentiality of any confidential information provided to the Authority under paragraph (4).

(7) If a host state competent authority informs the Authority that an authorised electronic money institution providing services through an EEA branch or an EEA agent does not comply with a provision of the payment services directive, the Authority must—

- (a) exercise its powers as appropriate without undue delay, to ensure that the authorised payment institution complies with the relevant provisions; and
- (b) inform the host state competent authority and the competent authority of any other relevant EEA State of the measures taken without delay.

(8) Where immediate action is necessary to address a serious risk to the collective interests of electronic money holders or payment service users in the United Kingdom, the Authority may, in addition to providing information under paragraph (2), take precautionary measures in relation to an EEA authorised electronic money institution pending action by the home state competent authority.

(9) Any measures taken under paragraph (8) must be temporary and must end when the risk identified has been addressed.

(10) If the Authority decides to take measures under paragraph (8), it must inform the home state competent authority, the competent authority of any other relevant EEA State, and the European Banking Authority of the measures to be taken and the reason that immediate action is necessary—

- (a) in advance of taking the measures, if that is compatible with the need for immediate action; and
- (b) in any event without undue delay.

(12) In paragraphs (7)(b) and (10) “competent authority of any other relevant EEA State” means a competent authority designated in accordance with the electronic money directive in an EEA State which the Authority considers to have an interest in the measures taken, or to be taken, by the Authority.]

Textual Amendments

- F4** Words in reg. 30(2)(b)(ii) inserted (13.8.2017 for specified purposes, 13.10.2017 for specified purposes, 13.1.2018 in so far as not already in force) by [The Payment Services Regulations 2017 \(S.I. 2017/752\)](#), [reg. 1\(2\)\(c\)\(iii\)\(3\)\(f\)\(i\)\(6\)](#), [Sch. 8 para. 5\(20\)\(a\)](#) (with [reg. 3](#))
- F5** Reg. 30(4)–(12) substituted for reg. 30(4) (13.8.2017 for specified purposes, 13.10.2017 for specified purposes, 13.1.2018 in so far as not already in force) by [The Payment Services Regulations 2017 \(S.I. 2017/752\)](#), [reg. 1\(2\)\(c\)\(iii\)\(3\)\(f\)\(i\)\(6\)](#), [Sch. 8 para. 5\(20\)\(b\)](#) (with [reg. 3](#))

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Carrying on of Consumer Credit Act business by an EEA authorised electronic money institution

^{F6}**31.**

Textual Amendments

F6 Reg. 31 omitted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by virtue of [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013](#) (S.I. 2013/1881), art. 1(2)(6), **Sch. para. 42**

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