

Belgium: Basic banking service framework for companies now finalized and ready to take effect

In brief

Belgium has finalized the basic banking service framework for companies, among others, by creating the long-awaited basic banking service chamber, as a result of which the new rules can now finally take effect.

Key takeaways

On 16 January 2023, the Belgian Royal Decree of 16 December 2022 on the basic banking service for companies ("Royal Decree") and the Belgian Act of 25 September 2022 containing various provisions on the economy ("Act of 25 September 2022") were published in the Belgian State Gazette.

These laws further implement the Belgian Act of 8 November 2020, introducing provisions on the basic banking service for companies in Book VII of the Code of Economic Law ("Act of 8 November 2020"). As a result, the Belgian regulatory framework for a basic banking service for companies is now finalized and ready to take effect. The new rules enter into force as from 26 January 2023.

What does it mean?

Background

As explained in our previous alert, the Belgian legislator introduced a right to a basic banking service for companies in Book VII of the Belgian Code of Economic Law (CEL) through the Act of 8 November 2020 that entered into force on 1 May 2021.

Since then, a right to a basic banking service exists in Belgium not only for consumers, but also for companies. However, up until now, executing measures were lacking to create the so-called basic banking service chamber that designates a basic banking service provider to an applicant for a basic banking service. These executing measures were essential for the rules to take effect and have now been adopted.

Accordingly, Belgian companies are now finally able to exercise their right to a basic banking service in accordance with the rules set out in Book VII of the CEL and the Royal Decree. As a reminder, a basic banking service consists of one or more of the following:

- Services enabling cash to be placed on a payment account as well as all the operations required for operating a payment account.
- Services enabling cash withdrawals from a payment account as well as all the operations required for operating a payment account.
- Execution of payment transactions, as follows, including transfers of funds on a payment account with the user's payment service provider or with another payment service provider, including the following:

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- Execution of payment transactions through a payment card
- Execution of credit transfers, including standing orders

Creation of the basic banking service chamber

Pursuant to Article VII.59/4 of the CEL, if at least three credit institutions refuse to offer a basic banking service, a company can submit a request to the basic banking service chamber at the Federal Public Service Economy to obtain a basic banking service from a designated Belgian credit institution. The Royal Decree now establishes this basic banking service chamber.

The basic banking service chamber is an administrative body composed of two civil servants appointed by the Minister of Economic Affairs for a term of six years and a maximum of four other members (not civil servants) who have specific knowledge of corporate payment services and/or prevention of money laundering and terrorist financing and/or diplomatic affairs, appointed by the Minister of Economic Affairs for a term of six years. A chair will be elected among the chamber's members. Every member has one vote and decisions are taken by simple majority. The chair and members of the chamber are bound by a duty of discretion.

Any request for a basic banking service submitted by a company to the basic banking service chamber must be accompanied by the following:

- A declaration of honor that the company does not already use a basic banking service or possess a payment account with another Belgian or EU credit institution.
- A confirmation, supported by the necessary documentary evidence, that the company has requested and has been refused access to a basic banking service by at least three credit institutions .
- A duly filled-in request form.

After receiving the request and declaring it admissible, the basic banking service chamber asks for a confidential opinion from the Belgian financial intelligence unit (Cel voor Financiële Informatieverwerking / Cellule de Traitement des Informations Financières). If the advice is positive or no reply is received within 60 days, the basic banking service chamber designates a basic banking service provider, who subsequently has 10 business days to provide the basic banking service to the applicant, subject to any additional time as may be required to conduct an anti-money laundering customer due diligence.

The operating costs of the basic banking service chamber are borne by the credit institutions referred to in Article VII.59/11, paragraph 1 of the CEL that hold at least 0.1% market share. The operating costs consist of the personnel costs, the costs of developing and managing the IT systems and the costs for the members of the chamber. The contribution amount is divided among all the aforementioned credit institutions in proportion to their market share.

Designation of a basic banking service provider

Belgian credit institutions that are regarded as systemically important institutions can be designated as a basic banking service provider. These are the credit institutions that resort under the direct supervision of the European Central Bank. For 2023, these are BNP Paribas Fortis, KBC Group, Belfius Bank, ING Belgium, Argenta and Axa Bank Belgium.

When designating a credit institution to provide a basic banking service, the basic banking service chamber will consider a proportionate distribution of cases based on the following criteria:

- The relevant market share of payment accounts held by companies with the credit institution.
- The payment services requested.
- The payment services offered by the credit institution.
- A proportionate distribution of companies that are "obliged entities" subject to the Belgian Act of 18 September 2017 on the prevention of money laundering and terrorist financing and limiting the use of the cash ("**AML Act**").

Diplomatic missions in Belgium are also in scope

Another novelty is that the scope of the Belgian regime for a basic banking service for companies has now been extended to diplomatic missions in Belgium, such as embassies. Diplomatic missions often face difficulties in opening or maintaining a payment account with a credit institution explaining the scope extension. However, the individual staff members of the diplomatic mission do not enjoy the right to a basic banking service.

Clarification of the grounds to refuse or terminate a basic banking service

The grounds for credit institutions (not designated by the basic banking service chamber) to refuse to provide a basic banking service were set out in the Act of 8 November 2020 and have now been further clarified by the Act of 25 September 2022.

A basic banking service **must** be refused if at least one of the following conditions is met:

- The refusal is warranted under the AML Act.
- A member of the governance body of the company or a person charged with effective management, or a member of the executive committee, has been convicted of fraud, abuse of trust, fraudulent bankruptcy or forgery.
- The company has provided false information in response to the questions of the credit institution within the framework of its duty of vigilance under the AML Act.

A basic banking service **may** also be refused if the company has closed its existing payment accounts for the purpose of making use of the right to a basic banking service or if the company already has another payment account that it can use in Belgium or in another member state, unless the company proves that this account does not suffice to carry out its professional activities.

The circumstances under which the designated basic banking service provider can refuse to provide a basic banking service or terminate these services remain unchanged and are explained in our previous alert.

Risk-mitigating measures in relation to obliged entities

The Royal Decree introduces additional risk-mitigating measures in relation to "obliged entities" under the AML Act, such as, for example, payment institutions, art traders, diamond traders, etc., and that were assigned a basic banking service provider by the basic banking service chamber.

In particular, the designated basic banking service provider may refuse to offer a basic banking service or may terminate the provision of this service if the obliged entity does not meet the following conditions and/or does not provide the following information:

- Natural persons holding at least 25% in the company should not (i) be deprived of their civil or political rights, (ii) be declared bankrupt without being granted rehabilitation or (iii) have incurred a criminal penalty, an unconditional prison sentence of at least six months for certain offenses and/or a criminal fine of at least EUR 2,500 (still to be multiplied by eight in accordance with the legal indexation mechanism) for violation of the AML Act.
- Companies must provide an extract of their criminal record and must notify the basic banking service provider if they or their directors are the subject of criminal proceedings.
- Companies may only approach the registered office of the basic banking service provider through the available electronic procedures (i.e., not through a branch office, for example)
- Companies must, where appropriate and upon the request of the credit institution, provide a list of their usual counterparties that allows the accurate identification of the origin and destination of the funds to be deposited with the basic banking service provider.
- Companies must, upon the request of the credit institution, document (i) any transaction exceeding EUR 5,000, (ii) transactions spread over one year exceeding EUR 20,000 involving the same counterparty, and (iii) transactions spread over one month exceeding EUR 5,000 involving the same counterparty (these amounts may be increased in light of the risk profile and size of the company)
- Companies must provide the credit institution with (i) their articles of association and any amendments thereto, (ii) any significant change in their business model, (iii) the shareholding structure, the ultimate beneficial owner(s) and any change thereto, and (iv) any appointment and/or resignation of members of their governance body or daily management, as well as documentation allowing the credit institution to verify the identity of these persons
- Companies must, at the request of the credit institution, provide evidence that they comply with the disclosure obligations in relation to the company's annual accounts referred to in the Belgian Code of Companies and Associations

Risk-mitigating measures in relation to diamond traders

On top of the risk-mitigating measures mentioned above for obliged entities, specific measures apply in relation to diamond traders. In particular, the designated basic banking service provider may refuse to offer a basic banking service or may terminate the service if the diamond trader does not meet the following conditions and/or does not provide the following information:

- The diamond trader must be subject to the measures linked with the identification and verification of the identity of its clients, their representatives and their ultimate beneficial owners (i.e., this means that the diamond trader must be an officially registered Belgian diamond trader, not be criminally convicted, provide evidence of its clients being screened against specific risks, etc.).
- The diamond trader is subject to the measures linked to the identification of the characteristics of its clients and the object and nature of their business relationship (i.e., this means that the diamond trader must provide an appropriate insurance certificate in relation to its commercial activities; they must provide an overview of the type of trade they are involved in; they must describe on their invoices the classification of their goods, as well as the number of carats, the value and, if possible, the quality of the diamonds, and that such diamonds are not conflict diamonds, etc.).
- The diamond trader must provide the credit institution with a signed copy of the "Diamond Terminology Guideline" and certify that they use the correct terminology on their invoices.
- The diamond trader is subject to measures aimed at reducing the risks associated with client characteristics, i.e., the diamond trader has not issued any bills of exchange that have been protested and has not been involved in a bankruptcy, and they are a member of a recognized diamond exchange.
- The diamond trader is subject to measures aimed at reducing risk factors linked to the characteristics of the payment services provided, i.e., the diamond traders must use the payment account exclusively for their professional activities as a diamond trader and not for any other professional activities or for private transactions. They should also not carry out transactions in foreign currencies, with the exception of USD.
- The diamond traders must be subject to measures that allow or facilitate the exercise of constant vigilance related to business relationships and transactions, i.e., the diamond trader guarantees full traceability of the underlying flow of goods on a transaction-by-transaction basis and to this end provides all information requested by the basic banking service provider.

Accordingly, this means that diamond traders must observe both the risk-mitigating measures that apply to obliged entities as well as the additional risk-mitigating measures for their specific diamond trading business. This essentially implies that diamond traders must rigorously comply with the existing rules applicable to their profession to exercise their right to a basic banking service.

Transactions in cash or in USD

The Royal Decree foresees additional rules for transactions in cash or in USD offered by the basic banking service provider.

Services enabling cash to be placed at or withdrawn from a payment account may only be offered by the basic banking service provider if the following conditions are met:

- The company provides transparency on the magnitude of the use of cash, as well as a justification for the use of cash and conformity to its profile and activity.
- Cash withdrawals are limited to an amount that is strictly necessary to make commonly used payments for everyday needs in cash when an electronic payment is not possible.
- The company always offers its customers the possibility to make an electronic payment.
- The diamond trader does not use cash for the purchase or sale of diamonds.

If the execution of payment transactions also relates to USD, the following additional conditions must be met:

- The company demonstrates that the USD is the functional currency of the company.
- A transaction in USD may be subject to the prior supervision of the basic banking service provider's anti-money laundering compliance officer.
- The company precisely and accurately documents the legitimacy of each transaction in USD.

- The transactions are limited to the payment services referred in Article I.9, 1°, c), of CEL, i.e., execution of payment transactions, including transfers of funds on a payment account with the user's payment service provider or with another payment service provider.

The designated basic banking service provider may refuse to offer a basic banking service or may terminate the service if the additional rules for transactions in cash or USD are not complied with by the company using the basic banking service.

What's next?

Now that Belgium's basic banking service framework for companies has been completed, the new rules will finally take effect, meaning that companies will now actually be able to exercise their right to a basic banking service.

The extension of the scope of the rules to diplomatic missions in Belgium will likely be a welcome chance for foreign embassies. Obligated entities under the AML Act and the diamond industry will, however, face a series of additional risk-mitigating measures that may render the exercise of their right to a basic banking service more onerous compared to unregulated companies. They will carefully have to document and demonstrate compliance with these risk-mitigating measures to avoid falling between the cracks once more.

Belgian credit institutions, and particularly those that can or will be designated as basic banking service providers by the basic banking service chamber, may need to revisit their existing processes and (contractual) framework regarding their basic banking service to take full account of the new rules.

If you want to read more, the new royal decree can be found [here](#), and the new act and its preparatory works can be found [here](#). If you require further assistance or guidance on the matter, please consult your regular contact at Baker McKenzie.

Contact us



Michael Van Acker

Partner

michael.vanacker@bakermckenzie.com



Olivier Van den broeke

Associate

olivier.vandenbroeke@bakermckenzie.com



Steffi Illegems

Associate

steffi.illegems@bakermckenzie.com



Petra Lasku

Associate

petra.lasku@bakermckenzie.com

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