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Status	Final Q&A
Legal act	Directive 2009/110/EC (EMD)
Topic	Not applicable
Article	3
Paragraph	4
Subparagraph	-
COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations	Not applicable
Article/Paragraph	Not applicable
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Disclose name of institution / entity	No
Type of submitter	Law firm
Subject matter	Subcontractor of electronic money distributor
Question	Does Article 3, paragraph 4 of Directive 2009/110/EC (EMD) mean that that a legal person acting as an electronic money distributor on behalf of an electronic money institution may enter into a contract with another legal person (subcontractor) for the execution of distribution and redeeming of electronic money? Or on the contrary, an electronic money distributor may not use subcontractors to distribute electronic money in the name of the electronic money institution under EU law?
Background on the question	An electronic money institution registered in Member State A and licenced by the competent authority of Member State A wishes to distribute e-money in Member State B on a cross-border basis via a Member State B electronic money distributor. For this purpose the electronic money institution passported its licence to Member State B. The electronic money distributor is a legal entity in Member State B who intends to use subcontractors for the distribution of electronic money. These subcontractors are also legal entities, and they would distribute and/or redeem electronic money in the name of the electronic money institution. However, there would not be a direct contractual relationship between the electronic money institution and the subcontractors of the electronic money distributors. As such, the business

structure would be the following: - electronic money institution (1st level; direct contractual relationship with the electronic money distributor) - electronic money distributor (2nd level; direct contractual relationship - upstream - with the electronic money institution and -downstream - with the subcontractors) - subcontractors of the electronic money distributor (3rd level; direct contractual relationship with the electronic money distributor). The opinion of the competent authority in Member State B was requested in respect of the above-described business model. The position of the authority is that the distribution of electronic money may only be provided by the electronic money distributor who is in a direct contractual relationship with the electronic money institution. A subcontractor, therefore, may not distribute electronic money. The authority highlights in its opinion that neither the EMD Directive, nor the PSD2 Directive, nor the Member State B's Payment Service Provider (PSP) Act contains a definition of the subcontractor of the electronic money distributor. Furthermore, these do not regulate the subcontractor of the electronic money distributor.

Final answer

In accordance with Article 3(4) Directive 2009/110/EC (EMD2), electronic money institutions should be allowed to distribute and redeem electronic money through natural or legal persons which act on their behalf.

The requirement to "act on their behalf" means that the distribution and redemption of electronic money may only be provided by persons who are in a direct contractual relationship with the electronic money institution. It should be stipulated in the respective contracts through appropriate clauses that the distributor "acts on behalf" of the electronic money institution.

A distributor can, however, involve other natural or legal persons for the distribution of electronic money provided that it is ensured that the electronic money institution still remains responsible for all persons involved in the distribution of the electronic money.

Sub contracting should be clearly stated in the relevant contracts. This presupposes that the possibility of sub-contracting is already foreseen in the contracts between the actual distributor and the electronic money institution. This also requires an indication in the contracts between the distributor and the sub-distributor that the latter is also acting on behalf of the electronic money institution. All of this can be the subject of a tripartite agreement between the electronic money institution, distributor and sub-distributor.

All requirements for distributing and redeeming electronic money should also be met in the case of sub-contracting. For example, that the requirements regarding transparency and liability are met, and that the relevant passport notification requirements are fulfilled.

	<p>Disclaimer:</p> <p>The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.</p>
Link	https://www.eba.europa.eu/single-rule-book-qa/qna/view/publicId/2020_5624

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