

Electronic money: taking up, pursuit and prudential supervision of the business of electronic money institutions

2008/0190(COD) - 09/10/2008 - Legislative proposal

PURPOSE: to promote the emergence of a true single market for electronic money services in the European Union.

PROPOSED ACT: Directive of the European Parliament and of the Council.

BACKGROUND: customers and businesses in the European Union are making increasing use of electronic money, which is only now starting to be successful in replacing other means of payment in some Member States for certain types of payments. However, electronic money is still far from delivering the full potential benefits that were expected eight years ago at the time of adoption of **Directive 2000/46/EC** on the taking up, pursuit of and prudential supervision of the business of electronic money institutions.

Outstanding electronic money represented only EUR 1 billion in comparison with 637 billion of cash in circulation as of August 2007. 20 electronic money institutions and 127 entities under a waiver were reported at end-2007. These figures show that, in most of the Member States, e-money has not yet been considered a credible alternative to cash.

The Commission presented a report which highlighted the need to revise Directive 2000/46/EC since some of its provisions were considered to have hindered the emergence of a true single market for electronic money services. The first problem strand relates to the unclear definition of electronic money and the scope of the Directive, which generates legal uncertainty and hinders the development of the market. The second relates to an inconsistent legal framework with a disproportionate prudential regime, inconsistent waivers and passporting procedures as well as the application of anti-money laundering rules to electronic money services.

Directive 2007/64/EC on payment services in the internal market has established a modern and coherent legal framework for payment services, including the coordination of national provisions on prudential requirements for a new category of payment service providers, namely payment institutions.

CONTENT: this proposal focuses on modernising the provisions of the Electronic Money Directive, with special reference to the prudential regime of electronic money institutions, ensuring consistency with that of payment institutions under the Payment Services Directive. It aims to enable new, innovative and secure electronic money services to be designed, provide market access to new players and foster real and effective competition between all market participants. The new proposal has a complete new structure. Given the desired alignment to the Payment Service Directive and the fact that all provisions have been amended, the existing Electronic Money Directive will be repealed and replaced by the new proposal.

The major changes that will be introduced by the proposal are the following:

Clarification of the scope of the Directive and of the definition of electronic money: the current Directive raises legal uncertainty as to its applicability to certain business models and hinders the development of new and innovative services. As proposed in the Review Report, clarification of the definitions of 'electronic money' and 'electronic money institution' is necessary to address concerns as to

which business models fall under the Directive and which services are regulated by Directive 2007/64/EC. A technically neutral and simpler definition of 'electronic money' is proposed.

Revision of the prudential requirements: currently, the prudential regime of electronic money institutions is closely linked to the prudential regime of credit institutions under Directive 2006/48/EC. The Commission considers that the current prudential requirements are excessive with regard to the risk of the activity. Given the close interrelationship between electronic money and electronic payments, it is important to ensure seamless consistency between the respective regimes for payment institutions and electronic money institutions. The proposal therefore includes the following adaptations:

- application of the **qualitative prudential requirements** under Title II of Directive 2007/64/EC to electronic money institutions. This includes the authorisation procedure of Directive 2007/64/EC, following which e-money institutions have to submit an application to the competent authorities of the home Member State, including, *inter alia*, the programme of operations, a business plan and evidence of initial capital and governance arrangements. The competent authorities shall inform the institution within three months after receipt of the application whether the authorisation is granted or refused;
- lowering of the **initial capital requirement** from EUR 1 million to EUR 125 000;
- replacing current **ongoing capital requirements** with new methods of calculation based on the nature and the risk profile of electronic money institutions.

Activities and safeguarding requirements: under the current Directive, electronic money institutions are prohibited from doing any business other than the issuance of electronic money and closely related services. According to the proposal, electronic money institutions' activities should not necessarily be restricted to issuing electronic money and therefore safeguarding requirements such as those in Directive 2007/64/EC should apply in cases of hybrid electronic money institutions.

Redeemability: clarification is needed on the application of redeemability requirements (the possibility for a consumer to get back his electronic money at all times by credit transfer or in cash), with special reference to their application to mobile telecom. Consumers should have the right to redeem funds at all times, free of charge if redemption takes place in total. Where redemption is partial, before termination of the contract, the issuer may charge the holder a fee which should be commensurate with the cost of the operation.

Waiver: the Review Report outlined that a balance should be struck between facilitating market access, ensuring adequate safeguards and avoiding competitive distortions. There is also a need to provide incentives to institutions that operate under a waiver but envisage becoming fully licensed institutions. It is suggested that the electronic money waiver regime be aligned with the regime in Article 26 of Directive 2007/64/EC. Such a change must be seen in the context of the lighter entry requirements for electronic money institutions.

Money laundering rules: the current Directive contains no specific provisions covering anti-money laundering. However, Directive 2005/60/EC introduced a simplified customer due diligence regime which applies to electronic money, and a similar regime has been inserted in the Regulation on information on the payer accompanying transfers of funds. It is proposed that these low amounts be aligned with Directive 2007/64/EC and, therefore, that the amounts of the thresholds Directive 2005/60/EC be increased. This measure would contribute to avoiding double identification in account-based situations.

Amendments to Directive 2006/48/EC: E-money institutions shall not accept deposits. The deposit-taking shall remain the monopoly of credit institutions. However, it is appropriate to consider e-money institutions as "financial institutions" for the purpose of the Capital Requirements Directive 2006/48/EC. Changes are made to the Capital Requirements Directive in order to reflect this and ensure that credit institutions may continue to issue e-money.

