

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

2008/0190(COD) - 24/04/2009 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 364 votes to 30, with 1 abstention, a legislative resolution modifying, under the first reading of the codecision procedure, the proposal for a directive of the European Parliament and of the Council on the taking up, pursuit and prudential supervision of the business of electronic money institutions, amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC.

The amendments are the result of a compromise negotiated with the Council.

The main amendments are as follows:

Scope: the compromise clarifies that this Directive lays down the rules for the pursuit of the activity of issuing electronic money in accordance with which Member States shall distinguish the following five categories of electronic money issuers:

- credit institutions, as defined in Directive 2006/48/EC relating to the taking up and pursuit of the business of credit institutions, including, in accordance with national law, branches within the meaning of that Directive located in the Community in accordance with Article 38 of the same Directive of credit institutions having their head offices outside the Community;
- electronic money institutions, including branches located in the Community of the electronic money institutions having their head offices outside the Community;
- post office giro institutions which are entitled under national law to issue electronic money;
- the European Central Bank and national central banks when not acting in their capacity as monetary authority or other public authorities;
- Member States or their regional or local authorities when acting in their capacity as public authorities.

The Directive also lays down the rules for the taking up, the pursuit and the prudential supervision of the business of electronic money institutions.

Member States may waive the application of all or part of the provisions of Title II of this Directive to certain institutions referred to in Article 2 of Directive 2006/48/EC.

This Directive does not apply to: (i) monetary value stored on instruments exempted as specified in Article 3(k) of Directive 2007/64/EC on payment services in the internal market; (ii) monetary value that is used to make payment transactions exempted as specified in Article 3(l) of Directive 2007/64/EC.

General prudential rules: electronic money institutions shall inform the competent authorities in advance of any material change in measures taken for safeguarding of funds that have been received in exchange for electronic money issued.

Any natural or legal person who has taken a decision to acquire or dispose, directly or indirectly, a qualifying holding within the meaning of Directive 2006/48/EC in an electronic money institution, or to further increase or reduce, directly or indirectly, such qualifying holding as a result of which the

proportion of the voting rights in the capital held would reach, exceed or fall below 20%, 30% or 50%, or so that the electronic money institution would become or ceased to be its subsidiary, shall inform the competent authorities of their intention in advance of such acquisition, disposal, increase or reduction.

Member States shall allow electronic money institutions to distribute and redeem electronic money through natural or legal persons which act on their behalf.

Initial capital: the amended text stipulates that Member States shall require electronic money institutions to hold, at the time of authorisation, initial capital of **not less than EUR 350 000**.

Own funds: the own funds of an electronic money institution for the activity of issuing electronic money shall amount to **at least 2% of the average outstanding electronic money**.

Moreover, in order to encourage growth of electronic money services, the Parliament and the Council agreed to delete the rule preventing electronic money institutions from providing any service other than electronic money.

Safeguarding requirements: under the compromise, Member States shall require an electronic money institution to safeguard funds that have been received in exchange for electronic money that has been issued.

Funds received in the form of payment by a payment instrument do not need to be safeguarded until they are credited to electronic money institutions payment account or otherwise made available to electronic money institutions in accordance with the execution time requirements laid down in the Directive 2007/64 /EC, where applicable. In any event, such funds shall be safeguarded by no later than five business days after the issuance of electronic money.

Relations with third countries: Member States shall not apply to branches of electronic money institutions having their head office outside the Community, when commencing or carrying on their business, provisions which result in more favourable treatment than that accorded to electronic money institutions having their head office in the Community.

The competent authorities shall notify the Commission of all authorisations for branches granted to electronic money institutions having their head office outside the Community. The Community may, through agreements concluded with one or more third countries, agree to apply provisions that ensure that branches of an electronic money institution having its head office outside the Community are treated identically throughout the territory of the Community.

Optional exemptions: Member States may waive or allow their competent authorities to waive the application of all or part of the procedures and conditions set out in the Directive, and allow legal persons to be entered in the register for electronic money institutions if the total business activities generate an average outstanding electronic money that does not exceed a limit set by the Member State but that is, in any event, no higher than EUR 5 million.

Prohibition from issuing electronic money: Member States shall prohibit natural or legal persons who are not electronic money issuers from issuing electronic money.

Issuance and redeemability: Member States shall ensure that: (i) electronic money issuers issue electronic money at par value on the receipt of funds; (ii) upon request by the electronic money holder, issuers of electronic money redeem, at any moment and at par value, the monetary value of the electronic money held.

The contract between the electronic money issuer and the electronic money holder shall clearly and prominently state the conditions of redemption, including any fees relating thereto, and the electronic money holder shall be informed of these conditions before he is bound by any contract or offer.

Redemption may be subject to a fee only if stated in the contract and only in any of the following cases: (a) where redemption is requested before the termination of the contract; (b) where the contract provides for a termination date and electronic money holder terminated the contract before this date; (c) where redemption is requested more than one year after the date of termination of the contract.

Any such fee shall be proportionate and commensurate with the actual costs incurred by the electronic money issuer.

Where redemption is requested before the date of termination of the contract, the electronic money holder may request either a part or the total of the monetary value of electronic money.

Where redemption is requested on or up to one year after the date of the termination of the contract, upon request by the electronic money holder: (a) the total monetary value of the electronic money held shall be redeemed; (b) if an electronic money institution carries out one or more of the activities listed in Article 6 (1)(e) and it is unknown in advance what portion of funds is to be used as electronic money, electronic money institution shall redeem all funds claimed by the electronic money holder.

Prohibition of interest: Member States shall prohibit the granting of interest or any other benefit related to the length of time during which the electronic money holder holds the electronic money.

Member States shall ensure that electronic money issuers do not derogate, to the detriment of electronic money holders, from the provisions of national law implementing or corresponding to provisions of this Directive except where explicitly provided for therein.

No later than 1 November 2012, the Commission shall present a report on the implementation and impact of this Directive.