

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

2008/0190(COD) - 16/09/2009 - Final act

PURPOSE: to promote the emergence of a true single market for electronic money services in the European Union that is innovative and secure while ensuring there is competition between players on the market and that it is accessible to new entrants.

LEGISLATIVE ACT: Directive 2009/110/EC 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.

CONTENT: the Council has adopted this directive concerning electronic money having reached agreement with the European Parliament at first reading. Its adoption follows on from an evaluation by the Commission of the application of Directive 2000/46/EC on the taking up, pursuit of and prudential supervision of the business of electronic money institutions which shows that electronic money is still far from delivering the full potential benefits that were expected eight years ago at the time of the adoption of the Directive. The number of new entrants to the market is relatively low and, in the majority of Member States, electronic money is still not considered a credible substitute for cash.

The new directive updates the provisions of Directive 2000/46/EC by giving particular emphasis to the level of initial capital and prudential supervision of electronic money establishments. It also seeks to ensure consistency with [Directive 2007/64/EC](#) concerning payment services.

The main provisions of the Directive are as follows:

Subject matter and scope: the Directive lays down rules for the pursuit of the activity of issuing electronic money to which end the Member States shall recognise the following five categories of electronic money issuer:

1. credit institutions as defined in [Directive 2006/48/EC](#) including, in accordance with national law, a branch thereof, where such a branch is located within the Community and its head office is located outside the Community, in accordance with Article 38 of that Directive;
2. electronic money institutions including a branch thereof, where such a branch is located within the Community and its head office is located outside the Community;
3. post office giro institutions which are entitled under national law to issue electronic money;
4. the European Central Bank and national central banks when not acting in their capacity as monetary authority or other public authorities;
5. Member States or their regional or local authorities when acting in their capacity as public authorities.

Prudential supervision of the business of electronic money institutions: the new Directive seeks to re-examine the system of prudential supervision of electronic money institutions and to better adapt it to the risks of their activity. It also makes it more consistent with the system of prudential supervision applicable to payment establishments governed by Directive 2007/64/EC. In this respect, the relevant provisions of Directive 2007/64/EC will apply *mutatis mutandis* to electronic money institutions, without prejudice to the provisions of this new Directive.

Electronic money institutions will be required to inform the competent authorities in advance of any significant change affecting the measures taken to protect the funds which have been received in exchange for electronic money issued.

It is recognised that electronic money institutions distribute electronic money, including by selling or reselling electronic money products to the public, providing a means of distributing electronic money to customers, or of redeeming electronic money on the request of customers or of topping up customers' electronic money products, through natural or legal persons on their behalf, according to the requirements of their respective business models.

While electronic money institutions should not be permitted to issue electronic money through agents, they should nonetheless be permitted to provide the payment services listed in the Annex to Directive 2007/64/EC through agents, where the conditions of that Directive are met.

Initial capital: 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 electronic money institution's own funds shall not fall below 2% of the average of electronic money in circulation.

Safeguarding requirements: Member States shall require an electronic money institution to safeguard funds that have been received in exchange for electronic money that has been issued. 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 a branch of an electronic money institution having its head office outside the Community, when taking up or pursuing its business, provisions which result in more favourable treatment than that accorded to an electronic money institution having its head office within the Community.

The competent authorities shall notify the Commission of all authorisations for branches of 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 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 this 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, in any event, amounts to no more than EUR 5 000 000.

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: (i) that electronic money issuers issue electronic money at par value on the receipt of funds and that (ii) electronic money issuers 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 those conditions before being 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 the electronic money holder terminates the contract before that date; or (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.

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

Review: by 1 November 2012, the Commission shall a report on the implementation and impact of this Directive, in particular on the application of prudential requirements for electronic money institutions, accompanied, where appropriate, by a proposal for its revision.

Transitional provisions: Member States shall allow electronic money institutions that have taken up, before 30 April 2011, activities in accordance with national law transposing Directive 2000/46/EC in the Member State in which their head office is located, to continue those activities in that Member State or in another Member State in accordance with the mutual recognition arrangements provided for in Directive 2000/46/EC without being required to seek authorisation in accordance with this Directive.

It should be noted that the Council also adopted:

- a Regulation establishing a legal framework for [credit rating agencies](#) and a directive updating [banks' capital requirements](#) which constitute an important part of the work programme which it undertook last autumn to deal with the financial crisis;
- a Regulation on [cross-border payments](#), as well as a [decision](#) to establish a Community programme to support specific activities in the field of financial services, financial reporting and auditing.

ENTRY INTO FORCE: 30/10/2009.

TRANSPOSITON: 30/04/2011.

APPLICATION: from 30/04/2011.