Basic information

2008/0190(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure completed
Electronic money: taking up, pursuit and prudential supervision of the business of electronic money institutions Repealing Directive 2000/46/EC 1998/0252(COD) Amending Directive 2005/60/EC 2004/0137(COD) Amending Directive 2006/48/EC 2004/0155(COD) Amended by 2013/0264(COD) **Subject** 2.50.04 Banks and credit 2.50.04.02 Electronic money and payments, cross-border credit transfers 2.50.10 Financial supervision	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
ECON Economic and Monetary Affairs	PURVIS John (PPE-DE)	24/09/2008

Committee for opinion	Rapporteur for opinion	Appointed
IMCO Internal Market and Consumer Protection	The committee decided not to give an opinion.	
JURI Legal Affairs	The committee decided not to give an opinion.	03/11/2008
LIBE Civil Liberties, Justice and Home Affairs	The committee decided not to give an opinion.	

Council of the European Union

Council configuration	Meetings	Date
General Affairs	2957	2009-07-27
Economic and Financial Affairs ECOFIN	2940	2009-05-05

European Commission

Commission DG	Commissioner
Financial Stability, Financial Services and Capital Markets Union	MCCREEVY Charlie

Key events

Date	Event	Reference	Summary
09/10/2008	Legislative proposal published	COM(2008)0627	Summary
21/10/2008	Committee referral announced in Parliament, 1st reading		
11/02/2009	Vote in committee, 1st reading		Summary
16/02/2009	Committee report tabled for plenary, 1st reading	A6-0056/2009	
24/04/2009	Decision by Parliament, 1st reading	T6-0322/2009	Summary
24/04/2009	Results of vote in Parliament		
24/04/2009	Debate in Parliament		
27/07/2009	Act adopted by Council after Parliament's 1st reading		
16/09/2009	Final act signed		
16/09/2009	End of procedure in Parliament		
10/10/2009	Final act published in Official Journal		

Technical information

Procedure reference	2008/0190(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Amendments and repeals	Repealing Directive 2000/46/EC 1998/0252(COD) Amending Directive 2005/60/EC 2004/0137(COD) Amending Directive 2006/48/EC 2004/0155(COD) Amended by 2013/0264(COD)
Legal basis	EC Treaty (after Amsterdam) EC 095 EC Treaty (after Amsterdam) EC 047-p2-a1
Stage reached in procedure	Procedure completed
Committee dossier	ECON/6/68358

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE415.201	17/11/2008	
Amendments tabled in committee		PE418.029	17/12/2008	
Committee report tabled for plenary, 1st reading/single reading		A6-0056/2009	16/02/2009	
Text adopted by Parliament, 1st reading/single reading		T6-0322/2009	24/04/2009	Summary

Council of the EU

Document type	Reference	Date	Summary
Draft final act	03666/2009/LEX	16/09/2009	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2008)0627	09/10/2008	Summary
Document attached to the procedure	SEC(2008)2572	09/10/2008	
Document attached to the procedure	SEC(2008)2573	09/10/2008	
Commission response to text adopted in plenary	SP(2009)3507	25/06/2009	
Follow-up document	COM(2018)0041	25/01/2018	Summary

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
ECB	European Central Bank: opinion, guideline, report	CON/2008/0084 OJ C 030 06.02.2009, p. 0001	05/12/2008	Summary
EESC	Economic and Social Committee: opinion, report	CES0333/2009	25/02/2009	

Additional information

Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	

Final act

Directive 2009/0110
OJ L 267 10.10.2009, p. 0007 Summary

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

2008/0190(COD) - 25/01/2018 - Follow-up document

The Commission presented a report on the implementation and impact of Directive 2009/110/EC (EMD2), in particular on the application of prudential requirements for electronic money institutions.

The report covers 2009 to 2014 and is based on two dedicated external studies which consisted of a legal conformity assessment of the transposition of EMD2 in the 27 Member States and an **assessment of the economic impact of EMD 2** on the electronic money market.

The Commission has also taken into account the results of the review process of the Payment Services Directive (PSD) and the legislative proposal to amend the fourth anti-money laundering Directive (Directive (EU) 2015/849) which will also have an impact on the electronic money market in the Union.

Transposition: Member States were required to transpose the Directive into their national legislation before 30 April 2011. This conformity assessment showed that overall, the implementing laws of the Member States were **in conformity with the Directive**. Today, all EU Member States have implemented the Directive.

Application and impact of EMD2: the economic study on the impact of EMD2 on the European electronic market concluded that **the overall effect of the EMD2 on the market is positive**.

The report concluded that, to a large extent, the objective to remove barriers to market entry and to facilitate the take up and pursuit of the business of electronic money issuance, by creating a level playing field for all players in the market has been fulfilled.

There is evidence of an increased interest in electronic money licenses and cross-border activity through the use of passporting has increased since 2011. The offer of electronic **prepaid cards** in particular is growing, including through their distribution by institutional actors such as national Post Offices.

The **optional waiver regime** for smaller e-money institutions proposed in Article 9 has been used by a number of Member States. The option is overall considered as positive by the emoney institutions that have benefited from it.

The economic study has **not identified serious issues** in relation to the provisions on issuance and redeem ability of electronic money. Consumer associations have not reported specific concerns or problems related to electronic money from the point of view of consumers.

Impact of the recent revision of the PSD: the revised Payment Services Directive (PSD2) was adopted at the end of 2015 and entered into force on 13 January 2016.

Among the major changes brought forward by PSD2 (regulation of the so-called third party payment service providers, increased security requirements for electronic payments, partial coverage of international transactions in or out of the EU), the one with the most impact on electronic money institutions relate to the strengthening of the prudential rules for payment institutions which foresee a stronger supervisory role and competences for the host Member State where a payment institution is passporting its services to another Member State

Also the clarifications in PSD2 on the exemption on limited networks, combined with the obligation for all limited networks to notify their activities once the size of their business reaches a certain threshold, will provide better guidance to competent authorities to assess the applicability of the legal framework of PSD2 or EMD2 to these networks

Relationship between EMD2 and the Fourth Anti-Money Laundering Directive: the fourth anti-Money Laundering Directive (AMLD4) which was adopted in 2015, will also apply to E-money institutions. The study found that industry stakeholders see most e-money transactions as low risk partly due to the small size of the e-money market. However, a recommendation for the longer term would be to ensure that **specific provisions are harmonised to the maximum**, in particular the thresholds for due diligence under the anti-money laundering provisions and the possibility to register as small e-money institutions.

Review of the EMD2 and emerging questions: although the overall evaluation of EMR 2 is positive, **concrete improvements** could be made in the short or medium term to the current regulatory framework by providing guidance in three areas, namely:

- **the classification of products as e-money**: it is difficult to make a distinction between a payment account, an e-money account and a bank account. This is particularly the case for prepaid card schemes, which have in some instances been considered to be subject to PSD, and in other instances as e-money institutions;
- **the concept of distributor and agent in the context of e-money**: there are divergences of approach with regard to the legal concept of agent and the non-defined concept of distributor, which has a different status in EMD2;
- **the application of the provision on limited networks**: clarification is requested concerning the limited networks approach, which are excluded from the scope of the EMR 2. The divergent interpretation between national authorities on that front, often based on a case-by-case application, is voiced as an issue of concern.

The challenges encountered in the **cross-border supervision** of E-money institutions seem to be addressed adequately in the context of the PSD2, which, through the relevant cross-references, will also apply to e-money institutions.

Further consideration could be given, in the longer term, to promoting maximum harmonisation for specific provisions, in particular with regard to the currently **optional waiver regime** foreseen for small electronic money institutions under Article 9 of the EMD.

Likewise, a further analysis could be conducted on the development of an intermediate category of a '**large limited network**' that would be subject to some but not all EMD2 requirements

A future revision of the Directive and its merger with the revised Payment Services Directive would require **further analysis** and only after Member States and stakeholders will have been able to gather experience with the adapted framework following the adoption of PSD2, which will also have an impact on e-money institutions.

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.

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

2008/0190(COD) - 05/12/2008 - European Central Bank: opinion, guideline, report

OPINION OF THE EUROPEAN CENTRAL BANK on a proposal for a Directive on the taking up, pursuit and prudential supervision of the business of electronic money institutions.

On 30 October 2008, the European Central Bank (ECB) received a request from the Council of the European Union for an opinion on a 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.

General observations: the objective of the proposed directive is to open the market for the issuance of electronic money by electronic money institutions (ELMIs), which are regulated under a lighter prudential regime than the one applicable to credit institutions. The ECB supports the review of Directive 2000/46/EC on the taking up, pursuit of and prudential supervision of the business of electronic money institutions, as this recognises that the Directive is not entirely in line with the current market expectations as regards the issuance of e-money. At the same time, the ECB has serious concerns regarding the proposal to change the legal definition of ELMIs from 'credit institution' to 'financial institution', as defined in Directive 2006/48 /EC relating to the taking up and pursuit of the business of credit institutions (recast). This may have wide-ranging consequences for the conduct of monetary policy. In the same vein, the proposed directive poses concerns from a supervisory perspective, as it lightens the supervisory regime for ELMIs while simultaneously broadening the scope of their activities.

Specific observations: the European Central bank makes the following observations:

(1) Legal nature of ELMIs: the ECB has serious concerns regarding the proposal to change the legal definition of ELMIs from 'credit institution' to 'financial institution', as defined in Directive 2006/48/EC relating to the taking up and pursuit of the business of credit institutions (recast). The ECB notes that, in view of the type of activities which ELMIs will be allowed to undertake under the proposed directive, the legal nature of ELMIs would continue to be equivalent to that of credit institutions as defined in Directive 2006/48/EC - "**an undertaking whose business it is to receive deposits or other repayable funds from the public and to grant credits for its own account**". This definition relates to the nature of the business transacted, not to the nature of the entity that transacts it. In this respect, it seems clear that irrespective of ELMIs ceasing to be credit institutions under the proposed

directive and irrespective of its prohibition on ELMIs taking deposits or other repayable funds, they will de facto continue to take such deposits. More specifically, funds received may be kept for an indefinite period until the holder requests them to be redeemed and issuers of e-money may pay interest on the funds received. In addition, ELMIs will continue to fulfil the other criteria of the business of credit institutions. Therefore, from a legal point of view, it would seem that an ELMI, as defined in the proposed directive, would have features resembling those of credit institutions even more than today since deposit-taking activity remains unchanged and restricted granting of credit will be allowed in the future.

(2) Monetary policy: considerations from a monetary policy perspective strongly support that ELMIs should continue to be classified as credit institutions, contrary to the suggestion made in the proposed directive. In this respect, the ECB is of the view that the concerns relating to monetary policy clearly outweigh the rationale underlying the proposed directive to align the regulatory framework applicable to ELMIs with that applicable to payment institutions as defined in Directive 2007/64/EC, which are not covered by the definition of credit institution.

At the same time, the ECB welcomes the fact that the proposed directive to a large extent maintains the redeemability requirements contained in Directive 2000/46/EC. Redeemability is a core issue from a central bank point of view. ELMIs must, therefore, be legally obliged to redeem e-money for central bank money at par value at the request of the holder of the e-money.

Moreover, the ECB notes that the proposed directive implies that the holder of e-money can request to be redeemed, at any moment, at 'the monetary value of the electronic money held'. The provision in question does not mirror the content of Directive 2000/46/EC according to which the holder can choose between being redeemed at par value in both coins and banknotes or by transfer to an account. For reasons of legal clarity and to ensure consistent transposition of the provision into the national legislation of the Member States, the ECB suggests amending the proposed directive accordingly to ensure that an e-money holder is free to choose their preferred method of redemption.

(3) Supervisory framework: the ECB highlights the following concerns:

- apart from the right of ELMIs and credit institutions to issue e-money, the distinction between ELMIs and payment institutions is unclear, which makes the assessment of risks and related safeguards a challenging task from a supervisory perspective;
- the proposed change in the definition of ELMIs would not reduce risks associated with their activities. By contrast, the impact assessment accompanying the proposed directive does not address the risks that may be associated with the broader range of activities that ELMIs are entitled to undertake;
- clear evidence of the alleged disproportion between safeguarding requirements and actual risks associated with ELMI activities is still missing. There is a clear need to further consider the potential risks associated with the new 'legal nature' of ELMIs to ensure their proper regulatory and supervisory treatment;
- the fairly restrictive nature of Directive 2000/46/EC in terms of the options that it leaves e-money issuers to make a profit through the issuance of e-money has been relaxed in the proposed directive. This proposed amendment may prove positive for the industry's future growth. However, the significant liquidity and default risks which an ELMI may face, if it is allowed to invest in any kind of assets, must be taken into account;
- the proposed directive raises the thresholds for identification and customer due diligence requirements in accordance with Directive 2005/60 /EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing. However, these thresholds do not correspond to the thresholds in Directive 2007/64/EC. A substantial increase of the current thresholds would facilitate anonymity in payment transactions and increase money laundering and financing of terrorism risks associated with the issuance of e-money, in particular through the acquisition of multiple prepaid cards.

(4) Legal and technical comments: the ECB highlights the need for clarification of Recital 5 of the proposed Directive in relation to "limited networks" and mobile phone operators' exemption from the scope of application. Moreover, the ECB recommends an amendment to the definition of e-money, specifying that any funds received can only be used for the sole purpose of electronic transfer of funds from the e-money holder to its payees.

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

2008/0190(COD) - 05/05/2009

The Council took note of **progress** on the following financial services dossiers:

- Electronic money (draft directive)
- Cross-border payments in the EU (draft regulation);
- Credit rating agencies (draft regulation);
- Solvency requirements for insurance companies (draft "Solvency II" directive);

On all four dossiers, the presidency has reached agreement with the European Parliament in first reading, enabling adoption by the Council at a forthcoming meeting, once the texts have been finalised.

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.

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.