

DIRECTIVES

DIRECTIVE 2009/110/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 16 September 2009

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular the first and third sentences of Article 47(2) and Article 95 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Having regard to the opinion of the European Central Bank ⁽²⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽³⁾,

Whereas:

(1) Directive 2000/46/EC of the European Parliament and of the Council of 18 September 2000 on the taking up, pursuit of and prudential supervision of the business of electronic money institutions ⁽⁴⁾ was adopted in response to the emergence of new pre-paid electronic payment products and was intended to create a clear legal framework designed to strengthen the internal market while ensuring an adequate level of prudential supervision.

(2) In its review of Directive 2000/46/EC the Commission highlighted the need to revise that Directive since some

⁽¹⁾ Opinion of 26 February 2009 (not yet published in the Official Journal).

⁽²⁾ OJ C 30, 6.2.2009, p. 1.

⁽³⁾ Opinion of the European Parliament of 24 April 2009 (not yet published in the Official Journal) and Council Decision of 27 July 2009.

⁽⁴⁾ OJ L 275, 27.10.2000, p. 39.

of its provisions were considered to have hindered the emergence of a true single market for electronic money services and the development of such user-friendly services.

(3) Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market ⁽⁵⁾ 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.

(4) With the objective of removing barriers to market entry and facilitating the taking up and pursuit of the business of electronic money issuance, the rules to which electronic money institutions are subject need to be reviewed so as to ensure a level playing field for all payment services providers.

(5) It is appropriate to limit the application of this Directive to payment service providers that issue electronic money. This Directive should not apply to monetary value stored on specific pre-paid instruments, designed to address precise needs that can be used only in a limited way, because they allow the electronic money holder to purchase goods or services only in the premises of the electronic money issuer or within a limited network of service providers under direct commercial agreement with a professional issuer, or because they can be used only to acquire a limited range of goods or services. An instrument should be considered to be used within such a limited network if it can be used only either for the purchase of goods and services in a specific store or chain of stores, or for a limited range of goods or services, regardless of the geographical location of the point of sale. Such instruments could include store cards, petrol cards, membership cards, public transport cards, meal vouchers or vouchers for services (such as vouchers for childcare, or vouchers for social or services schemes which subsidise the employment of staff to carry out household tasks such as cleaning, ironing or gardening), which are sometimes subject to a specific tax or labour legal framework designed to promote the use of such instruments to meet the objectives laid down in

⁽⁵⁾ OJ L 319, 5.12.2007, p. 1.

social legislation. Where such a specific-purpose instrument develops into a general-purpose instrument, the exemption from the scope of this Directive should no longer apply. Instruments which can be used for purchases in stores of listed merchants should not be exempted from the scope of this Directive as such instruments are typically designed for a network of service providers which is continuously growing.

- (6) It is also appropriate that this Directive not apply to monetary value that is used to purchase digital goods or services, where, by virtue of the nature of the good or service, the operator adds intrinsic value to it, e.g. in the form of access, search or distribution facilities, provided that the good or service in question can be used only through a digital device, such as a mobile phone or a computer, and provided that the telecommunication, digital or information technology operator does not act only as an intermediary between the payment service user and the supplier of the goods and services. This is a situation where a mobile phone or other digital network subscriber pays the network operator directly and there is neither a direct payment relationship nor a direct debtor-creditor relationship between the network subscriber and any third-party supplier of goods or services delivered as part of the transaction.

- (7) It is appropriate to introduce a clear definition of electronic money in order to make it technically neutral. That definition should cover all situations where the payment service provider issues a pre-paid stored value in exchange for funds, which can be used for payment purposes because it is accepted by third persons as a payment.

- (8) The definition of electronic money should cover electronic money whether it is held on a payment device in the electronic money holder's possession or stored remotely at a server and managed by the electronic money holder through a specific account for electronic money. That definition should be wide enough to avoid hampering technological innovation and to cover not only all the electronic money products available today in the market but also those products which could be developed in the future.

- (9) The prudential supervisory regime for electronic money institutions should be reviewed and aligned more closely with the risks faced by those institutions. That regime should also be made coherent with the prudential supervisory regime applying to payment institutions under Directive 2007/64/EC. In this respect, the relevant provisions of Directive 2007/64/EC should apply *mutatis mutandis* to electronic money institutions

without prejudice to the provisions of this Directive. A reference to 'payment institution' in Directive 2007/64/EC therefore needs to be read as a reference to electronic money institution; a reference to 'payment service' needs to be read as a reference to the activity of payment services and issuing electronic money; a reference to 'payment service user' needs to be read as a reference to payment service user and electronic money holder; a reference to 'this Directive' needs to be read as a reference to both Directive 2007/64/EC and this Directive; a reference to Title II of Directive 2007/64/EC needs to be read as a reference to Title II of Directive 2007/64/EC and Title II of this Directive; a reference to Article 6 of Directive 2007/64/EC needs to be read as a reference to Article 4 of this Directive; a reference to Article 7(1) of Directive 2007/64/EC needs to be read as a reference to Article 5(1) of this Directive; a reference to Article 7(2) of Directive 2007/64/EC needs to be read as a reference to Article 5(6) of this Directive; a reference to Article 8 of Directive 2007/64/EC needs to be read as a reference to Article 5(2) to (5) of this Directive; a reference to Article 9 of Directive 2007/64/EC needs to be read as a reference to Article 7 of this Directive; a reference to Article 16(1) of Directive 2007/64/EC needs to be read as a reference to Article 6(1)(c) to (e) of this Directive; and a reference to Article 26 of Directive 2007/64/EC needs to be read as a reference to Article 9 of this Directive.

- (10) 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 none the less be permitted to provide the payment services listed in the Annex to Directive 2007/64/EC through agents, where the conditions in Article 17 of that Directive are met.

- (11) There is a need for a regime for initial capital combined with one for ongoing capital to ensure an appropriate level of consumer protection and the sound and prudent operation of electronic money institutions. Given the specificity of electronic money, an additional method for calculating ongoing capital should be provided for. Full supervisory discretion to ensure that the same risks are treated in the same way for all payment service providers and that the method of calculation encompasses the specific business situation of a given electronic money institution should be preserved. In addition, provision should be made for electronic money institutions to be required to keep the funds of electronic money holders separate from the funds of the electronic money institution for other business activities. Electronic money institutions should also be subject to effective anti-money laundering and anti-terrorist financing rules.

- (12) The operation of payment systems is an activity which is not reserved to specific categories of institution. It is important to recognise, however, that, as is the case for payment institutions, it is also possible for the operation of payment systems to be carried out by electronic money institutions.
- (13) The issuance of electronic money does not constitute a deposit-taking activity pursuant to Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions⁽¹⁾, in view of its specific character as an electronic surrogate for coins and banknotes, which is to be used for making payments, usually of limited amount and not as means of saving. Electronic money institutions should not be allowed to grant credit from the funds received or held for the purpose of issuing electronic money. Electronic money issuers should not, moreover, be allowed to grant interest or any other benefit unless those benefits are not related to the length of time during which the electronic money holder holds electronic money. The conditions for granting and maintaining authorisation as electronic money institutions should include prudential requirements that are proportionate to the operational and financial risks faced by such bodies in the course of their business related to the issuance of electronic money, independently of any other commercial activities carried out by the electronic money institution.
- (14) It is necessary, however, to preserve a level playing field between electronic money institutions and credit institutions with regard to the issuance of electronic money to ensure fair competition for the same service among a wider range of institutions for the benefit of electronic money holders. This should be achieved by balancing the less cumbersome features of the prudential supervisory regime applying to electronic money institutions against provisions that are more stringent than those applying to credit institutions, notably as regards the safeguarding of the funds of an electronic money holder. Given the crucial importance of safeguarding, it is necessary that the competent authorities be informed in advance of any material change, such as a change in the safeguarding method, a change in the credit institution where safeguarded funds are deposited, or a change in the insurance undertaking or credit institution which insured or guaranteed the safeguarded funds.
- (15) The rules governing branches of electronic money institutions which have their head office outside the Community should be analogous in all Member States. It is important to provide that such rules not be more favourable than those for branches of electronic money institutions which have their head office in another Member State. The Community should be able to conclude agreements with third countries providing for the application of rules which accord branches of electronic money institutions which have their head office outside the Community the same treatment throughout the Community. The branches of electronic money institutions which have their head office outside the Community should benefit from neither the freedom of establishment under Article 43 of the Treaty in Member States other than those in which they are established nor the freedom to provide services under the second paragraph of Article 49 of the Treaty.
- (16) It is appropriate to allow Member States to waive the application of certain provisions of this Directive as regards institutions issuing only a limited amount of electronic money. Institutions benefiting from such a waiver should not have the right under this Directive to exercise the freedom of establishment or the freedom to provide services and they should not indirectly exercise those rights as members of a payment system. It is desirable, however, to register the details of all entities providing electronic money services, including those benefiting from a waiver. For that purpose, Member States should enter such entities in a register of electronic money institutions.
- (17) For prudential reasons, Member States should ensure that only electronic money institutions duly authorised or benefiting from a waiver in accordance with this Directive, credit institutions authorised in accordance with Directive 2006/48/EC, post office giro institutions entitled under national law to issue electronic money, institutions referred to in Article 2 of Directive 2006/48/EC, the European Central Bank, national central banks when not acting in their capacity as monetary authority or other public authorities and Member States or their regional or local authorities when acting in their capacity as public authorities may issue electronic money.
- (18) Electronic money needs to be redeemable to preserve the confidence of the electronic money holder. Redeemability does not imply that the funds received in exchange for electronic money should be regarded as deposits or other repayable funds for the purpose of Directive 2006/48/EC. Redemption should be possible at any time, at par value without any possibility to agree a minimum threshold for redemption. Redemption should, in general, be granted free of charge. However, in cases duly specified in this Directive it should be possible to request a proportionate and cost-based fee without prejudice to national legislation on tax or social matters or any obligations on the electronic money issuer under other relevant Community or national legislation, such as anti-money laundering and anti-terrorist financing rules, any action targeting the freezing of funds or any specific measure linked to the prevention and investigation of crimes.

⁽¹⁾ OJ L 177, 30.6.2006, p. 1.

- (19) Out-of-court complaint and redress procedures for the settlement of disputes should be at the disposal of electronic money holders. Chapter 5 of Title IV of Directive 2007/64/EC should therefore apply *mutatis mutandis* in the context of this Directive, without prejudice to the provisions of this Directive. A reference to 'payment service provider' in Directive 2007/64/EC therefore needs to be read as a reference to electronic money issuer; a reference to 'payment service user' needs to be read as a reference to electronic money holder; and a reference to Titles III and IV of Directive 2007/64/EC needs to be read as a reference to Title III of this Directive.
- (20) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽¹⁾.
- (21) In particular, the Commission should be empowered to adopt implementing provisions in order to take account of inflation or technological and market developments and to ensure a convergent application of the exemptions under this Directive. Since such measures are of general scope and are designed to amend non-essential elements of this Directive they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.
- (22) The efficient functioning of this Directive will need to be reviewed. The Commission should therefore be required to produce a report three years after the deadline for transposition of this Directive. Member States should provide to the Commission information regarding the application of some of the provisions of this Directive.
- (23) In the interests of legal certainty, transitional arrangements should be made to ensure that electronic money institutions which have taken up their activities in accordance with the national laws transposing Directive 2000/46/EC are able to continue those activities within the Member State concerned for a specified period. That period should be longer for electronic money institutions that have benefited from the waiver provided for in Article 8 of Directive 2000/46/EC.
- (24) This Directive introduces a new definition of electronic money, the issuance of which can benefit from the derogations in Articles 34 and 53 of Directive 2007/64/EC. Therefore, the simplified customer due diligence regime for electronic money institutions under Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing ⁽²⁾ should be amended accordingly.
- (25) Pursuant to Directive 2006/48/EC, electronic money institutions are considered to be credit institutions, although they can neither receive deposits from the public nor grant credit from funds received from the public. Given the regime introduced by this Directive, it is appropriate to amend the definition of credit institution in Directive 2006/48/EC in order to ensure that electronic money institutions are not considered to be credit institutions. However, credit institutions should continue to be allowed to issue electronic money and to carry on such activity Community-wide, subject to mutual recognition and to the comprehensive prudential supervisory regime applying to them in accordance with the Community legislation in the field of banking. In the interests of maintaining a level playing field, however, credit institutions should, alternatively, be able to carry out that activity through a subsidiary under the prudential supervisory regime of this Directive, rather than under Directive 2006/48/EC.
- (26) The provisions of this Directive replace all corresponding provisions of Directive 2000/46/EC. Directive 2000/46/EC should therefore be repealed.
- (27) Since the objective of this Directive cannot be sufficiently achieved by the Member States because it requires the harmonisation of many different rules currently existing in the legal systems of the various Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (28) In accordance with point 34 of the Interinstitutional Agreement on better law-making ⁽³⁾, Member States are encouraged to draw up, for themselves and in the interest of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures and to make them public.

HAVE ADOPTED THIS DIRECTIVE:

TITLE I

SCOPE AND DEFINITIONS

Article 1

Subject matter and scope

1. This Directive lays down the rules for the pursuit of the activity of issuing electronic money to which end the Member States shall recognise the following categories of electronic money issuer:

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

⁽²⁾ OJ L 309, 25.11.2005, p. 15.

⁽³⁾ OJ C 321, 31.12.2003, p. 1.

- (a) credit institutions as defined in point 1 of Article 4 of Directive 2006/48/EC including, in accordance with national law, a branch thereof within the meaning of point 3 of Article 4 of that Directive, 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;
- (b) electronic money institutions as defined in point 1 of Article 2 of this Directive including, in accordance with Article 8 of this Directive and national law, a branch thereof, where such a branch is located within the Community and its head office is located outside the Community;
- (c) post office giro institutions which are entitled under national law to issue electronic money;
- (d) the European Central Bank and national central banks when not acting in their capacity as monetary authority or other public authorities;
- (e) Member States or their regional or local authorities when acting in their capacity as public authorities.

2. Title II of this Directive lays down the rules for the taking up, the pursuit and the prudential supervision of the business of electronic money institutions.

3. Member States may waive the application of all or part of the provisions of Title II of this Directive to the institutions referred to in Article 2 of Directive 2006/48/EC, with the exception of those referred to in the first and second indents of that Article.

4. This Directive does not apply to monetary value stored on instruments exempted as specified in Article 3(k) of Directive 2007/64/EC.

5. This Directive does not apply to monetary value that is used to make payment transactions exempted as specified in Article 3(l) of Directive 2007/64/EC.

Article 2

Definitions

For the purposes of this Directive, the following definitions shall apply:

1. 'electronic money institution' means a legal person that has been granted authorisation under Title II to issue electronic money;
2. 'electronic money' means electronically, including magnetically, stored monetary value as represented by a claim on the issuer which is issued on receipt of funds for the purpose of making payment transactions as defined in point 5 of Article 4 of Directive 2007/64/EC, and which is accepted by a natural or legal person other than the electronic money issuer;

3. 'electronic money issuer' means entities referred to in Article 1(1), institutions benefiting from the waiver under Article 1(3) and legal persons benefiting from a waiver under Article 9;

4. 'average outstanding electronic money' means the average total amount of financial liabilities related to electronic money in issue at the end of each calendar day over the preceding six calendar months, calculated on the first calendar day of each calendar month and applied for that calendar month.

TITLE II

REQUIREMENTS FOR THE TAKING UP, PURSUIT AND PRUDENTIAL SUPERVISION OF THE BUSINESS OF ELECTRONIC MONEY INSTITUTIONS

Article 3

General prudential rules

1. Without prejudice to this Directive, Articles 5 and 10 to 15, Article 17(7) and Articles 18 to 25 of Directive 2007/64/EC shall apply to electronic money institutions *mutatis mutandis*.

2. 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.**

3. Any natural or legal person who has taken a decision to acquire or dispose of, directly or indirectly, a qualifying holding within the meaning of point 11 of Article 4 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 capital or of the voting rights held would reach, exceed or fall below 20 %, 30 % or 50 %, or so that the electronic money institution would become or cease to be its subsidiary, shall inform the competent authorities of their intention in advance of such acquisition, disposal, increase or reduction.

The proposed acquirer shall supply to the competent authority information indicating the size of the intended holding and relevant information referred to in Article 19a(4) of Directive 2006/48/EC.

Where the influence exercised by the persons referred to in the second subparagraph is likely to operate to the detriment of the prudent and sound management of the institution, the competent authorities shall express their opposition or take other appropriate measures to bring that situation to an end. Such measures may include injunctions, sanctions against directors or managers, or the suspension of the exercise of the voting rights attached to the shares held by the shareholders or members in question.

Similar measures shall apply to natural or legal persons who fail to comply with the obligation to provide prior information, as laid down in this paragraph.

If a holding is acquired despite the opposition of the competent authorities, those authorities shall, regardless of any other sanction to be adopted, provide for the exercise of the voting rights of the acquirer to be suspended, the nullity of votes cast or the possibility of annulling those votes.

The Member States may waive or allow their competent authorities to waive the application of all or part of the obligations pursuant to this paragraph in respect of electronic money institutions that carry out one or more of the activities listed in Article 6(1)(e).

4. Member States shall allow electronic money institutions to distribute and redeem electronic money through natural or legal persons which act on their behalf. Where the electronic money institution wishes to distribute electronic money in another Member State by engaging such a natural or legal person, it shall follow the procedure set out in Article 25 of Directive 2007/64/EC.

5. Notwithstanding paragraph 4, electronic money institutions shall not issue electronic money through agents. Electronic money institutions shall be allowed to provide payment services referred to in Article 6(1)(a) through agents only if the conditions in Article 17 of Directive 2007/64/EC are met.

Article 4

Initial capital

Member States shall require electronic money institutions to hold, at the time of authorisation, initial capital, comprised of the items set out in Article 57(a) and (b) of Directive 2006/48/EC, of **not less than EUR 350 000**.

Article 5

Own funds

1. The electronic money institution's own funds, as set out in Articles 57 to 61, 63, 64 and 66 of Directive 2006/48/EC shall not fall below the amount required under paragraphs 2 to 5 of this Article or under Article 4 of this Directive, whichever the higher.

2. In regard to the activities referred to in Article 6(1)(a) that are not linked to the issuance of electronic money, the own funds requirements of an electronic money institution shall be calculated in accordance with one of the three methods (A, B or C) set out in Article 8(1) and (2) of Directive 2007/64/EC. The appropriate method shall be determined by the competent authorities in accordance with national legislation.

In regard to the activity of issuing electronic money, the own funds requirements of an electronic money institution shall be

calculated in accordance with Method D as set out in paragraph 3.

Electronic money institutions shall at all times hold own funds that are at least equal to the sum of the requirements referred to in the first and second subparagraphs.

3. **Method D: 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.**

4. Where an electronic money institution carries out any of the activities referred to in Article 6(1)(a) that are not linked to the issuance of electronic money or any of the activities referred to in Article 6(1)(b) to (e) and the amount of outstanding electronic money is unknown in advance, the competent authorities shall allow that electronic money institution to calculate its own funds requirements on the basis of a representative portion assumed to be used for the issuance of electronic money, provided such a representative portion can be reasonably estimated on the basis of historical data and to the satisfaction of the competent authorities. Where an electronic money institution has not completed a sufficient period of business, its own funds requirements shall be calculated on the basis of projected outstanding electronic money evidenced by its business plan subject to any adjustment to that plan having been required by the competent authorities.

5. On the basis of an evaluation of the risk-management processes, of the risk loss databases and internal control mechanisms of the electronic money institution, the competent authorities may require the electronic money institution to hold an amount of own funds which is up to 20 % higher than the amount which would result from the application of the relevant method in accordance with paragraph 2, or permit the electronic money institution to hold an amount of own funds which is up to 20 % lower than the amount which would result from the application of the relevant method in accordance with paragraph 2.

6. Member States shall take the necessary measures to prevent the multiple use of elements eligible for own funds:

(a) where the electronic money institution belongs to the same group as another electronic money institution, a credit institution, a payment institution, an investment firm, an asset management company or an insurance or reinsurance undertaking;

(b) where an electronic money institution carries out activities other than the issuance of electronic money.

7. Where the conditions laid down in Article 69 of Directive 2006/48/EC are met, Member States or their competent authorities may choose not to apply paragraphs 2 and 3 of this Article to electronic money institutions which are included in the consolidated supervision of the parent credit institutions pursuant to Directive 2006/48/EC.

Article 6

Activities

1. In addition to issuing electronic money, electronic money institutions shall be entitled to engage in any of the following activities:

- (a) the provision of payment services listed in the Annex to Directive 2007/64/EC;
- (b) the granting of credit related to payment services referred to in points 4, 5 or 7 of the Annex to Directive 2007/64/EC, where the conditions laid down in Article 16(3) and (5) of that Directive are met;
- (c) the provision of operational services and closely related ancillary services in respect of the issuing of electronic money or to the provision of payment services referred to in point (a);
- (d) the operation of payment systems as defined in point 6 of Article 4 of Directive 2007/64/EC and without prejudice to Article 28 of that Directive;
- (e) business activities other than issuance of electronic money, having regard to the applicable Community and national law.

Credit referred to in point (b) of the first subparagraph shall not be granted from the funds received in exchange of electronic money and held in accordance with Article 7(1).

2. Electronic money institutions shall not take deposits or other repayable funds from the public within the meaning of Article 5 of Directive 2006/48/EC.

3. Any funds received by electronic money institutions from the electronic money holder shall be exchanged for electronic money without delay. Such funds shall not constitute either a deposit or other repayable funds received from the public within the meaning of Article 5 of Directive 2006/48/EC.

4. Article 16(2) and (4) of Directive 2007/64/EC shall apply to funds received for the activities referred to in paragraph 1(a) of this Article that are not linked to the activity of issuing electronic money.

Article 7

Safeguarding requirements

1. 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 accordance with Article 9(1) and (2) of Directive 2007/64/EC. Funds received in the form of payment by payment instrument need not be safeguarded until they are credited to the electronic money institution's payment account or are otherwise made available to the electronic money institution 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, as defined in point 27 of Article 4 of that Directive, after the issuance of electronic money.

2. For the purposes of paragraph 1, secure, low-risk assets are asset items falling into one of the categories set out in Table 1 of point 14 of Annex I to Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions⁽¹⁾ for which the specific risk capital charge is no higher than 1,6 %, but excluding other qualifying items as defined in point 15 of that Annex.

For the purposes of paragraph 1, secure, low-risk assets are also units in an undertaking for collective investment in transferable securities (UCITS) which invests solely in assets as specified in the first subparagraph.

In exceptional circumstances and with adequate justification, the competent authorities may, based on an evaluation of security, maturity, value or other risk element of the assets as specified in the first and second subparagraphs, determine which of those assets do not constitute secure, low-risk assets for the purposes of paragraph 1.

3. Article 9 of Directive 2007/64/EC shall apply to electronic money institutions for the activities referred to in Article 6(1)(a) of this Directive that are not linked to the activity of issuing electronic money.

4. For the purposes of paragraphs 1 and 3, Member States or their competent authorities may determine, in accordance with national legislation, which method shall be used by the electronic money institutions to safeguard funds.

Article 8

Relations with third countries

1. 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.

2. The competent authorities shall notify the Commission of all authorisations for branches of electronic money institutions having their head office outside the Community.

3. Without prejudice to paragraph 1, 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.

Article 9

Optional exemptions

1. 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 Articles 3, 4, 5 and 7 of this Directive, with the exception of Articles 20, 22, 23 and 24 of Directive 2007/64/EC, and allow legal persons to be entered in the register for electronic money institutions if both of the following requirements are complied with:

⁽¹⁾ OJ L 177, 30.6.2006, p. 201.

- (a) 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; and
- (b) none of the natural persons responsible for the management or operation of the business has been convicted of offences relating to money laundering or terrorist financing or other financial crimes.

Where an electronic money institution carries out any of the activities referred to in Article 6(1)(a) that are not linked to the issuance of electronic money or any of the activities referred to in Article 6(1)(b) to (e) and the amount of outstanding electronic money is unknown in advance, the competent authorities shall allow that electronic money institution to apply point (a) of the first subparagraph on the basis of a representative portion assumed to be used for the issuance of electronic money, provided that such a representative portion can be reasonably estimated on the basis of historical data and to the satisfaction of the competent authorities. Where an electronic money institution has not completed a sufficiently long period of business, that requirement shall be assessed on the basis of projected outstanding electronic money evidenced by its business plan subject to any adjustment to that plan having been required by the competent authorities.

Member States may also provide for the granting of the optional exemptions under this Article to be subject to an additional requirement of a maximum storage amount on the payment instrument or payment account of the consumer where the electronic money is stored.

A legal person registered in accordance with this paragraph may provide payment services not related to electronic money issued in accordance with this Article only if conditions set out in Article 26 of Directive 2007/64/EC are met.

2. A legal person registered in accordance with paragraph 1 shall be required to have its head office in the Member State in which it actually pursues its business.

3. A legal person registered in accordance with paragraph 1 shall be treated as an electronic money institution. However, Article 10(9) and Article 25 of Directive 2007/64/EC shall not apply to it.

4. Member States may provide for a legal person registered in accordance with paragraph 1 to engage only in some of the activities listed in Article 6(1).

5. A legal person referred to in paragraph 1 shall:

- (a) notify the competent authorities of any change in its situation which is relevant to the conditions specified in paragraph 1; and

- (b) at least annually, on date specified by the competent authorities, report on the average outstanding electronic money.

6. Member States shall take the necessary steps to ensure that where the conditions set out in paragraphs 1, 2 and 4 are no longer met, the legal person concerned shall seek authorisation within 30 calendar days in accordance with Article 3. Any such person that has not sought authorisation within that period shall be prohibited, in accordance with Article 10, from issuing electronic money.

7. Member States shall ensure that their competent authorities are sufficiently empowered to verify continued compliance with the requirements laid down in this Article.

8. This Article shall not apply in respect of the provisions of Directive 2005/60/EC or national anti-money-laundering provisions.

9. Where a Member State avails itself of the waiver provided for in paragraph 1, it shall notify the Commission accordingly by 30 April 2011. The Member State shall notify the Commission forthwith of any subsequent change. In addition, the Member State shall inform the Commission of the number of legal persons concerned and, on an annual basis, of the total amount of outstanding electronic money issued at 31 December of each calendar year, as referred to in paragraph 1.

TITLE III

ISSUANCE AND REDEEMABILITY OF ELECTRONIC MONEY

Article 10

Prohibition from issuing electronic money

Without prejudice to Article 18, Member States shall prohibit natural or legal persons who are not electronic money issuers from issuing electronic money.

Article 11

Issuance and redeemability

1. Member States shall ensure that electronic money issuers issue electronic money at par value on the receipt of funds.

2. Member States shall ensure that, upon request by the electronic money holder, electronic money issuers redeem, at any moment and at par value, the monetary value of the electronic money held.

3. 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.

4. **Redemption may be subject** to a fee only if stated in the contract in accordance with paragraph 3 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.

5. Where redemption is requested before the termination of the contract, the electronic money holder may request redemption of the electronic money in whole or in part.

6. Where redemption is requested by the electronic money holder on or up to one year after the date of the termination of the contract:

- (a) the total monetary value of the electronic money held shall be redeemed; or
- (b) where the electronic money institution carries out one or more of the activities listed in Article 6(1)(e) and it is unknown in advance what proportion of funds is to be used as electronic money, all funds requested by the electronic money holder shall be redeemed.

7. Notwithstanding paragraphs 4, 5 and 6, redemption rights of a person, other than a consumer, who accepts electronic money shall be subject to the contractual agreement between the electronic money issuer and that person.

Article 12

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.

Article 13

Out-of-court complaint and redress procedures for the settlement of disputes

Without prejudice to this Directive, Chapter 5 of Title IV of Directive 2007/64/EC shall apply *mutatis mutandis* to electronic money issuers in respect of their duties arising from this Title.

TITLE IV

FINAL PROVISIONS AND IMPLEMENTING MEASURES

Article 14

Implementing measures

1. The Commission may adopt measures which are necessary to update the provisions of this Directive in order to take account of inflation or technological and market developments. Those measures, designed to amend non-essential elements of

this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 15(2).

2. The Commission shall adopt measures to ensure the convergent application of the exemptions referred to in Article 1(4) and (5). Those measures, designed to amend non-essential elements of this Directive shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 15(2).

Article 15

Committee procedure

1. The Commission shall be assisted by the Payments Committee set up in accordance with Article 85 of Directive 2007/64/EC.

2. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

Article 16

Full harmonisation

1. Without prejudice to Article 1(3), the sixth subparagraph of Article 3(3), Article 5(7), Article 7(4), Article 9 and Article 18(2) and in so far as this Directive provides for harmonisation, Member States shall not maintain or introduce provisions other than those laid down in this Directive.

2. Member States shall ensure that an electronic money issuer does not derogate, to the detriment of an electronic money holder, from the provisions of national law implementing or corresponding to provisions of this Directive except where explicitly provided for therein.

Article 17

Review

By 1 November 2012, the Commission shall present to the European Parliament, the Council, the European Economic and Social Committee and the European Central Bank 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.

Article 18

Transitional provisions

1. 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 Article 3 of this Directive or to comply with the other provisions laid down or referred to in Title II of this Directive.

Member States shall require such electronic money institutions to submit all relevant information to the competent authorities in order to allow the latter to assess, by 30 October 2011, whether the electronic money institutions comply with the requirements laid down in this Directive and, if not, which measures need to be taken in order to ensure compliance or whether a withdrawal of authorisation is appropriate.

Compliant electronic money institutions shall be granted authorisation, shall be entered in the register, and shall be required to comply with the requirements in Title II. Where electronic money institutions do not comply with the requirements laid down in this Directive by 30 October 2011, they shall be prohibited from issuing electronic money.

2. Member States may provide for an electronic money institution to be automatically granted authorisation and entered in the register provided for in Article 3 if the competent authorities already have evidence that the electronic money institution concerned complies with the requirements laid down in Articles 3, 4 and 5. The competent authorities shall inform the electronic money institutions concerned before the authorisation is granted.

3. Member States shall allow electronic money institutions that have taken up, before 30 April 2011, activities in accordance with national law transposing Article 8 of Directive 2000/46/EC, to continue those activities within the Member State concerned in accordance with Directive 2000/46/EC until 30 April 2012, without being required to seek authorisation under Article 3 of this Directive or to comply with the other provisions laid down or referred to in Title II of this Directive. Electronic money institutions which, during that period, have been neither authorised nor waived within the meaning of Article 9 of this Directive, shall be prohibited from issuing electronic money.

Article 19

Amendments to Directive 2005/60/EC

Directive 2005/60/EC is hereby amended as follows:

1. in Article 3(2), point (a) is replaced by the following:

'(a) an undertaking, other than a credit institution, which carries out one or more of the operations included in points 2 to 12 and points 14 and 15 of Annex I to Directive 2006/48/EC, including the activities of currency exchange offices (bureaux de change);'

2. in Article 11(5), point (d) is replaced by the following:

'(d) electronic money, as defined in point 2 of Article 2 of Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions (*) where, if it is not possible to recharge, the maximum amount stored electronically in the device is no more than EUR 250, or

where, if it is possible to recharge, a limit of EUR 2 500 is imposed on the total amount transacted in a calendar year, except when an amount of EUR 1 000 or more is redeemed in that same calendar year upon the electronic money holder's request in accordance with Article 11 of Directive 2009/110/EC. As regards national payment transactions, Member States or their competent authorities may increase the amount of EUR 250 referred to in this point to a ceiling of EUR 500.

(*) OJ L 267, 10.10.2009, p 7.

Article 20

Amendments to Directive 2006/48/EC

Directive 2006/48/EC is hereby amended as follows:

1. Article 4 is amended as following:

(a) point 1 is replaced by the following:

'1. "credit institution" means an undertaking the business of which is to receive deposits or other repayable funds from the public and to grant credits for its own account;'

(b) point 5 is replaced by the following:

'5. "financial institution" means an undertaking other than a credit institution, the principal activity of which is to acquire holdings or to pursue one or more of the activities listed in points 2 to 12 and 15 of Annex I;'

2. the following point is added to Annex I:

'15. Issuing electronic money.'

Article 21

Repeal

Directive 2000/46/EC shall be repealed with effect from 30 April 2011, without prejudice to Article 18(1) and (3) of this Directive.

Any reference to the repealed Directive shall be construed as a reference to this Directive.

Article 22

Transposition

1. Member States shall adopt and publish, not later than 30 April 2011, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those measures.

They shall apply those measures from 30 April 2011.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 23

Entry into force

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Article 24

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 16 September 2009.

For the European Parliament

The President

J. BUZEK

For the Council

The President

C. MALMSTRÖM