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COMMISSION OF THE EUROPEAN COMMUNITIES

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proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of

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)

(presented by the Commission)

{SEC(2008) 2572}

{SEC(2008) 2573}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1. Objectives of the proposal

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 (hereafter referred to as the 'Electronic Money Directive')¹.

The evaluation of the application of this Directive² has shown that some of its provisions seem to have hindered the take-up of the electronic money market, hampering technological innovation. Figures on the limited number of fully licensed electronic money institutions or on the low volume of electronic money issued demonstrate that electronic money has not yet really taken off in most of the Member States.

Now that a modern and coherent legal framework for payment services has been established at Community level with the adoption of Directive 2007/64/EC on payment services in the internal market (hereafter referred to as the 'Payment Services Directive')³, further action is urgently required to promote the emergence of a true single market for electronic money services in the European Union.

This Commission 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. Innovation in the payments market will create tangible benefits for consumers, businesses and the wider European economy. Creative solutions will promote rapidity of payments, convenience of use and new functionalities for the e-society of the 21st century.

1.2. General context

The current volume of electronic money is unsatisfactorily low, mainly because the number of newcomers to the payment market after the adoption of the Electronic Money Directive has not been as significant as expected. Therefore, in most of the Member States, e-money has not yet been considered a credible alternative to cash. The full potential of the electronic money market remains unexploited as it has not significantly contributed to stimulating consumer spending and economic growth. Outstanding electronic money represented only

¹ OJ L 275, 27.10.2000, p. 39.

² SEC(2006) 1049, http://ec.europa.eu/internal_market/bank/docs/e-money/working-document_en.pdf.

³ OJ L 319, 5.12.2007, p. 1.

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.

The current Electronic Money Directive was adopted in response to the emergence of new categories of pre-paid payment instruments, in the context of the rapid changes in the business environment linked to the information technology revolution. The Electronic Money Directive sought to open the market for the issuance of electronic money through the creation of 'electronic money institutions' regulated under a specific prudential regime. The objective was to create a clear legal framework designed to strengthen the single market for electronic payments and stimulate competition while at the same time ensuring an adequate level of prudential supervision. However, some inherent weaknesses have prevented it from delivering the expected results. These weaknesses have been identified in the evaluation of the Electronic Money Directive. They are linked mainly to the inadequacy of the legal and prudential framework for electronic money institutions under the current Directive.

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. This overall legal inconsistency will increase once the Payment Services Directive provisions have been implemented (by November 2009), since some of the requirements for the prudential regime of payment institutions differ widely from those applicable today to electronic money institutions (e.g. electronic money institutions are currently subject to the principle of exclusivity of activities whereas payment institutions will not be).

Traditionally, payment services were offered by banks regulated by the EU banking directives. These were amended in 2006 and replaced by Directive 2006/48/EC relating to the taking up and pursuit of the business of credit institutions (recast of Directive 2000/12/EC)⁴ and Directive 2006/49/EC on the capital adequacy of investment firms and credit institutions (recast of Directive 93/6/EEC)⁵, hereafter referred to as the 'Capital Requirements Directive'.

Electronic money can be issued by electronic money institutions (which, for the purpose of the Capital Requirements Directive, are considered as 'special purpose' credit institutions), regulated under the Electronic Money Directive. Credit institutions, regulated under the Capital Requirements Directive, can also issue electronic money within the framework of the Electronic Money Directive. Providers wishing to issue electronic money therefore currently have two options:

- to apply for a licence as an electronic money institution under the Electronic Money Directive, or
- to apply for a licence as a full-blown credit institution.

The Payment Services Directive provides the legal foundation for the creation of an EU-wide single market for payments. It aims to establish a modern and comprehensive set of rules applicable to all payment services in the European Union. Member States will have to implement it at the latest by 1 November 2009. Under Title II of the Payment Services

⁴ OJ L 177, 30.6.2006, p. 1.

⁵ OJ L 177, 30.6.2006, p. 201.

Directive, a new category of payment service providers, namely 'payment institutions', has been created. Payment institutions enjoy a specific prudential regime which is different from that of electronic money institutions and credit institutions. However, payment institutions are not allowed to issue electronic money. They are also prohibited from accepting deposits from payment service users and are permitted to use funds received from payment service users only for providing the payment services listed in the Annex to the Payment Services Directive. The activity of issuing electronic money is not listed in the Annex to the Payment Services Directive, but is implicit within one of the items of Annex I to Directive 2006/48/EC.

1.3. Consistency with other policies and objectives of the Community

The approach is consistent with the policies and objectives to create a true internal market for financial services, and contributes to the creation of a Single Euro Payments Area (SEPA). It is consistent with the Lisbon agenda, as the review of the Electronic Money Directive will promote technological innovation and contribute to growth and jobs.

2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

2.1. Consultation of interested parties

Consultation methods, main sectors targeted and general profile of respondents

On the basis of the Electronic Money Directive review clause (Article 11), the Commission launched an evaluation exercise beginning 2005. To conduct this evaluation, the Commission services launched a public consultation in July 2005. Based on the evaluation study and the public consultation, the Commission services published a staff working document on the review of the Electronic Money Directive in July 2006⁶.

Member States and interested stakeholders have been regularly consulted on the objectives and content of the proposal. Two expert groups on retail payments, respectively the Payment System Government Expert Group and the Payment System Market Group, discussed the review of the Electronic Money Directive between December 2007 and June 2008. In addition, regular bilateral discussions with Member States, the European Central Bank, the payment industry (banks, electronic money institutions and mobile payment providers), consumer organisations, etc. have been organised.

Summary of responses and how they have been taken into account

The main findings of the evaluation report and the public consultation are summarised in the Commission staff working document on the review of the Electronic Money Directive issued in July 2006⁷. Most of the respondents saw a need for revising the Directive, claiming that some provisions seemed to have hindered the development of the e-money market.

During the review process, stakeholders expressed concerns that the current Directive lacks legal certainty due to the unclear definition of electronic money and the unclear scope of the Directive.

⁶ SEC(2006) 1049, 19.7.2006, http://ec.europa.eu/internal_market/bank/docs/e-money/working-document_en.pdf.

⁷ Cf. footnote 5.

In addition, the Review Report showed that high capital requirements, as well as certain restrictions (e.g. on the scope of activities of electronic money institutions) and requirements imposed by the Electronic Money Directive, have hindered the development of the electronic money market.

The main contributions to the public consultation can be found at: http://circa.europa.eu/Public/irc/markt/markt_consultations/library?l=/financial_services/e-money_directive&vm=detailed&sb=Title.

2.2. Collection and use of expertise

The Commission made wide use of external expertise during the preparation of this proposal. An evaluation study by external consultants, a public consultation and input from two expert groups provided valuable expertise. A specific meeting was organised with the electronic money industry and the European Central Bank.

2.3. Impact assessment

A wide range of solutions have been considered to address the problems affecting electronic money services and meet the objectives that have been set. The two main problems, as mentioned in section three, are caused by issues related to:

- (1) The definition of e-money and scope of the Electronic Money Directive;
- (2) The inadequacy of the legal framework (prudential regime, waivers and anti-money laundering rules).

Based on an initial screening of the different policy options against the policy objectives, five key policy options were evaluated: 1) do nothing; 2) issue a simple guidance note; 3) apply the prudential regime of payment institutions to electronic money institutions; 4) apply a specific prudential regime for electronic money institutions; and 5) repeal the Electronic Money Directive.

Based on the evaluation of the policy options, it has been considered that alignment with the Payment Services Directive, as envisaged in both policy option 3 and policy option 4, would be the most appropriate way forward. Both options are expected to have a positive impact on the uptake of the electronic money market in terms of electronic money in circulation (a potential increase up to EUR 10 billion) and the number of institutions (up to 120 electronic money institutions).

The main advantages of policy option 4 are the availability of a specific prudential regime commensurate with the risks posed by electronic money institutions and maintenance of the existing reporting requirements for electronic money institutions to ensure market monitoring. The disadvantage would be a higher administrative burden, which remains however proportionate to its objective.

Policy option 3, applying the prudential requirements relating to payment institutions, would have the advantage that it would lower the administrative burden as no reporting would be required. The main disadvantage is that this would complicate market monitoring. In addition, the prudential regime in question is indirectly linked to the risks of electronic money institutions via payment volume as electronic money is used for executing payments.

Policy option 1 (do nothing) or policy option 2 (issue a guidance note) would maintain the complexity of the legal framework after the transposition of the Payment Services Directive in 2009 and would hinder further market development. Option 5 (repeal the Directive) would create legal uncertainty and hinder the development of new electronic money services.

The Commission's impact assessment is accessible at:

http://europa.eu.int/comm/secretariat_general/impact/docs/SEC_2008_1_en.pdf.

3. LEGAL ELEMENTS OF THE PROPOSAL

3.1. Summary of the proposed action

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:

Articles 1 and 2: 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.

Articles 3, 6, 7 and 9: 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. Based on the qualitative risk assessment carried out in its impact assessment, the Commission considers that the current prudential requirements are excessive with regard to the risk of the activity. In order to facilitate possible future integration of the provisions of this Directive into Directive 2007/64/EC and 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 (Article 3). 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 (Article 6). The initial capital is considered to be excessive and disproportionate with regard to the risk of

the service. This high initial capital is seen as a major obstacle for smaller firms (mainly waived institutions) to apply for an authorisation to become an electronic money institution.

Replacing current **ongoing capital requirements** with new methods of calculation based on the nature and the risk profile of electronic money institutions (Article 7).

Articles 8 and 9: Activities and safeguarding requirements

Today, under Article 1(4) of the Directive, electronic money institutions are prohibited from doing any business other than the issuance of electronic money and closely related services. This restriction of activities is not in line with the non-exclusivity approach for payment institutions which, under Directive 2007/64/EC, may engage in non-payment services business (e.g. retailing or telecom activities). A more coherent approach is advisable. Electronic money institutions' activities should not necessarily be restricted to issuing electronic money and therefore safeguarding requirements such as those in Article 9 of Directive 2007/64/EC should apply in cases of hybrid electronic money institutions.

Article 5: 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.

Article 10: 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.

Article 16: Money laundering rules

In view of the low average amounts involved in electronic money transactions, full application of identification and record-keeping requirements could be considered disproportionate, taking into account their high administrative costs for the payments industry, in a low-value online or mobile payments context. 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 those in Articles 34 and 53 of Directive 2007/64/EC and, therefore, that the amounts of the thresholds in Article 11(5)(d) of Directive 2005/60/EC be increased. This measure would contribute to avoiding double identification in account-based situations. In addition, accompanying measures adopted by the industry would contribute to the mitigation of the risk. This would be in line with the self-regulatory approach in the area of payments (e.g. SEPA).

Article 17: 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 inserted in Article 4(5) and in Annex I of the Capital Requirements Directive in order to reflect this and ensure that credit institutions may continue to issue e-money.

3.2. Legal basis

The legal basis for the proposal is Articles 47(2) and 95 of the EC Treaty.

3.3. Subsidiarity principle

The subsidiarity principle is respected. According to this principle, action at Community level should be taken only when the objectives envisaged cannot be achieved sufficiently by Member States alone.

Directive 2000/46/EC has created a harmonised single market for the provision of electronic money in the European Union. However, some obstacles remain and need to be addressed at pan-European level. Electronic commerce is, by its very nature, a global issue and national solutions alone would hamper the development of electronic money. A Community-wide approach is appropriate because the applicable rules and principles have to be the same in all Member States in order to achieve legal certainty and a level playing field for all market participants.

3.4. Proportionality principle

The proposal respects the proportionality principle, since it aims to ensure full harmonisation only of the issues that are necessary to overcome the obstacles to the development of a single market for electronic money and that were identified during open stakeholder consultation.

All the proposed rules have been subject to a proportionality test and intensive consultation to ensure appropriate and proportionate regulation. This is particularly reflected in the prudential rules for electronic money institutions, the waiver and the redeemability clauses.

3.5. Choice of instrument

Regulatory action continues to be required to provide the necessary legal framework harmonising the prudential supervision of electronic money institutions to the extent necessary for ensuring, in particular, their sound and prudent operation and financial integrity. The Commission therefore proposes to keep the same instrument (a directive).

The Commission proposes a directive rather than a regulation as this former instrument is better suited to harmonising existing legislations. It is also consistent with the nature of the previous instrument chosen to harmonise rules in this field, and with other instruments adopted in related areas, such as the PSD.

4. BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

5. ADDITIONAL INFORMATION

5.1. Simulation, pilot phase and transitional period

There will be a transitional period for certain already established electronic money institutions with regard to compliance with the provisions in Title II of the Directive.

5.2. Simplification

The proposal provides for simplification of legislation, simplification of administrative procedures for public authorities (EC or national), and simplification of administrative procedures for private parties.

Supervision of electronic money institutions will follow a harmonised and coherent approach, aligned with that of payment institutions, with the same rules for all Member States. This will help to simplify administrative procedures.

The full harmonisation approach of the proposal simplifies procedures for private parties.

5.3. Repeal of existing legislation

The adoption of the proposal will lead to the repeal of existing legislation. The Directive will replace Directive 2000/46/EC.

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(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 Commission⁸,

Having regard to the opinion of the European Economic and Social Committee⁹,

Having regard to the opinion of the European Central Bank¹⁰,

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

Whereas:

- (1) Directive 2000/46/EC on the taking up, pursuit of and prudential supervision of the business of electronic money institutions¹¹ 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 single market while ensuring an adequate level of prudential supervision.
- (2) The Commission presented a report¹² 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.
- (3) Directive 2007/64/EC of the European Parliament and of the Council on payment services in the internal market¹³ has established a modern and coherent legal framework for payment services, including the coordination of national provisions on

⁸ OJ C , p. .

⁹ OJ C , p. .

¹⁰ OJ C , p. .

¹¹ OJ L 275, 27.10.2000, p. 39.

¹² SEC(2006) 1049, 19.7.2006.

¹³ OJ L 319, 5.12.2007, p. 1.

prudential requirements for a new category of payment service providers, namely payment institutions.

- (4) With the objective of removing barriers to market entry and making it easier to take up and pursue the business of electronic money institutions, the rules to which these 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. It should not apply to pre-paid instruments that can only be used in a limited way, either because they allow the holder to purchase goods or services only in the premises of the issuer or within a limited network of service providers under direct commercial agreement with a professional issuer, or because they can only be used to acquire a limited range of goods or services. An instrument should be considered to be used within a 'limited network' if it can be used only for the purchase of goods and services in a specific store, a chain of stores or for a limited range of goods or services, regardless of the geographical location of the point of sale. Examples of such instruments are store cards, petrol cards, membership cards and public transport cards and meal vouchers. Instruments which can be used for purchases in stores of listed merchants should not be exempted as such instruments are typically designed for a network of service providers which is continuously growing. Finally, the Directive should not apply to payment transactions for the purchase of 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 only be used through a digital device, such as a mobile phone or a computer.
- (6) It is appropriate to introduce a clear definition of electronic money in order to make it technically neutral. This definition should cover all situations where the payment service provider issues a pre-paid stored value in exchange for funds.
- (7) The definition should cover electronic money which is either held on a payment device in the holder's possession or is stored remotely at a server and managed by the holder through a payment account with the payment service provider. This definition should be wide enough to avoid hampering technological innovation and to cover not only all the electronic money schemes available today in the electronic market but also those which could be developed in the future.
- (8) The prudential supervisory regime for electronic money institutions should be reviewed and brought more into line with the risks faced by these institutions. It should also be made coherent with the prudential supervisory regime applying to payment institutions under Directive 2007/64/EC.
- (9) The issuance of electronic money does not constitute in itself a deposit-taking activity pursuant to Directive 2006/48/EC, in view of its specific character as an electronic surrogate for coins and banknotes only likely to be used for making payments of limited amounts and not as means of saving. 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.

- (10) There is a need for a regime of initial capital combined with 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 on-going capital should be allowed, keeping, however, supervisory discretion to ensure that the same risks are treated in the same way for all payment service providers. In addition, provision should be made for client funds to be kept separate from the electronic money institution's funds for other business activities. Electronic money institutions should also be made subject to effective anti-money laundering and anti-terrorist financing rules.
- (11) For prudential reasons, Member States should ensure that only electronic money institutions duly authorised in accordance with this Directive, credit institutions authorised under Directive 2006/48/EC and, under certain circumstances, national central banks and other national authorities may issue electronic money.
- (12) Electronic money needs to be redeemable to preserve bearer confidence. Redeemability does not imply, in itself, 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 always be possible at any time, at par value. Redemption of the full amount should always be free of charge. Partial redemption may generate some costs to the issuer. It may, therefore, be subject to a proportionate and cost-based fee. This is without prejudice to national legislation on tax or social matters as well as any obligations on the 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.
- (13) It is appropriate to allow Member States to waive the application of certain provisions of this Directive to institutions providing only a limited amount of payment transactions. Institutions benefiting from such a waiver should not have the right under this Directive to exercise the freedom of establishment or provide services cross-border and they should not indirectly exercise those rights as members of a payment system. However, it is desirable to register the details of all entities providing e-money services, including those institutions benefiting from a waiver. For this purpose, Member States should enter such entities in the register of e-money institutions while not applying all or part of the conditions for authorisation.
- (14) In the interests of legal certainty, transitional arrangements should be made to ensure that electronic money institutions which have commenced their activities in accordance with the national laws transposing Directive 2000/46/EC into domestic law may continue those activities within the Member State concerned for a specified period. This period should be longer for entities that have benefited from the waiver provision in Article 8 of Directive 2000/46/EC.
- (15) This Directive introduces a new definition of electronic money whose issuance 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 financing¹⁴ should be amended accordingly.

- (16) 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 the funds received from the public. Given the system 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 as 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.
- (17) The provisions of this Directive replace all corresponding provisions of Directive 2000/46/EC, therefore, the latter Directive should be repealed.
- (18) The objectives of this Directive cannot be sufficiently achieved by the Member States because they require 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.
- (19) The efficient functioning of this Directive needs to be reviewed. Therefore, the Commission should be required to produce a report three years after the deadline for transposition 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 Commission¹⁵.
- (21) In particular, the Commission should be empowered to adopt implementing provisions in order to take account of technological and market developments. Since such measures are of general scope and are designed to amend non-essential elements of this Directive, by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC,

HAVE ADOPTED THIS DIRECTIVE:

TITLE I

SCOPE AND DEFINITIONS

¹⁴ OJ L 309, 25.11.2005, p. 15.

¹⁵ OJ L 184, 17.7.1999, p. 23.

Article 1
Subject matter and scope

1. This Directive lays down rules for the taking up, pursuit and prudential supervision of the business of electronic money institutions and for the activity of issuing electronic money.
2. With the exception of Article 5, this Directive shall not apply to credit institutions as defined in Article 4(1)(a) of Directive 2006/48/EC.
3. This Directive shall not apply to services based on instruments that can be used to acquire goods or services only in the premises used by the issuer or under commercial agreement with the issuer, either within a limited network of service providers or for a limited range of goods or services.
4. This Directive shall not apply to services based on any telecommunication, digital or information technology (IT) device, where the goods or services purchased are delivered to and are to be used through a telecommunication, digital or IT device, provided that the telecommunication, digital or IT operator does not act only as an intermediary between the payment service user and the supplier of the goods and services.

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 of this Directive to issue electronic money;
2. *'electronic money'* means a monetary value as represented by a claim on the issuer which is stored electronically and issued on receipt of funds, for the purpose of making payment transactions as defined in Article 4(5) of Directive 2007/64/EC, and is accepted by natural or legal persons other than the issuer;
3. *'outstanding electronic money'* means the monthly average of the preceding 12 months' financial liabilities related to electronic money;
4. *'payment volume'* means the average of the preceding 12 months' total amount of monthly payment transactions executed.

TITLE II
REQUIREMENTS FOR ACCESS TO THE TAKING UP AND PURSUIT OF THE
BUSINESS OF ELECTRONIC MONEY INSTITUTIONS

Article 3
General prudential rules

Articles 5, 10 to 15 and 17 to 25 of Directive 2007/64/EC shall apply mutatis mutandis to electronic money institutions.

Article 4
Prohibition to issue e-money

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

- (1) an electronic money institution as defined in Article 2(1);
- (2) a credit institution as defined in Article 4(1)(a) of Directive 2006/48/EC;
- (3) payment service providers as referred to in Article 1(1)(e) and (f) of Directive 2007/64/EC.

Article 5
Redeemability

1. Member States shall ensure that, upon request by the holder, issuers of electronic money redeem, at any moment and at par value, the monetary value of the electronic money held.
2. The contract between the issuer and the holder shall clearly state the conditions of redemption.
3. Where redemption takes place before the date of termination of the contract, it may cover either a part of or the totality of the money stored electronically.
4. Where redemption takes place on the date of termination of the contract, the monetary value of the electronic money held shall be redeemed free of charge.
5. The issuer may charge a fee only in the case of partial or full redemption before termination of the contract. The level of this fee shall be mentioned in the contract. It shall be proportionate and commensurate with the actual costs incurred by the issuer.

Article 6
Initial capital

1. Member States shall require electronic money institutions to hold, at the time of authorisation, initial capital, comprised of the items defined in Article 57(a) and (b) of Directive 2006/48/EC, of not less than EUR 125 000.

Article 7
Own funds

1. In addition to the initial capital requirements set out in Article 6, Member states shall require electronic money institutions to hold, at all times, own funds, as defined in Articles 57 to 61, 63, 64 and 66 of Directive 2006/48/EC
2. The own funds of electronic money institutions shall be calculated either in accordance with one of the three methods (A, B, C) set out in Article 8 of Directive 2007/64/EC or in accordance with Method D set out in paragraph 3. The appropriate

method shall be determined by the competent authorities on the basis of national legislation.

3. Method D: where electronic money represents the highest amount between outstanding electronic money and payment volume, the own funds of electronic money institutions shall amount at least to the sum of the following elements:
 - (a) 5% of the slice of electronic money up to EUR 5 million;
 - (b) 2.5% of the slice of electronic money above EUR 5 million up to EUR 10 million;
 - (c) 2% of the slice of electronic money above EUR 10 million up to EUR 100 million;
 - (d) 1.5% of the slice of electronic money above EUR 100 million up to EUR 250 million;
 - (e) 1% of the slice of electronic money above EUR 250 million.
4. On the basis of an evaluation of the risk-management processes, of the risk loss data bases 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 method chosen 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 method chosen in accordance with paragraph 2.
5. The own funds of electronic money institutions shall not fall below the amount required under article 6.
6. Member States shall take the necessary measures to prevent the multiple use of elements eligible for own funds where the electronic money institution belongs to the same group as another e-money institution, credit institution, investment firm, asset management company or insurance undertaking. This paragraph shall also apply where an electronic money institution carries out activities other than issuing electronic money.

Article 8 *Activities*

1. Apart from 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) granting 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 and closely related ancillary services closely related to the issuing of e-money;
 - (d) the operation of payment systems;
 - (e) business activities other than issuance of electronic money, having regard to applicable Community and national law.
2. Any funds received by electronic money institutions from the payment service user in exchange for electronic money shall not constitute a deposit or other repayable funds within the meaning of Article 5 of Directive 2006/48/EC. Funds received for any other payment service shall not constitute either a deposit or other repayable funds within the meaning of Article 5 of Directive 2006/48/EC, or electronic money within the meaning of this Directive.
 3. Electronic money institutions shall not conduct the business of taking deposits or other repayable funds within the meaning of Article 5 of Directive 2006/48/EC.

Article 9
Safeguarding requirements

1. Member States or their competent authorities shall require an electronic money institution which carries on any of the activities referred to in Article 8(1)(a) to (d) and, at the same time, is engaged in other business activities referred to in Article 8(1)(e) to safeguard funds that have been received from the payment service users or through another payment service provider for the execution of payment transactions, in accordance with the provisions of Article 9(1), (2) and (4) of Directive 2007/64/EC.
2. Member States or their competent authorities may require that electronic money institutions which are not engaged in other business activities referred to in Article 8(1)(a) to (d) shall also comply with the safeguarding requirements under paragraph 1 of this Article.

Article 10
Optional exemptions

1. With the exception of Articles 20, 22, 23 and 24 of Directive 2007/64/EC, 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, 6, 7 and 9 of this Directive, and allow legal persons to be entered in the register for electronic money institutions if all of the following requirements are met:
 - (a) the average of the preceding 12 months' total amount of payment transactions executed by the person concerned, including any agent for which it assumes full responsibility, does not exceed EUR 3 million per month.

- (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.

The requirement set out in point (a) of the first subparagraph shall be assessed on the basis of the projected total amount of payment volume in its business plan, unless an adjustment to that plan is required by the competent authorities.

- 2. Any legal person registered in accordance with paragraph 1 shall be required to have its head office in the Member State in which it actually carries on its business.
- 3. Legal persons referred to in paragraph 1 shall be treated as electronic money institutions. However, Articles 10(9) and 25 of Directive 2007/64/EC shall not apply to them.
- 4. Member States may provide that any legal person registered in accordance with paragraph 1 may engage only in certain activities listed in Article 8(1).
- 5. Legal persons referred to in paragraph 1 shall notify the competent authorities of any change in their situation which is relevant to the conditions specified in that paragraph. Member States shall take the necessary steps to ensure that where the conditions set out in paragraphs 1, 2 and 4 are no longer fulfilled, the persons concerned shall seek authorisation within 30 calendar days in accordance with Article 3. Any such persons that have not sought authorisation within this period shall be prohibited, in accordance with Article 4, from issuing electronic money.
- 6. This Article shall not be applied in respect of the provisions of Directive 2005/60/EC or national anti-money-laundering provisions.

TITLE III IMPLEMENTING MEASURES

Article 11 Implementing measures

- 1. The Commission may adopt the following measures:
 - (a) measures in order to update the amounts specified in Article 10 to take account of inflation;
 - (b) measures to ensure uniform application of this Directive;
 - (c) measures to take account of technological and market developments.
- 2. The measures referred to in paragraph 1, designed to amend non-essential elements of this directive, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 12.

Article 12
Committee

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.

TITLE IV
FINAL PROVISIONS

Article 13
Full harmonisation

Member States shall not maintain or introduce provisions other than those laid down in this Directive.

Article 14
Review

No later than [three years after the deadline for transposition in Article 18(1)], 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 15
Transitional provisions

1. Member States shall allow electronic money institutions that have commenced their activity in accordance with the provisions implementing Directive 2000/46/EC in the Member State in which they have their head office, before the date of entry into force of this Directive, to continue their activities without the authorisation provided for in Article 3. 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, within six months from the date of entry into force of the provisions under Article 11, whether the institutions comply with the requirements pursuant to 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 and entered in the register. If compliance is not reached within six months from [deadline for implementation of the Directive], the electronic money institutions concerned shall be prohibited from issuing electronic money.
2. Member States may provide that an electronic money institution shall be automatically granted authorisation and entered in the register provided for in Article 3 if the competent authorities already have evidence that the requirements

laid down in Articles 3, 6 and 7 are complied with. The competent authorities shall inform the electronic money institutions concerned before the authorisation is granted.

3. Member States shall allow legal persons that have commenced, their activities as entities under national law implementing Article 8 of Directive 2000/46/EC before [date of adoption of the Commission proposal], to continue those activities within the Member State concerned until [12 months after deadline for transposition], without seeking authorisation under Article 3. Electronic money institutions which, during that period, have been neither authorised nor waived within the meaning of Article 10, shall be prohibited from issuing electronic money.

Article 16

Amendment to Directive 2005/60/EC

1. Article 11(5)(d) of Directive 2005/60/EC is replaced by the following:

'(d) electronic money, as defined in Article 1(3)(b) of Directive 2009/./EC (*), where, if it is not possible to recharge, the maximum amount stored electronically in the device is no more than [EUR 500], or where, if it is possible to recharge, a limit of [EUR 3 000] 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 by the bearer as referred to in Article 5 of Directive 2009/.../EC'.

(*) O.J.

Article 17

Amendments to Directive 2006/48/EC

1. Article 4 is amended as following:

- (a) Point (1)(b) is replaced by the following:

"(1) 'credit institution' means an undertaking whose business 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 carry on one or more of the activities listed in points 2 to 12 and 15 of Annex I'.

2. The following point 15 is added to Annex I:

'15. Issuing electronic money'.

Article 18
Repeal

Directive 2000/46/EC shall be repealed with effect from [deadline for transposition in Article 19(1)].

Any references to the repealed Directive shall be construed as references to this Directive.

Article 19
Transposition

1. Member States shall adopt and publish, by at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

They shall apply those provisions from .

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

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 20
Entry into force

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

Article 21

This Directive is addressed to the Member States.

Done at Brussels,

For the Commission

Member of the Commission