EU Directive

ELECTRONIC MONEY

Status: 21.11.2008

Centrum für Europäische Politik

MAIN ISSUES

Objectives of the Directive: The legal requirements for "e-money institutions" are to be simplified. This aims to provide easier market access to new players and promote the circulation of e-money.

Groups Affected: E-money institutions, credit institutions, consumers, suppliers of goods and services and supervisory authorities.

Pros: Since e-money institutions pose lower economic risks than banks, a relaxation of the requirements for licensing, supervision and capital resources would be justified.

Cons: –

Changes Required: –

CONTENT

Title

Proposal COM(2008) 627 of 9 October 2008 for a **Directive** of the European Parliament and of the Council on the **taking up, pursuit and prudential supervision of the business of electronic money institutions**, amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC

Abstract

► **General Background**

– Electronic money (e-money) means a monetary value which
  - is issued on receipt of funds
  - is stored electronically on a data carrier of the owner of a claim or on a server
  - serves as a direct means of payment and is accepted by natural or legal persons other than the issuer (Art. 2 No. 2).

  Given the above, e-money offers an electronic alternative to cash. Until now it has mainly appeared in the form of credits stored on bank card chips ("electronic purse") and prepaid credits for electronic payment services.
– At the end of 2007, there were only 20 companies in the EU which had been established with the specific aim to issue e-money ("e-money institutions"). In August 2007, the total issued e-money in circulation was EUR 1 billion, whereas cash in circulation totalled EUR 637 billion.
– According to the Commission, e-money's potential is therefore "still far from delivering the full benefits". Since e-money is not yet considered a "credible alternative to cash" in most of the Member States, "it has not contributed significantly to stimulating consumer spending and economic growth."
– Member States must not deviate from the provisions laid down in the Directive ("full harmonisation", Art. 13).

► **Authorisation to Issue E-Money**

– The following parties are exclusively authorised to issue e-money:
  - Enterprises licensed as e-money institutions
  - Credit institutions
  - The European Central Bank and national central banks
  - Member States and their local authorities, unless acting as public authorities (Art. 4 in connection with Art. 1 No. 1 lit. e, f of the Payment Services Directive 2007/64/EC).
– Credit institutions are organisations that receive deposits or other repayable funds and grant credits for their own account (amended Art. 4 No. 1 lit. b of the Directive 2006/48/EC).
– E-money institutions are not credit institutions. Funds received for providing e-money payment services are deemed neither deposits nor repayable funds (Art. 8 (2)).
– E-money institutions are entitled to issue e-money and, in particular, to offer the following additional services:
  - granting credits provided they relate to card payments, remittance or debit orders
  - operating payment systems
  - carrying out remittances, debit orders, card and electronic payment
  - other "business operations" that do not infringe either EU law or national law (Art. 8 (1) in connection with the Annex of the Directive 2007/64/EC).
– E-Money institutions may grant credits solely if:
  - they are not granted out of funds received for issuing e-money
  - granting credits is not the main business field of an e-money institution
  - the repayment period does not exceed 12 months

- the e-money institution's own capital is at all times "appropriate in view of the overall amount of credit granted" (Art. 8 (1) lit. b in connection with Art. 16 (3) of the Directive 2007/64/EC).

- **Licensing E-Money Institutions**
  – E-money institutions receive an EU-wide license if the relevant application has been filed with the competent authorities of their home Member State and if their "overall assessment is favourable" (Art. 3 in connection with Art. 5 and 10 (2) of the Directive 2007/64/EC). The application has to contain details on:
    - corporate governance and organisational structure
    - risk management and measures taken for safeguarding paid in funds
    - accounting procedures (Art. 3 in connection with Art. 5 of the Directive 2007/64/EC)
  – E-money institutions must have an initial capital of at least EUR 125,000 at their disposal (Art. 6).

- **Current Requirements for E-Money Institutions**
  – E-money institutions must hold at all times their own funds in the form of nominal capital, reserves and funds for the safeguarding of general risks (Art. 7 in connection with Art. 57 of the Directive 2006/48/EC).
  – Own funds may not fall below the initial capital at any time (Art. 7 (5)).
  – E-money institutions which, apart from issuing e-money, are engaged in other business activities must "safeguard" e-money funds (Art. 9 (1)). This requirement is deemed complied with if e-money institutions:
    - exclude any commingling of funds received for the issuing of e-money with any other funds and further exclude that other creditors of e-money institutions may claim it, or
    - grant individual e-money credits, or contract an insurance policy covering the relevant fund (Art. 9 (1) in connection with Art. 9 (1) and (2) of the Directive 2007/64/EC).

    Member States may limit the abovementioned safeguarding requirements where individual credits exceed EUR 600 (Art. 9 (1) in connection with Art. 9 (4) of the Directive 2007/64/EC).
  – Where there is a threat to the financial stability of an e-money institution, the competent supervisory authority may require the outsourcing of the issuing of e-money into an own entity (Art. 3 in connection with Art. 10 (5) of the Directive 2007/64/EC).
  – Member States must ensure that e-money be redeemed into the monetary value at all times and at par value (Art. 5 (1)).
    - The contract between an e-money institution and a holder of a fund must clearly state the conditions of redemption (Art. 5 (2)).
    - Upon contract termination, redemption must be free of charge (Art. 5 (4)). Contracts must also provide for partial or full redemption before contract termination (Art. 5 (3)). E-money institutions may charge a fee in the aforesaid cases which must, however, "be proportionate and commensurate" with the costs incurred (Art. 5 (5)).

- **Exemptions to Safeguarding Requirements**
  Member States or competent authorities may partially or fully exempt e-money institutions from the application procedure and ongoing requirements if:
  – the average total amount of payment transactions of the preceding 12 months does not exceed EUR 3 million per month
  – no member of senior management has a criminal record for money laundering or other criminal offences related to finance
  – the headquarter is located in the same Member State as the one in which the institution operates (Art. 10 (1) and (2)).

Changes Compared to the Status Quo

- The proposed Directive is to replace the existing e-money Directive (2000/46/EC).
- Presently, e-money has to be stored on a data carrier in the claim holder's possession. In future it may also be stored remotely at a server.
- The initial capital amount prescribed for e-money institutions will be reduced from EUR 1 million to EUR 125,000.
- Until now e-money institutions have been obliged to disclose the amount of their existing own funds twice per annum (Art. 6 of the e-money Directive 2000/46/EC). This obligation will be waived.
- Until now e-money institutions have been obliged to invest funds received by customers for the issuing of e-money into liquid funds. This obligation will also be waived.
- The business field of e-money institutions has been restricted to the issuing of e-money and closely related services. In future they will be entitled to offer further payment services and also to grant credits in connection with such services.
- Until now amounts less than EUR 10 did not have to be redeemed into cash or deposit money. Moreover, fees were charged for redemption upon contract termination. These provisions will be waived, too.

Statement on Subsidiarity

The Commission holds the opinion that legal certainty and equal footing in connection with EU-wide trade on the internet can be achieved solely through the introduction of equal rules in all Member States.

Political Context

According to the Commission, the existing E-Money Directive (2000/46/EC) generates legal uncertainty, because on the one hand it excludes innovative forms of e-money and on the other hand imposes unreasonably strict authorisation requirements on e-money institutions. The Payment Services Directive (2007/64/EG), to be implemented in Member States by 1 November 2009, will further aggravate the issue. It stipulates less strict provisions for so-called payment institutions – which are entitled to keep payment accounts and to render payment services, such as remittances, debit orders and card payments – than for e-money institutions, despite their comparable business fields and risk assessments. This is why the Commission intends to adjust the rules for e-money institutions to those of payment institutions.

Status of Legislation

09.10.08	Adoption by Commission
Open	Adoption by European Parliament and the Council, publication in the Official Journal of the European Union, entry into force

Options for Influencing the Political Process

Leading Directorate General:	DG Internal Market and Services
Committees of the European Parliament:	Economic and Monetary Affairs (in charge)
Committees of the German Bundestag:	Finance (in charge); Economics and Technology
Decision Mode in the Council:	Qualified majority (approval by a majority of Member States and at least 255 out of 345 votes; Germany: 29 votes)

Formalities

Legal competence:	Article 47 (2) TEC (Freedom of Establishment) and Article 95 TEC (Internal Market)
Form of legislative competence:	Concurrent legislative competence
Legislative procedure:	Article 251 TEC (Codecision)

ASSESSMENT

Economic Impact

Ordoliberal Assessment

E-money is currently used in many Member States especially for low-value payments in public transport, parking and on the internet. In that sense it offers competition to cash payment and sight deposits held by commercial banks. Over the last few years the establishment of institutions for the issuing of e-money has been made possible. However, to date hardly any Member State has e-money institutions; in Germany there is just one. By far the greatest amount of e-money circulating is actually issued by banks.

Thorough scrutiny reveals that existing EU provisions do not adequately reflect the risk profile of e-money institutions. **The Commission's aim to exempt e-money institutions from authorization and current requirements applicable to credit institutions deserves to be supported**.

According to the Commission, in future, **e-money institutions should also be entitled to issue credits, provided they are "granted** exclusively **in connection with the execution of a payment transaction**" such as remittance, card payment or debit orders. **This is justifiable, since funds received for the issuance of e-money must not be used for granting credits**. The underlying distinction between the business practice of e-money institutions and that of banks is vital, since it is out of their savings deposits that banks grant credits.

Where e-money institutions do issue credit, the funds from which this practice is financed are to be generated elsewhere. Therefore, in practice the issuance of credits is mainly restricted to "hybrid" e-money institutions which, apart from issuing e-money, engage in further business activities. The obligation to safeguard received funds minimizes the risk of losses due to the insolvency of such e-money institutions. The collapse of e-money institutions does not entail any systemic risks, since the funds received by payment service users always serve to execute payment transactions and therefore are usually low.

E-money institutions are subject to less requirements than banks, **but this** also **does not lead to competitive distortion**. Therefore, banks may choose to establish their own e-money institutions. The fact that institutions issuing e-money must redeem such money at all times into cash or deposit money is a mandatory prerequisite for an adequate acceptance of e-money as a means of payment.

Impact on Efficiency and Individual Freedom of Choice

The circulation of e-money reduces the costs for payment transactions, in particular if carried out repeatedly, since costs incur to consumers, traders and banks for holding cash in the amount and denomination required and for processing payment by EC or credit cards.
At first, introduction costs will be incurred for traders, as they will have to equip their cash desks with readers. However, an increased number of payment transactions will soon generate a return on investment. The use of e-money by consumers and traders is a self-perpetuating process: the more e-money is circulated, the more it is accepted, which in turn contributes to its increased circulation.
The intended option to store e-money credits electronically **at servers will facilitate payment transactions on the internet significantly**: Buyers will no longer have to disclose bank or credit card details to any vendor. Vendors, in turn, bear lower transaction costs and default risks. It is only through such practices that many simple services will become profitable at all, such as the access to news articles and test reports on the internet.

Impact on Growth and Employment

Reduced costs for payment transaction will lead to, albeit minor, growth.

Impact on Europe as a Business Location

Insignificant.

Legal Assessment

Legal Competence

The legal basis is laid down in Art. 47 (2) and Art. 95 TEC.

Subsidiarity

Member States implemented the E-Money Directive differently. For instance, monetary values stored at remote servers were considered by several states – for example Great Britain – to be e-money, but not by others. **A full harmonisation** at EU level **is** therefore **necessary in order to establish equal conditions for a cross-border offer**.

Proportionality

Unproblematic.

Compatibility with EU Law

Unproblematic.

Compatibility with German Law

First of all, the German Banking Act (KWG) would need to be modified. The definition of the term "e-money" (§ 1 (14)) is to be extended to cover the storage of e-money at remote servers. The provision on redemption of e-money into cash or deposit money (§ 22p) will have to include an exemption from charges upon contract termination, as well as the option to redeem e-money only partially. The provision on minimum amounts prescribed for the redemption into cash or deposit money must be waived. The required initial capital (§ 33 (1) sentence 1 No.1 lit. e KWG) must be reduced from EUR 1 million to EUR 125,000. Furthermore, a new provision must be incorporated into the KWG entitling e-money institutions to carry out business activities other than issuing e-money.

Alternative Policy Options

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Possible Future EU Actions

In the long term the E-Money Directive might be integrated into the Payment Service Directive.

Conclusion

The Commission's project to ease requirements regarding the authorization and supervision of e-money institutions compared to those applicable to credit institutions is to be welcomed. The already restricted option to issue credits does not constitute a systemic risk, since e-money institutions must not use money received for payment services for the granting of credits. Competitive distortion is excluded, since banks are entitled to establish their own e-money institutions. Last but not least, the Proposal reduces payment transaction costs.