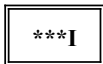


25 March 1999 A4-0156/99



REPORT

on the proposal for a European Parliament and Council Directive on the taking up, the pursuit and the prudential supervision of the business of electronic money institutions (COM(98)0461 - C4-0531/98 - 98/0252(COD)) and

on the proposal for a European Parliament and Council Directive amending Directive 77/780/EEC on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions (COM(98)0461 - C4-0532/98 - 98/0253(COD))

Committee on Legal Affairs and Citizens' Rights

Rapporteur: Astrid Thors

Draftsman: Helena Torres Marques, Committee on Economic and Monetary Affairs and Industrial Policy (*)

(*HUGHES procedure)

C O N T E N T S

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PROCEDURAL PAGE

By letter of 21 September 1998 the Commission submitted to Parliament, pursuant to Articles 189b(2) and 57(2) of the EC Treaty, the proposal for a European Parliament and Council Directive on the taking up, the pursuit and the prudential supervision of the business of electronic money institutions and the proposal for a European Parliament and Council Directive amending Directive 77/780/EEC on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions.

At the sitting of 9 October 1998 the President of Parliament announced that he had referred these proposals to the Committee on Legal Affairs and Citizens' Rights as the committee responsible and the Committee on Economic and Monetary Affairs and Industrial Policy and the Committee on Committee on the Environment, Public Health and Consumer Protection for their opinions.

The Committee on Legal Affairs and Citizens' Rights appointed Mrs Thors rapporteur at its meeting of 4 November 1998.

At the sitting of 20 November 1998 the President of Parliament announced that this report was to be drawn up in accordance with the Hughes procedure by the Committee on Legal Affairs and Citizens' Rights in collaboration with the Committee on Economic and Monetary Affairs and Industrial Policy.

It considered the Commission proposals and the draft report at its meetings of 19 January 1999, 24 February 1999 and 25 March 1999.

At the last meeting it adopted the draft legislative resolutions unanimously.

The following were present for the vote: De Clercq, chairman; Malangré, vice-chairman; Thors, rapporteur; Ahern, Añoveros Trías de Bes (for C. Casini), Berger, Cassidy, Cot, Falconer (for Oddy), Gebhardt, Habsburg-Lothringen (for Lehne), Sierra González, Torres Marques (pursuant to Rule 147(7)), Ullmann, Verdi i Aldea and Wijnsbeek.

The opinion of the Committee on Economic and Monetary Affairs and Industrial Policy is attached. The Committee on the Environment, Public Health and Consumer Protection decided on 27 October 1998 not to deliver an opinion.

The report was tabled on 25 March 1999.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

A.I
LEGISLATIVE PROPOSAL

Proposal for a European Parliament and Council Directive on the taking up, the pursuit and the prudential supervision of the business of electronic money institutions (COM(98)0461 - C4-0531/98 - 98/0252(COD))

This proposal is approved with the following amendments:

Text proposed by the Commission()

Amendments by Parliament

(Amendment 1)
Entire text

Replace the words 'user' and 'users' by the words 'bearer' and 'bearers'.

This amendment applies to the entire text.

(Amendment 2)
Recital 3

whereas the approach adopted is appropriate to achieve only the essential harmonisation necessary and sufficient to secure the mutual recognition of authorisation and prudential supervision of electronic money institutions, making possible the granting of a single license recognised throughout the Community and the application of the principle of home Member State prudential supervision;

whereas the approach adopted is appropriate to achieve the essential harmonisation necessary and sufficient to secure the mutual recognition of authorisation and prudential supervision of electronic money institutions, making possible the granting of a single license recognised throughout the Community and designed to ensure bearer confidence and the application of the principle of home Member State prudential supervision;

(Amendment 3)
Recital 3a (new)

Whereas this Directive shall be followed by

(¹) OJ C 317, 15.10.1998, p. 7.

another Directive on the rules applicable to contractual relations between issuers and bearers of electronic money;

(Amendment 4)
Recital 3b (new)

Whereas each country in the euro zone, with the exception of Luxembourg, has its own inter-bank systems which monitor payments within each country, as well as having its own system of controls on payments made with electronic purse cards;

(Amendment 5)
Recital 3c (new)

Whereas in practice this situation means that all payments in euros made outside the country are treated as international payments with the associated charges;

(Amendment 6)
Recital 3d (new)

Whereas these national inter-bank organisations may function as monopolies controlling the access of any undertaking, even a multinational undertaking represented in various EU countries, to a system other than that in the country of establishment;

(Amendment 7)
Recital 3e (new)

Whereas this situation is incompatible with the internal market and may place a disproportionate burden on undertakings and, consequently, on consumers, and hinders competition within the euro zone;

(Amendment 8)
Recital 3f (new)

Whereas the Commission must use its powers under Directive 98/34/EC to mandate the European Committee for Standardisation to introduce an interoperable electronic money system;

(Amendment 9)
Recital 3g (new)

Whereas the standardisation and interoperability of electronic cards is a basic condition for their utilisation by users and for the speediest possible use of the euro, including for small payments;

(Amendment 10)
Recital 6a (new)

Whereas it is imperative for electronic money to be redeemable free of charge to maintain bearer confidence;

(Amendment 11)
Recital 8

whereas, however, it is necessary to preserve a level playing field between credit institutions issuing electronic money and electronic money institutions and, thus, to ensure fair competition among a wider range of institutions to the benefits of users; whereas this is achieved since the above-mentioned less cumbersome features of the prudential supervisory regime applying to electronic money institutions are balanced by provisions that are more stringent than those applying to credit institutions, notably as regards restrictions of the business activities electronic money institutions may carry on and, particularly, prudent limitations of their investments aimed at ensuring that their financial liabilities related to outstanding electronic money are backed at all times by highly liquid low risk assets;

whereas, however, it is necessary to preserve a level playing field between credit institutions issuing electronic money and electronic money institutions and, also including interoperability questions, thus, to ensure fair competition among a wider range of institutions to the benefits of bearers; whereas this is achieved since the above-mentioned less cumbersome features of the prudential supervisory regime applying to electronic money institutions are balanced by provisions that are more stringent than those applying to credit institutions, notably as regards restrictions of the business activities electronic money institutions may carry on and, particularly, prudent limitations of their investments aimed at ensuring that their financial liabilities related to outstanding electronic money are backed at all times by highly liquid low risk assets;

(Amendment 12)
Recital 12a (new)

Whereas the Commission must submit as soon as possible a proposal for a Directive on the establishment of an inter-bank network for the euro zone;

(Amendment 13)
Recital 12b (new)

Whereas, with a view to ensuring genuine competition, the Commission must submit a proposal for a Directive to allow the free access of any undertaking to the services

provided by the issuing institutions in any country in the euro zone;

(Amendment 14)
Article 1(3)(a)

3. For the purposes of this Directive:

(a) 'electronic money institution shall mean an undertaking, other than a credit institution as defined in Article 1, first indent, (a) of Council Directive 77/780/EEC, which issues means of payment in the form of electronic money, or which invests the proceeds from such activities without being subject to Council Directive 93/22/EEC;

3. For the purposes of this Directive:

(a) 'electronic money electronic money institution shall mean an undertaking or any other legal person, other than a credit institution as defined in Article 1, first indent, (a) of Council Directive 77/780/EEC, which issues means of payment in the form of electronic money, or which invests the proceeds from such activities without being subject to Council Directive 93/22/EEC;

(Amendment 15)
Article 1(3)(b)

(b) 'electronic money' shall mean monetary value which 15:

(i) stored electronically on an electronic device such as a chip card or a computer memory;

(ii) accepted as means of payment by undertakings other than the issuing institution;

(iii) generated in order to be put at the disposal of users to serve as an electronic surrogate for coins and banknotes; and

(iv) generated for the purpose of effecting electronic transfers of limited value payments.

(b) 'electronic money' shall mean monetary value which is:

(i) stored on an electronic device such as a chip card or a computer memory;

(ii) accepted as means of payment by natural and legal persons other than the issuing institution or its subsidiaries, its parent undertaking or subsidiaries of the parent undertaking;

(iii) generated in order to be put at the disposal of bearers to serve as an electronic surrogate for coins and banknotes; and

(iii)a does not give rise to the levying of charges on the user at the time of payment.

deleted

(c) 'competent authorities' shall mean those national authorities which are responsible for the supervision of electronic money institutions, and

(d) 'own funds' shall mean own funds as defined in Council Directive 89/299/EEC⁽¹⁾.

⁽¹⁾ OJ L 124, 5.5.1989, p. 16.

(Amendment 16)
Article 2(1)

Application of banking directives

1. Save where otherwise expressly provided for, references to credit institutions in Community Regulations, Directives other than Directives 77/780/EEC and 89/646/EEC, recommendations and opinions shall not apply to electronic money institutions.

Application of banking directives

1. Save where otherwise expressly provided for, references to credit institutions in Directives 77/780/EEC, 89/646/EEC 91/308/EEC and 92/30/EEC shall apply to electronic money institutions.

(Amendment 17)
Article 2(3)

3. Council Directives 91/308/EEC and 92/30/EEC shall apply to electronic money institutions. ~~deleted~~

(Amendment 18)

Article 2(4)

4. For the purpose of applying Article 3 of Directive 89/646/EEC funds received in exchange for electronic money shall not be regarded as deposits within the meaning of that Article if the underlying contractual arrangements:

(a) clearly establish the specific character of electronic money as an electronic surrogate for coins and banknotes; and

(b) do not provide for the possibility of advancing funds with a view to and in exchange for the receipt of electronic money at a later stage;

Redeemability of electronic money is, in itself, not a sufficient reason for considering the funds advanced by the user to be deposits within the meaning of Article 3 of Directive 89/646/EEC. The contract between the issuer and the user shall define if the stored electronic money is redeemable or not, and, if appropriate, the conditions, the formalities and the time period of redeemability.

4. For the purpose of applying Article 3 of Directive 89/646/EEC funds received in exchange for electronic money shall not be regarded as deposits within the meaning of that Article if the underlying contractual arrangements:

(a) clearly establish the specific character of electronic money as an electronic surrogate for coins and banknotes;

(b) do not provide for the possibility of advancing funds with a view to and in exchange for the receipt of electronic money at a later stage;

(c) ensure full redeemability of the funds received without charges, conditions or time periods other than those strictly necessary to carry out that operation. Redeemability of electronic money is, in itself, not a sufficient reason for considering the funds advanced by the bearer to be deposits within the meaning of Article 3 of Directive 89/646/EEC. The contract between the issuer and the bearer shall state that the stored electronic money is redeemable and, if appropriate, the conditions and the formalities of redeemability.

(Amendment 19)

Article 2a (new)

Redeemability

1. A bearer of electronic money may, during the period of validity, ask the issuer to redeem it in coins and bank notes free of charge.

2. The contract between the issuer and the

bearer shall clearly state the conditions of redemption.

The contract may stipulate a minimum threshold for redemption. The threshold may not exceed EUR 10.

(Amendment 20)
Article 3(1)

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|--|--|
| <p>1. Electronic money institutions shall have an initial capital of no less than <u>ECU</u> 500 000. Notwithstanding paragraphs 2 and 3 their own funds shall not fall below that amount.</p> | <p>1. Electronic money institutions shall have an initial capital of no less than <u>EUR</u> 500 000. Notwithstanding paragraphs 2 and 3 their own funds shall not fall below that amount.</p> |
|--|--|

(Amendment 21)
Article 4(1)

- | | |
|--|--|
| <p>1. Electronic money institutions shall have investments of an amount of no less than their financial liabilities related to outstanding electronic money in the following assets only:</p> <p>(a) asset items which according to Article 6(1)(a) points 1, 2, 3, 4 and Article 7(1) of Directive 89/647/EEC attract a zero credit risk weighting and which are highly liquid;</p> <p>(b) sight deposits held with Zone A credit institutions and debt instruments, which are</p> <p>(i) highly liquid;</p> <p>(ii) not covered by paragraph 1(a),</p> <p>(iii) recognised by competent authorities as qualifying items within the meaning of Article 2(12) of Directive 93/6/EEC; and</p> | <p>1. Electronic money institutions shall have investments of an amount of no less than their financial liabilities related to outstanding electronic money in the following assets only:</p> <p>(a) asset items which according to Article 6(1)(a) points 1, 2, 3, 4 and Article 7(1) of Directive 89/647/EEC attract a zero credit risk weighting and which are highly liquid;</p> <p>(b) sight deposits held with Zone A credit institutions and debt instruments, which are</p> <p>(i) <u>sufficiently</u> highly liquid;</p> <p>(ii) not covered by paragraph 1(a),</p> <p>(iii) recognised by competent authorities as qualifying items within the meaning of Article 2(12) of Directive 93/6/EEC; and</p> |
|--|--|

(iv) issued by undertakings other than undertakings which have a direct or indirect holding in the electronic money institution concerned or which must be included in these undertakings' consolidated accounts or in which the electronic money institution concerned has a direct or indirect holding.

(iv) issued by undertakings other than undertakings which have a direct or indirect holding in the electronic money institution concerned or which must be included in these undertakings' consolidated accounts or in which the electronic money institution concerned has a direct or indirect holding.

(Amendment 22)

Article 4(3)

3. For the purpose of hedging market risks arising from the issuance of electronic money and from the investments referred to in paragraph 1, electronic money institutions may use highly liquid interest-rate and foreign-exchange-related off balance-sheet items in the form of exchange-traded derivative instruments to which Annex II to Directive 89/647/EEC does not apply. The use of derivative instruments according to the first sentence is permissible only if the full elimination of market risks is intended and, to the extent possible, achieved.
3. For the purpose of hedging market risks arising from the issuance of electronic money and from the investments referred to in paragraph 1, electronic money institutions may use sufficiently highly liquid interest-rate and foreign-exchange-related off balance-sheet items in the form of exchange-traded derivative instruments to which Annex II to Directive 89/647/EEC does not apply. The use of derivative instruments according to the first sentence is permissible only if the full elimination of market risks is intended and, to the extent possible, achieved.

(Amendment 23)

Article 7(1)

1. Member States may waive the application of Articles 1(4), 3(1), and 8 of this Directive and the application of Directives 77/780/EEC and 89/646/EEC to an electronic money institution if the totality of the business activities of the type referred to in Article 1(3)(a) it undertakes alone or in co-operation with other electronic money institutions fulfil the following conditions:
 - (a) it generates a total amount of financial liabilities related to
1. Member States may waive the application of Articles 1(4), 3(1), and 8 of this Directive and the application of Directives 77/780/EEC and 89/646/EEC to an electronic money institution if the totality of the business activities of the type referred to in Article 1(3)(a) it undertakes alone or in co-operation with other electronic money institutions fulfil the following conditions:
 - (a) it generates a total amount of financial liabilities related to

outstanding electronic money that normally does not exceed ECU 10 million and never exceeds ECU 12 million; and

(b) is related to electronic money the underlying contractual arrangements of which provide that the electronic storage device at the disposal of users for the purpose of making payments is subject to a maximum storage amount of no more than ECU 150.

An electronic money institution for which the application of one of the above Articles has been waived shall not benefit from the freedom of establishment and the freedom to provide services as conveyed by Directive 89/647/EEC.

2. For the purpose of applying this Directive to undertakings which seek for a waiver according to paragraph 1 to be approved or for which the waiver has been approved:

(a) 'competent authorities' shall mean those national authorities which are responsible for the supervision of electronic money institutions; and

(b) 'own funds' shall mean own funds as defined in Council Directive 89/299/EEC⁽¹⁾.

⁽¹⁾OJ L 124, 5.5.1989, p. 16.

outstanding electronic money that normally does not exceed EUR 10 million and never exceeds EUR 12 million; and

(b) is related to electronic money the underlying contractual arrangements of which provide that the electronic storage device at the disposal of bearers for the purpose of making payments is subject to a maximum storage amount of no more than EUR 150.

An electronic money institution for which the application of one of the above Articles has been waived shall not benefit from the freedom of establishment and the freedom to provide services as conveyed by Directive 89/647/EEC.

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DRAFT LEGISLATIVE RESOLUTION

Legislative resolution embodying Parliament's opinion on the proposal for a European Parliament and Council Directive on the taking up, the pursuit and the prudential supervision of the business of electronic money institutions (COM(98)0461 - C4-0531/98 - 98/0252(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council, COM(98)0461 - C4-0531/98 - 98/0252(COD))()
 - having regard to Articles 189b(2) and 57(2) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C4-0531/98),
 - having regard to Rule 58 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and Citizens' Rights and the opinion of the Committee on Economic and Monetary Affairs and Industrial Policy (A4-0156/99),
1. Approves the Commission proposal, subject to Parliament's amendments;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 189a(2) of the EC Treaty;
 3. Calls on the Council to incorporate Parliament's amendments in the common position that it adopts in accordance with Article 189b(2) of the EC Treaty;
 4. Points out that the Commission is required to submit to Parliament any modification it may intend to make to its proposal as amended by Parliament;
 5. Instructs its President to forward this opinion to the Council and Commission.

(1) OJ C 317, 15.10.1998, p. 7.

A.II
LEGISLATIVE PROPOSAL

Proposal for a European Parliament and Council Directive amending Directive 77/780/EEC on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions (COM(98)0461 - C4-0532/98 - 98/0253(COD))

This proposal is approved with the following amendments:

Text proposed by the Commission⁽¹⁾

Amendments by Parliament

(Amendment 1)
Recital 4a (new)

Whereas it is necessary for electronic money to be redeemable to ensure bearer confidence;

(Amendment 2)
Article 1a (new)

Article [2a] of European Parliament and Council Directive 99/.../EC shall apply to credit institutions.

⁽¹⁾ OJ C 317, 15.10.1998, p. 7.

DRAFT LEGISLATIVE RESOLUTION

Legislative resolution embodying Parliament's opinion on the proposal for a European Parliament and Council Directive amending Directive 77/780/EEC on the coordination of laws, regulations and administrative provisions relating to the taking up, the pursuit and the prudential supervision of the business of electronic money institutions (COM(98)0461 - C4-0531/98 - 98/0252(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council, COM(98)0461 - 98/0253(COD)(),
 - having regard to Article 189b(2) and 57(2) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C4-0532/98),
 - having regard to Rule 58 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and Citizens' Rights and the opinion of the Committee on Economic and Monetary Affairs and Industrial Policy (A4-0156/99),
1. Approves the Commission proposal, subject to Parliament's amendments;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 189a(2) of the EC Treaty;
 3. Calls on the Council to incorporate Parliament's amendments in the common position that it adopts in accordance with Article 189b(2) of the EC Treaty;
 4. Points out that the Commission is required to submit to Parliament any modification it may intend to make to its proposal as amended by Parliament;
 5. Instructs its President to forward this opinion to the Council and Commission.

(¹) OJ C 317, 15.10.1998, p. 12.

B
EXPLANATORY STATEMENT

Commented [COMMENT3]:
NOAM

I. INTRODUCTION: ELECTRONIC MONEY - A BOOMING PHENOMENON

In recent years, there has been a major development in electronic means of payment in most European Union Member States.

In its August 1998 report, the European Central Bank

() noted that multi provider prepaid payment cards are being developed or are in use in the following countries:

- single system: Belgium, Denmark, Luxembourg, Austria, Portugal and Sweden;
- several systems: Germany, Greece, Spain, Italy, Netherlands, Finland and the United Kingdom.

Several of these systems have been developed at national level.

In addition, several systems of computer-memory-registered electronic money have also been developed. Certain projects involving prepaid services offered on the Internet (Belgium, Germany, France and Finland) are under development in the European Union.

According to the European Committee for Standardisation, there are a host of electronic money systems - about 30 or 40 - in Europe, e.g. PROTON in Belgium, GELDKARTE in Germany and MONDEX in the United Kingdom.

Issuers of electronic money have an advantage over payment cards and credit cards: while the latter are mostly on-line to a telephone network, electronic money functions off-line and is therefore less costly to manage(). The cost of telecommunications in Europe may be prohibitive.

Lastly, reference should be made to the monetary union context: for three years, the euro will be in circulation without coins or notes, thus creating the scope for using electronic money. The new environment resulting from the introduction of the euro affords an opportunity to be seized on to develop an interoperable system.

() noted that multi provider prepaid payment cards are being developed or are in use in the following countries:) Report on Electronic Money (in English only), European Central Bank, Frankfurt-on-Main, August 1998.

(). The cost of telecommunications in Europe may be prohibitive.) The fact that telephone calls are cheaper in the United States may account for the fact that credit cards are more widely developed and hence electronic money is not very well developed there.

II. THE CONTEXT OF THE PROPOSAL FOR A DIRECTIVE

1. Clarification of concepts

Electronic money means a unit of account acknowledged by the purchaser and by the vendor. It currently comes in two forms: a tangible form, i.e. a prepaid card with memory or a more virtual form, i.e. a computer file on a hard disk or computer memory (virtual purse).

A distinction must be made between a prepaid card (or a computer file) and a traditional payment card, which is electronically managed bank money allowing access to an account. It is as if a consumer had cash on his person.

A parallel can be drawn with cards for public telephones, which may be regarded as single-purpose prepaid cards, whereas the cards of interest to us in this instance are multi-purpose cards.

In the case of both the prepaid card and the virtual purse, banks use their monopoly as intermediary between customer and trader.

Prepaid cards are likely to continue to be used for limited-value payments only. They have the advantage of being instantaneous, but are hardly going to be a surrogate for transactions involving higher amounts. This constraint is a fact of life, it is not a constraint in law. It also conveys the impression that high-value payments are not covered by the Directive().

We must bear in mind that electronic money may take very different forms, as witness the experience of the firm American Express, which the rapporteur cites in this context purely to illustrate what a non-bank issuer of electronic money is. This company has piloted both off-line smart-card products as well as on-line stored-value products (requiring prior authorisation). As there is not yet an infrastructure to support major smart-card products, its major e-money products have been on-line magnetic stripe cards that utilise the American Express card network.

Charged-for access to Internet pages is a further typical application, with a very small sum being debited from a computer memory each time an Internet service is accessed.

2. Development of electronic commerce

(^b) Cf. ECB, opinion of 18 January 1999 (not yet published in the OJ).

The development of electronic money must be set in the context of the increasing pace of technological progress and the development of electronic commerce on the Internet, the importance of which the Commission rightly stresses(

). The medium requires little in the way of specific investment, it costs little to use, and it is accessible to the public at large. Because it is relatively inde

() The medium requires little in the way of specific investment, it costs little to use, and it is accessible to the public at large. Because it is relatively independent in terms of type of infrastructure, borders and operators,

) Pages 3 and 4 of the explanatory memorandum.

3. Need for Community rules

Electronic money has developed over recent years without a specific regulatory framework at Community level. At national level, there is relatively little regulation because, as a rule, the issuance of electronic money is restricted to banking establishments and the need for specific legislation has not made itself felt. In terms, however, of confidence in the system, on the part of both economic operators and consumers, it is important that a regulatory framework be set up with solvency guarantees in order to prevent bankruptcies in particular. The recent bankruptcy of the non-bank electronic money issuer DigiCash is a case in point which speaks volumes. Press headlines immediately predicted the demise of electronic money(

). Such events can have a disastrous impact on public opinion and undermine the confidence of consumers and firms, whose impression is that the devel

Electronic money transaction traceability, advocated by the ECB, has benefits and drawbacks. For the consumer - potentially at least - it could undermine transaction confidentiality. At the same time, however, it can play an important role in combating counterfeiting, money-laundering and tax fraud. It is important to make sure that the development of electronic money does not become a heaven-sent opportunity for money-laundering traffickers().

In addition, there is legitimate concern that pin codes are not authorised in the United Kingdom.

One possible solution sometimes mentioned would involve capping the amount of electronic money which may be registered on the medium or to set a ceiling for each operation. Such a provision could be very easily circumvented by having several accounts or cards, however, which is why it would not solve the problem.

4. The regulatory system for electronic money in the United States

Commented [COMMENT4]:
NOAM

It may be helpful to outline the rules in force in the United States. In the United States, there is no rigid financial supervision, but, rather, a division of responsibilities between the public authorities and the sector itself. In addition, the 1998 *US Federal Electronic Fund Transfer Act* applies; it also covers some SMEs().

(¹) Report by the working party chaired by Mr Francis Lorentz, Ministry for Economic Affairs and Finance, Paris, October 1998.

() Such events can have a disastrous impact on public opinion and undermine the confidence of consumers and firms, whose impression is that the development of electronic money is an anarchic process.

) See *Der Standard*, 7-8.11.1998, p. 36.

(¹) Electronic money institutions are also subject to Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money-laundering, OJ L 166, 28.6.1991, p. 77 et seq.

(¹) See in this connection the *Report to the Congress on the Application of the Electronic Fund Transfer Act to Electronic Stored-Value Products - Board of Governors of the Federal Reserve System, March 1997*.

In three states, non-banks are subject to state banking department supervision and must obtain licenses prior to issuing electronic money products. Issuers can be subject to annual audits and

minimum capital requirements and are required to invest 100% of all outstanding funds in highly rated permissible investments. Issuers must also provide information to demonstrate sound and prudent management. Some states also specify that these funds be held in trust for the holder and cannot be seized in the event of bankruptcy. At the federal level, non-bank issuers are subject to the supervision of the Federal Trade Commission (FTC)().

III. ASSESSMENT OF THE CONTENTS OF THE COMMISSION PROPOSAL

1. Basic options in the proposal under consideration

The major principles underlying the two banking Directives are applicable in this instance: free movement for financial markets and the 'European passport'(

). Rules have been introduced with regard to non-bank operators and the solvency ratio applicable to them.

Funds advanced by bearers are not considered deposits

The underlying principle of the proposal for a Directive is that funds advanced by bearers are not considered deposits within the meaning of Article 3 of Directive 89/646/EEC. The structure of the Directive is based on this initial choice. Reasons should have been given for that choice, however.

Non-bank institutions may issue electronic money

As stressed by the European Central Bank report, few non-bank institutions have issued electronic money to date. The rapporteur endorses the Commission's option, which will permit genuine competition. A sense of proportion must be restored to the debate: even if the issuance of electronic money were prohibited for non-bank institutions, they could still acquire a bank, given their economic strength, in order to diversify their activities and ultimately issue electronic money. For instance, then, a telecommunications company could always find a solution in law (e.g. a joint venture with a bank) to issue electronic money.

2. Limiting the scope of the proposal for a Directive to prudential supervision

• Creating the macroeconomic conditions for stability

The Directive under consideration is designed solely to govern access to and the exercise of electronic money institutions' business and the prudential supervision of those institutions.

(¹) The rapporteur was given this information by American Express.

(²) Rules have been introduced with regard to non-bank operators and the solvency ratio applicable to them.) 77/780/EEC, OJ L 322, 17.1.1997, p. 30.
89/646/EEC, OJ L 386, 30.12.1989, p.1.

- **Consumer protection should be covered by a later Commission proposal**

In principle, the proposal does not address the question of consumer protection in the context of the development of electronic money, which should be covered by a later Directive().

However, the Commission's position on this question of consumer protection is not entirely logical. The fact is that Article 2(4) contains provisions on the redeemability of electronic money, yet this is an aspect of consumer protection. Furthermore, in more general terms, the Directive as a whole, the objective of macroeconomic stability and the solvency ratio provisions are in fact designed to create a climate of confidence also benefiting consumers and vendors. In a host of respects, then, there seems to be an artificial distinction between a prudential supervision Directive and a consumer protection Directive.

The proposal stipulates that provision may be made in the contract between issuer and bearer for electronic money to be redeemable. It is legitimate to wonder whether a clause ruling out redeemability would be in line with consumer protection legislation in connection with pre-formulated standard contracts(

). In the rapporteur's opinion, however, even if existing legislation could be regarded as sufficient to protect the consumer, there would be legal uncertainty

Electronic money ought to be redeemable at par, until the medium expires, without calling into question the basic principle that funds received in exchange for electronic money are not regarded as deposits. Redeemability is all the more important since there is no provision for introducing a cap on the amount of electronic money registered on an electronic medium.

The rapporteur takes the view, however, that a provision ought to be inserted into the Directive to allow the principle to be applied flexibly: stipulating a minimum threshold of EUR 10 for redemption in coins and notes(.

Lastly, we would point out that, in practice, there are likely to be very few requests for redemption; but this right must nonetheless be guaranteed for bearers in order to strengthen confidence in the system.

(¹) In communication COM(97)0353, the Commission sets out the instruments which it proposes to implement in order to enhance confidence in electronic means of payment within the single market.

() In the rapporteur's opinion, however, even if existing legislation could be regarded as sufficient to protect the consumer, there would be legal uncertainty - at least before the courts have ruled - which would not be covered by Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, OJ L 095, 21.4.1993, p. 29.

(²) In its report, the ECB also points out that, if there is no close link between electronic money and central-bank-issued money or fiduciary money, electronic money might be created on an unlimited basis, at least potentially, and there could therefore be inflation pressure (*op. cit.*, note 1, p 27). See also point 19 of the ECB opinion, *op. cit.*, note 3.

The rapporteur's consumer protection amendments are not intended to address all the relevant questions in this connection; the rapporteur's intention is merely to ensure that the text

encourages greater customer and operator confidence in electronic money(). At all events, the Commission is called upon to submit promptly a comprehensive proposal on consumer protection, in particular with regard to contractual relations. A new recital would enable this intention to be enshrined.

- **Interoperability of the various electronic money systems will be brought in by the banking sector itself**

According to the ECB, interoperability is a situation in which payment instruments belonging to a given scheme may be used in other countries and in systems installed by other schemes. Interoperability requires technical compatibility between systems, but can only take effect where commercial agreements have been concluded between the schemes concerned.

Interoperability, which involves largely technical aspects, is in reality the key question for users in connection with monetary union. The European Committee on Banking Standards (ECBS) has taken the initiative of introducing a chip card system permitting electronic purse interoperability at technical level in 2002 at the latest. The rapporteur takes the view that this is a good example of self-regulation of an economic sector and that there is no need to interfere in this move. The question which may be asked is what about interoperability with electronic money issuers which are not banking institutions? Such issuers are not organised at European level within an association; they should go over to the interoperability model defined by the banks, and they should possibly be involved in the process of devising that model. The rules under Article 85 et seq. of the EC Treaty must be complied with. In particular, the banks should not be in a position to hamper the existence of effective competition. At all events, action will have to be taken, as the Commission indicates in its explanatory memorandum, to make sure that there is 'sound and vigorous competition' (page 9); and the rapporteur can but encourage stepping up the pace of work in this connection.

The Commission will issue a communication in the spring of 1999 on the future of payment systems in the single market which will set out a framework for achieving the goal of a single payments area. The aim is to examine and reduce existing barriers in cross-border payments in the single market to make them as efficient as domestic payments, i.e. with the same level of speed and security as national operations and a comparable cost. The Commission would welcome the rapid development of a European electronic wallet (i.e. electronic card which stores value and can be used to make low-value retail purchases). The urgency for action in this area has been fully supported by the personal representatives of Ecofin ministers at the first meeting of the Financial Services Policy Group (chaired by Commissioner Monti) on 28 January 1999.

An interoperable system could be introduced through a European standard, but, as this is a fast-developing sector, it would be desirable for the initial specification to be dealt with by a workshop in the context of CEN/standardisation system in the information society, with direct involvement by the operators concerned. This could be based on the work carried out by the ECBS, but opened up to a wider community.

The Commission could give a mandate for this work on the basis of Directive 98/34/EC

(1) See Commission communication COM(97)0353.

). This would be a more formal way of ensuring genuine involvement on the part of the operators concerned.

(. This would be a more formal way of ensuring genuine involvement on the part of the operators concerned.) OJ L 204, 21.7.1998, pp. 37-48.

3. Drafting quality and legal coherence of the proposed text

The Interinstitutional Agreement of 22 December 1998 on joint guidelines concerning the drafting of Community legislation(), hereinafter referred to as 'the guidelines', provides invaluable tools to improve the proposal under consideration.

In general terms, it is regrettable that the proposal makes a host of references to previous acts, which makes it particularly labourious to read (cf. para. 16 of the guidelines). Furthermore, the recitals are too long.

Definition of electronic money

The definition of electronic money given here is very broad: electronic money is 'stored' on a chip card or a 'computer memory'. The effect of this deliberately broad definition is to bring all non-bank electronic money issuing institutions within the scope of the Directive under consideration. Your rapporteur endorses that option. This is an important point in that electronic money issuers may be organised in very different ways, and the definition must be sufficiently broad to encompass them all. However, the point specifying that electronic money is exclusively intended for limited-value payments has no significance in law and should be deleted.

'Bearer': The term 'user' in the Commission proposal is ambiguous: a retailer who accepts electronic money is also a 'user'. The term 'bearer' is therefore preferable to the term 'user'.

The 'accepter' of electronic money: Article 1(b)ii of the proposal under consideration stipulates that such money is accepted by 'undertakings'. This definition seems too vague and too restrictive. In your rapporteur's view, the term 'natural legal persons', which is more in line with reality, should be used. The fact is that it ought to be entirely possible to pay a doctor, for instance, with a prepaid card.

Definitions in Article 7: Article 7 enables Member States to grant exemptions from certain provisions in the proposals, in proportion to the risks inherent in small-scale systems, which accounts for the non-application of the definitions in the two banking Directives. For that reason, the Commission thought it advisable to give a definition of 'competent authorities' and 'own funds'. To make the text more logical and more readable, however, these definitions should preferably be included in Article 1 (cf. para. 15 of the guidelines).

(, hereinafter referred to as 'the guidelines', provides invaluable tools to improve the proposal under consideration.) OJ C 073, 17.3.1999, pp. 1-4.

IV: CONCLUSION

The amendments proposed by the rapporteur do not call into question the approach taken by the Commission, which seeks to avoid an overly rigid regulatory framework. Access to non-bank electronic money institutions' business should indeed be permitted, thus opening up vigorous and sound competition. The Directive must define the framework for the prudential supervision of electronic money institutions. Without seeking to regulate all questions relating to contractual relations between issuers and bearers - the Commission should take such an initiative in due course - we have thought it apt to lay down a number of rules which will strengthen both operators' and consumers' confidence in electronic money.

18 February 1999

OPINION

(Rule 147)

for the Committee on Legal Affairs and Citizens' Rights

on the proposal for a European Parliament and Council Directive on the taking up, the pursuit and the prudential supervision of the business of electronic money institutions (COM(98)0461 - C4-0531/98 - 98/0252(COD))

and

the proposal for a European Parliament and Council Directive amending Directive 77/780/EEC on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions (COM(98)0461 - C4-0532/98 - 98/0253(COD)) (report by Mrs Thors)

Committee on Economic and Monetary Affairs and Industrial Policy

Draftsman: Mrs Helena Torres Marques

PROCEDURE

At its meeting of 10 November 1998 the Committee on Economic and Monetary Affairs and Industrial Policy appointed Mrs Torres Marques draftsman.

It considered the draft opinion at its meetings of 8 December 1998, 20 January 1999 and 17 February 1999.

At the last meeting it adopted the following conclusions unanimously.

The following were present for the vote: von Wogau, chairman; Katiforis and Secchi, vice-chairmen; Hendrick (for Torres Marques, draftsman), Camison Asensio (for Areitio Toledo), Carlsson, Carrozzo, Cassidy (for Arroni), Caudron, Ettl (for Billingham), Fourçans, Gasoliba I Böhm, Glante, Goedbloed (for Riis-Jørgensen), Herman, Hoppenstedt, Ilaskivi, Kestelijn-Sierens, Kuckelkorn, Larive, Lulling, Metten, Miller, Murphy, Paasilinna, Peijs, Pérez Royo, Rapkay, Read, Siso Cruellas (for Mezzaroma), Tappin (for Harrison), Thyssen, Watson, Wolf (for Hautala).

INTRODUCTION

The issue in context

Electronic money is a means of payment which transfers funds from one person to another in a manner equivalent to the use cash, but without a physical medium. Monetary value is expressed in the form of a 'virtual object', a secure digital representation stored in the memory of a computer or a 'chip' card. The existence of any kind of physical medium is thus unnecessary.

Electronic money differs from other means of payment in common use as follows:

- unlike traditional payment cards (credit or debit cards) or bank transfer orders, even those transmitted electronically, the monetary value is directly loaded into the virtual object; payment therefore does not entail booking from one account to another;
- the holding of electronic money does not require the user to have a bank account;
- unlike systems such as loyalty cards or vouchers issued by companies as part of their bilateral relations with their consumer customers, electronic money is intended to be used in transactions with third parties.

In its actual or potential use, electronic money is therefore much more akin to the notes and coins that it is intended to supplement or even replace (particularly for transactions on the Internet).

It shares with cash the fundamental characteristics inherent in the very concept of money (and does so even if the various existing or future systems are free not to combine all of those characteristics): an inherent value which is independent of the personal situation of the user, anonymity, universal transferability, permanence and fungibility (or 'redeemability', if electronic money is not wholly equated with traditional money).

It is even legitimate to regard electronic money as an entirely separate form of money. Money, of course, is not just an ordinary product or service: even if it is treated as an object of personal possession in the context of contractual or other relations, it is public property, the integrity and security of which must be guaranteed in order to ensure confidence on the part of all potential users.

Critical analysis

Confidence is the prerequisite for the development of this new form of money, as it was for all preceding forms. Prudential supervision is a vital factor in ensuring such confidence, and the Committee on Economic and Monetary Affairs and Industrial Policy approves the principles and procedures of the mechanism proposed by the Commission, subject to a more detailed examination by the Committee on Legal Affairs and Citizens' Rights, which is the committee responsible with regard to these proposals.

This committee takes the view, however, that the legal framework cannot be restricted to the prudential aspect; this is necessary, but insufficient to ensure user confidence and, beyond that, to stimulate the development of electronic money as a means of payment in general use.

For that reason, this committee wishes to see an affirmation of the following two principles:

- no levying of charges on the user at the time of payment (which does not necessarily rule out possible payment for the service by means of charges levied on the beneficiaries of the payment, or the levying of lump-sum or periodic charges);
- full and immediate redeemability of electronic money, while accepting the need to apply charges, time periods and conditions strictly to the extent required to carry out such an operation.

Given the simplicity of use that it offers, electronic money has a role to play in the changeover to the euro: it may help to facilitate payments in different Member States and to carry out easily conversions between national expressions of the euro without waiting for the physical introduction of notes and coins, and its development will reduce, to a similar extent, the volume of notes and coins required in 2002. It is thus in the interests of the Community and the Member States to provide strong encouragement for its use and, to that end, to ensure consumer confidence.

Although this aspect cannot feature as such in the context of this Directive, **the Committee on Economic and Monetary Affairs and Industrial Policy believes it to be essential for the various electronic money systems to be interoperable.** The Commission should, accordingly, permit issuers to act together and should encourage the establishment of procedures and standards making it possible to avoid incompatibility between networks, countries and equipment or technology. **Internally, the European institutions (and Parliament, in particular), should set an example and take systematic steps to enable electronic money to be used within their walls.**

Another aspect to be taken into account is that of subscription and transaction costs. The example of commission charges on credit card payments (both the levels thereof, and the variations between Member States) shows the need to stimulate the development of effective competition between networks and countries. Accordingly, we believe it to be desirable to specify that an electronic money system must be valid throughout the euro zone, and that exceptions must be limited and indicated as such.

In addition, the opportunity for non-bank institutions to issue electronic money and to be treated, for that purpose, in the same way as credit institutions seems to us likely to make a positive contribution to the development of such competition. Certain reservations have been expressed about this approach. We believe, however, that it is possible for the issuance of electronic money - an activity which has no effect on the money supply - not to be restricted to the banks alone, provided that there is satisfactory prudential supervision. Moreover, there is nothing to prevent a bank guarantee being required where this is deemed necessary, and we propose introducing this option.

Finally, we believe it is unreasonable to permit unlimited amounts to be transmitted by means of an electronic money payment. **While anonymity is a positive aspect, the risks of**

money-laundering and other illegal transactions seem to us to justify setting a ceiling, albeit at a level which is high enough not to impose constraints on users who are natural persons in their everyday transactions. In this respect, the Directive on cross-border payments provides a guide, since it sets a ceiling of EUR 12 500 beyond which the transaction is no longer deemed to be consumer expenditure (which is covered, in that directive, by a guarantee of reimbursement).

CONCLUSIONS

The Committee on Economic and Monetary Affairs and Industrial Policy calls on the Committee on Legal Affairs and Citizens' Rights, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission	Amendments by Parliament
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Commented [COMMENT5]:
(Amendment ##)
→##←

(Amendment 1)

Recital 3

whereas the approach adopted is appropriate to achieve only the essential harmonisation necessary and sufficient to secure the mutual recognition of authorisation and prudential supervision of electronic money institutions, making possible the granting of a single licence recognised throughout the Community and the application of the principle of home Member State prudential supervision;

whereas the approach adopted is appropriate to achieve only the essential harmonisation necessary and sufficient to secure the mutual recognition of authorisation and prudential supervision of electronic money institutions, making possible the granting of a single licence recognised throughout the Community and designed to ensure user confidence, and the application of the principle of home Member State prudential supervision;

(Amendment 2)

Recital 3a (new)

Whereas each country in the euro zone, with the exception of Luxembourg, has its own inter-bank systems which monitor payments within each country, as well as having its own system of controls on payments made with electronic purse cards;

(Amendment 3)
Recital 3b (new)

Whereas in practice this situation means that all payments in euros made outside the country are treated as international payments with the associated charges;

(Amendment 4)
Recital 3c (new)

Whereas these national inter-bank organisations may function as monopolies controlling the access of any undertaking, even a multinational undertaking represented in various EU countries, to a system other than that in the country of establishment;

(Amendment 5)
Recital 3d (new)

Whereas this situation is incompatible with the internal market and may place a disproportionate burden on undertakings and, consequently, on consumers, and hinders competition within the euro zone;

(Amendment 6)
Recital 3e (new)

Whereas the standardisation and interoperability of electronic cards is a basic condition for their utilisation by users and for the speediest possible use of the euro, including for small payments;

(Amendment 7)
Article 1, par. 3

3. For the purposes of this Directive:

(a) 'electronic money institution shall mean an undertaking, other than a credit institution as defined in Article 1, first indent, (a) of Council Directive 77/780/EEC, which issues means of payment in the form of electronic money, or which invests the proceeds from such activities without being subject to Council Directive 93/22/EEC;

(b) 'electronic money' shall mean monetary value which is:

(i) stored electronically on an electronic device such as a chip card or a computer memory;

(ii) accepted as means of payment by undertakings other than the issuing institution;

(iii) generated in order to be put at the disposal of users to serve as an electronic surrogate for coins and banknotes; and

3. For the purposes of this Directive:

(a) 'electronic money institution shall mean an undertaking or any other legal person, other than a credit institution as defined in Article 1, first indent, (a) of Council Directive 77/780/EEC, which issues means of payment in the form of electronic money, or which invests the proceeds from such activities without being subject to Council Directive 93/22/EEC;

(b) 'electronic money' shall mean monetary value which:

(i) is stored electronically on an electronic device such as a chip card or a computer memory;

(ii) is accepted as means of payment by persons other than the issuing institution;

(iii) is generated in order to be put at the disposal of users to serve as an electronic surrogate for coins and banknotes wherever these are legal tender;

(iiia) does not give rise to the levying of charges on the user at the time of payment; and

(iv) generated for the purpose of effecting electronic transfers of limited value payments.

(iv) generated for the purpose of effecting electronic transfers of limited value payments.

(Amendment 8)
Article 1(3)(b)(ii)

(ii) accepted as means of payment by undertakings other than the issuing institution;

ii) accepted as means of payment for a wide variety of goods and services by undertakings other than the issuing institution;

(Amendment 9)
Article 2(4)

4. For the purpose of applying Article 3 of Directive 89/646/EEC funds received in exchange for electronic money shall not be regarded as deposits within the meaning of that Article if the underlying contractual arrangements:

(a) clearly establish the specific character of electronic money as an electronic surrogate for coins and banknotes; and

(b) do not provide for the possibility of advancing funds with a view to and in exchange for the receipt of electronic money at a later stage.

Redeemability of electronic money is, in itself, not a sufficient reason for considering the funds advanced by the user to be deposits within the meaning of Article 3 of Directive 89/646/EEC. The contract between the issuer and the user shall define if the stored electronic money is redeemable or not, and, if appropriate, the conditions, the formalities and the time period of redeemability.

4. For the purpose of applying Article 3 of Directive 89/646/EEC funds received in exchange for electronic money shall not be regarded as deposits within the meaning of that Article if the underlying contractual arrangements:

(a) clearly establish the specific character of electronic money as an electronic surrogate for coins and banknotes; and

(b) do not provide for the possibility of advancing funds with a view to and in exchange for the receipt of electronic money at a later stage;

(c) ensure full redeemability of the funds received without charges, conditions or time periods other than those strictly necessary to carry out that operation. Redeemability of electronic money is, in itself, not a sufficient reason for considering the funds advanced by the user to be deposits within the meaning of Article 3 of Directive 89/646/EEC. The contract between the issuer and the user shall state that the stored electronic money is redeemable and, if appropriate, the conditions and the formalities of redeemability.

(Amendment 10)
Article 5

Competent authorities shall verify compliance with Articles 3 and 4 not less than twice each year on the basis of data supplied by the electronic money institutions.

Competent authorities shall verify compliance with Articles 3 and 4 not less than twice each year on the basis of data supplied by the electronic money institutions.

If the financial situation of an electronic money institution is seriously threatened or the composition of its assets is seriously impaired, the authorities may require the institution to furnish a guarantee, provided by a credit institution as defined in Article 1, first indent, (a) of Council Directive 77/780/EEC, in respect of an amount at least equal to its financial commitments relating to electronic money that has been issued and not used.