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AMENDMENTS 24 - 66

Draft report
John Purvis
(PE415.201v01-00)

on the proposal for a directive of the European Parliament and of the Council
on the taking up, pursuit and prudential supervision of the business of
electronic money institutions, amending Directives 2005/60/EC and
2006/48/EC and repealing Directive 2000/46/EC

Proposal for a directive – amending act
(COM(2008)0627 – C6-0350/2008 – 2008/0190(COD))

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Amendment 24
Jean-Paul Gauzès

Proposal for a directive – amending act
Recital 5

Text proposed by the Commission

(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.

Amendment

(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 ***and 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.

Or. en

Justification

Recital (5) relating to Article 1.4 should be consistent with Article 1.4 itself and not delete one of the conditions stated in that article. In the same line, since Article 1.4 is a copy of Article 3 (l) of the Payment Services Directive, this amendment is necessary to align Recital (5) of this Directive with Recital (6) of the Payment Services Directive.

Amendment 25 **John Purvis**

Proposal for a directive – amending act **Recital 12**

Text proposed by the Commission

(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.

Amendment

(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 ***on termination of the contract where a termination date is specified*** should always be free of charge. ***Full or*** partial redemption ***before termination*** may generate ***extra*** costs to the issuer. ***Such redemption*** 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.

Or. en

Justification

To align the text with the amendment to Article 5 on Redeemability.

Amendment 26
Jean-Paul Gauzès

Proposal for a directive – amending act
Recital 16

Text proposed by the Commission

(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.

Amendment

(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. ***In the interests of maintaining a level playing field, however, credit institutions should be able, alternatively, to carry out that activity through a subsidiary under the prudential supervisory regime of this Directive, instead of the banking Directive (2006/48/EC).***

Justification

It would be consistent with the level playing field principle that e-money institutions which are part of a banking group should equally have the opportunity to benefit from the specific capital regime of e-money institutions as defined under this Title, as an alternative to inclusion under the prudential supervision regime on a consolidated basis under directive 2006/48/EC.

Amendment 27
John Purvis

Proposal for a directive – amending act
Article 1 – paragraph 2

Text proposed by the Commission

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.

Amendment

2. With the exception of **Articles 1, 2 and 5, Article 8(2), and Titles III and IV**, this Directive shall not apply to credit institutions as defined in Article 4 (1) (a) of Directive 2006/48/EC.

Justification

In order to ensure a level playing field between credit institutions and e-money institutions, credit institutions should also be prohibited from using the money in the float for investments, particularly in the case of Member States where e-money purses are not included in the deposit guarantee scheme.

Amendment 28
John Purvis

Proposal for a directive – amending act
Article 1 – paragraph 3

Text proposed by the Commission

3. This Directive shall not apply to **services based on instruments that** can be used to

Amendment

3. This Directive shall not apply to **undertakings issuing electronic money**

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.

which can be used to acquire goods or services only:

- (a) in the premises used by the issuer; or
- (b) under commercial agreement with the issuer, either within a limited **local** network of **goods or services** providers or for a limited range of goods or services, **such as a common marketing or distribution scheme**.

Or. en

Justification

This further clarifies what can be considered a "limited network".

Amendment 29

John Purvis

Proposal for a directive – amending act Article 1 – paragraph 4

Text proposed by the Commission

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.

Amendment

4. This Directive shall not apply to **undertakings issuing electronic money** 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.

Or. en

Justification

The Directive applies to undertakings, not to services.

Amendment 30

John Purvis

Proposal for a directive – amending act Article 2 – point 2

Text proposed by the Commission

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;

Amendment

2. 'electronic money' means **any electronically stored** monetary value as represented by a claim on the issuer which is issued on receipt of funds and accepted **as a means of payment** by **a** natural or legal **person** other than the issuer;

Or. en

Justification

Clarification of the definition of e-money so as to distinguish it from banks, on the one hand, and payment institutions on the other.

Amendment 31

Bilyana Ilieva Raeva

Proposal for a directive – amending act Article 2 – point 2

Text proposed by the Commission

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;

Amendment

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 **transferring funds by electronic means from the electronic money holder to its payees**, and is accepted by natural or legal persons other than the issuer;

Justification

The e-money definition proposed is a very broad one. The reference to payment transactions as defined in Directive 2007/64/EC adds a very general concept to the definition, since payment transactions are not restricted to traditional means of payments but also cover transfer and withdrawal of funds. This would imply that traditional bank accounts as well as payment accounts could be considered as e-money. Therefore, it is important to specify that any funds received can only be used for the purpose of electronic transfer of funds from the e-money holder to its payees.

Amendment 32**John Purvis****Proposal for a directive – amending act
Article 3***Text proposed by the Commission*

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

Amendment

*Article 5, **Article 7(3)**, and Articles 10 to 15 and 17 to 25 of Directive 2007/64/EC shall apply mutatis mutandis to electronic money institutions.*

Justification

Reference to the PSD Article 7 (3) allows Member States to give banks the option of not having a separate ongoing capital requirement for an e-money subsidiary if the subsidiary is included in the consolidated supervision of the parent institution. This is already the case for payment institution subsidiaries.

Amendment 33**Jean-Paul Gauzès****Proposal for a directive – amending act
Article 4 a (new)***Text proposed by the Commission**Amendment***Article 4a**

Issuance

Electronic money shall be issued on receipt of funds of an amount not less in value than the monetary value issued.

Or. en

Justification

Electronic money issuers should not be allowed to over-issue electronic money on top of the value of the receipt of funds from customers, as it would create ultimate risks on the e-money issuers' financial soundness. This should be stated as one of the e-money issuers' obligation under a new article.

Amendment 34 John Purvis

Proposal for a directive – amending act Article 5

Text proposed by the Commission

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.

Amendment

Issuance and Redeemability

1. Member States shall ensure that ***issuers of electronic money:***

(a) issue electronic money at par value on receipt of funds; and

(b) upon request by the holder, redeem, at any moment, free of charge, partially or fully and at par value, the monetary value of the electronic money held.

2. Notwithstanding paragraph 1(b), the issuer may charge a fee for the partial or full redemption before the agreed termination date of the contract or where no termination date is specified. That fee shall be set out prominently and in detail in the contract. It shall be proportionate and commensurate with the actual costs incurred by the issuer. Where redemption

takes place on *or after* the *agreed and specified* date of termination of the contract, the monetary value of the electronic money held shall be redeemed free of charge.

3. The contract between the issuer and the holder shall clearly state the conditions of redemption.

3. Redemption rights of merchants shall be subject to contractual agreement between issuers of electronic money and merchants.

4. 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.

5. 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.

6. 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.

Or. en

Justification

This amends the report by removing "free of charge", as some business models charge the consumer for issuing or redeeming e-money. It also clarifies that redemption charges between e-money institutions and merchants should be determined by contractual arrangement.

Amendment 35 Jean-Paul Gauzès

Proposal for a directive – amending act Article 5 – paragraph 1

Text proposed by the Commission

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

Amendment

1. Member States shall ensure that, upon request by the holder, issuers of electronic money redeem, at any moment **during the**

value, the monetary value of the electronic money held.

period of validity of the contract and at par value, the monetary value of the electronic money held.

Or. en

Justification

From an operational perspective and as a general rule, the ability for the holder to exercise redemption should be linked with the duration of the contract and not open for an indefinite period of time afterwards.

Amendment 36
Bilyana Ilieva Raeva

Proposal for a directive – amending act
Article 5 – point 2

Text proposed by the Commission

2. The contract between the issuer and the holder shall *clearly* state the conditions of redemption.

Amendment

2. The contract between the issuer and the holder shall state, ***in a clear and accessible way***, the conditions of redemption, ***including timing and the financial implications thereof***.

Or. en

Justification

Bearers of electronic money should be made aware, in a clear and accessible way in the contract itself, of the conditions in which they can redeem their electronic money.

Amendment 37
Jean-Paul Gauzès

Proposal for a directive – amending act
Article 5 – paragraph 2

Text proposed by the Commission

2. The contract between the issuer and the holder shall clearly state the conditions of

Amendment

2. The contract between the issuer and the holder shall clearly state the conditions of

redemption.

redemption, *including timing and the financial implications thereof*.

Or. en

Justification

For the sake of legal security, the contract should clearly indicate the timeframe and financial conditions of redemption.

Amendment 38
Jean-Paul Gauzès

Proposal for a directive – amending act
Article 5 – paragraph 4

Text proposed by the Commission

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.

Amendment

4. Where redemption takes place *during* the *period* of termination, *as defined in* the contract, the monetary value of the electronic money held shall be redeemed free of charge.

Or. en

Justification

In practice, redemption cannot always occur on the very day of the termination of the contract. For operational and technical reasons, redemption is hardly possible on week-ends. The drafting of Article 5.4 should therefore be more flexible by introducing the possibility of redemption within a limited period of time after the end of the contract.

Amendment 39
Jean-Paul Gauzès

Proposal for a directive – amending act
Article 6

Text proposed by the Commission

1. Member States shall require electronic money institutions to hold, at the time of

Amendment

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**.

authorisation, initial capital, comprised of the items defined in Article 57(a) and (b) of Directive 2006/48/EC, of not less than EUR **250 000**. ***Their own funds shall not fall below that amount at any time.***

Or. en

Justification

The minimum capital requirement for electronic money institutions is lowered from EUR 1,000,000 at present to EUR 125,000 with no justification why the risks associated with the EUR 1,000,000 capital amount in Directive 2000/46/EC are not pertinent anymore. The amount of EUR 125,000 is far too low and will not guarantee users that the electronic money institution to which they entrust their funds has a future business life. The initial capital requirement should be sufficient to cover the time needed to set up and market an electronic money institution and the period of validity of the electronic money issued.

Amendment 40 **Gianni Pittella**

Proposal for a directive – amending act **Article 6**

Text proposed by the Commission

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**.

Amendment

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 **250 000**.

Or. en

Justification

The minimum capital requirement for electronic money institutions is lowered from EUR 1,000,000 at present to EUR 125,000 with no justification why the risks associated with the EUR 1,000,000 capital amount in Directive 2000/46/EC are not pertinent anymore. The amount of EUR 125,000 is far too low and will not guarantee users that the electronic money institution to which they entrust their funds has a future business life. The initial capital requirement should be sufficient to cover the time needed to set up and market an electronic money institution and the period of validity of the electronic money issued.

Amendment 41
Bilyana Ilieva Raeva

Proposal for a directive – amending act
Article 6

Text proposed by the Commission

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**.

Amendment

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 **200 000. Their own funds shall not fall below that amount.**

Or. en

Justification

Very low levels of initial capital requirements may allow for operators to enter the market, who do not poses the needed technical and system requirements to run e-money businesses. This may create risks for consumers and would be detrimental to the whole financial system.

Amendment 42
Jean-Paul Gauzès

Proposal for a directive – amending act
Article 7 – paragraph 2

Text proposed by the Commission

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.

Amendment

2. The own funds of electronic money institutions shall be calculated in accordance with one of the three methods (A, B, *or* C) set out in Article 8 of Directive 2007/64/EC **for the activities set out in Article 8(1)(a), (b) and (d) of this Directive and** in accordance with Method D set out in paragraph 3 **for the activities set out in Article 1(1).** The appropriate method **whether A, B or C, for the activities set out in Article 8(1)(a), (b) and (d),** shall be determined by the

competent authorities on the basis of national legislation.

Or. en

Justification

This amendment is in line with amendment 10 proposed by the rapporteur. The amount of own funds for electronic money institutions should be calculated according to a method aligned on the risks inherent to their activity, which cannot be method A, B and C stipulated under the Payment Services Directive for payment institutions only.

Amendment 43 **Bilyana Ilieva Raeva**

Proposal for a directive – amending act **Article 7 – paragraph 3**

Text proposed by the Commission

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;

Amendment

3. Method D: the own funds of electronic money institutions shall amount at least to ***1,5 % of the outstanding electronic money***.

Where electronic money institutions carry out any of the activities referred to in Article 8(1)(a) to (e) and the amount of outstanding electronic money is unknown in advance, the competent authorities shall allow those institutions to apply this paragraph on the basis of a representative portion assumed to be used for payment services, provided such a representative portion can be reasonably estimated on the basis of historical data and to the satisfaction of the competent authorities

Where electronic money institutions carry out any of the activities referred to in Article 8(1)(a) to (e), own funds may also be calculated in accordance with one of the three methods (A, B or C) set out in

Article 8 of Directive 2007/64/EC.

(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.

Or. en

Justification

Where electronic money institutions undertake e-money and non e-money business it may be appropriate to allow for own funds calculations to be based on costs, payment volume or revenue (methods A,B or C) rather than float funds (method D). This is because the former may better reflect the predominant activity of the payment service provider and the degree of risk to which the business is exposed. Allowing e-money issuers and competent authorities the flexibility to choose the most appropriate method offers a more effective prudential framework.

Amendment 44
Bilyana Ilieva Raeva

Proposal for a directive – amending act
Article 7 – paragraph 4

Text proposed by the Commission

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

Amendment

4. On the basis of an evaluation of the risk management ***policies of the electronic money institution and the risk posed by its products, systems, and market***, 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

application of the method chosen in accordance with paragraph 2.

in accordance with paragraph 2.

Or. en

Justification

This allows for flexibility in calculating own funds in individual cases, and considers factors that impact the risk posed by the business.

Amendment 45
Jean-Paul Gauzès

Proposal for a directive – amending act
Article 7 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

6a. If the conditions laid down in Article 69 of Directive 2006/48/EC are met, Members States or their competent authorities may choose not to apply Article 7(2) and (3) of this Directive to payment institutions which are included in the consolidated supervision of the parent credit institutions pursuant to Directive 2006/48/EC.

Or. en

Justification

This provision already exists under Article 7.3 of the Payment Services Directive in order to avoid that credit institutions are subject to cumulative prudential requirements under the banking directive on the one hand and the specific regime laid down for payment services institutions on the other hand. It should be restated also under this Directive in a parallel manner.

Amendment 46
Bilyana Ilieva Raeva

Proposal for a directive – amending act
Article 8 – paragraph 1 – introductory part

Text proposed by the Commission

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

Amendment

1. Apart from issuing electronic money, electronic money institutions shall be entitled to engage in any of the following activities, ***subject to compliance by the electronic money issuer with Article 3 of this Directive:***

Or. en

Justification

The reference in Article 8(1) to each activity ‘in every respect separately’ could be misunderstood as requiring separate authorisation for each activity, which is not intended. Article 3 refers to Articles 5 & 10 of the PSD which address authorisation, and also refers to other articles on supervision, record keeping, mutual recognition etc. Application of Article 3 of this Directive should suffice without additional wording that could give rise to confusion.

Amendment 47
John Purvis

Proposal for a directive – amending act
Article 8 – paragraph 1 – introductory part

Text proposed by the Commission

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

Amendment

1. Apart from issuing electronic money, electronic money institutions shall be entitled to engage in any of the following activities, ***subject to compliance with Article 3:***

Or. en

Justification

In order to prevent a distortion of the level playing field between electronic money issuers and payment institutions, all requirements related to running a business activity should be subject

to fulfilling the authorisation requirements on an ongoing basis, though institutions should not be required to be re-authorised for each new activity.

Amendment 48
Jean-Paul Gauzès

Proposal for a directive – amending act
Article 8 – paragraph 1 – point a

Text proposed by the Commission

(a) the provision of payment services listed in the Annex to Directive 2007/64/EC;

Amendment

(a) the provision of payment services listed in the Annex to Directive 2007/64/EC ***provided that the conditions laid down in Article 16(2) and (4) of Directive 2007/64/EC are met;***

Or. en

Justification

Conditions laid down in Articles 16(2) and (4) of Directive 2007/64/EC are not fully reflected in Article 8 of this proposed Directive. Particularly, for payment services, Article 16(2) of Directive 2007/64/EC specifies that a payment institution may hold only payment account used exclusively for payment transactions. This is not included anymore in the proposed Directive. For the sake of clarity, a reference to the full text of Article 16(2) should be added. Same for Article 16(4).

Amendment 49
John Purvis

Proposal for a directive – amending act
Article 8 – paragraph 1 – point b

Text proposed by the Commission

(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;

Amendment

(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, ***and such credit is not granted from the funds received in exchange for electronic money and held in accordance with Article 9(2);***

Justification

The application of Art. 16(3)(c) of the PSD should be amended for e-money issuers to refer to 'float' funds rather than the e-money itself. Under the current construction, 'funds received or held for the purpose of executing a payment transaction' (Art. 16(3)(c) of the PSD) would refer to the e-money itself, not the underlying float funds.

Amendment 50
Jean-Paul Gauzès

Proposal for a directive – amending act
Article 8 – paragraph 1 – point b

Text proposed by the Commission

(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;

Amendment

(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; ***moreover such credit shall not be granted from the funds received or held in exchange for the issuance of electronic money:***

Justification

Conditions laid down in Articles 16(2) and (4) of Directive 2007/64/EC are not fully reflected in Article 8 of this proposed Directive. Particularly, for payment services, Article 16(2) of Directive 2007/64/EC specifies that a payment institution may hold only payment account used exclusively for payment transactions. This is not included anymore in the proposed Directive. For the sake of clarity, a reference to the full text of Article 16(2) should be added. Same for Article 16(4).

Amendment 51
Gianni Pittella

Proposal for a directive – amending act
Article 8 – paragraph 1 – point b

Text proposed by the Commission

(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;

Amendment

(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; ***moreover such credit shall not be granted from the funds received or held in exchange for the issuance of electronic money;***

Or. en

Amendment 52
John Purvis

Proposal for a directive – amending act
Article 8 – paragraph 1 – point c

Text proposed by the Commission

(c) the provision of operational and closely related ancillary services closely related to the issuing of e-money;

Amendment

(c) the provision of operational and closely related ancillary services closely related to the issuing of e-money, ***as described in Article 16(1)(a) of Directive 2007/64/EC;***

Or. en

Justification

This is to confirm that the activities of an electronic money institution may be the same as those of a payment institution, thereby allowing a payment institution to ‘graduate’ or upgrade its status to an electronic money institution without losing any of the activities permitted for a payment institution, by referring to Article 16 (1) of the Payment Services Directive which lists the following activities as examples: ensuring the execution of payment transactions, foreign exchange services, safekeeping activities, and the storage processing of data.

Amendment 53
Gianni Pittella

Proposal for a directive – amending act
Article 8 – paragraph 1 – point d

Text proposed by the Commission

Amendment

(d) the operation of payment systems;

(d) the operation of payment systems **as defined in Article 4(1)(6) of Directive 2007/64/CE**;

Or. en

Amendment 54
John Purvis

Proposal for a directive – amending act
Article 8 – paragraph 1 – point d

Text proposed by the Commission

Amendment

(d) the operation of payment systems;

(d) the operation of payment systems, **without prejudice to Article 28 of Directive 2007/64/EC**;

Or. en

Justification

This is to confirm that the activities of an electronic money institution may be the same as those of a payment institution, thereby allowing a payment institution to ‘graduate’ or upgrade its status to an electronic money institution without losing any of the activities permitted for a payment institution.

Amendment 55
Jean-Paul Gauzès

Proposal for a directive – amending act
Article 8 – paragraph 2

Text proposed by the Commission

Amendment

2. Any funds received by electronic money

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.***

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.

Or. en

Justification

This amendment is a technical consequence of the amendment proposed under Article 8.1 (a). For the sake of completeness, the proposed Directive should refer to the full text of Article 16.2 as proposed under Article 8.1 (a).

Amendment 56 **Gianni Pittella**

Proposal for a directive – amending act **Article 8 – paragraph 2**

Text proposed by the Commission

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.

Amendment

2. Any funds received by electronic money institutions ***and credit 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.

Or. en

Justification

Both Electronic money institutions and credit institutions can issue electronic money. It is important to clarify that the funds received by a credit institution in exchange for electronic money do not constitute a deposit.

Amendment 57

John Purvis

Proposal for a directive – amending act Article 8 – paragraph 2

Text proposed by the Commission

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.

Amendment

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. ***Electronic money institutions shall not grant credit from the funds received or held for the purpose of executing e-money transactions.***

Or. en

Justification

This amendment clarifies the difference between money received as a deposit (in banks) and that held as a float (in e-money institutions). Reduced capital requirements due to the lower risk profile of e-money institutions must be accompanied by the clarification that the e-money float must be safeguarded and cannot be used to provide credit.

Amendment 58
Gianni Pittella

Proposal for a directive – amending act
Article 9 – paragraph 1

Text proposed by the Commission

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.

Amendment

Member States shall require an electronic money institution which carries on any of the activities referred to in:

(i) Article 8(1)(a), (c) and (d), to safeguard all funds that have been received in relation to electronic money issuance, in accordance with the provisions of Article 9(1)(a) and (c), and Article 9(2) of Directive 2007/64/EC, mutatis mutandis.

(ii) Article 8(1)(b) and (e), to safeguard all funds that have been received in relation to electronic money issuance or other payment transactions, in accordance with the provisions of Article 9(1)(a), (b), (c), and 9(2) of Directive 2007/64/EC, mutatis mutandis.

Credit and debit card receivables shall be considered secure, liquid, low-risk assets for the purpose of safeguarding funds that have been received in relation to electronic money.

Or. en

Justification

The proposed Directive does not impose a requirement to maintain funds equivalent to outstanding electronic money for all issuers. It would be more appropriate to provide that

such funds be maintained in secure, liquid, low risk assets. A shortcoming of the current Directive has been the inability to treat receivables from credit/debit cards as qualifying investments for the purposes of the float. This has led to extremely high costs for issuers.

Amendment 59

John Purvis

Proposal for a directive – amending act Article 9 – paragraph 1

Text proposed by the Commission

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.

Amendment

1. Member States shall require an electronic money institution which carries on any of the activities referred to in ***Article 8(1)(a) to (e)*** to safeguard ***all*** funds that have been received ***in relation to those activities*** for the execution of payment transactions, in accordance with the provisions of Article 9(1), (2) and (4) of Directive 2007/64/EC, ***mutatis mutandis, in relation to which credit and debit card receivables shall be considered to qualify as liquid low-risk assets.***

Or. en

Justification

This amends the report with an additional sentence to allow money expected to arrive from credit or debit card payments to count towards the amount of e-money float that needs to be safeguarded. E-money funds do not need to be legally safeguarded (in the case of insolvency) unless the e-money institution provides services other than e-money, in which case the risk is higher.

Amendment 60
Bilyana Ilieva Raeva

Proposal for a directive – amending act
Article 9 – paragraph 1

Text proposed by the Commission

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.

Amendment

1. Member States or their competent authorities shall require an electronic money institution which carries on any of the activities referred to in:

(i) 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) and (2)** of Directive 2007/64/EC.

(ii) Article 8(1)(a) to (d) only, to safeguard all funds that have been received in relation to electronic money issuance, in accordance with the provisions of Article 9(1)(a) and (c), Article 9(2) of Directive 2007/64/EC, mutatis mutandis;

Or. en

Justification

The Directive does not impose a requirement to maintain funds equivalent to outstanding electronic money where issuers only offer payment services including e-money. This is not in the interests of users, and issuers should be required to hold such funds. Directive 2000/46/EC does not require legal safeguarding, and this has not been a shortcoming in the current regime. Article 9(1)(b) has therefore been excluded. Exempting safeguarding of users'

funds below EUR 600 is not desirable, as this could expose the most vulnerable users to loss. Art. 9(4) of the PSD should not therefore apply to e-money.

Amendment 61

John Purvis

Proposal for a directive – amending act

Article 9 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

Notwithstanding the first subparagraph, Article 9(1)(b) of Directive 2007/64/EC shall not apply except where electronic money institutions offer credit or non-payment services.

Or. en

Justification

This amends the report with an additional sentence to allow money expected to arrive from credit or debit card payments to count towards the amount of e-money float that needs to be safeguarded. E-money funds do not need to be legally safeguarded (in the case of insolvency) unless the e-money institution provides services other than e-money, in which case the risk is higher.

Amendment 62

John Purvis

Proposal for a directive – amending act

Article 9 – paragraph 2

Text proposed by the Commission

Amendment

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.***

2. Member States ***shall*** require that electronic money institutions ***safeguard all funds that represent the financial liabilities related to outstanding electronic money in accordance with Article 9(1), (2) and (4) of Directive 2007/64/EC, mutatis mutandis.***

Or. en

Justification

This amends the report with an additional sentence to allow money expected to arrive from credit or debit card payments to count towards the amount of e-money float that needs to be safeguarded. E-money funds do not need to be legally safeguarded (in the case of insolvency) unless the e-money institution provides services other than e-money, in which case the risk is higher.

Amendment 63 **Gianni Pittella**

Proposal for a directive – amending act **Article 9 – paragraph 2**

Text proposed by the Commission

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.

Amendment

2. Member States may require that electronic money institutions ***safeguard funds that represent the financial liabilities related to outstanding electronic money in accordance with Article 9(1)(a), (b) and (c) and Article 9(2) of Directive 2007/64/EC, mutatis mutandis.***

Or. en

Justification

The proposed Directive does not impose a requirement to maintain funds equivalent to outstanding electronic money for all issuers. It would be more appropriate to provide that such funds be maintained in secure, liquid, low risk assets. A shortcoming of the current Directive has been the inability to treat receivables from credit/debit cards as qualifying investments for the purposes of the float. This has led to extremely high costs for issuers..

Amendment 64 **Bilyana Ilieva Raeva**

Proposal for a directive – amending act **Article 9 – paragraph 2 a (new)**

Text proposed by the Commission

Amendment

2a. For the purposes of paragraph 1, requirements for safeguarding provided

under Article 9 of Directive 2007/64/EC shall be interpreted to include credit and debit card receivables, as allowable investments.

Or. en

Justification

Directive 2000/46/EC does not treat receivables as qualifying investments for the purposes of holding outstanding liabilities in qualifying liquid assets. This has led unreasonably high costs for issuers. This resolves the problem by treating outstanding payments from credit and financial institutions as allowable investments.

Amendment 65
John Purvis

Proposal for a directive – amending act
Article 10 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

Where electronic money institutions carry out any of the activities referred to in Article 8(1)(a) to (e) and the amount of outstanding electronic money is unknown in advance, the competent authorities shall allow those institutions to apply this paragraph on the basis of a representative portion assumed to be used for payment services, provided such a representative portion can be reasonably estimated on the basis of historical data and to the satisfaction of the competent authorities.

Or. en

Justification

For mobile operators – or other market players that might want to use hybrid accounts in the future – the calculation of outstanding e-money is very difficult if not impossible. In the case of hybrid accounts, outstanding e-money can be calculated only on an ex-post basis, after the customer has completed a payment transaction. The Directive should allow for the calculation of outstanding e-money on the basis of estimates relying on historical data for the purpose of the waiver, similar to the solution found in relation to the calculation of own funds

and safeguarding requirements.

Amendment 66
Jean-Paul Gauzès

Proposal for a directive – amending act
Article 16
Directive 2005/60/EC
Article 11 – paragraph 5 – point d

Text proposed by the Commission

Amendment

Article 16

deleted

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.

Or. en

Justification

For the sake of public security and general confidence in the payment system, it is crucial that e-money issuers are subject to Directive 2005/60/EC under the current regime and that this regime is not lowered by the proposed Directive.