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Committee on Economic and Monetary Affairs

2008/0190(COD)

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*****I**

DRAFT REPORT

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 (COM(2008)0627 – C6-0350/2008– 2008/0190(COD))

Committee on Economic and Monetary Affairs

Rapporteur: John Purvis

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). Suggested corrections of this kind are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

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

(COM(2008)0627 – C6- 0350/2008– 2008/0190(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0627),
 - having regard to Article 251(2), Article 47(2) and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6- 0350/2008),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A6-0000/2008),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and the Commission.

Amendment 1

Proposal for a directive - amending act

Recital 2

Text proposed by the Commission

(2) The Commission presented a report which highlighted the need to revise Directive 2000/46/EC since some of its provisions were considered to have hindered the emergence of a true single market for electronic money services.

Amendment

(2) The Commission presented a report which highlighted the need to revise Directive 2000/46/EC since some of its provisions were considered to have hindered ***development of this user-friendly service and*** the emergence of a true single market for electronic money services.

Or. en

Amendment 2

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

Text proposed by the Commission

1. This Directive lays down rules for the taking up, pursuit **and prudential supervision of the business of electronic money institutions and for** the activity of issuing electronic money.

Amendment

1. This Directive lays down rules for the taking up **and** pursuit **of** the activity of issuing electronic money **and for the prudential supervision of electronic money institutions.**

Or. en

Justification

Clarification of the structure in line with other financial services Directives.

Amendment 3

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, 5, 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.

Or. en

Justification

The general provisions in the directive and the definition of what constitutes electronic money are also relevant for credit institutions when issuing electronic money.

Amendment 4

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 acquire goods or services only in the

Amendment

3. This Directive shall not apply to **undertakings issuing electronic money which** can be used to acquire goods or

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.

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 service providers or for a limited range of goods or services, *such as a common marketing or distribution scheme*.

Or. en

Justification

The Directive applies to undertakings, not to services. It needs also to be clarified what the limitation is that is referred to.

Amendment 5

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 *that* 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 6

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 making *multiple transfers of value by a bearer of electronic money to satisfy the monetary claims of a* natural or legal *person* other than the issuer;

Or. en

Justification

The proposed definition does not clearly differentiate between e-money transactions versus other payment transactions covered by the Payment Services Directive.

Amendment 7

Proposal for a directive - amending act

Article 2 – point 3

Text proposed by the Commission

3. 'outstanding electronic money' means the *monthly average of the preceding 12 months'* financial liabilities related to electronic money;

Amendment

3. 'outstanding electronic money' means the *total amount of* financial liabilities related to electronic money *in issue at any time*;

Or. en

Justification

Outstanding amounts are point in time evaluations that should not be averaged. In particular for fast growing undertakings, capital requirements based on averages become meaningless quickly. For some EMIs, issuance of e-money is highly seasonal (eg around Christmas or the Holiday Period). A capital requirement based on a year's average issuance could fall well short of that demanded to cover peak issuance.

Amendment 8

Proposal for a directive - amending act Article 4 – point 3

Text proposed by the Commission

(3) payment service providers as referred to in Article 1(1)(e) **and (f)** of Directive 2007/64/EC.

Amendment

(3) payment service providers as referred to in Article 1(1)(e) of Directive 2007/64/EC.

Or. en

Justification

Where regional or local authorities NOT acting in their capacity as public authorities issue electronic money, they should be subject to the rules of this Directive.

Amendment 9

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.**
3. **Where redemption takes place before the date of termination of the contract, it may cover either a part of or the totality of the money stored electronically.**
4. **Where redemption takes place before the date of termination of the contract, it may cover either a part of or the totality of the money stored electronically.**

Amendment

Issuance and Redeemability

1. Member States shall ensure that issuers of electronic money:
 - (a) **issue electronic money free of charge and 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 termination of the agreed contract only if the contract clearly specifies a date of termination after which the electronic money can no longer be used to make payment transactions. 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 date of termination of the contract, the monetary value of the electronic money held shall be redeemed free of charge.

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

In order to increase consumer confidence in electronic money and to enhance the flow of funds from and to electronic money, it is important to ensure that consumers can at all times convert electronic money into cash or scriptural money free of charge, except in cases where the contract clearly specifies a termination date which is expressly agreed by the holder and after which the electronic money can no longer be used to make payment transactions.

Amendment 10

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, 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 ***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

An electronic money institution is not a payment institution. The methodologies used for the latter may therefore not be appropriate for electronic money institutions. The total amount of own funds required should therefore be based on the different activities and the risks inherent in those activities.

Amendment 11

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;

(c) 2% of the slice of electronic money above EUR 10 million up to EUR 100 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.

(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

The amount of own funds required should be geared towards the activity. For issuing e-money a different methodology should be used, and a sliding scale according to size of operations is not appropriate as it penalises smaller businesses and discourages new entrants. Where pre-paid cards are used also for services of the issuer (e.g. mobile telephone operators) an allocation should be agreed with the national competent authorities based on a reasonable assessment of the proportion respectively used as e-money and prepaid for the issuers directly delivered services.

Amendment 12

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

Text proposed by the Commission

Amendment

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

deleted

Or. en

Justification

There is no need to require 20% capital more or less than the result of the calculation.

Amendment 13

Proposal for a directive - amending act Article 7 – paragraph 6

Text proposed by the Commission

6. Member States shall take the necessary measures to prevent the multiple use of elements eligible for own funds where the electronic money institution belongs to the same group as another e-money institution, credit institution, investment firm, asset management company or insurance undertaking. This paragraph shall also apply where an electronic money institution carries out activities other than issuing electronic money.

Amendment

6. Member States shall take the necessary measures to prevent the multiple use of elements eligible for own funds where the electronic money institution belongs to the same group as another e-money institution, credit institution, investment firm, asset management company or insurance **or reinsurance** undertaking. This paragraph shall also apply where an electronic money institution carries out activities other than issuing electronic money.

Or. en

Justification

Prevention of double gearing should equally apply to groups that include reinsurance undertakings, in line with present Directives.

Amendment 14

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 the rules referred to in Article 3 for each activity undertaken in every respect separately**:

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 a continuous basis.

Amendment 15

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 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 payment service **as laid down in the Annex of Directive 2007/64/EC** 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

It is important to clarify that electronic money never constitutes a deposit.

Amendment 16

Proposal for a directive - amending act Article 9

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.

2. Member States **or their competent**

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**.

2. Member States **shall** require that

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.**

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

The safeguarding requirements should apply to all institutions, irrespective of the scope of activities. The objective of safeguarding applies to all funds received for the execution of payment transactions.

Amendment 17

**Proposal for a directive - amending act
Article 10 – paragraph 1 – subparagraph 1 – point a**

Text proposed by the Commission

Amendment

(a) the **average of the preceding 12 months'** total amount of **payment transactions executed by the person concerned, including any agent for which it assumes full responsibility,** does not exceed EUR 3 million **per month.**

(a) the **total business activities generate a** total amount of **financial liabilities related to outstanding electronic money that** does not exceed EUR 3 million; **and**

Or. en

Justification

The waiver threshold should continue to be based on e-money float, rather than payment volume given that the size of the float is where the risks in e-money issuance lie.

Amendment 18

**Proposal for a directive - amending act
Article 10 – paragraph 1 – subparagraph 2**

Text proposed by the Commission

Amendment

The requirement set out in point (a) of the first subparagraph shall be assessed on the basis of the projected total amount of payment volume in its business plan,

deleted

unless an adjustment to that plan is required by the competent authorities.

Or. en

Justification

The waiver threshold should continue to be based on e-money float, rather than payment volume given that the size of the float is where the risks in e-money issuance lie.

Amendment 19

Proposal for a directive - amending act Article 15 – paragraph 1

Text proposed by the Commission

1. Member States shall allow electronic money institutions that have commenced their activity in accordance with the provisions implementing Directive 2000/46/EC in the Member State in which they have their head office, before the date of entry into force of this Directive, to continue their activities without the authorisation provided for in Article 3. Member States shall require such electronic money institutions to submit all relevant information to the competent authorities in order to allow the latter to assess, within six months from the date of entry into force of the provisions under Article 11, whether the institutions comply with the requirements pursuant to this Directive and, if not, which measures need to be taken in order to ensure compliance, or whether a withdrawal of authorisation is appropriate. Compliant electronic money institutions shall be granted authorisation and entered in the register. If compliance is not reached within six months from **[deadline for implementation of the Directive]**, the electronic money institutions concerned shall be prohibited from issuing electronic money.

Amendment

1. Member States shall allow electronic money institutions that have commenced their activity in accordance with the provisions implementing Directive 2000/46/EC in the Member State in which they have their head office, before the date of entry into force of this Directive, to continue their activities ***in that Member State and any other Member State in accordance with the mutual recognition arrangements provided for through Directive 2000/46/EC*** without the authorisation provided for in Article 3 ***of this Directive, and without being required to comply with the other provisions in, or referred to in, Title II***. Member States shall require such electronic money institutions to submit all relevant information to the competent authorities in order to allow the latter to assess, within six months from the date of entry into force of the provisions under Article 11, whether the institutions comply with the requirements pursuant to this Directive and, if not, which measures need to be taken in order to ensure compliance, or whether a withdrawal of authorisation is appropriate. Compliant electronic money institutions shall be granted authorisation and entered in the register ***and be required otherwise to comply with the requirements in Title II***. If compliance is not reached

within six months from ... *, the electronic money institutions concerned shall be prohibited from issuing electronic money.

** OJ: please insert the date of transposition referred to in Article 19(1).*

Or. en

Justification

It should be made clear which of the EMD provisions will or will not apply during the transitional period.

Amendment 20

Proposal for a directive - amending act Article 15 – paragraph 3

Text proposed by the Commission

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

Amendment

3. Member States shall allow legal persons that have commenced, their activities as entities under national law implementing Article 8 of Directive 2000/46/EC before ***9 October 2008***, to continue those activities within the Member State concerned until ... *, without seeking authorisation under Article 3 ***and without being required to comply with the other provisions of, or referred to in, Title II***. Electronic money institutions which, during that period, have been neither authorised nor waived within the meaning of Article 10, shall be prohibited from issuing electronic money.

** OJ: please insert date 12 months after the date of transposition referred to in Article 19(1).*

Or. en

Justification

Technical change, also related to the AM concerning Article 15(1).

Amendment 21

Proposal for a directive - amending act

Article 16 – point 1

Directive 2005/60/EC

Article 11 – paragraph 5 – point d

Text proposed by the Commission

(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'*

Amendment

(d) electronic money, as defined in **Article 2, point 2** 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 *in accordance with Article 5 of Directive 2009/.../EC'*

Or. en

Justification

Technical change

Amendment 22

Proposal for a directive - amending act

Article 17– point 1– point a

Directive 2006/48/EC

Article 4 – point 1 – point b

Text proposed by the Commission

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

Amendment

(a) **Point (1)** is replaced by the following:

Or. en

Justification

Technical change

Amendment 23

Proposal for a directive - amending act Article 19 – paragraph 1 – subparagraph 1

Text proposed by the Commission

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

Amendment

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

** OJ: please insert a date: 18 months after the date of entry into force of this Directive referred to in Article 20.*

Or. en

Justification

Technical change

EXPLANATORY STATEMENT

Electronic money is simply the storing of cash in an electronic form, whether it be with an online payment account, a pre-paid mobile phone account, an electronic gift voucher, an e-purse option on a bank card¹, a top-up travel card, meal or gift vouchers, or a myriad of other innovative technological options. Electronic money is also a payment option for those normally without access to a bank account, such as children or immigrants. In July 2007 e-money issuers in the EU carried €1053 million outstanding, compared to €670 million in 2005.

An Electronic Money Institution (EMI) is a non-bank where you can store prepaid funds and use them in various forms. Although used frequently as a growing business model for payments throughout the world, particularly in Asia, the e-money market in Europe has had a very patchy development, with growth really only in two member states - the UK (60²) and the Czech Republic (54). In most member States, e-money has still not been considered a credible alternative to cash.

At the end of 2007, Germany had 8 e-money issuers, Denmark 7, the Netherlands 6, France & Belgium 5 each, Latvia 4, Sweden & Italy 3, Slovenia 2, Cyprus & Finland 1 each.³

Minimum to maximum harmonisation

Although the E-Money directive 2000/46/EC included a waiver for small or limited network e-money institutions, it was also a minimum harmonization directive. Many Member States therefore chose not to apply the waiver (e.g. Spain, Austria), thus hampering new technological developments in this area. Two German EMIs chose to come under the UK regime due to the more favourable application of the e-money directive.

With the adoption of the Payment Services Directive (PSD) 2007/64/EC, which has modernised the regulation of payment systems, it makes sense to update the regulation of e-money services too. This is particularly important for achieving a true single market and justifies an increase in harmonisation. This should allow the industry to develop in Europe and especially in those member States where it has so far not been able to make any significant inroads.

The Commission proposal automatically and specifically exempts certain types of e-money institution from the Directive if they fulfil certain criteria, instead of allowing Member States the option of applying these exemptions or not. E-money institutions outside the scope of the Directive, or waived under Article 10, are not permitted to passport to another Member State.

¹ Smart-card-based electronic purse systems (in which value is stored on the card chip, not in an externally recorded account, so that machines accepting the card need no network connectivity) were tried throughout Europe from the mid-1990s, most notably in Germany (Geldkarte), Austria (Quick), Belgium (Proton), France (Moneo), the Netherlands (Chipknip and Chipper), Switzerland ("Cash"), Norway ("Mondex"), Sweden ("Cash"), Finland ("Avant"), UK ("Mondex"), Denmark ("Danmønt") and Portugal ("Porta-moedas Multibanco"). These also lower costs for banks by increasing the number of digital transactions - for example, paying for parking, vending machines or catering services.

² European Commission Impact Assessment on E-Money Directive, published 09/10/08, Annex 6

³ European Commission Impact Assessment on E-Money Directive, published 09/10/08, Annex 6, also ECB Legal working Paper on Electronic Money Institutions July 2008 <http://www.ecb.int/pub/pdf/scplps/ecblwp7.pdf>

Initial Capital requirements

Another barrier to growth has been identified as the over burdensome prudential requirements. The CRD and PSD were seen to be more congenial. In the old directive, e-money institutions were required to have €1 million of initial capital. The Commission proposal reduces this to a more reasonable €125,000. This level is consistent with the PSD and creates a more level playing-field for e-money institutions. In fact, e-money institutions are closer to payment institutions than banks in terms of their risk profile and their propensity to cause systemic damage. Reducing the initial capital charge will also encourage innovation in this product area.

E-money is typically used for small payments, and a recital in the Commission text clarifies that e-money accounts must not be used as savings accounts or for supporting credit creation. The rapporteur, despite this stricture, considers it quite likely that they will very probably become a minor form of savings and that incentives to use them in this way could well develop naturally. He is not unduly concerned if this does happen so long as it does not also lead to the creation of credit as well.

Exclusivity provision

The original e-money directive stated that e-money institutions were not permitted to provide any service other than that of e-money and closely related services¹. However, with the PSD this provision would create an unlevel playing field, as payment institutions and banks *are* allowed to branch out into other services (although only banks and e-money institutions are permitted to issue e-money).

In Hong Kong, when the "Octopus" card, used originally for transport payments, was expanded to include payments for products from kiosks in the underground, such as newspapers, sandwiches, etc., there was a 30% increase in turnover in station shops. Under the current e-money directive, Oyster Card London is not permitted to provide such a service. The new proposal takes away this "exclusivity" provision, which should encourage e-money growth and expansion.

It is important, however, that the institution continues to have the controls and capital appropriate for whatever other service it chooses to branch out into. Also the e-money funds should be ring-fenced to prevent leakage into support of any associated services.

Ongoing capital requirements

The current e-money directive requires ongoing capital to be at a flat 2% of the current amount, or "float". The Commission proposal suggests a variety of methods for calculating this level, in an effort to bring it into line with PSD Article 8 with its methods A, B & C as well as a new method "D".

These approaches all set graded capital requirements which are regressive and which penalise the smallest firms, where the marginal cost of capital is at its highest (e.g. 5% for the first €5 million under Method D in Article 7 of the new proposal). However, the nature of e-money services is quite different to that of payment services. Therefore it does not make sense to import these calculation methods, particularly as they were not impact-assessed and were the

¹ Art. 1 paragraph 5 of Dir. 2000/46/EC

result of a compromise solution incorporating most member states' capital calculation methods.

Alternatively, reverting back to the previous calculation system for ongoing capital requirements ("own funds"), which received very little criticism, would allow institutions to continue to use a method with which they are familiar, and simplify the implementation of this measure. Your rapporteur considers a flat 1.5% level for method D as a reasonable compromise, with a carve-out for mobile phone companies that are unable to calculate "float" due to the fact that customers' pre-paid accounts can be used for both phone-related services as well as e-money.

In the Commission proposal, Member States are also permitted to raise or lower the capital requirement by up to 20%. However, in a harmonised proposal, the rapporteur considers this makes no sense, and would only result in a very uneven playing field if used.

Redemption of funds

Consumers should have the right to redeem their funds at any time with no charge. This was included in both the original Directive and in the new proposal. However, Dir. 2000/46/EC made it possible to charge costs "strictly necessary to carry out that operation", and to stipulate a min. threshold for redemption (max. 10 EUR). This is to create legal clarity in the case of mobile phone companies, where customers use the same pre-paid account to pay for their calls as well as e-money. In most Member State markets (though not all¹), customers are charged for redemption of pre-paid mobile phone accounts. We would prefer to see no redemption charges but also accept the right of parties to agree a contract (if they so wish), which may include redemption conditions and fees, so long as this is clearly detailed and is agreed expressly by the user.

Safeguarding of funds

Easily the most complicated section of the proposal is the clear aim to ensure that an e-money issuer will always be able to redeem the funds of all its customers at any point in time. The safeguarding of these funds is essential for this. However, the method and level of safeguarding is under dispute. Reference is made to the PSD Article 9, which requires payment institutions to safeguard these funds in a bank account or invest them in "secure, liquid, low-risk assets as defined by the competent authorities..." and "insulated in accordance with national law...in the event of insolvency". This is understandable for institutions that provide multiple services - payments, e-money, etc. (i.e. "hybrid" institutions). However, your rapporteur considers it desirable that all e-money issuers, including those that only do e-money, should provide this basic safeguard.

Waiver

As mentioned earlier, the new Commission proposal automatically exempts e-money issuers which operate locally (e.g. issuers of gift vouchers that can only be redeemed in the shop or chain of shops they were bought in), within a "limited" network (e.g. only in public transport in one city, or from one company) or range of goods or services. Article 10 introduces an additional waiver for institutions under a certain size, which Member States may implement. However, once again, it uses text from the PSD which is much more suited to payment

¹ E.g. Denmark

institutions, as it measures according to payments made. As e-money institutions hold money on behalf of a customer, it makes more sense to base the waiver on the money held by the institution. Your rapporteur considers that the text for this *de minimis* waiver from the old/current e-money directive is more suited to e-money institutions. The threshold has also been lowered as more e-money issuers will be able to become authorised institutions as they will benefit from the reduced initial capital charge. This is also important in terms of consumer protection.