# DIRECTIVE 2009/110/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**of 16 September 2009 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**

**The European Parliament and the Council of the European Union,**

**Having regard to the Treaty establishing the European Community, and in particular the first and third sentences of Article 47(2) and Article 95 thereof,**

**Having regard to the proposal from the Commission,**

**Having regard to the opinion of the European Economic and Social Committee,[1]**

**Having regard to the opinion of the European Central Bank,[2]**

**Acting in accordance with the procedure laid down in Article 251 of the Treaty,[3]**

**Whereas:**

**(1) Directive 2000/46/EC of the European Parliament and of the Council of 18 September 2000 on the taking up, pursuit of and prudential supervision of the business of electronic money institutions[4] was adopted in response to the emergence of new pre-paid electronic payment products and was intended to create a clear legal framework designed to strengthen the internal market while ensuring an adequate level of prudential supervision.**

**(2) In its review of Directive 2000/46/EC the Commission highlighted the need to revise that Directive since some of its provisions were considered to have hindered the emergence of a true single market for electronic money services and the development of such user-friendly services.**

**(3) Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market[5] has established a modern and coherent legal framework for payment**

1. Opinion of 26 February 2009 (not yet published in the Official Journal).
2. OJ C 30, 6.2.2009, p. 1.
3. Opinion of the European Parliament of 24 April 2009 (not yet published in the Official Journal) and Council Decision of 27 July 2009.
4. OJ L 275, 27.10.2000, p. 39.
5. OJ L 319, 5.12.2007, p. 1.

services, including the coordination of national provisions on prudential requirements for a new category of payment service providers, namely payment institutions.

(4) With the objective of removing barriers to market entry and facilitating the taking up and pursuit of the business of electronic money issuance, the rules to which electronic money institutions are subject need to be reviewed so as to ensure a level playing field for all payment services providers.

(5) It is appropriate to limit the application of this Directive to payment service providers that issue electronic money. This Directive should not apply to monetary value stored on specific pre-paid instruments, designed to address precise needs that can be used only in a limited way, because they allow the electronic money holder to purchase goods or services only in the premises of the electronic money issuer or within a limited network of service providers under direct commercial agreement with a professional issuer, or because they can be used only to acquire a limited range of goods or services. An instrument should be considered to be used within such a limited network if it can be used only either for the purchase of goods and services in a specific store or chain of stores, or for a limited range of goods or services, regardless of the geographical location of the point of sale. Such instruments could include store cards, petrol cards, membership cards, public transport cards, meal vouchers or vouchers for services (such as vouchers for childcare, or vouchers for social or services schemes which subsidise the employment of staff to carry out household tasks such as cleaning, ironing or gardening), which are sometimes subject to a specific tax or labour legal framework designed to promote the use of such instruments to meet the objectives laid down in social legislation. Where such a specific-purpose instrument develops into a general-purpose instrument, the exemption from the scope of this Directive should no longer apply. Instruments which can be used for purchases in stores of listed merchants should not be exempted from the scope of this Directive as such instruments are typically designed for a network of service providers which is continuously growing.

(6) It is also appropriate that this Directive not apply to monetary value that is used to purchase 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 be used only through a digital device, such as a mobile phone or a computer, and provided that the telecommunication, digital or information technology operator does not act only as an intermediary between the payment service user and the supplier of the goods and services. This is a situation where a mobile phone or other digital network subscriber pays the network operator directly and there is neither a direct payment relationship nor a direct debtor-creditor relationship between the network subscriber and any





third-party supplier of goods or services delivered as part of the transaction.

(7) It is appropriate to introduce a clear definition of electronic money in order to make it technically neutral. That definition should cover all situations where the payment service provider issues a pre-paid stored value in exchange for funds, which can be used for payment purposes because it is accepted by third persons as a payment.

(8) The definition of electronic money should cover electronic money whether it is held on a payment device in the electronic money holder's possession or stored remotely at a server and managed by the electronic money holder through a specific account for electronic money. That definition should be wide enough to avoid hampering technological innovation and to cover not only all the electronic money products available today in the market but also those products which could be developed in the future.

(9) The prudential supervisory regime for electronic money institutions should be reviewed and aligned more closely with the risks faced by those institutions. That regime should also be made coherent with the prudential supervisory regime applying to payment institutions under Directive 2007/64/EC. In this respect, the relevant provisions of Directive 2007/64/EC should apply mutatis mutandis to electronic money institutions without prejudice to the provisions of this Directive. A reference to 'payment institution' in Directive 2007/64/EC therefore needs to be read as a reference to electronic money institution; a reference to 'payment service' needs to be read as a reference to the activity of payment services and issuing electronic money; a reference to 'payment service user' needs to be read as a reference to payment service user and electronic money holder; a reference to 'this Directive' needs to be read as a reference to both Directive 2007/64/EC and this Directive; a reference to Title II of Directive 2007/64/EC needs to be read as a reference to Title II of Directive 2007/64/EC and Title II of this Directive; a reference to Article 6 of Directive 2007/64/EC needs to be read as a reference to Article 4 of this Directive; a reference to Article 7(1) of Directive 2007/64/EC needs to be read as a reference to Article 5(1) of this Directive; a reference to Article 7(2) of Directive 2007/64/EC needs to be read as a reference to Article 5(6) of this Directive; a reference to Article 8 of Directive 2007/64/EC needs to be read as a reference to Article 5(2) to (5) of this Directive; a reference to Article 9 of Directive 2007/64/EC needs to be read as a reference to Article 7 of this Directive; a reference to Article 16(1) of Directive 2007/64/EC needs to be read as a reference to Article 6(1)(c) to (e) of this Directive; and a reference to Article 26 of Directive 2007/64/EC needs to be read as a reference to Article 9 of this Directive.

(10) It is recognised that electronic money institutions distribute electronic money, including by selling or reselling electronic money products to the public, providing a means of distributing electronic money to

customers, or of redeeming electronic money on the request of customers or of topping up customers' electronic money products, through natural or legal persons on their behalf, according to the requirements of their respective business models. While electronic money institutions should not be permitted to issue electronic money through agents, they should none the less be permitted to provide the payment services listed in the Annex to Directive 2007/64/EC through agents, where the conditions in Article 17 of that Directive are met.

(11) There is a need for a regime for initial capital combined with one for ongoing capital to ensure an appropriate level of consumer protection and the sound and prudent operation of electronic money institutions. Given the specificity of electronic money, an additional method for calculating ongoing capital should be provided for. Full supervisory discretion to ensure that the same risks are treated in the same way for all payment service providers and that the method of calculation encompasses the specific business situation of a given electronic money institution should be preserved. In addition, provision should be made for electronic money institutions to be required to keep the funds of electronic money holders separate from the funds of the electronic money institution for other business activities. Electronic money institutions should also be subject to effective anti-money laundering and anti-terrorist financing rules.

(12) The operation of payment systems is an activity which is not reserved to specific categories of institution. It is important to recognise, however, that, as is the case for payment institutions, it is also possible for the operation of payment systems to be carried out by electronic money institutions.

(13) The issuance of electronic money does not constitute a deposit-taking activity pursuant to Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions,[6] in view of its specific character as an electronic surrogate for coins and banknotes, which is to be used for making payments, usually of limited amount and not as means of saving. Electronic money institutions should not be allowed to grant credit from the funds received or held for the purpose of issuing electronic money. Electronic money issuers should not, moreover, be allowed to grant interest or any other benefit unless those benefits are not related to the length of time during which the electronic money holder holds electronic money. The conditions for granting and maintaining authorisation as electronic money institutions should include prudential requirements that are proportionate to the operational and financial risks faced by such bodies in the course of their business related to the issuance of electronic money, independently of any other commercial activities carried out by the electronic money institution.

6. OJ L 177, 30.6.2006, p. 1.





(14) It is necessary, however, to preserve a level playing field between electronic money institutions and credit institutions with regard to the issuance of electronic money to ensure fair competition for the same service among a wider range of institutions for the benefit of electronic money holders. This should be achieved by balancing the less cumbersome features of the prudential supervisory regime applying to electronic money institutions against provisions that are more stringent than those applying to credit institutions, notably as regards the safeguarding of the funds of an electronic money holder. Given the crucial importance of safeguarding, it is necessary that the competent authorities be informed in advance of any material change, such as a change in the safeguarding method, a change in the credit institution where safeguarded funds are deposited, or a change in the insurance undertaking or credit institution which insured or guaranteed the safeguarded funds.

(15) The rules governing branches of electronic money institutions which have their head office outside the Community should be analogous in all Member States. It is important to provide that such rules not be more favourable than those for branches of electronic money institutions which have their head office in another Member State. The Community should be able to conclude agreements with third countries providing for the application of rules which accord branches of electronic money institutions which have their head office outside the Community the same treatment throughout the Community. The branches of electronic money institutions which have their head office outside the Community should benefit from neither the freedom of establishment under Article 43 of the Treaty in Member States other than those in which they are established nor the freedom to provide services under the second paragraph of Article 49 of the Treaty.

(16) It is appropriate to allow Member States to waive the application of certain provisions of this Directive as regards institutions issuing only a limited amount of electronic money institutions benefiting from such a waiver should not have the right under this Directive to exercise the freedom of establishment or the freedom to provide services and they should not indirectly exercise those rights as members of a payment system. It is desirable, however, to register the details of all entities providing electronic money services, including those benefiting from a waiver. For that purpose, Member States should enter such entities in a register of electronic money institutions.

(17) For prudential reasons, Member States should ensure that only electronic money institutions duly authorised or benefiting from a waiver in accordance with this Directive, credit institutions authorised in accordance with Directive 2006/48/EC, post office giro institutions entitled under national law to issue electronic money, institutions referred to in Article 2 of Directive 2006/48/EC, the European Central Bank, national central banks when not acting in their capacity as monetary authority

or other public authorities and Member States or their regional or local authorities when acting in their capacity as public authorities may issue electronic money.

(18) Electronic money needs to be redeemable to preserve the confidence of the electronic money holder. Redeemability does not imply 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 be possible at any time, at par value without any possibility to agree a minimum threshold for redemption. Redemption should, in general, be granted free of charge. However, in cases duly specified in this Directive it should be possible to request a proportionate and cost-based fee without prejudice to national legislation on tax or social matters or any obligations on the electronic money 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.

(19) Out-of-court complaint and redress procedures for the settlement of disputes should be at the disposal of electronic money holders. Chapter 5 of Title IV of Directive 2007/64/EC should therefore apply mutatis mutandis in the context of this Directive, without prejudice to the provisions of this Directive. A reference to 'payment service provider' in Directive 2007/64/EC therefore needs to be read as a reference to electronic money issuer; a reference to 'payment service user' needs to be read as a reference to electronic money holder; and a reference to Titles III and IV of Directive 2007/64/EC needs to be read as a reference to Title III of this Directive.

(20) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission.[7]

(21) In particular, the Commission should be empowered to adopt implementing provisions in order to take account of inflation or technological and market developments and to ensure a convergent application of the exemptions under this Directive. Since such measures are of general scope and are designed to amend non-essential elements of this Directive they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

(22) The efficient functioning of this Directive will need to be reviewed. The Commission should therefore be required to produce a report three years after the deadline for transposition of this Directive. Member States should provide to the Commission information regarding the application of some of the provisions of this Directive.

7. OJ L 184, 17.7.1999, p. 23.





(23) In the interests of legal certainty, transitional arrangements should be made to ensure that electronic money institutions which have taken up their activities in accordance with the national laws transposing Directive 2000/46/EC are able to continue those activities within the Member State concerned for a specified period. That period should be longer for electronic money institutions that have benefited from the waiver provided for in Article 8 of Directive 2000/46/EC.

(24) This Directive introduces a new definition of electronic money, the issuance of which can benefit from the derogations in Articles 34 and 53 of Directive 2007/64/EC. Therefore, the simplified customer due diligence regime for electronic money institutions under Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing[8] should be amended accordingly.

(25) 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 funds received from the public. Given the regime 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 to be 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, alternatively, be able to carry out that activity through a subsidiary under the prudential supervisory regime of this Directive, rather than under Directive 2006/48/EC.

(26) The provisions of this Directive replace all corresponding provisions of Directive 2000/46/EC. Directive 2000/46/EC should therefore be repealed.

(27) Since the objective of this Directive cannot be sufficiently achieved by the Member States because it requires the harmonisation of many different rules currently existing in the legal systems of the various Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(28) In accordance with point 34 of the Interinstitutional Agreement on better law-making,[9] Member States are encouraged to draw up, for

8. OJ L 309, 25.11.2005, p. 15.
9. OJ C 321, 31.12.2003, p. 1.

**themselves and in the interest of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures and to make them public,**

**Have adopted this Directive:**

**1. Background. Directive 2000/46/EC.** Taking into account the increasing use of electronic money and the emergence of new payment instruments, related to information technology revolution, Directive 2000/46/EC of the European Parliament and of the Council of 18 September 2000 on the taking up, pursuit of and prudential supervision of the business of electronic money institutions (hereafter referred to as Directive 2000/46/EC) has been adopted. This Directive provides a definition of 'electronic money' and 'electronic money institutions'. These ones are regulated under a specific prudential regime established by the Directive 2000/46/EC. Due to the risks associated with the issuance of electronic money, the system is calibrated on the prudential regime of credit institutions (which are also allowed to issue electronic money). Anyway, specific characteristics of the service convinced European legislator that it was not necessary to establish such a cumbersome prudential supervisory regime. Therefore, in accordance with Directive 2000/46/EC, electronic money institutions are submitted to a much simpler regime. However, in order to 'preserve a level playing field between electronic money institutions and other credit institutions issuing electronic money and, thus, to ensure fair competition among a wider range of institutions to the benefit of bearers' (recital 12 of Directive 2000/46/EC), provisions of Directive 2000/46/EC are more stringent (for a comment of this Directive, see the first edition of Concise European IT Law).

**2. Objectives of the new Directive.** The evaluation launched by the Commission in 2005 showed that there were not as many new comers as expected in the electronic money market and that the volume of electronic money had not taken off.[10] Some provisions of Directive 2000/46/EC could explain the situation. The assessment stressed mainly the legal uncertainty related the scope of the Directive and the definition of electronic money, on one hand, the excessive prudential requirements, with regard to the risks of the service, on the other hand. With the need to revise Directive 2000/46/EC and the adoption of Directive 2007/64/EC on payment services in the internal market (hereafter referred to as Directive 2007/64/EC), it was coherent to continue modernising the legal framework on payment services with a new Directive on e-Money, from which the weaknesses of Directive 2000/46/EC would have been removed. Therefore, Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 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 was enacted (hereafter referred to as the Directive). Due to the new structure and the deep modifications, Directive 2000/46/EC had to be replaced by a new one.

10. See Commission staff working document on the review of the E-Money Directive (2000/46/EC), 19.07.2006, SEC (2006) 1049.





**3. Legal basis.** Legal basis are logically similar in both directives: freedom of establishment consecrated at art. 47(2), of the Treaty. This Directive also refers to approximation of laws (art. 95 of the Treaty). Co-decision procedure has been followed in accordance with art. 251 of the Treaty.

## TITLE I. SCOPE AND DEFINITIONS

### Article 1

**[Subject matter and scope]**

**(1) This Directive lays down the rules for the pursuit of the activity of issuing electronic money to which end the Member States shall recognise the following categories of electronic money issuer:**

- **(a) credit institutions as defined in point 1 of Article 4 of Directive 2006/48/EC including, in accordance with national law, a branch thereof within the meaning of point 3 of Article 4 of that Directive, where such a branch is located within the Community and its head office is located outside the Community, in accordance with Article 38 of that Directive;**
- **(b) electronic money institutions as defined in point 1 of Article 2 of this Directive including, in accordance with Article 8 of this Directive and national law, a branch thereof, where such a branch is located within the Community and its head office is located outside the Community;**
- **(c) post office giro institutions which are entitled under national law to issue electronic money;**
- **(d) the European Central Bank and national central banks when not acting in their capacity as monetary authority or other public authorities;**
- **(e) Member States or their regional or local authorities when acting in their capacity as public authorities.**

**(2) Title II of this Directive lays down the rules for the taking up, the pursuit and the prudential supervision of the business of electronic money institutions.**

**(3) Member States may waive the application of all or part of the provisions of Title II of this Directive to the institutions referred to in Article 2 of Directive 2006/48/EC, with the exception of those referred to in the first and second indents of that Article.**

**(4) This Directive does not apply to monetary value stored on instruments exempted as specified in Article 3(k) of Directive 2007/64/EC.**

**(5) This Directive does not apply to monetary value that is used to make payment transactions exempted as specified in Article 3(l) of Directive 2007/64/EC.**

**1. General.** Two main elements determine the scope of the Directive: the concepts of 'electronic money' (as defined in art. 2(2)) on one hand, 'electronic money issuer' (as defined in art. 2(3)) on the other hand. Arts. 1 and 2 have to be read together to define precisely these notions. General definitions can be found in art. 2. Art. 1 goes further, providing a list of five categories of electronic money issuers (positive scope); a restriction in the scope of the Directive is also laid down and some applications of electronic money are expressly excluded (negative scope).

**2. Positive scope.** While Directive 2000/46/EC only applied to 'electronic money institutions' (art. 1(1)), this Directive 'lays down the rules for the pursuit of the activity of issuing electronic money', not only for electronic money institutions but also for four other categories of electronic money issuers. If Title II of the Directive imposes requirements for the taking up, pursuit and prudential supervision of the business of electronic money institutions, Title III on issuance and redeemability has to be observed by any issuer of electronic money. The Directive expressly states that electronic money can be issued by a credit institution (a), i.e. 'an undertaking the business of which is to receive deposits or other repayable funds from the public and to grant credits for its own account' (in the meaning of art. 4(1), of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions, hereafter referred as to Directive 2006/48/EC). In accordance with national law, a branch can also be considered as a credit institution and issue electronic money with respect to provisions of the Directive, if it is located within the Community (even if the head office is located outside the Community, in accordance with art. 38 of Directive 2006/48/EC). Branch is defined by art. 4(3), of Directive 2006/48/EC as 'a place of business which forms a legally dependent part of a credit institution and which carries out directly all or some of the transactions inherent in the business of credit institutions'. Legal persons to which authorisation has been granted under Title II of the Directive to issue electronic money are another category of electronic money issuer: electronic money institutions (b). As for credit institutions, branches located within the Community (and with head office located outside the Community) are also submitted to the Directive (see also art. 8 of the Directive). May also be considered as electronic money issuers: post office giro institutions which are entitled under national law to issue electronic money (c); the European Central Bank and national Central Banks when not acting in their capacity as public authorities (d) and Member States or their regional or local authorities when acting in their capacity as public authorities (e). Central banks of Member States as well as post office giro institutions were excluded from the regulatory regime of Directive 2000/46/EC (art. 1(2)). Moreover, some institutions (referred to in art. 2 of Directive 2006/48/EC), like the 'Institut de Réescompte et de Garantie' in Belgium, the 'Instituto de Crédito Oficial' in Spain or the National Savings Bank in the United Kingdom, can be considered as electronic money issuers and exempted by Member States to respect all or part of the provisions of Title II of the Directive (art. 1(3)).

**3. Negative scope.** Two specific applications, which could have been considered as electronic money, in the meaning of art. 2(2), are excluded from the scope of the Directive. First, the Directive does not apply to monetary value stored on instruments exempted as specified on art. 3(k) of Directive 2007/64/EC (art. 1(4), of the Directive). This last provision refers to 'services based on instruments that can be used to acquire goods or services only in the premises used by the issuer or under a commercial agreement with the issuer either within a limited network of service providers or for a limited range of goods or services'. They are designed to address precise needs that can be used only in a limited way. Recital 5 of the Directive provides several examples of such services: store cards, membership cards, public transport cards, vouchers for childcare, etc. The exclusion from the scope of the Directive is closely related to the specific purpose of the instrument. Therefore, if they are designed to be used in a wider way and for general purposes, the Directive shall apply. The second exclusion is related to monetary value that is used to make payment transactions executed by means of any telecommunication, digital or IT device. If three requirements provided by art. 1(5), of the Directive (see also recital 6), which refers to art. 3(1) of Directive 2007/64/EC (see also recital 6), are fulfilled, this kind of payment transactions also falls within the negative scope of both directives. First requirement: payment transactions must be executed by means of any telecommunication, digital or IT device (a mobile phone – m-payment – is used for payment, for instance). Second requirement: the goods or services purchased are delivered to and are to be used through a telecommunication, digital or IT device (such as ring tones, music or digital newspapers). Third requirement: 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. This requirement can be met if the operator adds an intrinsic value to the goods or services (for instance, in the form of access, search or distribution facilities). The objective of Directive 2007/64/EC is to exclude its application when the operator goes beyond a mere payment transaction; in this case, this operator will not be considered as a payment service provider. With regard to the Directive, the objective is similar: if the operator simply arranges for payment to be made to a third-party supplier and can be considered as an intermediary, legal framework on electronic money must be observed.

**[Definitions]**

**Article 2**

**For the purposes of this Directive, the following definitions shall apply:**

**(1) 'electronic money institution' means a legal person that has been granted authorisation under Title II to issue electronic money;**

**(2) 'electronic money' means electronically, including magnetically, stored monetary value as represented by a claim on the issuer which is issued on receipt of funds for the purpose of making payment transactions as defined in point 5 of Article 4 of Directive 2007/64/EC, and which is accepted by a natural or legal person other than the electronic money issuer;**

**(3) 'electronic money issuer' means entities referred to in Article 1(1), institutions benefiting from the waiver under Article 1(3) and legal persons benefiting from a waiver under Article 9;**

**(4) 'average outstanding electronic money' means the average total amount of financial liabilities related to electronic money in issue at the end of each calendar day over the preceding six calendar months, calculated on the first calendar day of each calendar month and applied for that calendar month.**

**1. General**. Four definitions are provided by art. 2 of the Directive: 'electronic money institutions', 'electronic money', 'electronic money issuer' and 'average outstanding electronic money'. The two first terms were also defined by Directive 2000/46/EC, but differently.

**2. Electronic money.** For a better understanding, four parts of 'electronic money' definition shall be distinguished. First, an 'electronically, including magnetically, stored monetary value' is required. Legal definitions in the framework of information technologies have to fulfil the principle of technological neutrality (see recitals 7 and 8). In this field, technological innovations are pretty fast. Therefore, if a legal instrument quotes a specific technical mean, available at the time of its adoption, there is a huge probability that this mean of payment would not be used anymore and will become obsolete in a near future. To prevent continuous amendments of legal instruments, definition must remain neutral. Several categories of electronic storage can be conceived. Electronic money can be stored on a device in the holder's possession, for instance chip card, personal computer memory or chip in a mobile phone. Electronic money can also be stored remotely on a server, in a virtual wallet, managed by the holder. Second, monetary value is 'represented by a claim on the issuer which is issued on receipt of funds'. According to recital 3 of Directive 2000/46/EC, 'electronic money can be considered an electronic surrogate for coins and banknotes' (see also recital 13 of this Directive). As for coins and banknotes, monetary value and intrinsic value of the material support (metal of the coin, paper of the banknote) are not related





to each other. Electronic money can thus be considered as fiduciary money (which can be opposed to scriptural money). It is represented by a claim and can be exchanged at any time by its monetary value. Electronic money has to be issued on receipt of funds which can be transferred by the holder or by a third party on the banking account of the electronic money issuer (whether by a physical deposit). Third, electronic money is issued 'for the purpose of making payment transactions' (in the meaning of art. 4(5) of Directive 2007/64/EC). A payment transaction is an 'act, initiated by the payer or by the payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and the payee'. Fourth, monetary value represented by a claim on the issuer 'must be accepted by a natural or legal person other than the electronic money issuer'. Retailers' cards and company cards are therefore excluded from the scope of the Directive, due to their limited acceptance in the outlets of the issuer. This requirement can be linked with the abovementioned scope's exclusion related to monetary value stored on instruments exempted as specified on art. 3(k) of Directive 2007/64/EC (art. 1(4) of the Directive).

**3. Electronic money issuer**. Directive 2000/46/EC only defined 'electronic money institutions'. This Directive also provides a definition of 'electronic money issuer'. This one can be any entity referred to in art. 1(1): credit institutions, electronic money institutions, post office giro institutions, European Central Bank and national central banks when not acting in their capacity as monetary authority or other public authorities and Member States or their regional or local authorities when acting in their capacity as public authorities (see art. 1). It can also be institutions benefiting from the waiver under art. 1(3) (for instance 'Institut de Réescompte et de Garantie' in Belgium) and legal persons benefiting from a waiver under art. 9. This last category has not been mentioned yet. As explained hereunder, by virtue of art. 1, optional exemptions of all or parts of the requirements set out in arts. 3, 4, 5 and 7 can be established by Member States, to some legal person's benefit.

**4. Electronic money institutions.** Any 'legal person that has been granted authorisation under Title II to issue electronic money' can receive the qualification of electronic money institution. Requirements and procedure established in Title II for the taking up, the pursuit and prudential supervision of the business of electronic money institutions are detailed hereafter.

**5. Average outstanding electronic money.** The Directive also provides a technical definition of the 'the average outstanding electronic money'. This average will determine the amount of the own funds of an electronic money institution for the activity of issuing electronic money (art. 5(3) of the Directive) or will determine which legal persons can benefit from the optional exemption of art. 9.

## TITLE II: REQUIREMENTS FOR THE TAKING UP, PURSUIT AND PRUDENTIAL SUPERVISION OF THE BUSINESS OF ELECTRONIC MONEY INSTITUTIONS

**[General prudential rules]**

**Article 3**

**(1) Without prejudice to this Directive, Articles 5 and 10 to 15, Article 17(7) and Articles 18 to 25 of Directive 2007/64/EC shall apply to electronic money institutions mutatis mutandis.**

**(2) Electronic money institutions shall inform the competent authorities in advance of any material change in measures taken for safeguarding of funds that have been received in exchange for electronic money issued.**

**(3) Any natural or legal person who has taken a decision to acquire or dispose of, directly or indirectly, a qualifying holding within the meaning of point 11 of Article 4 of Directive 2006/48/EC in an electronic money institution, or to further increase or reduce, directly or indirectly, such qualifying holding as a result of which the proportion of the capital or of the voting rights held would reach, exceed or fall below 20 %, 30 % or 50 %, or so that the electronic money institution would become or cease to be its subsidiary, shall inform the competent authorities of their intention in advance of such acquisition, disposal, increase or reduction.**

**The proposed acquirer shall supply to the competent authority information indicating the size of the intended holding and relevant information referred to in Article 19a(4) of Directive 2006/48/EC.**

**Where the influence exercised by the persons referred to in the second subparagraph is likely to operate to the detriment of the prudent and sound management of the institution, the competent authorities shall express their opposition or take other appropriate measures to bring that situation to an end. Such measures may include injunctions, sanctions against directors or managers, or the suspension of the exercise of the voting rights attached to the shares held by the shareholders or members in question.**

**Similar measures shall apply to natural or legal persons who fail to comply with the obligation to provide prior information, as laid down in this paragraph.**

**If a holding is acquired despite the opposition of the competent authorities, those authorities shall, regardless of any other sanction to be adopted, provide for the exercise of the voting rights of the acquirer to be suspended, the nullity of votes cast or the possibility of annulling those votes.**

**The Member States may waive or allow their competent authorities to waive the application of all or part of the obligations pursuant to this paragraph in respect of electronic money institutions that carry out one or more of the activities listed in Article 6(1)(e).**





**(4) Member States shall allow electronic money institutions to distribute and redeem electronic money through natural or legal persons which act on their behalf. Where the electronic money institution wishes to distribute electronic money in another Member State by engaging such a natural or legal person, it shall follow the procedure set out in Article 25 of Directive 2007/64/EC.**

**(5) Notwithstanding paragraph 4, electronic money institutions shall not issue electronic money through agents. Electronic money institutions shall be allowed to provide payment services referred to in Article 6(1)(a) through agents only if the conditions in Article 17 of Directive 2007/64/EC are met.**

**1. Consistency with Directive 2007/64/EC.** Directive 2007/64/EC provides the legal foundation for the creation of an EU-wide single market for payments. It creates a new category of payment service providers, namely the 'payment institutions'. These payment institutions – which are not allowed to issue electronic money – enjoy a specific prudential regime. The Directive has reviewed the prudential supervisory regime for electronic money institutions as set forth before and has aligned more closely the risks faced by those institutions. Considering the implementation of the Directive 2007/64/EC, and specially the requirements for the prudential regime of payment institutions, the Directive has put the legal and prudential framework for electronic money institutions in adequacy with the framework applicable to services payment in order to avoid any inconsistency. Therefore, art. 3(1), provides that the prudential supervisory regime applying to payment institutions under the Directive 2007/64/EC shall apply to electronic money institutions.

**2. Authorisation Regime.** The regime provided by the Directive 2007/64/EC implies a single licence for all providers issuing electronic money. This authorisation regime shall comply with several requirements (see note 2(a)); art. 3 and, mutatis mutandis, provisions of Directive 2007/64/EC also lays down the notification system (see note 2(b)), the grant, refusal, limitation and withdrawal rules (see note 2(c)) and the accounting and statutory audit (see note 2(d)). **(a) Requirements.** Five requirements are listed. Firstly, an authorisation shall be granted on the basis of the information and evidences accompanying the application and if the competent authorities' overall assessment, having scrutinised the application, is favourable (see art. 5 of Directive 2007/64/EC, mutatis mutandis). The information and evidences are the following: (a) a programme of operations; (b) a business plan; (c) evidence that the electronic money institution holds the initial capital; (d) a description of the measures taken for safeguarding payment service users' and electronic money holders' funds in accordance with art. 7, providing that the electronic money institutions shall inform the competent authorities in advance of any material change of these safeguarding measures; (e) a description of the applicant's governance arrangements and internal control mechanisms, which

shall be proportionate, appropriate and adequate; (f) a description of the internal control mechanisms which the applicant has established in order to comply with obligations in relation to money laundering and terrorist financing under Directive 2005/60/EC and Regulation (EC) No. 1781/2006; (g) a description of the applicant's structural organisation, including, where applicable, a description of the intended use of agents and branches and a description of outsourcing arrangements, and of its participation in a national or international payment system; (h) the identity of persons holding in the applicant, directly or indirectly, qualifying holdings within the meaning of art. 4(11) of Directive 2006/48/EC, the size of their holdings and evidence of their suitability;[11] (i) the identity of directors and persons responsible for the management of the electronic money institution as well as evidence of their good repute and appropriate knowledge and experience; (j) where applicable, the identity of statutory auditors and audit firms; (k) the applicant's legal status and articles of association and (l) the address of the applicant's head office. The electronic money institution shall without undue delay inform the competent authorities of any change in the accuracy of such information and evidences. Injunctions or sanctions against directors or managers, or the suspension of the exercise of the voting rights shall apply to the natural or legal persons who fail to comply with such an obligation of providing prior information. Secondly, authorisation shall only be granted to a legal person established in a Member State. If, under its national law, the electronic money institution is required to have a registered office, its head office shall be located in the same Member State as its registered office (art. 10 of Directive 2007/64/EC, mutatis mutandis). The third requirement provides that the authorisation shall only be granted if the electronic money institution has robust governance arrangements for its payment services and issuing electronic money business, which include a clear organisational structure with well-defined, transparent and consistent lines of responsibility, effective procedures to identify, manage, monitor and report the risks to which it is or might be exposed, and adequate internal control mechanisms, including sound administrative and accounting procedures (art. 10 of Directive 2007/64/EC, mutatis mutandis). Fourthly, it is required that the authorisation shall be granted only if any link (as defined in art. 4(46) of Directive 2006/48/EC) existing between the electronic money institution and other natural or legal persons, do not prevent the effective exercise of their supervisory functions (art. 10(7), of Directive 2007/64/EC, mutatis mutandis). The fifth and last requirement provides that the authorisation shall only be granted if the laws, regulations or

11. In this view, the Directive provides that any person who shall acquire or dispose of a qualifying holding in an electronic money institution, or who shall further increase or reduce such qualifying holding shall inform the competent authorities of its intention in advance (art. 3(3)). However, if the electronic money institution is engaged in business activities other than issuance of electronic money it may be exempted from this information requirement.





administrative provisions of a third country governing one or more natural or legal persons with which the electronic money institution has close links, or difficulties involved in the enforcement of those laws, regulations or administrative provisions, do not prevent the effective exercise of their supervisory functions (art. 10(8), of Directive 2007/64/EC, mutatis mutandis). **(b) Communication.** Within three months of receipt of an application, the competent authorities shall inform the applicant whether the authorisation has been granted or refused. Reasons shall be given whenever an authorisation is refused (art. 11 of Directive 2007/64/EC, mutatis mutandis). **(c) Refusal, grant, additional requirements, specific supervision and withdrawal of the authorisation.** *Refusal.* If the application does not meet the described requirements, or if the competent authorities are not satisfied as to the suitability of the shareholders or members that have qualifying holdings, they shall refuse to grant an authorisation (art. 10(6), of Directive 2007/64/EC, mutatis mutandis). *Grant.* If the authorisation is granted, it shall allow the electronic money institution to provide payment services and issuing electronic money throughout all the Community. In this case, all authorised electronic money institutions, their agents and branches, as well as the natural and legal persons, their agents and branches, benefiting from the waiver provided under art. 9 of the Directive shall be listed in a national public register (art. 13 of Directive 2007/64/EC, mutatis mutandis). *Additional requirements.* Where an electronic money institution is engaged in other business activities, the competent authorities may require the establishment of a separate entity for payment services and issuing electronic money business. It will be the case when the other activities of the electronic money institution impair or are likely to impair either the financial soundness of the electronic money institution or the ability of the competent authorities to monitor the electronic money institution's compliance with its obligations (art. 10(5), of Directive 2007/64/EC, mutatis mutandis). *Specific supervision.* Where the influence exercised by the natural or legal person who has taken a decision of acquisition or disposal of a qualifying holding in an electronic money institution, or of increase or reduction of such qualifying holding is likely to operate to the detriment of the prudent and sound management of the institution, the competent authorities shall express their opposition or take other appropriate measures to bring that situation to an end (art. 3(3), of this Directive). Such measures may include injunctions, sanctions against directors or managers, or the suspension of the exercise of the voting rights attached to the shares held by the shareholders or members in question. If a holding is acquired despite the opposition of the competent authorities, those authorities shall provide for the exercise of the voting rights of the acquirer to be suspended, the nullity of votes cast or the possibility of annulling those votes. *Withdrawal of authorisation.* The competent authorities may withdraw an authorisation only where the institution: (a) does not make use of the authorisation within 12 months, expressly renounces the authorisation or has ceased to engage in business for more than six months, (b) has obtained the authorisation through false statements or any other ir-

regular means; (c) no longer fulfils the conditions for granting the authorisation; (d) would constitute a threat to the stability of the payment system by continuing its payment services business; or (e) falls within one of the other cases where national law provides for withdrawal of an authorisation (art. 12 of Directive 2007/64/EC, mutatis mutandis). **(d) Accounting and statutory audit.** The accounting and statutory audit is provided by Directive 2007/64/EC by reference to Directive 78/660/EC and Directives 83/349/ECC and 86/635/ECC and Regulation (EC) 1606/2002, as well as Directives 2006/43/EC and 2006/48/EC (art. 15 of Directive 2007/64/EC, mutatis mutandis).

**3. Operating system.** The system set forth for issuing electronic money shows two characteristics. **(a) Outsourcing.** Electronic money institutions are allowed to distribute electronic money or to redeem electronic money on the request of customers, or of topping up customers' electronic money products, through natural or legal persons on their behalf (art. 3(4), of this Directive). However, electronic money institutions shall not issue electronic money through agents (art. 3(5), of this Directive). Nonetheless, they should be permitted to provide the payment services listed in the Annex to Directive 2007/64/EC through agents, where the conditions in art. 17 of that Directive are met. Where electronic money institutions rely on third parties for the performance of operational functions, they shall take reasonable steps to ensure that the third parties comply with all the requirements they have to comply with (art. 18 of Directive 2007/64/EC, mutatis mutandis). Also, they shall remain liable for any acts of their employees, or any agent, branch or entity to which activities are outsourced. **(b) Record-keeping.** Electronic money institutions are required to keep all appropriate records for at least five years (art. 19 of Directive 2007/64/EC, mutatis mutandis).

**4. Competent authorities.** The Directive defines the competent authorities responsible for the authorisation and the prudential supervision of the electronic money institutions and provides some guidelines for the supervision undertaken (see art. 20 et seq. of Directive 2007/64/EC, mutatis mutandis). **(a) The authorities.** The authorities are either bodies recognised by national law or by public authorities expressly empowered by national law. They shall guarantee independence from economic bodies and avoid conflicts of interest. They shall possess all the powers necessary for the performance of their duties. **(b) The supervision.** The controls exercised by the competent authorities shall be proportionate, adequate and responsive to the risks to which electronic money institutions are exposed. The competent authorities may adopt or impose penalties or measures aimed specifically at ending observed breaches or the causes of such breaches. Beside this, they are entitled to take steps to ensure sufficient capital for electronic payment services, in particular where the non-payment services activities impair or are likely to impair the financial soundness of the electronic payment institution. All persons working or who have worked for the competent authorities, and experts, are bound by the obligation of professional secrecy.





**[Initial Capital]**

**Article 4**

**Member States shall require electronic money institutions to hold, at the time of authorisation, initial capital, comprised of the items set out in Article 57(a) and (b) of Directive 2006/48/EC, of not less than EUR 350000.**

**1. Definition of the initial capital.** The initial capital of an electronic money institution is defined be reference to art. 57(a) and (b) of Directive 2006/48/EC. The first of these provisions provides that the unconsolidated own funds shall consist firstly of the capital within the meaning of art. 22 of Directive 86/635/EEC on the annual accounts and consolidated art. of banks and other financial institutions. This means all amounts, regardless of their actual designations, which, in accordance with the legal structure of the institution concerned, are regarded under national law as equity capital subscribed by the shareholders or other proprietors, in so far as it has been paid up. It consists also in all share premium accounts excluding cumulative preferential shares. According to the second provision referred to, the initial capital consists in one hand of reserves within the meaning of art. 23 of the Directive 86/635/EEC which are (a) all the types of reserves listed in art. 9 of Directive 78/660/EEC (such as legal reserve or reserve for own shares in so far as national law requires such reserves, reserves provided for by the articles of association and other reserves) as well as (b) any other types of reserves prescribed by Member States which would be necessary for credit institutions the legal structures of which are not covered by Directive 78/660/EEC. It also consists in the other hand of the profits and losses brought forward as a result of the application of the final profit or loss.

**2. Lowering of the initial capital.** The prudential supervisory regime set forth in the Directive is less cumbersome than it was as provided in the Directive 2000/46/EC. The initial capital requirement has been lowered from EUR 1 million to EUR 350 000. This first amount was considered to be excessive and disproportionate with regard to the risk of the service. Moreover, the requirement of such a high initial capital was seen as a major obstacle for smaller firms and waived institutions to apply for an authorisation to become an electronic money institution.

**[Own funds]**

**Article 5**

**(1) The electronic money institution's own funds, as set out in Articles 57 to 61, 63, 64 and 66 of Directive 2006/48/EC shall not fall below the amount required under paragraphs 2 to 5 of this Article or under Article 4 of this Directive, whichever the higher.**

**(2) In regard to the activities referred to in Article 6(1)(a) that are not linked to the issuance of electronic money, the own funds requirements of an electronic money institution shall be calculated in accordance with one of the three methods (A, B or C) set out in Article 8(1) and (2) of Directive 2007/64/EC. The appropriate method shall be determined by the competent authorities in accordance with national legislation.**

**In regard to the activity of issuing electronic money, the own funds requirements of an electronic money institution shall be calculated in accordance with Method D as set out in paragraph 3.**

**Electronic money institutions shall at all times hold own funds that are at least equal to the sum of the requirements referred to in the first and second subparagraphs.**

**(3) Method D: The own funds of an electronic money institution for the activity of issuing electronic money shall amount to at least 2 % of the average outstanding electronic money.**

**(4) Where an electronic money institution carries out any of the activities referred to in Article 6(1)(a) that are not linked to the issuance of electronic money or any of the activities referred to in Article 6(1)(b) to (e) and the amount of outstanding electronic money is unknown in advance, the competent authorities shall allow that electronic money institution to calculate its own funds requirements on the basis of a representative portion assumed to be used for the issuance of electronic money, provided such a representative portion can be reasonably estimated on the basis of historical data and to the satisfaction of the competent authorities. Where an electronic money institution has not completed a sufficient period of business, its own funds requirements shall be calculated on the basis of projected outstanding electronic money evidenced by its business plan subject to any adjustment to that plan having been required by the competent authorities.**

**(5) On the basis of an evaluation of the risk-management processes, of the risk loss databases 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 relevant method 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 relevant method in accordance with paragraph 2.**

**(6) Member States shall take the necessary measures to prevent the multiple use of elements eligible for own funds:**

**(a) where the electronic money institution belongs to the same group as another electronic money institution, a credit institution, a payment institution, an investment firm, an asset management company or an insurance or reinsurance undertaking;**





**(b) where an electronic money institution carries out activities other than the issuance of electronic money.**

**(7) Where the conditions laid down in Article 69 of Directive 2006/48/EC are met, Member States or their competent authorities may choose not to apply paragraphs 2 and 3 of this Article to electronic money institutions which are included in the consolidated supervision of the parent credit institutions pursuant to Directive 2006/48/EC.**

**1. Definition.** Directive 2000/46/EC provided that the own funds of an electronic money institution had to be, at all time, equal or above 2% of the higher of either the current amount, or the average of the preceding six months' total amount of their financial liabilities related to outstanding electronic money and, in no case, below the initial capital. For defining the own funds, the Directive refers to the definition of Directive 2006/48/EC. This definition applies and circumscribes the items that can be included in their appraisal. The Directive provides that the electronic money institution's own funds shall not fall below the higher of three amount of reference: the first one is the initial capital and the two others are function of the electronic money institution activities. According to this system, when the initial capital is the higher of these three amounts, the own funds shall not fall below EUR 350 000. Otherwise, the own funds may not fall under the amount determined on basis of methods of calculation which take the nature and the risk profile of the electronic money institutions into consideration. Hence, for activities that are not linked to the issuance of electronic money and if the activities are those described in the Annex of Directive 2007/64/EC, own funds shall at all times be at least equal to the amount calculated in accordance with one of the method set out in Directive 2007/64/EC. Where activities of issuing electronic money are concerned, the own funds shall amount to at least 2% of the average outstanding electronic money.

**2. Derogations.** However, if the activities are those listed in art. 6(1), of the Directive and if the amount of outstanding electronic money may not be determined in advance, the own funds are calculated on the basis of a representative portion assumed to be used for the issuance of electronic money. Also, when such an institution leading such activities has not completed a sufficient period of business for a prospective calculation, reference is made to projected outstanding electronic money such as provided in its business plan. This provision replaces the system set up by art. 4(3), of Directive 2000/46/EC which provided specific own funds requirements for starters.

**3. Exemptions.** The Directive also opens the door to exemptions. Firstly, and notwithstanding the case where the higher amount is the initial capital, authorities may require the electronic money institution to hold an amount of own funds which is up to 20% higher or up to 20% lower than the determined amount. Secondly, under certain conditions and depending of Member States option, the electronic money institutions which are included in the

consolidated supervision of the parent credit institutions pursuant to Directive 2006/48/EC may have to comply only with the requirement that says that their own funds shall not fall under the initial capital of EUR 350 000.

**[Activities]**

**Article 6**

**(1) In addition to issuing electronic money, electronic money institutions shall be entitled to engage in any of the following activities:**

- **(a) the provision of payment services listed in the Annex to Directive 2007/64/EC;**
- **(b) the granting of credit related to payment services referred to in points 4, 5 or 7 of the Annex to Directive 2007/64/EC, where the conditions laid down in Article 16(3) and (5) of that Directive are met;**
- **(c) the provision of operational services and closely related ancillary services in respect of the issuing of electronic money or to the provision of payment services referred to in point (a);**
- **(d) the operation of payment systems as defined in point 6 of Article 4 of Directive 2007/64/EC and without prejudice to Article 28 of that Directive;**
- **(e) business activities other than issuance of electronic money, having regard to the applicable Community and national law.**

**Credit referred to in point (b) of the first subparagraph shall not be granted from the funds received in exchange of electronic money and held in accordance with Article 7(1).**

**(2) Electronic money institutions shall not take deposits or other repayable funds from the public within the meaning of Article 5 of Directive 2006/48/EC.**

**(3) Any funds received by electronic money institutions from the electronic money holder shall be exchanged for electronic money without delay. Such funds shall not constitute either a deposit or other repayable funds received from the public within the meaning of Article 5 of Directive 2006/48/EC.**

**(4) Article 16(2) and (4) of Directive 2007/64/EC shall apply to funds received for the activities referred to in paragraph 1(a) of this Article that are not linked to the activity of issuing electronic money.**

**1. The activities concerned.** Under art. 1(4) of Directive 2000/46/EC, electronic money institutions were prohibited from doing any business other than the issuance of electronic money and closely related services. This restriction of activities was not in line with the non-exclusivity approach for payment institutions which, under Directive 2007/64/EC, may be engaged in non-payment services business. Therefore, according to the Directive,





electronic money institutions may undertake activities other than issuance of electronic money. Hence, beside issuance of electronic money, electronic money institutions may provide any services payment such as those listed in Directive 2007/64/EC, and which are (a) the services that enable cash to be placed on a payment account as well as all the operations required for operating a payment account and those that (b) enable cash withdrawals from a payment account as well as all the operations required for operating a payment account; (c) any money remittance services (d) the execution of payment transactions, including transfers of funds on a payment account with the user's payment service provider or with another payment service provider and (e) where the funds are covered by a credit line for a payment service user; (f) the issuing and/or acquiring of payment instruments; and (g) the execution of payment transactions where the consent of the payer to execute a payment transaction is given by means of any telecommunication, digital or IT device and the payment is made to the telecommunication, IT system or network operator, acting only as an intermediary between the payment service user and the supplier of the goods and services. They are also entitled to grant credit related to these three last payment services under certain conditions. Electronic money institutions are also authorised to engage in operational services and closely related ancillary services linked to the issuing of electronic money or to payment services. They may also operate payment systems which are defined as funds transfer systems with formal and standardised arrangements and common rules for the processing, clearing and/or settlement of payment transactions.

**2. Funds received.** All funds received by the public shall be exchanged for electronic money without delay and in no case shall constitute deposit or repayable funds. In no case, credits are granted from these funds. In any case, electronic money institutions shall not take deposits or other repayable funds from the public.

**[Safeguarding requirements]**

**Article 7**

**(1) Member States shall require an electronic money institution to safeguard funds that have been received in exchange for electronic money that has been issued, in accordance with Article 9(1) and (2) of Directive 2007/64/EC. Funds received in the form of payment by payment instrument need not be safeguarded until they are credited to the electronic money institution's payment account or are otherwise made available to the electronic money institution in accordance with the execution time requirements laid down in the Directive 2007/64/EC, where applicable. In any event, such funds shall be safeguarded by no later than five business days, as defined in point 27 of Article 4 of that Directive, after the issuance of electronic money.**

**(2) For the purposes of paragraph 1, secure, low-risk assets are asset items falling into one of the categories set out in Table 1 of point 14 of Annex I to Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions[12] for which the specific risk capital charge is no higher than 1,6 %, but excluding other qualifying items as defined in point 15 of that Annex.**

**For the purposes of paragraph 1, secure, low-risk assets are also units in an undertaking for collective investment in transferable securities (UCITS) which invests solely in assets as specified in the first subparagraph.**

**In exceptional circumstances and with adequate justification, the competent authorities may, based on an evaluation of security, maturity, value or other risk element of the assets as specified in the first and second subparagraphs, determine which of those assets do not constitute secure, low-risk assets for the purposes of paragraph 1.**

**(3) Article 9 of Directive 2007/64/EC shall apply to electronic money institutions for the activities referred to in Article 6(1)(a) of this Directive that are not linked to the activity of issuing electronic money.**

**(4) For the purposes of paragraphs 1 and 3, Member States or their competent authorities may determine, in accordance with national legislation, which method shall be used by the electronic money institutions to safeguard funds.**

**General.** Funds received in the form of payment by a payment instrument shall be safeguarded from the moment they are credited or otherwise made available to the electronic money institution and no later than five business days after their issuance. The protection of these funds is provided by one of the two methods laid down by Directive 2007/64/EC. The first method makes to insure that the funds are not commingled at any time with the funds of any natural or legal person other than payment service users and electronic money holder on whose behalf the funds are held and, when they are not yet delivered to the payee or transferred to another payment service provider and/or electronic money institution, they shall be deposited in a separate account in a credit institution or invested in secure, liquid low-risk assets in the meaning of art. 7(2). Beside this, these funds shall be insulated against the claims of other creditors of the electronic money institution, in particular in the event of insolvency. The second safeguarding method that may be chosen implies that the funds are covered by an insurance policy or another comparable guarantee for an amount equivalent to that which would have been segregated in the absence of the insurance policy or other comparable guarantee.

12. OJ L 177, 30.6.2006, p. 201.





**[Relations with third countries]**

**Article 8**

**(1) Member States shall not apply to a branch of an electronic money institution having its head office outside the Community, when taking up or pursuing its business, provisions which result in more favourable treatment than that accorded to an electronic money institution having its head office within the Community.**

**(2) The competent authorities shall notify the Commission of all authorisations for branches of electronic money institutions having their head office outside the Community.**

**(3) Without prejudice to paragraph 1, the Community may, through agreements concluded with one or more third countries, agree to apply provisions that ensure that branches of an electronic money institution having its head office outside the Community are treated identically throughout the Community.**

**General.** Art. 8 applies the principle of not affording a more favourable treatment to actors established outside the Community. Accordingly, branches of electronic money institutions having their head outside the Community can not be submitted to less stringent rules by Member States. However, par 3 of this provision stressed that agreements can be concluded with third countries, to ensure treatment of branches of electronic money institutions having their head office outside the Community is identical throughout the Community.

**[Optional exemptions]**

**Article 9**

**(1) Member States may waive or allow their competent authorities to waive the application of all or part of the procedures and conditions set out in Articles 3, 4, 5 and 7 of this Directive, with the exception of Articles 20, 22, 23 and 24 of Directive 2007/64/EC, and allow legal persons to be entered in the register for electronic money institutions if both of the following requirements are complied with:**

- **(a) the total business activities generate an average outstanding electronic money that does not exceed a limit set by the Member State but that, in any event, amounts to no more than EUR 5000000; and**
- **(b) none of the natural persons responsible for the management or operation of the business has been convicted of offences relating to money laundering or terrorist financing or other financial crimes.**

**Where an electronic money institution carries out any of the activities referred to in Article 6(1)(a) that are not linked to the issuance of**

**electronic money or any of the activities referred to in Article 6(1)(b) to (e) and the amount of outstanding electronic money is unknown in advance, the competent authorities shall allow that electronic money institution to apply point (a) of the first subparagraph on the basis of a representative portion assumed to be used for the issuance of electronic money, provided that such a representative portion can be reasonably estimated on the basis of historical data and to the satisfaction of the competent authorities. Where an electronic money institution has not completed a sufficiently long period of business, that requirement shall be assessed on the basis of projected outstanding electronic money evidenced by its business plan subject to any adjustment to that plan having been required by the competent authorities.**

**Member States may also provide for the granting of the optional exemptions under this Article to be subject to an additional requirement of a maximum storage amount on the payment instrument or payment account of the consumer where the electronic money is stored.**

**A legal person registered in accordance with this paragraph may provide payment services not related to electronic money issued in accordance with this Article only if conditions set out in Article 26 of Directive 2007/64/EC are met.**

**(2) A legal person registered in accordance with paragraph 1 shall be required to have its head office in the Member State in which it actually pursues its business.**

**(3) A legal person registered in accordance with paragraph 1 shall be treated as an electronic money institution. However, Article 10(9) and Article 25 of Directive 2007/64/EC shall not apply to it.**

**(4) Member States may provide for a legal person registered in accordance with paragraph 1 to engage only in some of the activities listed in Article 6(1).**

**(5) A legal person referred to in paragraph 1 shall:**

- **(a) notify the competent authorities of any change in its situation which is relevant to the conditions specified in paragraph 1; and**
- **(b) at least annually, on date specified by the competent authorities, report on the average outstanding electronic money.**

**(6) Member States shall take the necessary steps to ensure that where the conditions set out in paragraphs 1, 2 and 4 are no longer met, the legal person concerned shall seek authorisation within 30 calendar days in accordance with Article 3. Any such person that has not sought authorisation within that period shall be prohibited, in accordance with Article 10, from issuing electronic money.**

**(7) Member States shall ensure that their competent authorities are sufficiently empowered to verify continued compliance with the requirements laid down in this Article.**





**(8) This Article shall not apply in respect of the provisions of Directive 2005/60/EC or national anti-money-laundering provisions.**

**(9) Where a Member State avails itself of the waiver provided for in paragraph 1, it shall notify the Commission accordingly by 30 April 2011. The Member State shall notify the Commission forthwith of any subsequent change. In addition, the Member State shall inform the Commission of the number of legal persons concerned and, on an annual basis, of the total amount of outstanding electronic money issued at 31 December of each calendar year, as referred to in paragraph 1.**

**1. Requirements for the granting of optional exemptions.** In order to make entry requirements more accessible for the electronic money institutions, the electronic money waiver regime has been aligned with the regime of art. 26 of Directive 2007/64/EC. The Directive provides that Member States, or their competent authorities, may allow legal persons to be entered in the register for electronic money institutions without having to comply with the general prudential rules, the provisions on initial capital and own funds and the safeguarding requirements. Directive provides two explicit conditions for this exemption. However, other requirements appear between the lines when reading art. 9. First of all, the exemption depends of the absence of any conviction related to money laundering, terrorist financing or financial crimes for the persons responsible for the management or operation of the business. Secondly, the business activities of the electronic money institution shall generate a limited average of outstanding electronic money. There is however a derogatory mechanism for the electronic money institutions whose the amount of outstanding electronic money is unknown in advance. The fulfilment with these requirements allows any legal person to be treated as an electronic money institution. Nevertheless, it could not prevail from the rules related to the validity of the agreement throughout the EU and the regime of right of establishment and freedom of provide services. Member States may also require that the optional exemptions apply only if a limited amount is stored on the payment instrument or on the payment account and may limit the activities the electronic money institution will offer. Beside this, the electronic money institution registered thanks to the optional exemptions regime may provide payment services not related to electronic money only if 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. This requirement shall be assessed on the projected total amount of payment transactions in its business plan, unless an adjustment to that plan is required by the competent authorities

**2. Consequences.** First of all, any legal person entered in the register for electronic money institutions thanks to the optional exemptions shall comply with several obligations: it shall have its head office in the country

where it pursues its business, it shall notify any change in its situation which may influence its fulfilment with the requirements, and shall report on the average outstanding electronic money. All provisions of Directive 2007/64/EC concerning the competent authorities and such as those concerning the designation of such authorities, their professional secrecy, the right to contest in Court these authorities' decisions and the rules on the exchange of information and the cooperation between the competent authorities of different Member States shall still apply. The Directive also lists obligations towards Member States.

## TITLE III. ISSUANCE AND REDEEMABILITY OF ELECTRONIC MONEY

### [Prohibition from issuing electronic money]

### Article 10

**Without prejudice to Article 18, Member States shall prohibit natural or legal persons who are not electronic money issuers from issuing electronic money.**

**1. Principle.** Due to the risks associated to the issuance of electronic money, and the correlative prudential regime established in Title II, this activity should be prohibited by Member States to natural or legal persons who are not, in the meaning of the Directive, credit institutions, electronic money institutions; post office giro institutions; European Central Bank and national central banks when not acting in their capacity as monetary authority or other public authorities and Member States or their regional or local authorities when acting in their capacity as public authorities (see art. 1). Electronic money issuance should also be prohibited to persons benefiting from the waiver under art. 1(3) or art. 9.

**2. Exception.** Transitional provisions. Directive must be implemented no later than 30 April 2011. In the meanwhile, if some electronic institutions have taken up activities in accordance with Directive 2000/46/EC, transitional provisions are established (art. 18). This is the only exception to the prohibition rule stated at art. 10.

### [Issuance and redeemability]

### Article 11

**(1) Member States shall ensure that electronic money issuers issue electronic money at par value on the receipt of funds.**

**(2) Member States shall ensure that, upon request by the electronic money holder, electronic money issuers redeem, at any moment and at par value, the monetary value of the electronic money held.**





**(3) The contract between the electronic money issuer and the electronic money holder shall clearly and prominently state the conditions of redemption, including any fees relating thereto, and the electronic money holder shall be informed of those conditions before being bound by any contract or offer.**

**(4) Redemption may be subject to a fee only if stated in the contract in accordance with paragraph 3 and only in any of the following cases:**

- **(a) where redemption is requested before the termination of the contract;**
- **(b) where the contract provides for a termination date and the electronic money holder terminates the contract before that date; or**
- **(c) where redemption is requested more than one year after the date of termination of the contract.**

**Any such fee shall be proportionate and commensurate with the actual costs incurred by the electronic money issuer.**

**(5) Where redemption is requested before the termination of the contract, the electronic money holder may request redemption of the electronic money in whole or in part.**

**(6) Where redemption is requested by the electronic money holder on or up to one year after the date of the termination of the contract:**

- **(a) the total monetary value of the electronic money held shall be redeemed; or**
- **(b) where the electronic money institution carries out one or more of the activities listed in Article 6(1)(e) and it is unknown in advance what proportion of funds is to be used as electronic money, all funds requested by the electronic money holder shall be redeemed.**

**(7) Notwithstanding paragraphs 4, 5 and 6, redemption rights of a person, other than a consumer, who accepts electronic money shall be subject to the contractual agreement between the electronic money issuer and that person.**

**1. General.** Issuance of electronic money gives rise to the intervention of three actors – the electronic money issuer, the electronic money holder and the person who accepts electronic money – and to a subsequent triangular contract relationship. Indeed, contracts are concluded between (1) the electronic money issuer and the electronic money holder (for the issuance of electronic money), (2) between electronic money holder and the person who accepts electronic money (i.e. a merchant at the occasion of a sale of goods through an e-commerce website, for instance) and (3) between the persons who accepts electronic money and the electronic money issuer (for the redemption of electronic money). Art. 11 of the Directive mainly states the rules to be observed in the contractual relationship between electronic money issuer and electronic money holder. They concern the value of elec-

tronic money issue on the receipt of funds (art. 11(1)) and redeemability principles (art. 11(2) to (6)). Art. 11(7) is related to the relationship between the person who accepts electronic money and the issuer. It can be stressed that the exact meaning of 'electronic money holder' is not provided in the art. 2 of the Directive, consecrated to definitions. No differentiation is made between the holders whether they can be considered as consumers (who are not acting in the course of their trade, business or profession) or professionals (who are acting in the course of their trade, business of profession). However, art. 11(7), only applies to the contractual relationship between the issuer and the person who accepts electronic money, when this one is not a consumer (and there is no definition of 'consumer' in the Directive).

**2. Issuance of electronic money at per value on the receipt of funds.** In the definition of electronic money, Directive 2000/46/EC provides that the receipt of funds could not be of an amount less in value than the monetary value issue. This requirement can not be found in the definition of electronic money provided by the Directive. The question is whether to know if electronic money issuer can also create (electronic) money (and not only issue it). The answer to this question remains negative in this Directive by virtue of art. 11(1). Therefore, an electronic money issuer is prohibited to issue more monetary value than the funds received.

**3. Contract relationship between electronic money issuer and electronic money holder.** Electronic money is defined as a stored monetary value as represented by a claim on the issuer which is issued on receipt of funds for the purpose of making payment transactions (art. 2 of the Directive). Redeemability of the claim's monetary value – in other words redeemability of electronic money – can be requested by the holder at any moment and at per value. This key principle of the Directive, aiming at preserving the confidence of the electronic money holder, is consecrated in art. 11(2). Art. 11(3) enunciates essential information to be stated clearly and prominently in the contract between the electronic money issuer and the electronic money holder: conditions of redemption, which have to include any fees relating thereto. Due to the impact of these conditions on the holder's consent, he shall be informed before being bound by any contract or offer. We can regret that the information does not have to be communicated in written or, in accordance with the terminology usually used in the last directives, on paper or on another durable medium available and accessible. Moreover, other information could have been required, as for instance the identification of the issuer or out-of-court complaint and redress procedures for the settlement of disputes. Redemption is normally free of charge and without any possibility to agree a minimum threshold. Anyway, if requirements prescribed by the Directive are fulfilled, redemption may be subject to a fee (see art. 11(4)). First, this possibility must be stated in the contract in accordance with art. 11(3). Second, the current hypothesis must correspond to one of the three following cases: the redemption is requested before the termination of the contract; the contract





provides for a termination date and the electronic money holder terminates the contract before that date; or redemption is requested more than one year after the date of termination. Third, electronic money issuer is not allowed to request any amount of fee: it shall be proportionate and commensurate with the actual costs incurred by the electronic money issuer. Moreover, as mentioned in recital 18 of the Directive, these rules are provided 'without prejudice to national legislation on tax or social matters or any obligations on the electronic money 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'. Rules are also provided where redemption is not requested at the termination of the contract. Before that time, it can be requested by the electronic money holder in whole or in part (art. 11(5)). In other words, he does not have to wait the term specified in the contract. On or up to one year after the date, '(a) the total monetary value of the electronic money held shall be redeemed; or (b) where the electronic money institution carries out one or more of the activities listed in art. 6(1) (e) and it is unknown in advance what proportion of funds is to be used as electronic money, all funds requested by the electronic money holder shall be redeemed' (art. 11(6)).

**4. Contractual relationship between electronic money issuer and the person who accepts payments in electronic money.** Art. 11(7), of the Directive is pretty unclear. Indeed, a new actor, which is not defined, is mentioned for the first time: 'the person, other than a consumer, who accepts electronic money'. A priori, this person is a merchant, who accepts payments in electronic money, received from electronic money holders, when goods or services are supplied to them. After payment transactions, this merchant will address to electronic money issuer in order to get redemption. Redemption conditions (in particular charges) are not subject to rules enacted in art. 11(4), (5) and (6) and redemption rights should be determined by contractual arrangement.

**[Prohibition of interest]**

**Article 12**

**Member States shall prohibit the granting of interest or any other benefit related to the length of time during which an electronic money holder holds the electronic money.**

**General.** Electronic money could be held during a pretty long time by the holders. Anyway, the issuance of electronic money and its storage by the holder can not be regarded as a deposit that could give rise to some kind of remuneration or benefit. Prohibition of interest is clearly stated in this provision.

**[Out-of-court complaint and redress procedures for the settlement of disputes]**

**Article 13**

**Without prejudice to this Directive, Chapter 5 of Title IV of Directive 2007/64/EC shall apply mutatis mutandis to electronic money issuers in respect of their duties arising from this Title.**

**General.** In case of dispute between parties, out-of-court complaint and redress procedures can be of great interest, with regard to the specificities of that kind of dispute resolution. Indeed, procedure is faster, simpler and cheaper. As for many other questions covered by this Directive, art. 13 refers to provisions of Directive 2007/64/EC on out-of-court complaint and redress procedures for the settlement of disputes (arts. 80 to 83). They have to be applied in disputes involving an electronic money issuer.

## TITLE IV. FINAL PROVISIONS AND IMPLEMENTING MEASURES

**[Implementing measures]**

**Article 14**

**(1) The Commission may adopt measures which are necessary to update the provisions of this Directive in order to take account of inflation or technological and market developments. Those measures, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 15(2).**

**(2) The Commission shall adopt measures to ensure the convergent application of the exemptions referred to in Article 1(4) and (5). Those measures, designed to amend non-essential elements of this Directive shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 15(2).**

**General.** Due to the topic regulated by the Directive, some elements could have to be amended in the near future. In Title II on prudential regime, many amounts are quoted; moreover, technological innovations and new business models could be observed (see art. 14(1)). Current provisions of the Directive could be inappropriate and hinder the take-up of electronic money market or hamper innovations. If non-essential elements have to be amended to correct these weaknesses (adapt amounts to inflation, for instance), implementing powers are conferred to the Commission to adopt necessary measures. Two specific applications, which could have been considered as electronic money, in the meaning of art. 2(2), are excluded from the scope of the Directive in art.





1(4) and (5) (which refer to hypothesis also excluded of Directive 2007/64/EC). Delegation is also granted to the Commission to insure the convergent application of these exemptions, considered as non-essential elements (see art. 14(2)). In both cases, procedure of art. 15(2), shall be followed.

**[Committee procedure]**

**Article 15**

**(1) The Commission shall be assisted by the Payments Committee set up in accordance with Article 85 of Directive 2007/64/EC.**

**(2) Where reference is made to this paragraph, Article 5*a* (1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.**

**1. Payments Committee.** Following art. 85 of Directive 2007/64/EC, the Commission shall benefit from the assistance of a Payments Committee. In the framework of electronic money, the Commission shall also be assisted by this Committee if measures are adopted to update the provisions of this Directive in order to take account the inflation or the technological and market developments or to ensure the convergent application of the exemptions referred to in art. 1(4) and (5) (see art. 14). Composition or functioning rules of the Committee are not provided by the aforementioned directives.

**2. Implementing powers conferred on the Commission.** Decision 1999/468/EC lays down the procedure for the exercise of implementing powers conferred on the Commission. Art. 5a states regulatory procedures with scrutiny (in particular composition and assistance of a regulatory procedure with scrutiny committee in this framework). If the draft implementing measures exceed powers provided for in the basic instrument (i.e., in this case, art. 14 of the Directive), a resolution can be adopted by the European Parliament, draft measures shall be re-examined by the Commission (art. 8).

**[Full harmonisation]**

**Article 16**

**(1) Without prejudice to Article 1(3), the sixth subparagraph of Article 3(3), Article 5(7), Article 7(4), Article 9 and Article 18(2) and in so far as this Directive provides for harmonisation, Member States shall not maintain or introduce provisions other than those laid down in this Directive.**

**(2) Member States shall ensure that an electronic money issuer does not derogate, to the detriment of an electronic money holder, from the provisions of national law implementing or corresponding to provisions of this Directive except where explicitly provided for therein.**

**General.** Taking into account the nature of electronic money, a Community-wide approach is appropriate. Accordingly, the subsidiarity principle was respected with the creation of a full harmonised single market for the provision of electronic money in the European Union. It implies that provisions other than those stated in the Directive can not be maintained or introduced by Member States in national laws. Measures also have to be taken by Member States to ensure that the legal framework on E-Money is observed by electronic money issuers and that these one do not derogate to it, to the detriment of electronic money holders.

**[Review]**

**Article 17**

**By 1 November 2012, the Commission shall present to the European Parliament, the Council, the European Economic and Social Committee and the European Central Bank a report on the implementation and impact of this Directive, in particular on the application of prudential requirements for electronic money institutions, accompanied, where appropriate, by a proposal for its revision.**

**General.** The evaluation made by the Commission in 2005 had shown several weaknesses of some provisions of Directive 2000/46/EC, which could have hinder the take-up of the electronic money market. This Directive has been adopted following, in particular, the conclusion of the evaluation. This procedure is very important: by virtue of art. 17, the report shall be presented no later than eighteen months after the transposition delay.

**[Transitional provisions]**

**Article 18**

**(1) Member States shall allow electronic money institutions that have taken up, before 30 April 2011, activities in accordance with national law transposing Directive 2000/46/EC in the Member State in which their head office is located, to continue those activities in that Member State or in another Member State in accordance with the mutual recognition arrangements provided for in Directive 2000/46/EC without being required to seek authorisation in accordance with Article 3 of this Directive or to comply with the other provisions laid down or referred to in Title II of this Directive.**

**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, by 30 October 2011, whether the electronic money institutions comply with the requirements laid down in 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, shall be entered in the register, and shall be required to comply with the requirements in Title II. Where electronic money institutions do not comply with the requirements laid down in this Directive by 30 October 2011, they shall be prohibited from issuing electronic money.**

**(2) Member States may provide for an electronic money institution to be automatically granted authorisation and entered in the register provided for in Article 3 if the competent authorities already have evidence that the electronic money institution concerned complies with the requirements laid down in Articles 3, 4 and 5. The competent authorities shall inform the electronic money institutions concerned before the authorisation is granted.**

**(3) Member States shall allow electronic money institutions that have taken up, before 30 April 2011, activities in accordance with national law transposing Article 8 of Directive 2000/46/EC, to continue those activities within the Member State concerned in accordance with Directive 2000/46/EC until 30 April 2012, without being required to seek authorisation under Article 3 of this Directive or to comply with the other provisions laid down or referred to in Title II of this Directive. Electronic money institutions which, during that period, have been neither authorised nor waived within the meaning of Article 9 of this Directive, shall be prohibited from issuing electronic money.**

**1. General.** The electronic money institutions that have started their activities in accordance with Directive 2000/46/EC before 30 April 2011, shall, by the 30 October 2011 at the latest, submit all relevant information that confirms that they do comply with the requirements laid down in the Directive. If they do not comply with the requirements, they shall be prohibited from issuing electronic money and may see their authorisation withdrawn.

**2. Exception.** The electronic money institutions which for (a) the total business activities of the type referred to in art. 1(3)(a) of Directive 2000/46/EC of the institution generate a total amount of financial liabilities related to outstanding electronic money that normally does not exceed EUR 5 million and never exceeds EUR 6 million; or (b) the electronic money issued is accepted as a means of payment only by subsidiaries of the institution which perform operational or other ancillary functions related to electronic money issued or distributed by the institution, any parent undertaking of the institution or any other subsidiaries of that parent undertaking; or (c) electronic money issued is accepted as payment only by a limited number of undertakings, which can be clearly distinguished by their location in the same premises or other limited local area or their close financial or business relationship with the electronic money institution, and which have started

their activities before 30 April 2011, shall have until 30 April 2012 to comply with the Directive. If they do not do so, they shall be prohibited from issuing electronic money

**[Amendments to Directive 2005/60/EC]**

**Article 19**

**Directive 2005/60/EC is hereby amended as follows:**

**(1) in Article 3(2), point (a) is replaced by the following:**

**'(a) an undertaking, other than a credit institution, which carries out one or more of the operations included in points 2 to 12 and points 14 and 15 of Annex I to Directive 2006/48/EC, including the activities of currency exchange offices (bureaux de change);'**

**(2) in Article 11(5), point (d) is replaced by the following:**

**'(d) electronic money, as defined in point 2 of Article 2 of Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions[13] where, if it is not possible to recharge, the maximum amount stored electronically in the device is no more than EUR 250, or where, if it is possible to recharge, a limit of EUR 2500 is imposed on the total amount transacted in a calendar year, except when an amount of EUR 1000 or more is redeemed in that same calendar year upon the electronic money holder's request in accordance with Article 11 of Directive 2009/110/EC. As regards national payment transactions, Member States or their competent authorities may increase the amount of EUR 250 referred to in this point to a ceiling of EUR 500.**

**General.** Directive 2005/60/EC aims at preventing the use the financial systems for the purpose of money laundering and terrorist financing. Considering the new definition of electronic money, amendments have to be introduced in this Directive. It shall apply in particular to financial institutions (art. 2) i.e., following new art. 3(2)(a), 'an undertaking, other than a credit institution, which carries out one or more of the operations included in points 2 to 12 and points 14 and 15 of Annex I to Directive 2006/48/EC, including the activities of currency exchange offices (bureaux de change)'. Point 15 of Annex I to Directive 2006/48/EC refers to the activity of issuing electronic money. With regard to the objectives of Directive 2005/60/EC, institutions and persons covered by it shall apply customer due diligence measures. Simplified customer due diligence is accepted in some specific cases, among others, in respect of electronic money, in the meaning of this Directive, when some limits are not exceeded (see new point d), introduced in art. 11(5) of Directive 2005/60/EC).

13. OJ L 267, 10.10.2009, p. 7.





**[Amendments to Directive 2006/48/EC]**

**Article 20**

**Directive 2006/48/EC is hereby amended as follows:**

**(1) Article 4 is amended as following:**

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

**'1. "credit institution" means an undertaking the business of which is to receive deposits or other repayable funds from the public and to grant credits for its own account;'**

**(b) point 5 is replaced by the following:**

**'5. "financial institution" means an undertaking other than a credit institution, the principal activity of which is to acquire holdings or to pursue one or more of the activities listed in points 2 to 12 and 15 of Annex I.';**

**(2) the following point is added to Annex I:**

**'15. Issuing electronic money.'.**

**General.** Before this Directive, electronic money institutions in the meaning of Directive 2000/46/EC were considered to be credit institutions by virtue of art. 4(1)(b), of Directive 2006/48/EC (even if they could neither receive deposits from the public nor grant credits from funds received from the public). As explained before, in the new Directive, the definition of 'electronic money institution' has been amended. Concept of 'electronic money issuer' which covers, among others, 'credit institutions' and 'electronic money institutions', has also been introduced. Therefore, electronic money institutions are not to be considered as credit institutions anymore and definition of 'credit institutions' in Directive 2006/48/EC has been modified accordingly. However, as stated in recital 25, '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, alternatively, be able to carry out that activity through a subsidiary under the prudential supervisory regime of this Directive, rather than under Directive 2006/48/EC'. So, another activity, consisting in issuing electronic money, has been added to Annex 1 of Directive 2006/48/EC. Provisions of this last Directive, which refer to the list of activities of Annex I, can then be applied to issuance of electronic money.

**[Repeal]**

**Article 21**

**Directive 2000/46/EC shall be repealed with effect from 30 April 2011, without prejudice to Article 18(1) and (3) of this Directive.**

**Any reference to the repealed Directive shall be construed as a reference to this Directive.**

**General.** In comparison with Directive 2000/46/EC, this Directive introduces a complete new structure. Moreover, many provisions have been amended. Consequently, from a legistic point of view, the best solution was to replace Directive 2000/46/EC. Therefore, and without prejudice of transitional provisions (art. 18), it shall be repealed.

**[Transposition]**

**Article 22**

**(1) Member States shall adopt and publish, not later than 30 April 2011, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those measures.**

**They shall apply those measures from 30 April 2011.**

**When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.**

**(2) Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.**

**[Entry into force]**

**Article 23**

**This Directive shall enter into force on the 20th day following its publication in the Official Journal of the European Union.**

**General.** The Directive entered into force on 30 October 2009.

**[Addressees]**

**Article 24**

**This Directive is addressed to the Member States.**



## DIRECTIVE 98/84/EC OF THE EUROPEAN PARLIAMENT AND THE COUNCIL

***(Directive on conditional access)***

**of 20 November 1998 on legal protection of services based on, or consisting of, conditional access**

**The European Parliament and the Council of the European Union,**

**Having regard to the Treaty establishing the European Community, and in particular Articles 57(2), 66 and 100a thereof,**

**Having regard to the proposal from the Commission,[1] Having regard to the opinion of the Economic and Social Committee,[2]**

**Acting in accordance with the procedure laid down in Article 189b of the Treaty,[3]**

**(1) Whereas the objectives of the Community as laid down in the Treaty include creating an ever closer union among the peoples of Europe and ensuring economic and social progress, by eliminating the barriers which divide them;**

**(2) Whereas the cross-border provision of broadcasting and information society services may contribute, from the individual point of view, to the full effectiveness of freedom of expression as a fundamental right and, from the collective point of view, to the achievement of the objectives laid down in the Treaty;**

**(3) Whereas the Treaty provides for the free movement of all services which are normally provided for remuneration; whereas this right, as applied to broadcasting and information society services, is also a specific manifestation in Community law of a more general principle, namely freedom of expression as enshrined in Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms; whereas that Article explicitly recognises the right of citizens to receive and impart information regardless of frontiers and whereas any restriction of that right must be based on due consideration of other legitimate interests deserving of legal protection;**

1. OJ C 314, 16 October 1997, p. 7 and OJ C 203, 30 June 1998, p. 12.
2. OJ C 129, 27 April 1998, p. 16.
3. Opinion of the European Parliament of 30 April 1998 (OJ C 152, 18 May 1998, p. 59), Council Common Position of 29 June 1998 (OJ C 262, 19 August 1998, p. 34) and Decision of the European Parliament of 8 October 1998 (OJ C 328, 26 October 1998). Council Decision of 9 November 1998.