



Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

22 February 2024*

(Reference for a preliminary ruling – Payment services in the internal market – Directive (EU) 2015/2366 – Article 4(3) and (5) – Payment service or payment transaction – Directive 2009/110/EC – Article 2(2) – Issuance of electronic money – Holding of customer funds by a payment institution without a specific payment order – Classification)

In Case C-661/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania), made by decision of 19 October 2022, received at the Court on 20 October 2022, in the proceedings

‘ABC Projektai’ UAB, formerly ‘Bruc Bond’ UAB,

v

Lietuvos bankas,

THE COURT (Fifth Chamber),

composed of E. Regan, President of the Chamber, Z. Csehi (Rapporteur), M. Ilešič, I. Jarukaitis and D. Gratsias, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- ‘ABC Projektai’ UAB, formerly ‘Bruc Bond’ UAB, by J. Jarusevičius, advokatas, and P. Grendelis,
- the Lithuanian Government, by V. Kazlauskaitė-Švenčionienė and E. Kurelaitytė, acting as Agents,
- the Czech Government, by J. Očková, M. Smolek and J. Vlácil, acting as Agents,
- the German Government, by J. Möller and A. Hoesch, acting as Agents,

* Language of the case: Lithuanian.

- the Polish Government, by B. Majczyna, acting as Agent,
- the European Commission, by C. Auvret, S.L. Kaléda, A. Steiblytė and H. Tserepa-Lacombe, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 5 October 2023,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 4(3) and (5) of Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ 2015 L 337, p. 35), and of Article 2(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 amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ 2009 L 267, p. 7).
- 2 The request has been made in proceedings between ‘ABC Projektai’ UAB, formerly ‘Bruc Bond’ UAB, and the Lietuvos bankas (Bank of Lithuania) concerning the withdrawal of the payment institution licence previously granted to ABC Projektai.

Legal context

European Union law

Directive 2009/110

- 3 Recital 7 of Directive 2009/110 states:

‘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.’

- 4 Article 1(1) of Directive 2009/110 provides:

‘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 [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 (OJ 2006 L 177, p. 1)] ...;
- (b) electronic money institutions as defined in point 1 of Article 2 of this Directive ...;

- (c) post office giro institutions ...;
- (d) the European Central Bank and national central banks ...;
- (e) Member States or their regional or local authorities ...'

5 Article 2 of Directive 2009/110, entitled 'Definitions', provides:

'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 [of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (OJ 2007 L 319, p. 1)], and which is accepted by a natural or legal person other than the electronic money issuer;

...'

6 Under Article 10 of that directive, entitled 'Prohibition from issuing electronic money':

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

Directive 2013/36/EU

7 Article 9 of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ 2013 L 176, p. 338), entitled 'Prohibition against persons or undertakings other than credit institutions from carrying out the business of taking deposits or other repayable funds from the public', provides, in paragraph 1 thereof:

'Member States shall prohibit persons or undertakings that are not credit institutions from carrying out the business of taking deposits or other repayable funds from the public.'

Directive 2015/2366

8 Article 1 of Directive 2015/2366, entitled 'Subject matter', provides, in paragraph 1 thereof:

'This Directive establishes the rules in accordance with which Member States shall distinguish between the following categories of payment service provider:

...

(b) electronic money institutions within the meaning of point (1) of Article 2 of Directive 2009/110/EC, including, in accordance with Article 8 of that Directive and with national law, branches thereof, where such branches are located within the [European] Union and their head offices are located outside the Union, in as far as the payment services provided by those branches are linked to the issuance of electronic money;

...

(d) payment institutions;

...'

9 Article 4 of Directive 2015/2366, entitled 'Definitions', provides, in points 3, 4, 5, 12 and 23 thereof:

'For the purposes of this Directive, the following definitions apply:

...

(3) "payment service" means any business activity set out in Annex I;

(4) "payment institution" means a legal person that has been granted authorisation in accordance with Article 11 to provide and execute payment services throughout the Union;

(5) "payment transaction" means an act, initiated by the payer or on his behalf or by the payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and the payee;

...

(12) "payment account" means an account held in the name of one or more payment service users which is used for the execution of payment transactions;

...

(23) "direct debit" means a payment service for debiting a payer's payment account, where a payment transaction is initiated by the payee on the basis of the consent given by the payer to the payee, to the payee's payment service provider or to the payer's own payment service provider'.

10 Article 10 of that directive, entitled ‘Safeguarding requirements’, is worded as follows:

‘1. The Member States or competent authorities shall require a payment institution which provides payment services as referred to in points (1) to (6) of Annex I to safeguard all funds which have been received from the payment service users or through another payment service provider for the execution of payment transactions, in either of the following ways:

- (a) funds shall not be commingled at any time with the funds of any natural or legal person other than payment service users on whose behalf the funds are held and, where they are still held by the payment institution and not yet delivered to the payee or transferred to another payment service provider by the end of the business day following the day when the funds have been received, they shall be deposited in a separate account in a credit institution or invested in secure, liquid low-risk assets as defined by the competent authorities of the home Member State; and they shall be insulated in accordance with national law in the interest of the payment service users against the claims of other creditors of the payment institution, in particular in the event of insolvency;
- (b) funds shall be covered by an insurance policy or some other comparable guarantee from an insurance company or a credit institution, which does not belong to the same group as the payment institution itself, for an amount equivalent to that which would have been segregated in the absence of the insurance policy or other comparable guarantee, payable in the event that the payment institution is unable to meet its financial obligations.

2. Where a payment institution is required to safeguard funds under paragraph 1 and a portion of those funds is to be used for future payment transactions with the remaining amount to be used for non-payment services, that portion of the funds to be used for future payment transactions shall also be subject to the requirements of paragraph 1. Where that portion is variable or not known in advance, Member States shall allow payment institutions to apply this paragraph on the basis of a representative portion assumed to be used for payment services provided such a representative portion can be reasonably estimated on the basis of historical data to the satisfaction of the competent authorities.’

11 Article 11 of Directive 2015/2366, entitled ‘Granting of authorisation’, provides, in paragraph 1 thereof:

‘Member States shall require undertakings other than those referred to in points (a), (b), (c), (e) and (f) of Article 1(1) and other than natural or legal persons benefiting from an exemption pursuant to Article 32 or 33, who intend to provide payment services, to obtain authorisation as a payment institution before commencing the provision of payment services. ...’

12 Article 18 of that directive, entitled ‘Activities’, provides, in paragraphs 1 to 5 thereof:

‘1. Apart from the provision of payment services, payment institutions shall be entitled to engage in the following activities:

- (a) the provision of operational and closely related ancillary services such as ensuring the execution of payment transactions, foreign exchange services, safekeeping activities, and the storage and processing of data;
- (b) the operation of payment systems, without prejudice to Article 35;

- (c) business activities other than the provision of payment services, having regard to applicable Union and national law.
2. Where payment institutions engage in the provision of one or more payment services, they may hold only payment accounts which are used exclusively for payment transactions.
3. Any funds received by payment institutions from payment service users with a view to the provision of payment services shall not constitute a deposit or other repayable funds within the meaning of Article 9 of Directive 2013/36/EU, or electronic money as defined in point (2) of Article 2 of Directive 2009/110/EC.
4. Payment institutions may grant credit relating to payment services as referred to in point (4) or (5) of Annex I only if all of the following conditions are met:
- (a) the credit shall be ancillary and granted exclusively in connection with the execution of a payment transaction;
 - (b) notwithstanding national rules on providing credit by credit cards, the credit granted in connection with a payment and executed in accordance with Article 11(9) and Article 28 shall be repaid within a short period which shall in no case exceed 12 months;
 - (c) such credit shall not be granted from the funds received or held for the purpose of executing a payment transaction;
 - (d) the own funds of the payment institution shall at all times and to the satisfaction of the supervisory authorities be appropriate in view of the overall amount of credit granted.
5. Payment institutions shall not conduct the business of taking deposits or other repayable funds within the meaning of Article 9 of Directive 2013/36/EU.’
- 13 Article 78 of Directive 2015/2366, entitled ‘Receipt of payment orders’, is worded as follows:
- ‘1. Member States shall ensure that the time of receipt is when the payment order is received by the payer’s payment service provider.
- The payer’s account shall not be debited before receipt of the payment order. If the time of receipt is not on a business day for the payer’s payment service provider, the payment order shall be deemed to have been received on the following business day. The payment service provider may establish a cut-off time near the end of a business day beyond which any payment order received shall be deemed to have been received on the following business day.
2. If the payment service user initiating a payment order and the payment service provider agree that execution of the payment order shall start on a specific day or at the end of a certain period or on the day on which the payer has put funds at the payment service provider’s disposal, the time of receipt for the purposes of Article 83 is deemed to be the agreed day. If the agreed day is not a business day for the payment service provider, the payment order received shall be deemed to have been received on the following business day.’

- 14 Article 83 of that directive, entitled ‘Payment transactions to a payment account’, provides, in paragraph 1 thereof:

‘Member States shall require the payer’s payment service provider to ensure that after the time of receipt as referred to in Article 78, the amount of the payment transaction will be credited to the payee’s payment service provider’s account by the end of the following business day. That time limit may be extended by a further business day for paper-initiated payment transactions.’

- 15 Article 87 of Directive 2015/2366, entitled ‘Value date and availability of funds’, provides, in paragraph 1 thereof:

‘Member States shall ensure that the credit value date for the payee’s payment account is no later than the business day on which the amount of the payment transaction is credited to the payee’s payment service provider’s account.’

- 16 Annex I to Directive 2015/2366, entitled ‘Payment services (as referred to in point (3) of Article 4)’, sets out the list of activities regarded as payment services:

‘1. Services enabling cash to be placed on a payment account as well as all the operations required for operating a payment account.

2. Services enabling cash withdrawals from a payment account as well as all the operations required for operating a payment account.

3. 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:

(a) execution of direct debits, including one-off direct debits;

(b) execution of payment transactions through a payment card or a similar device;

(c) execution of credit transfers, including standing orders.

4. Execution of payment transactions where the funds are covered by a credit line for a payment service user:

(a) execution of direct debits, including one-off direct debits;

(b) execution of payment transactions through a payment card or a similar device;

(c) execution of credit transfers, including standing orders.

5. Issuing of payment instruments and/or acquiring of payment transactions.

6. Money remittance.

7. Payment initiation services.

8. Account information services.’

Lithuanian law

- 17 Directive 2015/2366 was transposed into Lithuanian law by the Lietuvos Respublikos mokėjimų įstatymas (Law of the Republic of Lithuania on payments), as amended by Law No XIII-1092 of 17 April 2018 (TAR, 2018, No 2018-6727) ('the Law on Payments'), and the Lietuvos Respublikos mokėjimo įstaigų įstatymas (Law of the Republic of Lithuania on payment institutions), as amended by Law No XI-549 of 17 April 2018 (TAR, 2018, No 2018-6729).
- 18 Article 46(1) of the Law on Payments provides that the payer's payment service provider is to ensure that, after the time of receipt of the payment order, the amount of a payment transaction in euros carried out in Lithuania and destined for another Member State will be credited to the payee's payment service provider's account by the end of the following business day, except in the case referred to in paragraph 3 of that article. That time limit may be extended by a further business day where the payment transaction is paper-initiated.
- 19 Directive 2009/110 was transposed into Lithuanian law by the Lietuvos Respublikos elektroninių pinigų ir elektroninių pinigų įstaigų įstatymas (Law of the Republic of Lithuania on electronic money and electronic money institutions), in the version thereof applicable to the facts in the main proceedings, which entered into force on 1 August 2018 (TAR, 2018, No 2018-6730).
- 20 Article 5 of that law prohibits any natural or legal person who is not an electronic money issuer from issuing electronic money.

The dispute in the main proceedings and the question referred for a preliminary ruling

- 21 On 13 October 2016, ABC Projektai, the legal successor to Bruc Bond, obtained a licence from the Lietuvos bankas (Bank of Lithuania) authorising it to provide payment services.
- 22 It was thus authorised to provide the following payment services: payment transactions, including transfers of funds on a payment account with the user's payment service provider or with another payment service provider; direct debits, including one-off direct debits, and payment transactions through a payment card or a similar device; and/or credit transfers, including standing orders, and money remittance.
- 23 On 16 April 2020, the Bank of Lithuania revoked that licence, relying on 10 grounds, only one of which is concerned by the present request for a preliminary ruling, namely the issuance by ABC Projektai of electronic money despite that company not having the status of an electronic money issuer, thereby infringing Article 5 of the Law of the Republic of Lithuania on electronic money and electronic money institutions, in the version thereof applicable to the facts in the main proceedings.
- 24 According to the Bank of Lithuania, ABC Projektai retained customer funds for longer than the time required for the execution of payment transactions. It considered that the fact of crediting funds received from customers to accounts for payments received without a specific payment purpose and retaining them for several days, and sometimes several months, without transferring the funds to the accounts of the recipients of those payments de facto constitutes issuance of electronic money.

- 25 In that regard, the Bank of Lithuania relied on the Lietuvos banko Priežiūros tarnybos pozicija dėl mokėjimo sąskaitose laikomų lėšų (Position of the Supervisory Board of the Bank of Lithuania on funds held in payment accounts), as approved by the Lietuvos banko Priežiūros tarnybos direktoriaus 2016 m. vasario 29 d. sprendimas Nr. 241-53 (Decision No 241-53 of the Director of the Supervisory Board of the Bank of Lithuania of 29 February 2016). It is apparent from that position, which, according to the Bank of Lithuania, was adopted in consultation with the European Commission, that a payment institution may receive funds on a payment account opened with it only if such funds are accompanied by a payment order, which must be executed within the time limits laid down in the Law on Payments, and that the payment institution must take sufficient measures to ensure that funds paid by third parties into a customer's payment account are not held for longer than the time required to execute the payments. If those requirements are not met, the funds in the payment institution's payment account are to be regarded as deposits, other repayable funds or electronic money.
- 26 ABC Projektai challenged the decision revoking its payment institution licence before the Vilniaus apygardos administracinis teismas (Regional Administrative Court, Vilnius, Lithuania). Since that court dismissed the action, ABC Projektai brought an appeal on a point of law before the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania), the referring court.
- 27 ABC Projektai submits that the court of first instance erred in law in its interpretation of the conditions for issuing electronic money and that, consequently, that court failed to follow the guidance provided in the judgment of 16 January 2019, *Paysera LT* (C-389/17, EU:C:2019:25). It follows from that judgment that, where the payment service is not provided by an electronic money institution and is not provided for the purpose of issuing or redeeming the par value of electronic services, that payment service cannot be regarded as an activity linked to the issuance of electronic money.
- 28 In the referring court's view, it is apparent from paragraph 29 of that judgment that the issuance of electronic money is not a 'spontaneous' activity, but rather, is carried out for the purpose of enabling the redemption of the par value of the electronic money. It notes that, in the present case, the objective of ABC Projektai was not to issue electronic money. However, since some customers had not indicated the purpose of the payments they wished to make, the funds necessary for executing those payments were retained by ABC Projektai for longer than the time required to execute the payment transactions and were refunded to customers only after some time.
- 29 The referring court states that, in the abovementioned judgment, the Court of Justice ruled on whether payment services provided by an electronic services institution had to be regarded as services linked to the issuance of electronic money, without, however, examining what distinguished the activity of payment institutions from that of electronic money institutions.

30 In those circumstances, the Lietuvos vyriausioji administracinis teismas (Supreme Administrative Court of Lithuania) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘In circumstances such as those in the main proceedings, where a payment institution accepts funds without a specific payment order to transfer them on the same or following business day and the funds remain in the payment institution’s account intended for carrying out payment transactions for longer than the time limits for the execution of the payment service laid down by legislation, are the actions of the payment institution to be regarded as:

- (a) a part of a payment service or a payment transaction, as defined in ... Article 4[(3) and (5)] of [Directive 2015/2366], performed by the payment institution; or
- (b) the issuance of electronic money as defined in ... Article 2[(2)] of [Directive 2009/110]?’

Consideration of the question referred

31 By its question, the referring court asks, in essence, whether Article 4(3) of Directive 2015/2366 and Article 2(2) of Directive 2009/110 are to be interpreted as meaning that the activity of a payment institution which consists in receiving funds from a user of a payment service, where such funds are not immediately accompanied by a payment order and therefore remain available on a payment account, within the meaning of Article 4(12) of Directive 2015/2366, operated by that institution, constitutes a payment service provided by that payment institution, within the meaning of Article 4(3) of Directive 2015/2366, or a transaction consisting in the issuance of electronic money, within the meaning of Article 2(2) of Directive 2009/110.

32 Article 4(3) of Directive 2015/2366 defines the concept of a ‘payment service’ as being any business activity set out in Annex I to that directive. In accordance with that annex, such activities include, inter alia, services enabling cash to be placed on, and withdrawn from, a payment account as well as all the operations required for operating a payment account; execution of payment transactions, including payment transactions where the funds are covered by a credit line for a payment service user, in particular execution of direct debits, including one-off direct debits, execution of payment transactions through a payment card or a similar device; and execution of credit transfers, including standing orders.

33 According to Article 4(5) of Directive 2015/2366, a ‘payment transaction’ means an act, initiated by the payer or on that payer’s behalf or by the payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and the payee.

34 It follows that, where a payment service user puts funds at a payment institution’s disposal and those funds are credited to a payment account held by that institution in the name of that user, such transactions must, in principle, be regarded as constituting a transaction related to the operation of a payment account within the meaning of Article 4(12) of Directive 2015/2366 and, therefore, as forming part of a payment service, within the meaning of Article 4(3) of that directive.

35 Those transactions cannot cease to be classified as such on the sole ground that the funds received on that payment account are not accompanied by a payment order on the same day or on the following business day.

- 36 It is true that Directive 2015/2366 imposes various obligations on payment service providers, inter alia as regards the time limit for executing payment orders or the reference times to be used. In particular, in accordance with Article 83(1) of Directive 2015/2366, Member States are to require the payer's payment service provider to ensure that after the time of receipt of the payment order, which occurs under the conditions laid down in Article 78 of that directive, the amount of the payment transaction will be credited to the payee's payment service provider's account by the end of the following business day, and that time limit may be extended by a further business day for paper-initiated payment transactions. With regard to the value date on which the amount of the payment transaction is credited to the payee's account, Article 87(1) of Directive 2015/2366 requires that that date be no later than the business day on which the amount of the payment transaction is credited to the payee's payment service provider's account.
- 37 By contrast, no provision of that directive precludes funds from being credited in advance to a payment account for the purpose of executing future payment orders, including payment orders not yet specified, or lays down any time limit within which, after such an account has been credited with a certain amount, that amount must be used for the purposes of a payment transaction.
- 38 On the contrary, as the Advocate General observed, in essence, in point 55 of his Opinion, Directive 2015/2366 refers to instances of payment services the proper execution of which requires funds to be credited in advance to a payment account without being accompanied by a payment order.
- 39 Indeed, Article 4(23) of that directive expressly envisages the execution of direct debits from a payment account, initiated by the payee on the basis of the consent given to that payee by the payer. The proper execution of such a payment transaction presupposes that the funds necessary for that transaction are available, in advance, on the payer's payment account.
- 40 In addition, Article 10(1) of Directive 2015/2366 requires payment institutions to safeguard, in accordance with the detailed rules laid down in points (a) and (b) of that provision, all funds which have been received from the payment service users or through another payment service provider for the execution of payment transactions. The safeguarding rules provided for in Article 10(1)(a) of that directive expressly refer to the situation in which those funds are, by the end of the business day following the day when the funds have been received, still held by the payment institution and not yet delivered to the payee or transferred to another payment service provider.
- 41 Article 10(2) of Directive 2015/2366 also confirms such an interpretation. That provision expressly refers to the situation in which some of the user's funds are to be used for future payment transactions, including where the amount of such funds is variable or not known in advance.
- 42 Furthermore, the fact that Article 18(4) of that directive allows payment institutions, under certain conditions, to grant ancillary credit would be difficult to reconcile with a strict requirement that each payment order be accompanied by the transfer of the corresponding sums to the account from which the relevant payment order will be executed.

- 43 That said, it is necessary to state that the transfer of funds to a payment account must always be made for the purpose of executing payment orders, irrespective of whether or not those orders have already been specified. Indeed, in accordance with Article 18(2) of Directive 2015/2366, payment institutions, where they engage in the provision of one or more payment services, may hold only payment accounts which are used exclusively for payment transactions.
- 44 Moreover, in accordance with Article 18(3) of that directive, any funds received by payment institutions from payment service users with a view to the provision of payment services are not to constitute a deposit or other repayable funds within the meaning of Article 9 of Directive 2013/36, or electronic money as defined in Article 2(2) of Directive 2009/110. Similarly, under Article 18(5) of Directive 2015/2366, payment institutions are not to conduct the business of taking such deposits or other such repayable funds.
- 45 It follows that, in order to avoid the reclassification of acts consisting in the receipt of funds as the business of taking deposits or other repayable funds, the accounts to which such funds are credited must, in accordance with Article 4(12) of Directive 2015/2366, be used exclusively for the execution of payment transactions.
- 46 With regard to the potential reclassification of transactions, such as those at issue in the main proceedings, as issuances of electronic money, within the meaning of Article 2(2) of Directive 2009/110, as envisaged by the referring court and advocated by the Lithuanian Government, it should be recalled, first of all, that the concept of ‘electronic money’, within the meaning of that provision, is defined as 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, and which is accepted by a natural or legal person other than the electronic money issuer. Furthermore, in the light of the general prohibition to that effect laid down in Article 10 of that directive, payment institutions are not authorised to issue electronic money.
- 47 Although an entry in a payment account also represents a claim, expressed in monetary value, on the institution concerned vis-à-vis a user of its services which has been issued on receipt of funds, it may be inferred from that definition of electronic money provided in Article 2(2) of Directive 2009/110 that the issuance of electronic money is distinct from the mere entry in a payment account in that, inter alia, before being used for the purposes of such a payment, such money must be electronically ‘stored’, which implies that it has been issued beforehand, that is to say, converted into a monetary asset separate from the funds received, and that its use as a means of payment is accepted by a natural or legal person other than the electronic money issuer.
- 48 As the Advocate General stated in points 66 to 69 of his Opinion, in order for an activity to come under the issuance of ‘electronic money’, within the meaning of Article 2(2) of that directive, it is at the very least necessary that there be a contractual agreement between the user and the electronic money issuer under which those parties expressly agree that that issuer will issue a separate monetary asset up to the monetary value of the funds paid by the user. However, transferring and holding funds on a payment account without immediately mandating payment transactions up to the value of those funds does not mean that the user of the payment service has given his, her or its express or tacit consent to the issuance of electronic money.

- 49 It is not apparent from the documents before the Court that ABC Projektai converted some of the funds which it received into electronically, including magnetically, stored money which could be used by a network of customers who would accept it voluntarily. On the contrary, all the indications are that the funds in question were deposited in payment accounts and could be used solely to execute payment orders from the users concerned.
- 50 Next, the judgment of 16 January 2019, *Paysera LT* (C-389/17, EU:C:2019:25), referred to in the order for reference, is not directly relevant in that context. In the case which gave rise to that judgment, the applicant in the main proceedings was an electronic money institution and the dispute in the main proceedings concerned the rules for the calculation of own funds of electronic money institutions. In the present case, the appellant in the main proceedings does not have such status and appears to have never intended to issue electronic money.
- 51 Lastly, and in any event, assuming that ABC Projektai failed to comply with some of the regulatory requirements which apply in the context of the execution of payment orders or that it infringed contractual provisions applicable to the operation of the payment account at issue in the main proceedings, that would not necessarily make the transactions carried out by that provider issuances of electronic money, within the meaning of Article 2(2) of Directive 2009/110. Subject to a reclassification of the transaction for the reasons referred to in paragraphs 44 and 47 above, failure by the payment service provider to comply with certain regulatory or contractual requirements could indeed render it liable, but such irregularities would not, in themselves, have the consequence of removing the transaction in question from the scope of Directive 2015/2366.
- 52 In the light of the foregoing considerations, the answer to the question referred is that Article 4(3) of Directive 2015/2366 and Article 2(2) of Directive 2009/110 must be interpreted as meaning that the activity of a payment institution which consists in receiving funds from a user of a payment service, where such funds are not immediately accompanied by a payment order and therefore remain available on a payment account, within the meaning of Article 4(12) of Directive 2015/2366, operated by that institution, constitutes a payment service provided by that payment institution, within the meaning of Article 4(3) of Directive 2015/2366, and not a transaction consisting in the issuance of electronic money, within the meaning of Article 2(2) of Directive 2009/110.

Costs

- 53 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fifth Chamber) hereby rules:

Article 4(3) of Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC, and Article 2(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 amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC,

must be interpreted as meaning that the activity of a payment institution which consists in receiving funds from a user of a payment service, where such funds are not immediately accompanied by a payment order and therefore remain available on a payment account, within the meaning of Article 4(12) of Directive 2015/2366, operated by that institution, constitutes a payment service provided by that payment institution, within the meaning of Article 4(3) of Directive 2015/2366, and not a transaction consisting in the issuance of electronic money, within the meaning of Article 2(2) of Directive 2009/110.

[Signatures]