

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

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) thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the Economic and Social Committee ⁽²⁾,

Having regard to the opinion of the European Central Bank ⁽³⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽⁴⁾,

Whereas:

- (1) Credit institutions within the meaning of Article 1, point 1, first subparagraph (b) of Directive 2000/12/EC ⁽⁵⁾ are limited in the scope of their activities.
- (2) It is necessary to take account of the specific characteristics of these institutions and to provide the appropriate measures necessary to coordinate and harmonise Member States' laws, regulations and administrative provisions relating to the taking up, pursuit and prudential supervision of the business of electronic money institutions.
- (3) For the purposes of this Directive, electronic money can be considered an electronic surrogate for coins and banknotes, which is stored on an electronic device such as a chip card or computer memory and which is generally intended for the purpose of effecting electronic payments of limited amounts.
- (4) The approach adopted is appropriate to achieve only the essential harmonisation necessary and sufficient to secure the mutual recognition of authorisation and prudential supervision of electronic money institutions, making possible the granting of a single licence recognised throughout the Community and designed to

ensure bearer confidence and the application of the principle of home Member State prudential supervision.

- (5) Within the wider context of the rapidly evolving electronic commerce it is desirable to provide a regulatory framework that assists electronic money in delivering its full potential benefits and that avoids hampering technological innovation in particular. Therefore, this Directive introduces a technology-neutral legal framework that harmonises the prudential supervision of electronic money institutions to the extent necessary for ensuring their sound and prudent operation and their financial integrity in particular.
- (6) Credit institutions, by virtue of point 5 of Annex I to Directive 2000/12/EC, are already allowed to issue and administer means of payment including electronic money and to carry on such activities Community-wide subject to mutual recognition and to the comprehensive prudential supervisory system applying to them in accordance with the European banking Directives.
- (7) The introduction of a separate prudential supervisory regime for electronic money institutions, which, although calibrated on the prudential supervisory regime applying to other credit institutions and Directive 2000/12/EC except Title V, Chapters 2 and 3 thereof in particular, differs from that regime, is justified and desirable because the issuance of electronic money does not constitute in itself, in view of its specific character as an electronic surrogate for coins and banknotes, a deposit-taking activity pursuant to Article 3 of Directive 2000/12/EC, if the received funds are immediately exchanged for electronic money.
- (8) The receipt of funds from the public in exchange for electronic money, which results in a credit balance left on account with the issuing institution, constitutes the receipt of deposits or other repayable funds for the purpose of Directive 2000/12/EC.
- (9) It is necessary for electronic money to be redeemable to ensure bearer confidence. Redeemability does not imply, in itself, that the funds received in exchange for electronic money shall be regarded as deposits or other repayable funds for the purpose of Directive 2000/12/EC.
- (10) Redeemability should always be understood to be at par value.

⁽¹⁾ OJ C 317, 15.10.1998, p. 7.

⁽²⁾ OJ C 101, 12.4.1999, p. 64.

⁽³⁾ OJ C 189, 6.7.1999, p. 7.

⁽⁴⁾ Opinion of the European Parliament of 15 April 1999 (OJ C 219, 30.7.1999, p. 415), confirmed on 27 October 1999, Council Common Position of 29 November 1999 (OJ C 26, 28.1.2000, p. 1) and Decision of the European Parliament of 11 April 2000 (not yet published in the Official Journal). Decision of the Council of 16 June 2000.

⁽⁵⁾ Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions (OJ L 126, 26.5.2000, p. 1). Directive as last amended by Directive 2000/28/EC (see page 37 of this Official Journal).

- (11) In order to respond to the specific risks associated with the issuance of electronic money this prudential supervisory regime must be more targeted and, accordingly, less cumbersome than the prudential supervisory regime applying to credit institutions, notably as regards reduced initial capital requirements and the non-application of Directive 93/6/EEC⁽¹⁾ and Title V, Chapter 2, Sections II and III of Directive 2000/12/EC.
- (12) However, it is necessary 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. This is achieved since the abovementioned less cumbersome features of the prudential supervisory regime applying to electronic money institutions are balanced by provisions that are more stringent than those applying to other credit institutions, notably as regards restrictions on the business activities which electronic money institutions may carry on and, particularly, prudent limitations of their investments aimed at ensuring that their financial liabilities related to outstanding electronic money are backed at all times by sufficiently liquid low risk assets.
- (13) Pending the harmonisation of prudential supervision of outsourced activities for credit institutions it is appropriate that electronic money institutions have sound and prudent management and control procedures. With a view to the possibility of operational and other ancillary functions related to the issuance of electronic money being performed by undertakings which are not subject to prudential supervision it is essential that electronic money institutions have in place internal structures which should respond to the financial and non-financial risks to which they are exposed.
- (14) The issuance of electronic money may affect the stability of the financial system and the smooth operation of payments systems. Close cooperation in assessing the integrity of electronic money schemes is called for.
- (15) It is appropriate to afford competent authorities the possibility of waiving some or all of the requirements imposed by this Directive for electronic money institutions which operate only within the territories of the respective Member States.
- (16) Adoption of this Directive constitutes the most appropriate means of achieving the desired objectives. This Directive is limited to the minimum necessary to achieve these objectives and does not go beyond what is necessary for this purpose.

- (17) Provision should be made for the review of this Directive in the light of experience of developments in the market and the protection of bearers of electronic money.
- (18) The Banking Advisory Committee has been consulted on the adoption of this Directive,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Scope, definitions and restriction of activities

1. This Directive shall apply to electronic money institutions.
2. It shall not apply to the institutions referred to in Article 2(3) of Directive 2000/12/EC.
3. For the purposes of this Directive:
 - (a) 'electronic money institution' shall mean an undertaking or any other legal person, other than a credit institution as defined in Article 1, point 1, first subparagraph (a) of Directive 2000/12/EC which issues means of payment in the form of electronic money;
 - (b) 'electronic money' shall mean monetary value as represented by a claim on the issuer which is:
 - (i) stored on an electronic device;
 - (ii) issued on receipt of funds of an amount not less in value than the monetary value issued;
 - (iii) accepted as means of payment by undertakings other than the issuer.
4. Member States shall prohibit persons or undertakings that are not credit institutions, as defined in Article 1, point 1, first subparagraph of Directive 2000/12/EC, from carrying on the business of issuing electronic money.
5. The business activities of electronic money institutions other than the issuing of electronic money shall be restricted to:
 - (a) the provision of closely related financial and non-financial services such as the administering of electronic money by the performance of operational and other ancillary functions related to its issuance, and the issuing and administering of other means of payment but excluding the granting of any form of credit; and
 - (b) the storing of data on the electronic device on behalf of other undertakings or public institutions.

Electronic money institutions shall not have any holdings in other undertakings except where these undertakings perform operational or other ancillary functions related to electronic money issued or distributed by the institution concerned.

⁽¹⁾ Council Directive 93/6/EEC of 15 March 1993 on the capital adequacy of investment firms and credit institutions (OJ L 141, 11.6.1993, p. 1). Directive as last amended by Directive 98/33/EC (OJ L 204, 21.7.1998, p. 29).

*Article 2***Application of Banking Directives**

1. Save where otherwise expressly provided for, only references to credit institutions in Directive 91/308/EEC⁽¹⁾ and Directive 2000/12/EC except Title V, Chapter 2 thereof shall apply to electronic money institutions.
2. Articles 5, 11, 13, 19, 20(7), 51 and 59 of Directive 2000/12/EC shall not apply. The mutual recognition arrangements provided for in Directive 2000/12/EC shall not apply to electronic money institutions' business activities other than the issuance of electronic money.
3. The receipt of funds within the meaning of Article 1(3)(b)(ii) does not constitute a deposit or other repayable funds according to Article 3 of Directive 2000/12/EC, if the funds received are immediately exchanged for electronic money.

*Article 3***Redeemability**

1. A bearer of electronic money may, during the period of validity, ask the issuer to redeem it at par value in coins and bank notes or by a transfer to an account free of charges other than those strictly necessary to carry out that operation.
2. The contract between the issuer and the bearer shall clearly state the conditions of redemption.
3. The contract may stipulate a minimum threshold for redemption. The threshold may not exceed EUR 10.

*Article 4***Initial capital and ongoing own funds requirements**

1. Electronic money institutions shall have an initial capital, as defined in Article 34(2), subparagraphs (1) and (2) of Directive 2000/12/EC, of not less than EUR 1 million. Notwithstanding paragraphs 2 and 3, their own funds, as defined in Directive 2000/12/EC, shall not fall below that amount.
2. Electronic money institutions shall have at all times own funds which are equal to or above 2 % of the higher of the current amount or the average of the preceding six months' total amount of their financial liabilities related to outstanding electronic money.
3. Where an electronic money institution has not completed a six months' period of business, including the day it starts up, it shall have own funds which are equal to or above 2 % of the higher of the current amount or the six months' target total amount of its financial liabilities related to outstanding elec-

tronic money. The six months' target total amount of the institution's financial liabilities related to outstanding electronic money shall be evidenced by its business plan subject to any adjustment to that plan having been required by the competent authorities.

*Article 5***Limitations of investments**

1. Electronic money institutions shall have investments of an amount of no less than their financial liabilities related to outstanding electronic money in the following assets only:
 - (a) asset items which according to Article 43(1)(a) (1), (2), (3) and (4) and Article 44(1) of Directive 2000/12/EC attract a zero credit risk weighting and which are sufficiently liquid;
 - (b) sight deposits held with Zone A credit institutions as defined in Directive 2000/12/EC; and
 - (c) debt instruments which are:
 - (i) sufficiently liquid;
 - (ii) not covered by paragraph 1(a);
 - (iii) recognised by competent authorities as qualifying items within the meaning of Article 2(12) of Directive 93/6/EEC; and
 - (iv) issued by undertakings other than undertakings which have a qualifying holding, as defined in Article 1 of Directive 2000/12/EC, in the electronic money institution concerned or which must be included in those undertakings' consolidated accounts.
2. Investments referred to in paragraph 1(b) and (c) may not exceed 20 times the own funds of the electronic money institution concerned and shall be subject to limitations which are at least as stringent as those applying to credit institutions in accordance with Title V, Chapter 2, Section III of Directive 2000/12/EC.
3. For the purpose of hedging market risks arising from the issuance of electronic money and from the investments referred to in paragraph 1, electronic money institutions may use sufficiently liquid interest-rate and foreign-exchange-related off balance-sheet items in the form of exchange-traded (i.e. not OTC) derivative instruments where they are subject to daily margin requirements or foreign exchange contracts with an original maturity of 14 calendar days or less. The use of derivative instruments according to the first sentence is permissible only if the full elimination of market risks is intended and, to the extent possible, achieved.
4. Member States shall impose appropriate limitations on the market risks electronic money institutions may incur from the investments referred to in paragraph 1.
5. For the purpose of applying paragraph 1, assets shall be valued at the lower of cost or market value.

⁽¹⁾ Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering (OJ L 166, 28.6.1991, p. 77).

6. If the value of the assets referred to in paragraph 1 falls below the amount of financial liabilities related to outstanding electronic money, the competent authorities shall ensure that the electronic money institution in question takes appropriate measures to remedy that situation promptly. To this end, and for a temporary period only, the competent authorities may allow the institution's financial liabilities related to outstanding electronic money to be backed by assets other than those referred to in paragraph 1 up to an amount not exceeding the lower of 5 % of these liabilities or the institution's total amount of own funds.

Article 6

Verification of specific requirements by the competent authorities

The competent authorities shall ensure that the calculations justifying compliance with Articles 4 and 5 are made, not less than twice each year, either by electronic money institutions themselves, which shall communicate them, and any component data required, to the competent authorities, or by competent authorities, using data supplied by the electronic money institutions.

Article 7

Sound and prudent operation

Electronic money institutions shall have sound and prudent management, administrative and accounting procedures and adequate internal control mechanisms. These should respond to the financial and non-financial risks to which the institution is exposed including technical and procedural risks as well as risks connected to its cooperation with any undertaking performing operational or other ancillary functions related to its business activities.

Article 8

Waiver

1. Member States may allow their competent authorities to waive the application of some or all of the provisions of this Directive and the application of Directive 2000/12/EC to electronic money institutions in cases where either:

- (a) the total business activities of the type referred to in Article 1(3)(a) of this Directive 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 by the institution is accepted as a means of payment only by any 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 by the institution is accepted as payment only by a limited number of undertakings, which can be clearly distinguished by:

- (i) their location in the same premises or other limited local area; or
- (ii) their close financial or business relationship with the issuing institution, such as a common marketing or distribution scheme.

The underlying contractual arrangements must provide that the electronic storage device at the disposal of bearers for the purpose of making payments is subject to a maximum storage amount of not more than EUR 150.

2. An electronic money institution for which a waiver has been granted under paragraph 1 shall not benefit from the mutual recognition arrangements provided for in Directive 2000/12/EC.

3. Member States shall require that all electronic money institutions to which the application of this Directive and Directive 2000/12/EC has been waived report periodically on their activities including the total amount of financial liabilities related to electronic money.

Article 9

Grandfathering

Electronic money institutions subject to this Directive which have commenced their activity in accordance with the provisions in force in the Member State in which they have their head office before the date of entry into force of the provisions adopted in implementation of this Directive or the date referred to in Article 10(1), whichever date is earlier, shall be presumed to be authorised. The Member States shall oblige such electronic money institutions to submit all relevant information to the competent authorities in order to allow them to assess within six months from the date of entry into force of the provisions adopted in implementation of this Directive, whether the institutions comply with the requirements pursuant to this Directive, which measures need to be taken in order to ensure compliance, or whether a withdrawal of authorisation is appropriate. If compliance is not ensured within six months from the date referred to in Article 10(1), the electronic money institution shall not benefit from mutual recognition after that time.

Article 10

Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 27 April 2002. They shall immediately inform the Commission thereof.

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

Article 11

Review

Not later than 27 April 2005 the Commission shall present a report to the European Parliament and the Council on the application of this Directive, in particular on:

- the measures to protect the bearers of electronic money, including the possible need to introduce a guarantee scheme,
- capital requirements,
- waivers, and
- the possible need to prohibit interest being paid on funds received in exchange for electronic money,

accompanied where appropriate by a proposal for its revision.

Article 12

Entry into force

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

Article 13

This Directive is addressed to the Member States.

Done at Brussels, 18 September 2000.

For the European Parliament

The President

N. FONTAINE

For the Council

The President

H. VÉDRINE
