

# 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

## Question

Pursuant to the Article 12 of the E-Money Directive (2009/110/EC)

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 e-money. Could you please clarify whether, for example, discount (price reduction) falls under the term any other benefit?

Situation: E-money holder will use a pre-paid card by purchasing of merchandise. By using of this pre paid card e-money holder will get a price reduction of purchase. This price reduction e-money holder can obtain during length of time of e-money holding. The price reduction by purchasing of merchandise is connected to holding of e-money.

Situation: A bank is interested in providing a new product (i.e. pre-paid cards). Pre-paid cards should be used especially for payment of goods or services. Pre-paid card holder will obtain

## Answer

It should be stressed that Article 12 only bans the granting of interest and those other benefits which are related *"to the length of time during which the electronic money holder holds electronic money"*, as stated in recital (13).

In the example of the question it appears that the benefit (the discount) is linked to the fact that e-money is held. However, it does not appear that such a benefit is linked to the length of time that the e-money is held by the holder of e-money, nor to the amount of e-money held. The benefit appears only to be linked to the fact that the purchase has been made with e-money.

Therefore, this benefit might be in line with the ban under Article 12 of Directive 2009/110/EC.

The situation described can be considered as issuance of e-money and the prepaid card as a payment instrument under Article 4(23) of the PSD. As described, e-money is issued in exchange of funds received and can be used for the purpose of executing payment transactions to purchase goods or services. The issuer is rightly not allowed to grant any credit to the holder of e-money, as provided for in Article 12 of Directive 2009/110/EC. Finally, as rightly stated, the funds received in exchange of electronic money can be safeguarded on an account of a bank as provided for in Article 7 of Directive 2009/110/EC, ensuring that funds are protected.

this card from bank on the basis of exchange funds for pre-paid card (value of funds is equal to value stored on pre-paid card). Pre-paid card holder isn't entitled to grant any interest. Funds received by bank from pre-paid card holders won't be held on account of pre-paid card holder (pre-paid card holder doesn't have any account in the name), but these funds will be held on one account of a bank. On this account will be accumulated all funds from pre-paid card holders. All pre-paid card holders would be registered on this account with possibility (possibility of bank) to extract information about funds and payment transaction of each pre-paid card holder.

Could we classify this situation as issuing of e-money?  
Could you please clarify under what circumstances above mentioned activity wouldn't be classify as issuing of e-money?  
Can we consider such pre-paid card as payment instrument according to the Article 4 (23) of PSD?  
Can we consider such account of bank as payment account according to the Article 4 (14) of PSD?

From a users perspective, what are the differences between funds in an e-money-account and in a deposit account?

However, inssofar this prepaid card can only be used to buy goods and services within a limited network", as provided for in Article 1(4) and 1(5) of Directive 2009/110/EC, it would fall out of the scope of the Directive. As explained in recital 5 of the Directive, 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 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.

While the Directive does not explicitly require that the holder has an account in its name, Article 4(14) of the Payment Services Directive 2007/64/EC defines a "payment account" as "an account held in the name of one or more payment service users..." However, it is questionable how the holder could identify that the e-money belongs to him.

As stated in recital (13) of the Directive, "the issuance of electronic money does not constitute a deposit-taking activity pursuant to Directive 2006/48/EC (...) 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 a means of saving". In the same recital, it is also stated that "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 the electronic money".

One of the implications is that the e-money issuer can not grant credit using the funds

received from the holder of e-money. On the contrary, credit institutions can use all funds received to grant credit and are not bound by a similar prohibition to grant interest on deposits since the limitation only applies to e-money. In addition, for e-money, there exist redemption rules which could allow to charge a cost-based fee in certain situations.

The EMD stipulates that e-money has the purpose of making payment transactions as defined in the PSD and the EMI are entitled to provide the payment services listed in the Annex to the PSD.

Unlike the presence of a legal definition of a "payment account" in the PSD, the EMD contains no definition of an "e-money account", which issue has already been discussed in question ID 951. As explained in the answer to this question, the definition of "e-money" in the EMD is broad enough to cover different situations, regardless of that if the stored value is connected to a payment account in the meaning of the PSD or not. Therefore, it is not essential characteristics of the e-money to be connected to a Payment Account and there are e-money products on the market, which are not connected to a Payment Account.

The new Regulation 260/2012 establishing technical and business requirements for credit transfers and direct debits in Euro envisages the obligation an IBAN of the payee and payer to be provided by the PSP upon SEPA

According to Article 2 (2) of the EMD "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". Furthermore, as stated in recital (8) of the EMD "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".

As to Regulation 260/2012, Article 1(2)(f) provides that the Regulation applies to "payment transactions transferring electronic money" if such transactions "result in a credit transfer or direct debit to and from a payment account identified by BBAN or IBAN". This could equally apply to situations where there is only one payment account identified by IBAN or BBAN as well as to situations where there are two accounts identified by IBAN or BBAN.

Credit Transfer.  
The negative scope of the Regulation 260/2012 (1, para. 2, (f)) excludes its application for "payment transactions transferring electronic money" (a payment transaction which is defined neither in the PSD, nor in the EMD), with the following exception: "unless such transactions result in a credit transfer or direct debit to and from a payment account identified by BBAN or IBAN".

This expression is a bit ambiguous and the following questions arise:

1. Is this provision to be interpreted in a meaning, that:  
a) the Regulation 260/2012 applies to transactions with e-money resulting in transfer of funds between TWO payment accounts ("to AND from"), i.e. situations where the e-money is connected to a Payment Account;  
OR  
b) any transaction, resulting in a transfer of funds to a Payment Account falls under the scope of the Regulation 260/2012 (example: some PSPs such as PayPal and Moneybookers offer the service "withdraw funds to a bank account" for transfer of e-money to a payment account, whereas the PayPal/Moneybookers Accounts are NOT Payment Accounts and have no IBAN, but the funds are transferred to an

Payment Account -  
would this situation  
fall under the scope of  
the Regulation  
260/2012 as resulting  
"in a credit transfer  
[...] to [...] a payment  
account identified by  
BBAN or IBAN?).

2. If the correct  
interpretation of the  
above answer is b)  
and upon such  
transfer of e-money  
the IBAN of the payer  
has to be provided by  
the PSP, does this  
mean that:

a) e-money  
transferable to a  
Payment Account  
shall always be  
connected to a  
Payment Account  
identifiable with an  
IBAN (which would  
have as a  
consequence in the  
above example that  
PayPal/Moneybookers  
shall provide Payment  
Accounts to the users  
in order to support the  
service "withdraw  
funds to a bank  
account")

or

b) an "e-money  
account" may also be  
identifiable with an  
IBAN (which would  
have as a  
consequence in the  
above example that  
PayPal/Moneybookers  
may assign an IBAN  
to their e-money  
accounts). What  
would be the  
difference between an  
"e-money account"  
and a "payment  
account" then?

Given that the  
Directive does not  
make inter-mediation  
of e-money a  
regulated activity (and  
that it is a maximum  
harmonisation

It is important to understand the nature of the legal link between the e-money institution and the distributors which will depend on the nature of activities they perform.

In legal terms, they will not be considered agents', because they are not entitled to carry out any of the payment services listed in the annex of the PSD 2007/64/EC.

As stated in recital (10) of the new EMD, "it is recognised that electronic money institutions

Directive in many respects) is the objective of this clause to simply let Host State regulators know which entities/persons in their own state are extensions of the e-money institution (Agents) involved in the e-money supply chain?

Distributors, retailers and resellers of e-money are not usually agents within the legal sense and neither are they e-money issuers (so one would expect their activities to not require financial services authorisation or notification). Is it correct therefore that third party arm's length partners in the e-money product chain (sales, marketing, distribution etc.) that are not carrying out other regulated functions (e.g. PSD regulated functions) do not need to be notified? Other interpretations would presumably involve a deluge of meaningless notifications for Home and Host State regulators about parties carrying out normal commercial activities that do not require authorisation (with no corresponding regulatory benefit).

Unless careful guidance is given on this Article, Member States may decide (in transposition or regulatory attitude) on an alternative interpretation of this Article that would restrict the growth of

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..." If they just carry out these pure-distribution authorities (e.g., selling a prepaid cards in a book-shop or a petrol-station), they are purely distributors. An obligation to register and notify them would impose disproportionate burdens, including meeting AML requirements (CDD, reporting etc.) which may in practice be extremely difficult to satisfy and costly - especially in a recognised low-risk AML environment. However if such persons also carry out one of the payment services listed in the annex of the PSD, on top of a distribution service, in that case they would be considered as agents and therefore would need to be registered as such by the competent authorities in the home Member State.

If the distributors are not subject to registration and AML compliance, the EMI itself should carry out such vigilance in cases and file STR in cases which could prove suspicious (e.g. large purchases of cards by one person etc.).

e-money (the opposite of the intention of EMD2) by using this clause to introduce additional regulated e-money activities (of redemption or distribution) that can only be done by agents, when no such regulated activity or agency requirement exists in the Directive (with no corresponding benefit for consumers).

Dear Sir or Madam,

I have a question regarding issuing of e-money by a payment institution which has already been authorised in accordance with Directive 2007/64/EC.

If I understand the Directive 2009/110/EC correctly, electronic money institutions are, according to Article 6, entitled to also provide payments services defined by the Directive 2007/64/EC, of course under the condition that they fulfil the requirements for the provision of those services as defined by Directive 2007/64/EC.

Transposition of Directive 2009/110/EC to Slovenian law has been done by a revision of the Payment Services and Systems Act, the act which was originally passed to transpose Directive 2007/64/EC. The revised act includes a provision

In the light of the principle 'same activity, same risks, same rules', the new legal framework for carrying out payment services within the EU provides for a single license which will have to be chosen keeping in mind the scope of the activities of the provider.

For carrying out only the payment services listed in the annex of the Payment Services Directive 2007/64/EC (the PSD), the license of 'payment institution' would be required. In cases where the legislation of a Member State has provided for this option (see [http://ec.europa.eu/internal\\_market/payments/docs/framework/transposition/options\\_en.pdf](http://ec.europa.eu/internal_market/payments/docs/framework/transposition/options_en.pdf)), a waiver under Article 26 of the PSD might be granted. At the same time, as stated in recital 9 of the PSD "payment institutions should not be allowed to issue electronic money".

Once the provisions of the new E-Money Directive 2009/110/EC (the EMD) have been implemented in the domestic law of Member States, these institutions will be able, under a single license, not only to issue e-money but also to carry out some or all of the payment services listed in the annex of the PSD and carry out, if they wish so, any other business activity. But the reciprocal is not valid, therefore payment institutions that want to provide services under the EMD must apply for an authorization.



which explicitly prohibits payment institutions to issue electronic money ("Payment institutions shall be prohibited from conducting business of taking deposits or issuing electronic money within the meaning of this Act"). However, it also includes a provision which transposes Article 6 of Directive 2009/110/EC thus enabling electronic money institutions to provide payment services within the meaning of Directive 2007/64/EC.

In light of the described contradictory provisions of the national Act (which are not present in the directives), my question is whether it is correct to assume that an authorised payment institution should nevertheless be allowed to apply for authorisation as an electronic money institution? And whether that institution should, if fulfilling the requirements of both directives, be able to provide both payment services and issue electronic money?

Thank you in advance for your answer.

According to the article 6 of EMD, in addition to issuing electronic money, electronic money institution shall be entitled to engage other activities for example 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). Does it mean that electronic money institution shall be entitled to provide this activity for third party (third party = other person as electronic money holder; it is person who entrusts pursuance of this activity to electronic money institution)? Or does it mean that electronic money institution shall be entitled to provide this activity only for electronic money holder?

In order an e-money institution to comply with the limitation for issuance of e-money thought agents the legal interpretation of various issuing techniques need to be clarified.

In particular, if an e-money institution is distributing pre-paid magnetic cards through agents, is it allowed to establish a direct real time connection to the point of sale of the agent, thus enabling the customer to load the instrument with a random amount of money? In this case the amount loaded to the card instrument would be directly recorded in the authorisation system of the e-money institution and accounted as issuance of e-money, wheres the sum would be received by

In accordance with Article 3(4) of Directive 2009/110/EC (EMD), an e-money institution is authorised to use natural and legal persons to distribute and redeem electronic money. As stated in recital 10 of the Directive, distributing electronic money can be organised in different ways "[...], 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". Article 3(5) EMD stipulates that "Notwithstanding paragraph 4, electronic money institutions shall not issue electronic money through agents". This also applies to 'distributors' under Article 3(4) EMD as confirmed by Article 10 EMD which states that "[...] Member States shall prohibit natural or legal persons who are not electronic money issuers from issuing electronic money". Article 11 EMD clarifies that "electronic money issuers issue electronic money [...] on the receipt of funds". The purpose of this set of rules is to keep accountability, responsibility and control over the issuance of electronic money with the e-money institution as authorised under Title II EMD.

A chosen business model would thus, in principle, be compatible with the EMD if it remains the electronic money institution who actually issues the pre-paid stored value on the receipt of funds. This should not depend on whether the customer can choose the amount to pre-pay at random. Regarding the act of issuing e-money, it follows from the definition of electronic money as set out in Article 2 EMD and from Article 11 on issuance, that e-money will be accounted only as "[...] issued on the receipt of funds". It is up to the national competent authorities to verify all practical, technical and operational aspects of a business model as proposed by an e-money institution and to ensure that the obligations under the directive are met.

the respective agent and then transferred from it to the e-money institution. Is this allowed, or it would be qualified as "issuance through agents"?

The other option would be the e-money instruments distributed through agents to be charged with fixed amounts of e-money, which is less convenient for the consumers. Furthermore, in this case the e-money would be accounted as issued before any funds are received from a customer, which is encumbering for the e-money institution and would dilute the information about the amount of e-money effectively outstanding.

I represent a company from an EU state member that want to trade with electronic money, that mean buying and selling electronic money from private persons. Our company intend only to be an independent reseller of electronic money.

We do NOT intend to issue electronic money, we only want to trade electronic money issued by other electronic money institutions using our own funds in this electronic money systems. We will hold our own accounts and funds in all the electronic money institutions we work with, and we will be independent from the electronic money

A 'distributor', as set out in Article 3(4) of the Directive 2009/110/EC, means a natural or legal person acting on behalf of an e-money institution and which is engaged by that e-money institution to distribute and redeem electronic money.

As stated in recital (10) of the Directive, "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".

institutions. That mean we will not represent and will not be a part of the electronic money institutions we work with. This activity will be carried out from our office in an EU state member.

We intend to offer the following services to our clients:

1. selling of electronic money = We will buy electronic money in bulk order from electronic money institutions and resell it to our clients in small amounts. Our clients will pay us by bank transfer to our bank account.

Example: if a client want to buy from us 1000 units of electronic money denominated in EURO, he/she need to pay us by bank transfer 1000 EURO plus our fee. When we receive the payment from the client we will transfer from our account in the specific electronic money system the 1000 electronic money units to the client account in that system.

2. buying of electronic money = we will buy electronic money from our clients and pay our clients by bank transfer.

Example: if a client want to sell us 1000 units of electronic money denominated in EURO in a specific system he/she will transfer the 1000 electronic money units from his account in that system to our account in the same electronic money system. After we

receive the payment  
we will send to the  
client bank account a  
bank transfer of 1000  
EURO minus our fee  
to pay for the  
electronic money  
units.

Please advise under  
what article of law  
falls our business  
activity and what type  
of license we need for  
our business activity  
according with the  
new Emoney  
Directive.

The directive enables  
an EMI to conduct  
"payment services not  
linked to issuing  
electronic money". It  
also added "issuing  
electronic money" to  
the list of activities  
subject to mutual  
recognition.

What is less clear, is  
the ambiguous  
concept of "electronic  
money payment  
services".

1) Can you confirm  
whether the EMD or  
the commission  
actually supports a  
definition of  
"electronic money  
payment services"  
2) Specifically, if an  
EMI only issues  
electronic money (and  
does not undertake  
any other activities),  
when that EMI is  
passporting to another  
member state, should  
that passport  
notification specify  
services as

a. issuing electronic  
money only or  
b. issuing electronic  
money and e-money  
related payment  
services.

i.e. does the passport

1) Article 6(1) of the Directive 2009/110/EC (EMD) enumerates the activities that an electronic money institution can engage into, as well as implicitly the services that it can provide.

"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."

2) Article 25 of Directive 2007/64/EC, by virtue of Article 3 of the EMD, requires an e-money institution wishing to carry out payment services activities and/or issue electronic money in another Member State to communicate to the competent authority in its home Member State the electronic money issuance or payment services activities it intends to provide in the host Member State (where applicable).

In light of Article 24 of Directive 2007/64/EC, competent authorities agree that any changes to an existing notification made under Article 25 of Directive 2007/64/EC, communicated by the e-money institution to the competent authority of the home Member State (e.g. addition, reduction, cessation of activities, change of name, revocation of licence etc.) should be communicated between home and host competent authorities. This will help ensure that details of the services being provided by e-money institutions and through their agents across the EEA are maintained and kept up to date as far as is possible, in order to maximise the efficiency of the co-operation between competent authorities.

notification have to  
sub-analyse issuing  
e-money into its  
component payment  
services?

Is it correct to say that  
one of the necessary  
characteristics of  
electronic money is  
that an electronic  
money holder must be  
able to make all types  
of payment  
transactions i.e.  
placing, transferring  
or withdrawing funds?

As stated in the definition from article 2(2) of the E-Money Directive 2009/110/EC (EMD): "'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".

Furthermore according to article 4(5) of the Payment Services Directive 2007/64/EC (PSD) : "'payment transaction" means 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".

Considering these two provisions, electronic money can be used, depending on the business model of the e-money institution, to make only one type of the payment transactions defined in article 4(5) of the PSD, as well as two or all of them.

Is it correct to say that  
one of the necessary  
characteristics of  
electronic money is  
that an electronic  
money holder must be  
able to top-up the  
value of the electronic  
money?

As stated in the recital (10) of the E-Money Directive 2009/110/EC (EMD):

"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."

Furthermore, the definition from article 2(2) of the EMD provides that: "'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".

Considering these two provisions, an e-money institution, depending on its business model can choose to provide only one of the following services: distribute, redeem or top up electronic money or all of them.

We should be grateful  
for your guidance on  
whether a licensed  
e-money institution or  
payment institution is  
required to establish a  
branch when  
engaging an agent in  
another EEA State to  
provide services such  
as acting as an  
intermediary to sell

According to Article 3(1) of the E-money Directive, the relevant provisions of the Directive 2007/64/EC, in particular Articles 10(9), 17 and 25 apply *mutatis mutandis*. Therefore a licensed e-money institution is allowed either to establish a branch or to use agents or distributors in another Member State depending on its business model and/or its organization structure.

the entity's products on its behalf or whether it is able to do so on a notification of services basis only.

Please let us know whether there are any issues, restrictions or guidance with the engagement of non-EEA agents or non-EEA distributors by a licensed e-money institution or payment institution, to carry out services in other EEA States.

Article 17 of Directive 2009/110/EC states that by 1 November 2012, the Commission shall present a report on the implementation and impact of this directive, in particular on the application of prudential requirements for e-money institutions, accompanied where appropriate by a proposal for its revision.

Could you please indicate what the current status is of this report and when it is expected to be made public?

Many thanks in beforehand.

In accordance with Recital 5, restaurant cards or restaurant vouchers are included or excluded of the application of the Directive?  
- Both are mail voucher - (Excluded)  
- Are instruments which can be used for purchases in stores of listed merchants

The E-money Directive provides not for any specific restrictions related to the nationality or the origin of an agent or distributor. Therefore a licensed e-money institution or payment institution would be allowed to engage non-EEA agents or non-EEA distributors to carry out services in a Member State as long it complies with the relevant laws of that Member State.

Article 17 of Directive 2009/110/EC states that by 1 November 2012, the Commission shall present a report on the implementation and impact of this directive. However, by 1 November 2012, only 23 Member States had fully transposed the Electronic Money Directive (EMD) into national law. Furthermore, 11 Member States transposed the Directive only in the second half of 2011 or the first half of 2012. Because of the delay in the transposition, the evaluation of the implementation and impact of the Directive had to be postponed. The review and its follow-up will be based on: a study on the conformity of the transposition starting in September 2012 and to be finalised early 2013 and a study on the economic impact of the EMD to be conducted in 2013. Considering this delay in the transposition and the lack of economic evidence on the impact of the EMD, the Commission proposed the postponement of the Report from November 2012 to November 2014.

According to recital 5, the Directive applies to the different pre-paid instruments listed in it depending on the criteria of the distribution network used and of their purpose. Specific-purpose instruments distributed through a limited network are excluded, but they enter under of the scope of the directive if they develop into general-purpose instruments "designed for a network of service providers which is continuously growing".

The national authorities are the only competent to analyse and decide based on the business models used if a specific pre-paid instrument should be excluded or not from the application of the Directive.



(restaurants listed) -  
(Included)

Thanks in advance.

I should be extremely grateful if you could take the time to confirm whether Directive 2009/110/EC will have application when issuing e-money outside the EEA.

For example, a UK company who has a branch in Mexico - this branch issues e-money to a separate entity located in Mexico - does the Directive apply to such a transaction?

Does the scope of the Directive extend to such activity, and if so, where is this noted?

Many thanks in advance.

A. Westhead

Dear colleagues,

We would be grateful if you could please express your opinion on the clarification e-money definition regarding server-based (account-based) e-money.

The situation is: A company provides service enabling to pay for products or services of third parties using mobile phone with a NFC sticker. The company receives funds from payers in advance. These funds are deposited in a separated company's

The procedure for the authorisation to act as an e-money institution issuer is regulated in Article 3 EMD2. This provision refers to Articles 5 and 10 of the Payment Services Directive. The geographical scope of an authorisation granted under the PSD is limited to the EU territory. The authorisation is valid in all Member States (if the payment services are provided under the right to provide services). This follows from Article 2 and Article 10(9) PSD. The authorisation does therefore not cover the provision of payment services outside the territory of the EU. Through the reference in Article 3 EMD2, this limitation in geographical scope also applies to e-money services.

As stated in recital 8 of the E-money Directive, the definition of the electronic money 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." It was the legislator's will not to give a an exhaustive list of criteria to classify an activity as issuance of e-money and to let the possibility to the supervision authorities in each Member State to decide on concrete situations, taking into account the technological progress and the specific market evolutions.

As for the second question, Art. 1(4) and (5) provides that the provisions of the E-money Directive do not apply to monetary value stored on the instruments exempted at the Art. 3 (k) of the PSD (Directive 2007/64/EC) or used to make payment transactions exempted at the Art. 3(l) of the PSD.



own account in a credit institution. The transaction center of the company assigns these funds to the payer's virtual accounts in the transaction center. The payer initiates a payment transaction using mobile phone with a NFC sticker. The transaction center using a NFC sticker determines the payer and verifies whether funds are sufficient in the virtual account to make a payment transaction and approves it. Any payment transaction is accumulated and transaction center forms payment order to the credit institution to transfer funds to the payee's account within time limits agreed between the company and the third party (payee).

Could we classify this situation as issuing of server-based (account-based) e-money?

Could you please clarify under what circumstances above mentioned activity wouldn't be classify as issuing of e-money?

Firstly, thank you for this forum for Q&A.

1. Am I correct in thinking that from April 2011 e-money issuers will be able to issue e-money and also do all other activities permitted in principle under the PSD for PI's?

2. Following 1, for e-money issuers carrying out mixed business (e-money and payment

accounts) there will be different treatment of "Own Funds" for funds managed - what are the essentially distinguishing features to help ascertain whether an account should be treated as a payment account or an e-money account (assume that both accounts can be accessed using a similar open-loop payment card acceptable with e.g. Visa or MasterCard)?

Also: would it be possible for the EC to re-publish existing legislation in a consolidated form? Currently the requirement to know how a number of (perhaps unknown) Directives might impact on a definition or provision contained in another Directive make it difficult to operate. The unofficial consolidated legislation tool is very difficult to use and appears to be inaccurate.

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 (\*) 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,

Article 19(2) of the EMD2 amends the Directive on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (2005/60/EC) by including a definition of e-money for the purpose of determining if the rules of customer due diligence in that Directive are applicable. Where it is possible to recharge the device, the limit for e-money is set on EUR 2 500 on the total amount transacted in a calendar year, except when an amount of EUR 1 000 or more is redeemed in that same calendar year. The transacted amount refers to the amount that is deducted from the monetary value issued on the device for making payment transactions or cash withdrawals. As regards the redeemable amount, it is noted that under Article 11 EMD2 the electronic money holder is entitled to request that the e-money issuer redeems at any moment and at par value the monetary value of the electronic money held. The redeem ability of e-money is a right vis-à-vis the e-money issuer. It does not refer to the withdrawal of cash at an ATM provider.

a limit of EUR 2 500 is imposed on the total amount transacted in a calendar year, except when an amount of EUR 1 000 or more is redeemed in that same calendar year 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.

My questions are the following:

1. a limit of EUR 2 500 is imposed on the total amount transacted in a calendar year (please clarify the meaning of TRANSACTED in a calendar year; in other words for an e-money instrument what is defined or considered as a transaction
2. except when an amount of EUR 1 000 or more is redeemed in that same calendar year (please clarify the meaning of REDEEMED; does this include pulling outcash / withdrawing cash from i.e. ATM, bank etc or any debit transaction via the the e-money instrument? please treat my request as urgent. thanking you in advance

Can a potential candidate to become an e-money institution freely choose the Member State where the application will be presented, when it intends to carry out its activity in several Member States?

A candidate to become e-money institution should first establish a company in one of the Member States and subsequently apply for an authorisation under the rules of the new E-Money Directive. Article 3 of that Directive refers to several Articles of Title II of the PSD, including Article 10, whose paragraph (1), last sentence, states that "an authorisation shall only be granted to a legal person established in a Member State". Once the authorisation has been granted, it shall be valid in all Member States and shall allow the e-money institution concerned to carry out its business activities throughout the Community, either under the freedom to provide services or the freedom of establishment.

A different situation is that of the legal persons who benefit from a waiver under Article 9. As stated in its paragraph (2), they shall be required to have its head office in the Member State in which it actually pursues its business. However, it will not benefit from the European passport and therefore will not be able to carry out its business activities in other Member States (see the second sentence of Article 9(3)).

Has the 2009/110/EC Directive been transposed to Cyprus Law? Is the final shape of the transposition already known?

According to our sources, preparatory work for the transposition of the new E-Money Directive 2009/110/EC is carried out in cooperation between the Ministry of Finance, the Central Bank of Cyprus and the Co-operative Societies Supervision and Development Authority. The transposition will require, inter alia, enactment of a new law to replace the existing Electronic Money Institutions Law of 2004. Following the example of the PSD transposition into Cyprus law, certain provisions of the EMD (mainly contained in Title II) will be transposed by means of secondary legislation. This work should be finished by end April 2011.

Could you explain to me in simple terms how the e-money directive works please. For example if I was to purchase a Gift Card online it is understood to come under e-money rules. If the place where I purchased the Gift Card was to close, for eg Post Office - One4All Gift Card would any money held on this card be totally protected and returned to the customer?

The purpose of Directive 2009/110/EC is to establish clear rules for the issuance of e-money to protect e-money holders against financial risks of entities engaging in such activity. Therefore, apart from credit institutions, post giro institutions and under certain conditions national and local public competent authorities, only e-money institutions that are licenced are allowed to issue e-money. The Member States are obliged to keep a public register of all authorised e-money institutions, to allow consumers to see if the institution concerned is licenced to engage in such activity.

The e-money institution can distribute e-money through natural or legal persons, such as retailers, on their behalf. If a legal person, acting on behalf of the e-money institution is no longer active (e.g. due to bankruptcy), the electronic money holder can still approach the issuer concerned, to ask for a full redemption of the monetary value of the electronic money held.

Is this an 'opt-out' scheme that retailers do not need to sign up to and if this is the case then do I have to check which retailers are members BEFORE I buy?

According to Article 1(4) of the Directive in conjunction with Article 3(k) of Directive 2007/64/EC on payment services, the Directive does not apply to monetary value stored on specific pre-paid instruments, designed to only be used within a limited network. However, these specific instruments enter within the scope of the Directive if they develop, as stated in recital (5), into general-purpose instruments "designed for a network of service providers which is continuously growing".

We do not know what the situation is with regard to the One4All Gift Card you refer to. It is for the national authorities to analyse and decide based on the business models used if the issuer of these gift vouchers can be excluded or not from the application of the Directive, and thus whether or not the issuer requires a licence to

engage in such activity.

If you would like to know which retailers accept the One4All Gift Card, you are advised to directly contact the issuer of these gift cards.

I would like to know the current state of play of the transposition of Directive 2009/110/EC in each Member State, and for each implementation, the national text. Where can I find the updated information?

You can view the current state of play of the transposition of Directive 2009/110/EC on the website of the European Commission at the following address:  
[http://ec.europa.eu/internal\\_market/payments/emoney/transposition\\_en.htm](http://ec.europa.eu/internal_market/payments/emoney/transposition_en.htm),  
as well as the references of the national transposition laws:  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:72009L0110:EN:NOT>

I am trying to find how many e-money licence holders there are in the EU. The link on the web page to national public registers of electronic money institutions is not live. Do you have a list please?

The European Commission does not dispose of the figures requested, as the Member States are not obliged to notify these figures to the European Commission. The numbers can, however, be accessed via the Member States' public registers, which the Member States have had to establish in line with Article 3(1) of the new Electronic Money Directive (EMD - Directive 2009/110/EC of 16 September 2009), in connection with Article 13 of the Payment Services Directive (PSD - Directive 2007/64/EC of 13 November 2007). The national registers shall list, amongst others, authorised electronic money institutions, next to legal persons benefiting from the waiver under Article 9 of the EMD. These registers must be publicly available for consultation, accessible online, and updated on a regular basis. It should, however, be noted that not all Member States have implemented the EMD yet as the implementation deadline only elapsed at the end of April 2011. The Commission considers adding links to the national registers on its website in the future, in the same way it has done for the payment services.

I would like to understand what are the fundamental differences between "Payment Account" defined in 2007/64/CE and "Electronic Money Account" defined in 2009/110/EC ?

In contrast to what is suggested in the question, the new Electronic Money Directive (2009/110/EC) does not contain a definition of e-money account. Only the Payment Services Directive (2007/64/EC) contains in article 4.14 a definition of payment account. In addition, it should be kept in mind that the provision of title 3 & 4 of the payment services directive apply to e-money in the conditions laid down in article 53 and 54 of the same Directive.

At first sight the two notions are very similar and on behalf of my company I really would like to understand what will be possible with one instrument, not possible with the other and vice versa.

The payment services directive governs payment services as defined in the annex of the Payment Services Directive. The new e-money Directive governs the issuance of e-money as defined in article 2 of Directive 2009/110/EC. As stated in recital 7 of the Directive, the definition of electronic money "covers all situations where a 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."