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 ancilliary 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).