

ZENTRALER KREDITAUSSCHUSS

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Comments of the Zentraler Kreditausschuss* on the revision of Directive 2000/46/EC (Electronic Money Directive)

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**The ZKA is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public-sector banks, the Deutscher Sparkassen- und Giroverband (DSGV), for the savings banks finance group, and the Verband deutscher Pfandbriefbanken (VdP), for the Pfandbrief banks. Collectively, they represent around 2,300 banks.*

I. General remarks by the ZKA on the Commission's proposal

We have explicit reservations regarding the European Commission's Proposal of 9 October 2008 for a Directive on the taking up, pursuit and prudential supervision of the business of electronic money institutions, amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC. The envisaged prudential regime for e-money institutions is, in our view, unsatisfactory, as it does not adequately cover the risks inherent in the "e-money" business model.

In particular, we see no need to encourage the further proliferation of e-money by lowering the prudential standards for e-money institutions. The fact that the e-money market has failed to grow more strongly up to now is, as far as we can see, not due mainly to prudential hurdles but basically to the lack of demand from customers.

Lowering the prudential standards also poses a threat to the long-term, sustained protection of funds held by customers of e-money institutions. Especially with current developments on the financial markets in mind, it is vital that these funds are properly protected.

II. Comments of the ZKA on the Commission's individual proposals

1) Articles 5, 7, 8 - Prudential parity with payment institutions

Compared with Directive 2000/46/EC on the taking up, pursuit and prudential supervision of the business of electronic money institutions, the definition of e-money is to be broadened to cover network money as well. In addition, e-money institutions are to be entitled to engage in the activities permitted in the Annex to the Payment Services Directive (PSD) (Article 8 (1) of the Proposal). This means that e-money institutions would be able to conduct deposit-like business, which – because of its specific risks – has been reserved so far for credit institutions that are subject to a corresponding prudential regime. The activities listed in the PSD, which payment institutions are also allowed to conduct, are only of a short-term nature: payment transactions are executed within a short period of time and payment institutions may only hold and manage the amounts obtained from payment transactions on a short-term basis under tight conditions. The receipt of funds against the issuance of e-money, on the other hand, is not subject to any time restrictions. Irrespective of this, the funds received by e-money institutions are not to constitute deposits within the meaning of Directive 2006/48/EC (see Article 8 (2) of the Proposal).

We believe that the funds received by e-money institutions should be regarded as deposits. Under Article 5 (1) of the Proposal, the holders of e-money are entitled to redemption, at any moment and up to par value, of the monetary value of the e-money. It is therefore conceivable that an institution may issue and manage e-money without e-money-holders' claim to redemption being secured appropriately. The own funds that the e-money institution is required to hold are unlikely to suffice for this purpose. With own funds of only €10.125 million, it can issue e-money to the value of €1 billion.

We therefore also do not consider the proposal in Article 7 concerning the own funds requirements to be risk-sensitive enough. The currently applying own funds requirements in Directive 2000/46/EC are appropriate and should not be amended, particularly as an enlargement of the range of activities conducted by e-money institutions is envisaged (Article 8 of the Proposal).

2) Article 6 – Lowering of the initial capital requirement

The Commission proposes lowering the minimum initial capital requirement for e-money institutions from currently €1 million to €125,000. This means that e-money institutions would be put on a par here with payment institutions offering comparatively low-risk transactions such as credit transfers or other money transfer business.

Establishing prudential parity between e-money institutions and payment institutions is unjustified also in this respect. E-money business differs structurally from the execution of payment transactions. In payment transactions, funds are transferred once only, whereas in e-money business the redeemability at any time of the electronic units of value is crucial. This differentiated risk assessment must also lead to different own funds requirements, i.e. to higher own funds for e-money institutions.

In the PSD, the Commission made such a differentiated risk assessment itself by stipulating that payment institutions are not authorised to issue e-money (see Recital 9 of the PSD). However, by now proposing a lower initial capital requirement for e-money institutions in line with that for payment institutions, the Commission is flying in the face of the requirements and assumptions in the PSD.

Not least in the interest of better regulation, such inconsistencies should be avoided. The initial capital requirement for e-money institutions must take into account the additional risks of this line of business and should be much higher than the amount of €125,000 set in the Proposal. A high initial capital cushion is also justified by the fact that, unlike credit institutions conducting e-money business, pure e-money institutions are not subject to any specific rules on the capital backing for operational risk. As there are thus no risk-sensitive own funds

requirements for e-money institutions in this respect, a corresponding cushion in the form of a sufficiently high initial capital requirement is all the more essential.

3) Article 9 – Safeguarding requirements

The limitations on investments currently laid down in Article 5 of Directive 2000/46/EC, which require e-money institutions to have investments of an amount no less than their financial liabilities related to outstanding e-money in specifically defined assets only, are to be dropped in future. In Article 9 of the Proposal, the Commission now seeks alignment with the safeguarding requirements for payment institutions. This means that e-money institutions are only to be required to safeguard the amounts received for the execution of payment transactions if they are engaged in an activity within the meaning of Article 8 (1) (a)-(d) of the Proposal and at the same time conduct other business activities as referred to in Article 8 (1) (e) of the Proposal. In view of the special risks associated with the issuance of e-money, we believe that this restricted scope of the safeguarding requirements is inappropriate and that it should therefore be expanded to cover all activities within the meaning of Article 8 of the Proposal.

4) Article 16 – Due diligence regime with regard to money laundering

As financial institutions (Article 17 (1) (b) of the Proposal), e-money institutions continue to be subject to the requirements set in Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (Anti-Money Laundering Directive). Article 11 (5) (d) of the currently applicable version of the Anti-Money Laundering Directive provides for a simplified due diligence regime for e-money institutions under certain conditions as a national option. Article 16 of the Proposal introduces an amendment of Article 11 of the Anti-Money Laundering Directive that leads to an expansion of the simplified due diligence regime by raising thresholds.

In our view, this amendment is unjustified also against the background of an alignment with the PSD (Recital 15 of the Proposal). There is no basis in Articles 34 and 53 of the PSD for raising the threshold for rechargeable electronic devices to €3,000 in a calendar year. We are also against raising the threshold for non-rechargeable electronic devices from €150 to €500. The PSD sets this amount in any case only for domestic payment transactions. Because of the aforementioned differences compared with pure payment services, e-money also poses a greater threat with regard to money laundering and terrorist financing. E-money institutions would effectively be authorised to issue €500-notes on electronic devices.