

ELECTRONIC MONEY LAW OF 2012
Unofficial translation of Directive issued in accordance with articles 6, 8, 9, 10, 12, 13,
14, 15, 19, 20, 23 and 45

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Last updated June 2012

81 (I) of 2012
Official Journal of the
EU: L 267
10.10.2009, σ. 7.

The Central Bank of Cyprus, acting on the powers vested in it by the Electronic Money Law of 2012, issues this Directive for the purposes of harmonization with the European Community Act titled "Directive 2009/110/EC of the European Parliament and of the Council of 16th September 2009 for 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".

PART I
GENERAL PROVISIONS

- Short title. 1. This Directive will be referred to as the Electronic Money Institutions Directive of 2012.
- Interpretation. 2. For the purposes of this Directive, the definitions in article 2 of the Electronic Money Law of 2012 are applicable, unless a different definition is derived from the text, and furthermore -

“business day” means every day on which the relevant electronic money institution is open for business for the purposes of issuing electronic money or for the execution of payment transactions .

“electronic money institution” means any person falling under paragraph (a) of subsection (1) of section 5 of the Electronic Money Law of 2012 and for whom the Central Bank is the Competent Authority.

“payment instrument” means any personalised device and/or set of procedures agreed between the payment service user and the payment service provider and used by the payment service user in order to initiate a payment order .

"group" means a group of undertakings, which consists of-

(a) a parent undertaking,

(c) its subsidiaries,

(c) the entities in which the parent undertaking or its subsidiaries have a holding,

(d)(i) the undertaking or undertakings which, without being connected with their parent undertaking through a relationship described in points (b) and (c) above, are managed on a unified basis with the parent undertaking pursuant to a contract concluded with the parent undertaking or provisions in the articles of association of those undertakings; or

(ii) the undertaking or undertakings which are not connected with their parent undertaking through a relationship described in points (b) and (c) above, and whose administrative, management or supervisory bodies consist in their majority of the same persons in office during the financial year and until the consolidated accounts are drawn up.

PART II
UNDERTAKING AND CARRYING OUT THE ACTIVITY OF ELECTRONIC MONEY
INSTITUTION

Application.

3. (1) Every application for the authorisation of an electronic money institution shall be submitted together with the following-
- (a) a program of operations, setting out in particular the issue of electronic money and the type of any possible payment services envisaged ·
 - (b) a business plan including a forecast budget calculation for the first three financial years, which demonstrates that the applicant is able to employ the appropriate and proportionate systems, resources and procedures to operate soundly ·
 - (c) evidence that the legal person applying for authorisation holds the required initial capital ·
 - (d) a description of the measures taken to ensure compliance with section 13 of the Electronic Money Law of 2012·
 - (e) a description of the applicant's governance arrangements and internal control mechanisms, including administrative, risk management and accounting procedures, which demonstrates that these governance arrangements, control mechanisms and procedures are proportionate, appropriate, sound and adequate ·
 - (f) a description of the internal control mechanisms which the applicant has established in order to comply with obligations in relation to the Prevention and Suppression of Money Laundering Activities Laws of 2007 and 2010 and Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds, as amended or replaced·
 - (g) a description of the participation of the applicant in a national or international payment system as well as the intended arrangements for outsourcing of operational activities, the intended use of agents and branches and the intended use of natural or legal persons for the distribution and redemption of electronic money·
 - (h) the identity of the persons that have, directly or indirectly, control of the applicant, including the identity of the natural persons that hold, directly or indirectly, shares or voting rights in one or more legal persons that have control of the applicant, as well as details on the size of the actual participation of these persons and their suitability, taking into account the need to ensure the sound and prudent management of an electronic money institution ·
 - (i) the identity of directors and persons responsible for the management of the electronic money institution and, where relevant, persons responsible for the management of the issue of electronic money and the provision of payment services activities, as well as evidence that they are of good repute and possess appropriate knowledge and experience to issue electronic money and perform payment services, and in particular copy of clean criminal record report, non-bankruptcy report, description of professional and academic qualifications, managerial or board positions held in other legal persons, previous employments and experience in the issue of electronic money and the provision of payment services ·
 - (j) the identity of statutory auditors·
 - (k) the applicant's legal status and articles of association and
 - (l) the address of the applicant's head office.
- (2) Every application submitted pursuant to section 10 of the Electronic Money Law of 2012, shall include the following, in connection with any intended additional payment services-
- (a) information and documents in accordance with points (a), (b) and (d) of subparagraph (1), and
 - (b) any changes that may occur with regard to points (c) and (e) to (l) of subparagraph (1).
- (3) For the purposes of points (d), (e) and (g) of subparagraph (1), the applicant shall provide a description of its audit arrangements and the organisational arrangements it has set up with a view to taking all reasonable steps to protect the interests of the holders of electronic money and of the users of payment services and to ensure continuity and reliability in the issue of electronic money, including the redemption of electronic money, and to ensure continuity and reliability in the performance of payment services.

188(l) of 2007
58(l) of 2010.

Official Journal of the
EU: L 345,
8.12.2006, p. 1.

(4) The Central Bank shall evaluate the fitness and suitability of the directors and members of the management of the applicant as well, as the case may be, of the persons managing the issue of electronic money and the provision of payment services, in a corresponding application of the Fitness and Suitability (Assessment Criteria) of Bank Directors and Managers Directives of 2006 and 2007.

R.A.A. 427/2006
R.A.A. 147/2007

Public Register. 4. Information identifying electronic money institutions, including electronic money institutions authorised by the CSSDA, their branches their agents as well as the services covered by their authorisation, shall be recorded in the register of section 8 of the Electronic Money Law of 2012: the register shall be accessible electronically.

Amendments to the information submitted with the application. 5. For the purposes of subsection (2) of section 9 of the Electronic Money Law of 2012, a change in the credit institution or the insurance company, the services of which an electronic money institution is using for its compliance with the provisions of paragraph (a) of subsection (1) of section 13 of the same Law, shall constitute a significant amendment, without excluding other instances of significant amendments.

Initial capita and own funds. 6. (1) For the purposes of section 12 of the Electronic Money Law of 2012, the initial capital shall be deemed to include the items specified in points (a) and (b) of subparagraph (1) of paragraph 3 of Unit A of the Central Bank of Cyprus Directive to banks for the Calculation of Capital Requirements and Large Exposures of 2006 to (no 2) of 2011.
(2) For the purposes of section 12 of the Electronic Money Law of 2012, own funds shall be deemed to include, having regard to the circumstances, items specified in paragraphs 3(1) and (2), 4 to 8 and 10 of Unit A of the Directive to banks on the calculation of capital requirements and large exposures of 2006 to (no.2) 2011 , and to exclude, in addition to other foreseen deductions, also the items referred to in subparagraph (3) of the present paragraph.

R.A.A. 463/2006
R.A.A.. 328/2007
R.A.A.. 140/2010
R.A.A.. 470/2010.

(3) The items to be excluded in accordance with subparagraph (2) for the calculation of own funds, shall be:
(a) participations in other undertakings ·
(b) every item included in the own funds of a person which is obliged to maintain own funds during its operations, as long as that person and the electronic money institution belong to the same group, and
(c) every item which is intended for use in a business or business activity other than the issue of electronic money or the provision of payment services, as the case may be.

Capital requirement for the issue of electronic money 7. For the purposes of subsection (7) of section 12 of the Electronic Money Law of 2012, the minimum own funds for the issue of electronic money shall be equal to 2% of the average value of electronic money in circulation.

Capital requirement for the provision of payment services not connected with the issue of electronic money 8. (1) For the purposes of subsection (4) of section 12 of the Electronic Money Law of 2012, the Central Bank shall define for each electronic money institution one of the following methods for the calculation of minimum own funds for cases of provision of payment services which are not related to the issue of electronic money .

Method A

The electronic money institution's own funds shall amount to at least 10 % of its fixed overheads of the preceding year. This amount may be adjusted in the event of a material change in an electronic money institution's business since the preceding year. Where an electronic money institution has not completed a full year's business by the date of the calculation, the requirement shall be that its own funds amount to at least 10 % of the corresponding fixed overheads as projected in its business plan, subject to any adjustments at the request of the Central Bank.

Method B

The electronic money institution's own funds shall amount to at least the sum of the following elements multiplied by the scaling factor k defined in subparagraph (2), where payment volume (PV) represents one twelfth of the total amount of payment transactions executed by the electronic money institution in the preceding year:

(a) 4,0 % of the slice of PV up to EUR 5 million, plus

(b) 2,5 % of the slice of PV above EUR 5 million up to EUR 10 million, plus

- (c) 1 % of the slice of PV above EUR 10 million up to EUR 100 million, plus
- (d) 0,5 % of the slice of PV above EUR 100 million up to EUR 250 million, plus
- (e) 0,25 % of the slice of PV above EUR 250 million.

Method C

The electronic money institution's own funds shall amount to at least the relevant indicator defined in point (a), multiplied by the multiplication factor defined in point (b) and by the scaling factor k defined in subparagraph (2).

(a) The relevant indicator is the sum of the following:

- (i) interest income less interest expenses,
- (ii) commissions and fees received, and
- (iii) other operating income.

Each element shall be included in the sum with its positive or negative sign. Income from extraordinary or irregular items may not be used in the calculation of the relevant indicator. Expenditure on the outsourcing of services rendered by third parties may reduce the relevant indicator if the expenditure is paid to other electronic money institutions as defined in subsection (1) of section 5 or subsection (1) of article 24 of the Electronic Money Law of 2012 or subsection (1) of section 24 of the Payments Services Laws of 2009 and 2010.

The relevant indicator is calculated on the basis of the twelve-monthly observation at the end of the previous financial year. The relevant indicator shall be calculated over the previous financial year. Nevertheless own funds calculated according to Method C shall not fall below 80 % of the average of the previous three financial years for the relevant indicator. When audited figures are not available, business estimates may be used.

(b) The multiplication factor shall be:

- (i) 10 % of the slice of the relevant indicator up to EUR 2,5 million;
- (ii) 8 % of the slice of the relevant indicator from EUR 2,5 million up to EUR 5 million;
- (iii) 6 % of the slice of the relevant indicator from EUR 5 million up to EUR 25 million;
- (iv) 3 % of the slice of the relevant indicator from EUR 25 million up to 50 million;
- (v) 1,5 % above EUR 50 million.

(2) The incremental factor used in Methods B and C of subparagraph (1) shall be:

- (a) 0,5, when the payment service of point 6 of the Annex to the Payment Services Laws of 2009 and 2010 is the only payment service not related to the issue of electronic money, provided by the electronic money institution ·
- (b) 0,8, when the electronic money institution, irrespective of the issue of electronic money, also provides the payment services of point 7 of the Annex to the Payment Services Laws of 2009 and 2010 but does not provide any of the payment services of points 1 to 5 of the same Annex, and
- (c) 1, when the electronic money institution, irrespective of the issue of electronic money, provides any of the payment services of points 1 to 6 of the Annex to the Payment Services Laws of 2009 and 2010.

(3) If an electronic money institution has not completed a whole year of operations, methods B and C of subparagraph (1) shall apply on the basis of the projections in the business plan submitted by the electronic money institution to the Central Bank. Subject to any adjustments to this plan requested by the Central Bank.

Capital requirements for a bank subsidiary.

9. The Central Bank may grant the exemption provided for in subsection (10) of section 12 of the Electronic Money Law of 2012, provided that, *mutatis mutandis*, the conditions of paragraph 13 of Unit A of the Directive to banks on the calculation of capital requirements and large exposures of 2006 to (no.2) of 2011 are met.

Safeguarding requirements (general).

10. (1) When part of the funds collected by an electronic money institution, which vary in value or is not known beforehand, is to be used for future payments and the remaining funds are to be used for services other than the issue of electronic money and the

provision of payment services, the electronic money institution may apply to the Central Bank for the safeguarding requirements of section 13 of the Electronic Money Law of 2012 to apply only to a representative part of the funds collected by the electronic money institution. The Central Bank may grant such approval provided it is satisfied that this representative amount, which is deemed to be used for the issue of electronic money and for the provision of payment services, may be easily evaluated based on historical data.

(2) in the event of the dissolution of the electronic money institution, and/or its liquidation, the funds safeguarded in accordance with section 13 of the Electronic Money Law of 2012 shall be distributed to the rightful owners in priority over the claims of other creditors of the electronic money institution.

Safeguarding of the funds received in exchange for the issue of electronic money.

11. (1) For the purposes of the application of subsection (6) of section 13 of the Electronic Money Law of 2012, the Central Bank may specify for each electronic money institution one of or a combination of the following methods of safeguarding the funds referred to in paragraph (a) of subsection (1) of section 13 of the same law-

(a) The funds received by an electronic money institution in exchange for the issue of electronic money and until such time as this electronic money is redeemed, shall be deposited in a separate account in a credit institution or shall be invested in secure and liquid assets of low risk. Subject to subparagraph (2), these funds shall not be commingled at any time with the funds of any natural or legal person. The electronic money institution shall take all necessary measures to ensure that the funds received are legally protected, in the interest of the holders of electronic money, against demands from other creditors, particularly in the case of liquidation or insolvency.

(b) Subject to subparagraph (2), the funds received shall be covered by an insurance policy or some other comparable guarantee. The insurance or other comparable guarantee shall be provided by an insurance company or credit institution not belonging to the same group as the electronic money institution, for an amount equivalent to that which would have been segregated under point (a) above in the absence of the insurance policy or other comparable guarantee, payable in the event that the electronic money institution is unable to meet its financial obligations.

(2) An electronic money institution may not safeguard funds referred to in paragraph (a) of subsection (1) of section 13 of the Electronic Money Law of 2012, collected in the form of payment by a payment instrument, before they are credited in a payment account or become available to it in any other way in accordance with the provisions of the Payment Services Laws of 2009 and 2010 regarding execution deadlines, where applicable. in any case, an electronic money institution shall safeguard such funds at the latest as from the fifth working day following the issue of electronic money:

Nothing in this subparagraph shall be construed as imposing any obligation on an electronic money institution to issue electronic money before receiving any funds in exchange for the issue.

(3) For the purposes of point (a) of subparagraph (1), secure low risk assets shall be the following:

(a) assets falling in one of the categories of table 1 of paragraph 14 of Annex I of Unit B of the Directives to banks for the Calculation of the Capital Requirements and Large Exposures of 2006 to (No. 2) 2011, for which the specific risk capital requirement does not exceed 1,6%, excluding qualifying items within the meaning of paragraph 15 of the same Annex, and

(b) units held in an undertaking for collective investments in transferable securities, as these terms are defined in section 2 of the Open-Ended Undertakings for Collective Investments Law of 2012, which invests exclusively in the assets referred to in point (a) of the present subparagraph.

78(l) of 2012.

(4) For the purposes of point (a) of subparagraph (1), liquid assets shall be the assets invested in that provide immediate liquidity, as these are defined in paragraph 3.6.1 of Annex I of the Directive for the Calculation of Protective Liquidity in Euro of 2008 to 2011.

R.A.A. 250/2008
R.A.A. 389/2010
R.A.A. 23/2011.

Safeguarding of funds in the case of the provision of payment services not related with the issue of electronic money.

12. For the purposes of subsection (6) of section 13 of the Electronic Money Law of 2012, the Central Bank shall define for each electronic money institution one of or a combination of the following methods for the safeguarding of the funds referred to in paragraph (b) of subsection (1) of section 13 of the same law:

(a) The funds received by an electronic money institution from the payment service users for the execution of payment transactions shall not be commingled at any time with the funds of any natural or legal person; where such funds are still held by the electronic money 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. The electronic money institution shall take all necessary measures to ensure that the funds received are legally protected, in the interest of the payment service users, against demands from other creditors, particularly in the case of liquidation or insolvency.

(b) The funds received shall be covered by an insurance policy or some other comparable guarantee. The insurance or other comparable guarantee shall be provided by an insurance company or credit institution not belonging to the same group as the electronic money institution, for an amount equivalent to that which would have been segregated under point (a) above in the absence of the insurance policy or other comparable guarantee, payable in the event that the electronic money institution is unable to meet its financial obligations.

Preparation and audit of financial statements.

13. (1) The provisions of sections 142(1)-(4)(a) and 143(1)-(4) of the Companies law shall apply, mutatis mutandis, to all electronic money institutions.

Cap. 113.

9 of 1968
76 of 1977
17 of 1979
105 of 1985
198 of 1986
19 of 1990
14(I) of 1994
41(I) of 1994
15(I) of 1995
21(I) of 1997
82(I) of 1999
149(I) of 1999
2(I) of 2000
135(I) of 2000
151(I) of 2000
76(I) of 2001
70(I) of 2003
167(I) of 2003
92(I) of 2004
24(I) of 2005
129(I) of 2005
130(I) of 2005
98(I) of 2006
124(I) of 2006
70(I) of 2007
71(I) of 2007
131(I) of 2007
186(I) of 2007
87(I) of 2008
41(I) of 2009
49(I) of 2009
99(I) of 2009
42(I) of 2010
60(I) of 2010
88(I) of 2010
53(I) OF 2011
117(I) of 2011
145(I) of 2011
157(I) of 2011
198(I) of 2011
64(I) of 2012.

(2) Each electronic money institution shall submit to the Central Bank separate accounting information for the issue of electronic money, for the provision of payment services not connected with the issue of electronic money and for the activities referred to in paragraphs (c) and (d) of subsection (1) and in subsection (2) of section 15 of the Electronic Money Law of 2012. An audit report shall be prepared with regard to the accounting information of this subparagraph. For electronic money institutions which, based on Cyprus or community law, are required to have their financial statements audited by external auditors, the audit report referred to above shall be prepared by an external auditor.

Activities.

14. An electronic money institution may grant credit in accordance with paragraph (b) of subsection (1) of section 15 of the Electronic Money Law of 2012 only if the following conditions are met:
- (a) the credit must be ancillary and granted exclusively in connection with the execution of a payment transactions
 - (b) when the payment service, in connection with which the credit is granted, is provided in another member state, the credit 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 collected or held for the execution of payment transactions or from the funds received by an electronic money institution in exchange for the issue of electronic money and held in accordance with paragraph (a) of subsection (1) of section 13 of the Electronic Money Law of 2012, and
 - (d) the own funds of the electronic money institution shall, at all times and to the satisfaction of the Central Bank, be appropriate in view of the overall amount of credit granted.

Agents and persons via whom electronic money is distributed and redeemed.

15. (1) An application by an electronic money institution for the listing of an agent in the register of section 8 of the Electronic Money Law of 2012 shall include the following-
- (a) the name and address of the agent
 - (b) a description of the internal control mechanisms to be applied by the agent to ensure compliance with the obligations in relation to money laundering and terrorist financing under the provisions of the Prevention and Suppression of Money Laundering Activities Laws of 2007 and 2010 and Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006, on information on the payer accompanying transfers of funds, as amended or replaced, and
 - (c) the identity of directors and persons responsible for the management of the agent and of the persons that will manage the provision of payment services, and evidence that they are fit and proper persons, and in particular copy of criminal record and certificate of non-bankruptcy.
- (2) The Central Bank shall approve the listing of an agent of an electronic money institution in the register of section 8 of the Electronic Money Law of 2012 provided -
- (a) the agent has in place internal control mechanisms that ensure compliance with the obligations in relation to money laundering and terrorist financing under the provisions of the Prevention and Suppression of Money Laundering Activities Laws of 2007 and 2010 and Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006, on information on the payer accompanying transfers of funds, as amended or replaced
 - (b) there is no indication that, in connection with the proposed employment of the agent, there is any funding of terrorist acts or such funding is or has been attempted, or any legalisation of funds derived from illegal acts
 - (c) the employment of the agent could not potentially increase the risk of funding of terrorism or legalising funds from illegal acts; and
 - (d) the agent has suitable and capable directors and managerial staff.

Outsourcing of operational functions.

16. (1) An operational function shall be regarded as important if a defect or failure in its performance would materially impair the financial performance of an electronic money institution or the continuity of the activity of the issue of electronic money including the redemption of electronic money, and the continued provision of payment services or its continuing compliance with the requirements of its authorisation or its other obligations

laid down by the Electronic Money Law of 2012 and the Payment Services Laws of 2009 and 2010.

(2) Outsourcing of important operational functions may not be undertaken in such a way as to impair materially the quality of the electronic money institution's internal control and/or the ability of the Central Bank to monitor the electronic money institution's compliance with all obligations laid down in the Electronic Money Law of 2012 and the Payment Services Laws of 2009 and 2010.

(3) Any outsourcing of operational functions shall meet the following conditions:-

- (a) the outsourcing shall not result in the delegation of responsibility by the senior management of an electronic money institution;
- (b) the relationship and obligations of the electronic money institution towards the holders of electronic money and its payment service users under the Electronic Money Law of 2012 and the Payment Services Laws of 2009 and 210 shall not be altered;
- (c) the conditions which the electronic money institution is to comply with in order to be authorised and remain so in accordance with the Electronic Money Law of 2012 shall not be undermined, and
- (d) none of the other conditions subject to which the electronic money institution's authorisation was granted shall be removed or modified.

Exercise of the freedom of establishment and of the freedom to provide services.

17. (1) For the purposes of subsections (1) to (4) of section 23 of the Electronic Money Law of 2012 an electronic money institution shall submit the following to the Central Bank:-

- (a) the names of the persons responsible for the management of the branch in the host member state
- (b) the organisational structure of the branch, and
- (c) the kind of operations the electronic money institution intends to engage in in the territory of the host member state.

(2) The Central Bank shall not approve the listing in the register of section 8 of the Electronic Money Law of 2012, of a branch referred to in subparagraph (1) -

- (a) there are indications that funding of terrorism or legalisation of funds from illegal acts is being attempted or has taken place or has been attempted, in connection with the setting up of the branch, or
- (b) the setting up of the branch could potentially increase the danger for the funding of terrorism or the legalisation of funds from illegal acts.