Electronic money: taking up, pursuit and prudential supervision of the business of electronic money institutions

2008/0190(COD) - 25/01/2018 - Follow-up document

The Commission presented a report on the implementation and impact of Directive 2009/110/EC (EMD2), in particular on the application of prudential requirements for electronic money institutions.

The report covers 2009 to 2014 and is based on two dedicated external studies which consisted of a legal conformity assessment of the transposition of EMD2 in the 27 Member States and an **assessment of the economic impact of EMD 2** on the electronic money market.

The Commission has also taken into account the results of the review process of the Payment Services Directive (PSD) and the legislative proposal to amend the fourth anti-money laundering Directive (Directive (EU) 2015/849) which will also have an impact on the electronic money market in the Union.

Transposition: Member States were required to transpose the Directive into their national legislation before 30 April 2011. This conformity assessment showed that overall, the implementing laws of the Member States were **in conformity with the Directive**. Today, all EU Member States have implemented the Directive.

Application and impact of EMD2: the economic study on the impact of EMD2 on the European electronic market concluded that **the overall effect of the EMD2 on the market is positive**.

The report concluded that, to a large extent, the objective to remove barriers to market entry and to facilitate the take up and pursuit of the business of electronic money issuance, by creating a level playing field for all players in the market has been fulfilled.

There is evidence of an increased interest in electronic money licenses and cross-border activity through the use of passporting has increased since 2011. The offer of electronic **prepaid cards** in particular is growing, including through their distribution by institutional actors such as national Post Offices.

The **optional waiver regime** for smaller e-money institutions proposed in Article 9 has been used by a number of Member States. The option is overall considered as positive by the emoney institutions that have benefited from it.

The economic study has **not identified serious issues** in relation to the provisions on issuance and redeem ability of electronic money. Consumer associations have not reported specific concerns or problems related to electronic money from the point of view of consumers.

Impact of the recent revision of the PSD: the revised Payment Services Directive (PSD2) was adopted at the end of 2015 and entered into force on 13 January 2016.

Among the major changes brought forward by PSD2 (regulation of the so-called third party payment service providers, increased security requirements for electronic payments, partial coverage of international transactions in or out of the EU), the one with the most impact on electronic money institutions relate to the strengthening of the prudential rules for payment institutions which foresee a stronger supervisory role and competences for the host Member State where a payment institution is passporting its services to another Member State

Also the clarifications in PSD2 on the exemption on limited networks, combined with the obligation for all limited networks to notify their activities once the size of their business reaches a certain threshold, will provide better guidance to competent authorities to assess the applicability of the legal framework of PSD2 or EMD2 to these networks

Relationship between EMD2 and the Fourth Anti-Money Laundering Directive: the fourth anti-Money Laundering Directive (AMLD4) which was adopted in 2015, will also apply to E-money institutions. The study found that industry stakeholders see most e-money transactions as low risk partly due to the small size of the e-money market. However, a recommendation for the longer term would be to ensure that **specific provisions are harmonised to the maximum**, in particular the thresholds for due diligence under the anti-money laundering provisions and the possibility to register as small e-money institutions.

Review of the EMD2 and emerging questions: although the overall evaluation of EMR 2 is positive, **concrete improvements** could be made in the short or medium term to the current regulatory framework by providing guidance in three areas, namely:

- **the classification of products as e-money**: it is difficult to make a distinction between a payment account, an e-money account and a bank account. This is particularly the case for prepaid card schemes, which have in some instances been considered to be subject to PSD, and in other instances as e-money institutions;
- **the concept of distributor and agent in the context of e-money**: there are divergences of approach with regard to the legal concept of agent and the non-defined concept of distributor, which has a different status in EMD2;
- **the application of the provision on limited networks**: clarification is requested concerning the limited networks approach, which are excluded from the scope of the EMR 2. The divergent interpretation between national authorities on that front, often based on a case-by-case application, is voiced as an issue of concern.

The challenges encountered in the **cross-border supervision** of E-money institutions seem to be addressed adequately in the context of the PSD2, which, through the relevant cross-references, will also apply to e-money institutions.

Further consideration could be given, in the longer term, to promoting maximum harmonisation for specific provisions, in particular with regard to the currently **optional waiver regime** foreseen for small electronic money institutions under Article 9 of the EMD.

Likewise, a further analysis could be conducted on the development of an intermediate category of a ' **large limited network**' that would be subject to some but not all EMD2 requirements

A future revision of the Directive and its merger with the revised Payment Services Directive would require **further analysis** and only after Member States and stakeholders will have been able to gather experience with the adapted framework following the adoption of PSD2, which will also have an impact on e-money institutions.