

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 (Text with EEA relevance)

TITLE II

REQUIREMENTS FOR THE TAKING UP, PURSUIT AND PRUDENTIAL SUPERVISION OF THE BUSINESS OF ELECTRONIC MONEY INSTITUTIONS

Article 5

Own funds

1 The electronic money institution's own funds, as set out in Articles 57 to 61, 63, 64 and 66 of Directive 2006/48/EC shall not fall below the amount required under paragraphs 2 to 5 of this Article or under Article 4 of this Directive, whichever the higher.

2 In regard to the activities referred to in Article 6(1)(a) that are not linked to the issuance of electronic money, the own funds requirements of an electronic money institution shall be calculated in accordance with one of the three methods (A, B or C) set out in Article 8(1) and (2) of Directive 2007/64/EC. The appropriate method shall be determined by the competent authorities in accordance with national legislation.

In regard to the activity of issuing electronic money, the own funds requirements of an electronic money institution shall be calculated in accordance with Method D as set out in paragraph 3.

Electronic money institutions shall at all times hold own funds that are at least equal to the sum of the requirements referred to in the first and second subparagraphs.

3 Method D: The own funds of an electronic money institution for the activity of issuing electronic money shall amount to at least 2 % of the average outstanding electronic money.

4 Where an electronic money institution carries out any of the activities referred to in Article 6(1)(a) that are not linked to the issuance of electronic money or any of the activities referred to in Article 6(1)(b) to (e) and the amount of outstanding electronic money is unknown in advance, the competent authorities shall allow that electronic money institution to calculate its own funds requirements on the basis of a representative portion assumed to be used for the issuance of electronic money, provided such a representative portion can be reasonably estimated on the basis of historical data and to the satisfaction of the competent authorities. Where an electronic money institution has not completed a sufficient period of business, its own funds requirements shall be calculated on the basis of projected outstanding electronic money evidenced by its business plan subject to any adjustment to that plan having been required by the competent authorities.

5 On the basis of an evaluation of the risk-management processes, of the risk loss databases and internal control mechanisms of the electronic money institution, the competent authorities may require the electronic money institution to hold an amount of own funds which is up to 20 % higher than the amount which would result from the application of the relevant method in accordance with paragraph 2, or permit the electronic money institution to hold an

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amount of own funds which is up to 20 % lower than the amount which would result from the application of the relevant method in accordance with paragraph 2.

6 Member States shall take the necessary measures to prevent the multiple use of elements eligible for own funds:

- a where the electronic money institution belongs to the same group as another electronic money institution, a credit institution, a payment institution, an investment firm, an asset management company or an insurance or reinsurance undertaking;
- b where an electronic money institution carries out activities other than the issuance of electronic money.

7 Where the conditions laid down in Article 69 of Directive 2006/48/EC are met, Member States or their competent authorities may choose not to apply paragraphs 2 and 3 of this Article to electronic money institutions which are included in the consolidated supervision of the parent credit institutions pursuant to Directive 2006/48/EC.