

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 9*

#### **Optional exemptions**

1 Member States may waive or allow their competent authorities to waive the application of all or part of the procedures and conditions set out in Articles 3, 4, 5 and 7 of this Directive, with the exception of Articles 20, 22, 23 and 24 of Directive 2007/64/EC, and allow legal persons to be entered in the register for electronic money institutions if both of the following requirements are complied with:

- a the total business activities generate an average outstanding electronic money that does not exceed a limit set by the Member State but that, in any event, amounts to no more than EUR 5 000 000; and
- b none of the natural persons responsible for the management or operation of the business has been convicted of offences relating to money laundering or terrorist financing or other financial crimes.

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 apply point (a) of the first subparagraph on the basis of a representative portion assumed to be used for the issuance of electronic money, provided that 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 sufficiently long period of business, that requirement shall be assessed 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.

Member States may also provide for the granting of the optional exemptions under this Article to be subject to an additional requirement of a maximum storage amount on the payment instrument or payment account of the consumer where the electronic money is stored.

A legal person registered in accordance with this paragraph may provide payment services not related to electronic money issued in accordance with this Article only if conditions set out in Article 26 of Directive 2007/64/EC are met.

2 A legal person registered in accordance with paragraph 1 shall be required to have its head office in the Member State in which it actually pursues its business.

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3 A legal person registered in accordance with paragraph 1 shall be treated as an electronic money institution. However, Article 10(9) and Article 25 of Directive 2007/64/EC shall not apply to it.

4 Member States may provide for a legal person registered in accordance with paragraph 1 to engage only in some of the activities listed in Article 6(1).

5 A legal person referred to in paragraph 1 shall:

- a notify the competent authorities of any change in its situation which is relevant to the conditions specified in paragraph 1; and
- b at least annually, on date specified by the competent authorities, report on the average outstanding electronic money.

6 Member States shall take the necessary steps to ensure that where the conditions set out in paragraphs 1, 2 and 4 are no longer met, the legal person concerned shall seek authorisation within 30 calendar days in accordance with Article 3. Any such person that has not sought authorisation within that period shall be prohibited, in accordance with Article 10, from issuing electronic money.

7 Member States shall ensure that their competent authorities are sufficiently empowered to verify continued compliance with the requirements laid down in this Article.

8 This Article shall not apply in respect of the provisions of Directive 2005/60/EC or national anti-money-laundering provisions.

9 Where a Member State avails itself of the waiver provided for in paragraph 1, it shall notify the Commission accordingly by 30 April 2011. The Member State shall notify the Commission forthwith of any subsequent change. In addition, the Member State shall inform the Commission of the number of legal persons concerned and, on an annual basis, of the total amount of outstanding electronic money issued at 31 December of each calendar year, as referred to in paragraph 1.