

**Changes to legislation:** The Electronic Money Regulations 2011, PART 2 is up to date with all changes known to be in force on or before 26 September 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

## SCHEDULE 2

### Capital Requirements

## PART 2

### Own funds

#### *Qualifying items*

4. For the purposes of these Regulations “own funds” means [<sup>F1</sup>own funds as defined in Article 4(1)(18) of the capital requirements regulation, and are to be calculated in accordance with paragraphs 9 to 12.]

**F1** Words in Sch. 2 para. 4 substituted (13.8.2017 for specified purposes, 13.10.2017 for specified purposes, 13.1.2018 in so far as not already in force) by [The Payment Services Regulations 2017 \(S.I. 2017/752\)](#), reg. 1(2)(c)(iii)(3)(f)(i)(6), **Sch. 8 para. 5(30)(b)** (with reg. 3)

<sup>F2</sup>5. ....

**F2** Sch. 2 paras. 5-8 and heading omitted (13.8.2017 for specified purposes, 13.10.2017 for specified purposes, 13.1.2018 in so far as not already in force) by virtue of [The Payment Services Regulations 2017 \(S.I. 2017/752\)](#), reg. 1(2)(c)(iii)(3)(f)(i)(6), **Sch. 8 para. 5(30)(c)** (with reg. 3)

<sup>F2</sup>6. ....

**F2** Sch. 2 paras. 5-8 and heading omitted (13.8.2017 for specified purposes, 13.10.2017 for specified purposes, 13.1.2018 in so far as not already in force) by virtue of [The Payment Services Regulations 2017 \(S.I. 2017/752\)](#), reg. 1(2)(c)(iii)(3)(f)(i)(6), **Sch. 8 para. 5(30)(c)** (with reg. 3)

<sup>F2</sup>...

<sup>F2</sup>7. ....

<sup>F2</sup>8. ....

#### *Limits on qualifying items*

[<sup>F3</sup>9. For the purposes of calculating own funds—

- (a) the amount of Tier 2 capital must be equal to or less than one third of the amount of Tier 1 capital;
- (b) at least 75% of the amount of Tier 1 capital must be in the form of Common Equity Tier 1 capital.]

**F3** Sch. 2 para. 9 substituted (13.8.2017 for specified purposes, 13.10.2017 for specified purposes, 13.1.2018 in so far as not already in force) by [The Payment Services Regulations 2017 \(S.I. 2017/752\)](#), reg. 1(2)(c)(iii)(3)(f)(i)(6), **Sch. 8 para. 5(30)(d)** (with reg. 3)

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**10.** The Authority may in temporary and exceptional circumstances direct that an electronic money institution may exceed one or more of the limits described in paragraph 9(1).

**11.** An electronic money institution must not include in its own funds calculation—

- (a) any item used in an equivalent calculation of own funds by an electronic money institution, authorised payment institution, credit institution, investment firm, asset management company or insurance undertaking in the same group; or
- (b) in the case of an electronic money institution which carries on activities other than electronic money issuance or the provision of payment services, any item included in an own funds calculation required by or under any other enactment.

**12.** An authorised electronic money institution that carries on activities other than the issuance of electronic money and the provision of payment services related to the issuance of electronic money must not use—

- (a) in its calculation of own funds in accordance with Method A, B or C, any qualifying item included in its calculation of own funds in accordance with Method D;
- (b) in its calculation of own funds in accordance with Method D, any qualifying item included in its calculation of own funds in accordance with Method A, B or C.

#### *Own funds requirement*

**13.** An authorised electronic money institution must calculate its own funds requirement—

- (a) in accordance with such of Method A, Method B or Method C as the Authority may direct in respect of any activities carried on by the authorised electronic money institution consisting of payment services [<sup>F4</sup>specified in paragraph 1(a) to (f) of Schedule 1 of the Payment Services Regulations 2017] that are not related to the issuance of electronic money; and
- (b) in accordance with Method D in respect of any activities carried on by the authorised electronic money institution that consist of the issuance of electronic money and payment services that are related to the issuance of electronic money.

**F4** Words in Sch. 2 para. 13(a) inserted (13.8.2017 for specified purposes, 13.10.2017 for specified purposes, 13.1.2018 in so far as not already in force) by [The Payment Services Regulations 2017 \(S.I. 2017/752\)](#), reg. 1(2)(c)(iii)(3)(f)(i)(6), [Sch. 8 para. 5\(30\)\(e\)](#) (with reg. 3)

**14.** Where a small electronic money institution is required by regulation 19(2) to maintain own funds, it must calculate its own funds requirement as an amount equal to 2% of the average outstanding electronic money of the institution.

#### *Adjustment by the Authority*

**15.** The Authority may direct in respect of an authorised electronic money institution that—

- (a) an amount of own funds resulting from a calculation made in accordance with paragraph 13(a) is to be up to 20% higher or up to 20% lower;
- (b) an amount of own funds resulting from a calculation made in accordance with paragraph 13(b) is to be up to 20% higher or up to 20% lower; or
- (c) the sum of the amounts of own funds resulting from calculations made in accordance with paragraph 13(a) and (b) is to be up to 20% higher or up to 20% lower.

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16. The Authority may direct in respect of a small electronic money institution that an amount of own funds resulting from a calculation made in accordance with paragraph 14 is to be up to 20% higher or up to 20% lower.

17. A direction made under paragraph 15 or 16 must be on the basis of an evaluation of the relevant electronic money institution including, if available, and where the Authority considers it appropriate, any risk-management processes, risk loss database or internal control mechanisms of the electronic money institution.

18. The Authority may make a reasonable charge for making an evaluation required under paragraph 17.

#### *Provision for start-up electronic money institutions*

19. If an electronic money institution has not completed a full financial year's business, references to a figure for the preceding financial year are to be read as the equivalent figure projected in the business plan provided in the electronic money institution's application for authorisation or registration, subject to any adjustment to that plan required by the Authority.

#### *Method A*

20.—(1) “Method A” means the calculation method set out in this paragraph.

(2) The own funds requirement is 10% of the authorised electronic money institution's fixed overheads for the preceding financial year.

(3) If a material change has occurred in an authorised electronic money institution's business since the preceding financial year, the Authority may direct that the own funds requirement is to be a higher or lower amount than that calculated in accordance with sub-paragraph (2).

#### *Method B*

21.—(1) “Method B” means the calculation method set out in this paragraph.

(2) The own funds requirement is the sum of the following elements multiplied by the scaling factor—

- (a) 4% of the first 5,000,000 euro of payment volume;
- (b) 2.5% of the next 5,000,000 euro of payment volume;
- (c) 1% of the next 90,000,000 euro of payment volume;
- (d) 0.5% of the next 150,000,000 euro of payment volume; and
- (e) 0.25% of any remaining payment volume.

(3) “Payment volume” means the total amount of payment transactions that are not related to the issuance of electronic money executed by the authorised electronic money institution in the preceding financial year divided by the number of months in that year.

(4) The “scaling factor” is—

- (a) 0.5 for an authorised electronic money institution providing a payment service specified in paragraph 1(f) of Schedule 1 to the Payment Services Regulations [<sup>F5</sup>2017];

<sup>F6</sup>(b) .....

- (c) 1 for an authorised electronic money institution providing any other payment service [<sup>F7</sup>specified in paragraph 1(a) to (e) of Schedule 1 to those Regulations].

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- F5** Word in Sch. 2 para. 21(4)(a) substituted (13.8.2017 for specified purposes, 13.10.2017 for specified purposes, 13.1.2018 in so far as not already in force) by [The Payment Services Regulations 2017 \(S.I. 2017/752\)](#), [reg. 1\(2\)\(c\)\(iii\)\(3\)\(f\)\(i\)\(6\)](#), [Sch. 8 para. 5\(30\)\(f\)\(i\)](#) (with [reg. 3](#))
- F6** Sch. 2 para. 21(4)(b) omitted (13.8.2017 for specified purposes, 13.10.2017 for specified purposes, 13.1.2018 in so far as not already in force) by virtue of [The Payment Services Regulations 2017 \(S.I. 2017/752\)](#), [reg. 1\(2\)\(c\)\(iii\)\(3\)\(f\)\(i\)\(6\)](#), [Sch. 8 para. 5\(30\)\(f\)\(ii\)](#) (with [reg. 3](#))
- F7** Words in Sch. 2 para. 21(4)(c) inserted (13.8.2017 for specified purposes, 13.10.2017 for specified purposes, 13.1.2018 in so far as not already in force) by [The Payment Services Regulations 2017 \(S.I. 2017/752\)](#), [reg. 1\(2\)\(c\)\(iii\)\(3\)\(f\)\(i\)\(6\)](#), [Sch. 8 para. 5\(30\)\(f\)\(iii\)](#) (with [reg. 3](#))

### Method C

- 22.—**(1) “Method C” means the calculation method set out in this paragraph.
- (2) The own funds requirement is the relevant indicator multiplied by—
- (a) the multiplication factor; and
  - (b) the scaling factor;
- subject to the proviso in sub-paragraph (7).
- (3) The “relevant indicator” is the sum of the following elements—
- (a) interest income;
  - (b) interest expenses;
  - (c) gross commissions and fees received; and
  - (d) gross other operating income.
- (4) For the purpose of calculating the relevant indicator—
- (a) each element must be included in the sum with its positive or negative sign;
  - (b) income from extraordinary or irregular items may not be used;
  - (c) expenditure on the outsourcing of services rendered by third parties may reduce the relevant indicator if the expenditure is incurred from a payment service provider;
  - (d) the relevant indicator is calculated on the basis of the twelve-monthly observation at the end of the previous financial year;
  - (e) the relevant indicator must be calculated over the previous financial year; and
  - (f) audited figures must be used unless they are not available in which case business estimates may be used.
- (5) The “multiplication factor” is the sum of—
- (a) 10% of the first 2,500,000 euro of the relevant indicator;
  - (b) 8% of the next 2,500,000 euro of the relevant indicator;
  - (c) 6% of the next 20,000,000 euro of the relevant indicator;
  - (d) 3% of the next 25,000,000 euro of the relevant indicator; and
  - (e) 1.5% of any remaining amount of the relevant indicator.
- (6) “Scaling factor” has the meaning given in paragraph 21(4).
- (7) The proviso is that the own funds requirement must not be less than 80% of the average of the previous three financial years for the relevant indicator.

- 23.—**(1) “Method D” means the calculation method set out in this paragraph.

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(2) The own funds requirement in respect of the activity of issuing electronic money and providing payment services that are related to the issuance of electronic money is an amount equal to 2% of the average outstanding electronic money of the authorised electronic money institution.

**24.—(1) Where—**

- (a) an electronic money institution provides payment services that are not related to the issuance of electronic money or carries out any of the activities referred to in regulation 32(1)(b) to (d) and (2); and
- (b) the amount of outstanding electronic money is unknown in advance,

the institution may calculate its own funds requirement on the basis of a representative portion assumed to be used for the issuance of electronic money and payment services related to the issuance of electronic money, provided that such representative portion can be reasonably estimated on the basis of historical data and to the satisfaction of the Authority.

(2) Where an electronic money institution has not completed a sufficiently long period of business to compile historical data adequate to make the calculation under sub-paragraph (1), it must make an estimate on the basis of projected outstanding electronic money as evidenced by its business plan, subject to any adjustments to that plan which are, or have been, required by the Authority.

*Application of accounting standards*

**25.** Except where this Schedule provides for a different method of recognition, measurement or valuation, whenever a provision in this Schedule refers to an asset, liability, equity or income statement item, an electronic money institution must, for the purpose of that provision, recognise the asset, liability, equity or income statement item and measure its value in accordance with whichever of the following are applicable for the purpose of the institution's external financial reporting—

- (a) Financial Reporting Standards and Statements of Standard Accounting Practice issued or adopted by [<sup>F8</sup>the Financial Reporting Council Limited];
- (b) Statements of Recommended Practice, issued by industry or sectoral bodies recognised for this purpose by [<sup>F8</sup>the Financial Reporting Council Limited];
- (c) International Financial Reporting Standards and International Accounting Standards issued or adopted by the International Accounting Standards Board;
- (d) International Standards on Auditing (United Kingdom and Ireland) issued by the [<sup>F9</sup>Financial Reporting Council Limited or a predecessor body]; and
- (e) the Companies Act 2006.

**F8** Words in Sch. 2 para. 25(a)(b) substituted (2.7.2012) by [The Statutory Auditors \(Amendment of Companies Act 2006 and Delegation of Functions etc\) Order 2012 \(S.I. 2012/1741\)](#), art. 1(2), **Sch. para. 12**

**F9** Words in Sch. 2 para. 25(d) substituted (1.8.2012) by [The Payment Services Regulations 2012 \(S.I. 2012/1791\)](#), regs. 1(2)(a), **4**

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**Changes and effects yet to be applied to :**

- Regulations power to amend conferred by [2021 c. 22 s. 23](#)
- Regulations revoked by [2023 c. 29 Sch. 1 Pt. 2](#)