



Brussels, 24 June 2008
D(2008) 5227

Opinion

Title **Impact Assessment on the Proposal amending Directive 2000/46/EC on taking up, pursuit of and prudential supervision of the business of electronic money institutions (draft version: 26 May 2008)**

Lead DG **DG MARKT**

1) Impact Assessment Board Opinion

(A) Context

Directive 2000/46/EC on the taking up, pursuit of and prudential supervision of the business of electronic money institutions (hereby referred as 'the EMD') was adopted in response to the emergence of new pre-paid electronic payment products. It was intended to create a clear legal framework designed to strengthen the Internal Market and stimulate competition whilst at the same time ensuring an adequate level of prudential supervision.

On the basis of the EMD's review clause (Article 11), the Commission launched an evaluation exercise in January 2005. Based on indications that the development of e-money may have failed to live up to expectations, and that the original ambitions of the EMD may not have been achieved, the Commission decided to broaden the initial scope of the review.

In July 2006 the Commission adopted a Staff working document on the review of the E-Money Directive (EMD). The report concluded that there was a need to revise the current directive, some provisions of which seemed to have hindered the take-up of the e-money market. The report also suggested waiting for the final adoption of the Payment Services Directive (PSD) before taking further action, to permit completion of the complex negotiations on the PSD.

(B) Positive aspects

This impact assessment has benefited from thorough preparation, contains robust analysis and makes good use of the Commission's IA guidelines. In spite of the technical nature of the issue at hand, the impact assessment is accessible to non-expert readers.

(C) Main recommendations for improvements

The recommendations below are listed in order of descending importance. Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report.

General recommendation: The impact assessment needs to explain and analyse in more detail the administrative burden related to the current situation as a result of the waiver system (problem definition) and why it is necessary and proportionate to retain reporting requirements (in option 4). The IA also needs to consider in greater detail the demand side both in the problem definition when evaluating the sector's growth so far, and when analysing the impacts of the options. The assumptions on which the different scenarios rest should be stated more explicitly. The IA report could be further strengthened by more fully explaining the risks impacting on electronic money institutions. The author DG has provided a written response to the Board's quality checklist, in which it indicated its willingness to take the Board's recommendations into account.

(1) The need to retain reporting requirements for market monitoring purposes in option 4 should be clarified. The IA report should state unambiguously what these reporting requirements are and whether new ones could be set and if so by whom. The IA should demonstrate that the market monitoring requirements are needed and that they are proportionate. The IA should also clarify that the requirements are not linked to aiding the ECB's work by monitoring the money stock as this will not be affected by the activities of EMIs. A more thorough explanation of the current administrative burden due to the waiver system and its application in practice (including e-money market monitoring aspects) should be given in the problem definition to support the claim that it is too burdensome. The clarifications DG MARKT gave in its written response are a good starting point but deserve some further elaboration.

(2) An analysis of the demand side issues affecting the e-money market should be developed. Whilst the focus is on improving the supply side, the demand for e-money products needs to be taken into account too when assessing whether market growth has fallen short of expectations (problem definition) and when analysing the options. The problem definition needs to clarify in how far the less than expected growth of the market was due to supply side issues, which is what this proposal addresses, or whether there are also issues to do with demand which are not addressed by this proposal. Consequently, the demand assumptions contained in the scenarios should be spelt out and explained. In this context, any social impacts, although likely to be limited, should be addressed.

(3) The main assumptions underlying the scenarios in the analysis sections should be clarified. The expectations on which the scenarios rest should be made explicit, for instance as regards entry of new operators.

(4) The presentation of the risks affecting e-money institutions and risk management measures should be improved. The risks impacting on electronic money institutions should be explained more thoroughly to strengthen further the IA by better demonstrating proportionality and justifying why no full financial risk assessment has been carried out. In addition the overall advantages of new method D (option 4) in calculating ongoing capital requirements should be better presented, for instance by underlining that it addresses both the applicants risk profile and the nature of the business.

(D) Procedure and presentation

Tables and figures in the main body of the IA should be properly referenced. A glossary explaining financial terminology, abbreviations and acronyms should be added to the IA report

2) IAB scrutiny process

Reference number	2008/MARKT/047
Author DG	DG MARKT
External expertise used	No.
Date of Board Meeting	Written procedure
Date of adoption of Opinion	24 June 2008