

# The European legal Framework of Payments



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# Outline

- Regulation, yes or no?
- Payment Services Directive
  - Background & scope
  - Payment institutions
  - Information requirements
  - Rights & obligations
- E-money Directive
  - Definition of e-money
  - Main areas of e-money
  - E-money Directive II

# Regulation?

## Reasons to regulate:

- Generate trust
- Protect consumers
- Stimulate competition
- Stimulate efficiency
- Prevent uncontrolled money creation
- Enforce compliance
- Safeguard privacy
- .....
- .....

## Drawbacks of regulation:

- Hamper innovation
- Hamper competition
- Costly
- .....
- .....



# Regulation?

## EU solution: proportionate regulation

Activity      Risk      Regulation

- Banking Directives (national)
- Payment Services Directive
- E-money Directive

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# PSD: background

- Adopted on 13 Nov. 2007
- Implementation in national law by 1 Nov. 2009
- Legal harmonisation for SEPA



# PSD: objectives

1. Enhance competition → Definition of Payment Institutions
2. Increase market transparency → Requirements on information and transparency
3. Standardise rights & obligations → Rules on the relation user and provider

# Scope of PSD

Territory limits: EEA

Currency limits: euro or other EEA currency

5 categories of payment services:

1. Cash deposit & withdrawal services
2. Execution of payment transactions
3. Issuing & acquiring of payment instruments
4. Money remittances
5. Intermediary payment services



# Outside the scope of PSD

- Cash transactions without an intermediary;
- Transactions through a commercial agent;
- Money exchange services, with funds not held on an account;
- Paper-based payment transactions;
- Technical services supporting payment services, without technical provider possessing the funds;

# Outside the scope of PSD

- Services based on single or limited purpose instruments;
- Transactions carried out between PSP's for their own account;
- Transactions within a payment & security settlement system;
- Transactions related to securities, income or other distributions;
- Transactions between group companies;
- ATM cash withdrawal services.

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# Types of Payment Service Providers

- Credit institutions
- E-money institutions
- ECB & central banks
- Government departments
- Local authorities
- **Payment Institutions (PI)**



# Payment institutions

- Legal person granted authorisation...to provide and execute *payment services*;
- May undertake non-payment services, but cannot issue e-money or accept deposits;
- May grant credit subject to certain conditions;
- May undertake safe-keeping activities

# Application process

- Obtain **authorisation** for being a PI; or
- **Register** as a small PI subject to the qualification criteria.
- **Agents** of authorised PI's and small PI's must register with the NCB.

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# Information requirements

## Information requirements:

- Apply to **all** PSP's
- Before, during and after payment execution

## Distinction:

- Successive payment transactions
- Single payment transactions



# Information requirements

## - Single payment transactions -

### Info to the payer:

**- Prior –**  
Information needed Execution  
time  
Charges  
Exchange rate

### Info to the payee:

Reference, payer  
Amount  
Charges  
Exchange rate  
Credit value date

**- After –**  
Transaction Identifier, payee  
Amount  
Charges  
Exchange rate  
Date of receipt order

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# Rights & obligations

## Obligations for the user:

- Act according to the contract
- Reasonable safety measures
- Direct notification of loss/theft
- And more...

## Crediting & value dating:

- Crediting: D+1 (as from 1 Jan. 2012)
- Credit value date: D+1

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# Definition of e-money

- Monetary value
- Represented by a claim on the issuer
- Issued on a prepaid basis
- Stored on an electronic device
- Accepted as a means of payment by persons other than the issuer



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# Main areas of e-money

## 1. Pre-funded personalised online schemes:

- Online (non-traditional bank) accounts
- Accessible via Internet or mobile phone



**PayPal**<sup>TM</sup>



# Main areas of e-money

## 2. Card-based e-money (e-purses):

- Stored on a chip embedded in a card
- Card is used for authentication rather than for account information





# Main areas of e-money

## Categories of “smart-cards”:

- Single-purpose
- Limited-purpose
- Multi-purpose



# Main areas of e-money

## Categories of “smart-cards”:

- Contact card
- Contactless card
- Hybrid card
- Proximity card



# Main areas of e-money

## 3. Software-based e-money (network money):

- Stored centrally on a server
- Controlled by issuer
- Remote access via computer
- Transmission via telco network or internet



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# E-money Directive II: background

- E-money Directive I (2000)
  - Prudential requirements dominated
  - Impediment to innovation
- E-money Directive II (2011)
  - To facilitate entrance for small issuers
  - To foster innovation and competition
  - To ensure consistency with the PSD

# E-money Directive II: main changes

## Main adjustments:

- ELMI's defined as financial institutions
- Authorisation of ELMI's and registration of small issuers: Article 5 of PSD
- Exemption for limited scope schemes
- Passporting ELMI's: Article 25 of PSD
- No passports for small issuers
- New prudential regime

# E-money Directive II: main changes

## Prudential changes:

- Initial capital for ELMI's reduced from EUR 500 million to EUR 350,000,000
- Requirements for ELMI's prudential rules by

Review envisaged by November 2012 in line with PSD review

- ELMI's can now carry out mixed businesses

# Any questions?

