

# A regulatory perspective from Europe



## 1.1a2, Association of E-money Institutions in the Netherlands

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# Outline

- γ **About 1.1a2**
- γ **Position paper / comparative research**
  - Status of implementation of EMI-directive
  - Definitions and scope of electronic money
- γ **Regulatory overview**
- γ **Current situation in the Netherlands**
- γ **The way forward**



# About 1.1a2

γ **Adapted supervision law: July 1, 2002**

- specifies e-money and a role for representative organisation of e-money institutions
  - to discuss supervisory rules/regulations

γ **Consideration:**

- distinct issues / problems for new players require an independent representative organisation

γ **1.1a2 established: June 10, 2002**

- name refers to the article that defines electronic money institutions



## Members of 1.1a2

- γ **All are operational since Spring 2002**
  - pre-paid m-payment solutions
  - also focused on paying for digital content
- γ **2 larger e-money institutions:**
  - Global Payways / Moxmo
  - Digipay Nederland NV
- γ **1 smaller (technology provider):**
  - New Media Communications Amsterdam



# Activities of 1.1a2 so far

γ **Informative seminar**

- E-money (institutions) / legal implications

γ **Website for information distribution**

- <http://www.11a2.nl>

γ **Comments on consultations:**

- e-money consultation Dutch supervisor (DNB), FATF (review 40 rec); e-payments ECB, etc

γ **Position paper of November 15, 2002**

- Electronic Money & Electronic Money Institutions



# Why the position paper ?

## γ **Practical concern of members of 1.1a2**

- Is a server-side, account-based e-money system considered to be banking or is it e-money ?
- Will all issuers of server-side e-money be viewed as such (regardless of technology applied) and will there be a level playing/compliance field ?

## γ **Research of the EU-situation to determine**

- the status of implementation of directive
- the current EU-understanding of its scope



# Research of the EU-situation

## γ Research design:

- Executed in October / November 2002
- Web/desk research of status and content of implementation in different countries
- Questionnaire to regulators/market players and additional interviews

## γ Sufficient information to get a first impression of the situation in Europe



# Status of implementation

γ **Market consultations:**

- UK (timely) and Netherlands (late, brief)

γ **Implementation dates:**

- Austria (April 2), United Kingdom (April 28),
- Ireland (May 29), Germany (June), Netherlands (July), Denmark (July), Portugal (September), Spain (January 2003), LU/IT/SV (?)

γ **Too late - infringement procedure:**

- Belgium, Finland, France and Greece



# EU-definition of electronic money

- γ **Electronic money shall mean:**
  - a monetary value
  - as represented by claim on the issuer
  - which is stored on an electronic device
  - issued on receipt of funds (of an amount not less in value than the monetary value issued)
  - accepted as a means of payment by undertakings others than the issuer
- γ **Generally the basis for local definitions**



# Local definitions specify:

γ **Specific storage limits:**

- Ireland ( 5000); Austria ( 2000); UK ( 1000 dfl.)

γ **Issuing e-money is not taking deposits**

- Spain and Austria

γ **Additional constraints (Sweden)**

- "A monetary value ..... which, **without existing in a individualised account**, is stored ....."

γ **Broader boundaries (Netherlands)**

- "E-money is money-value on an electronic device"



## Issuing e-money is:

- γ **A distinct business activity (issuing payment instruments) that can be regulated separately**
  - Ireland, Denmark, United Kingdom, Sweden
- γ **A business activity that occurs as a part of banking activity**
  - Austria, Germany, Spain, The Netherlands, Portugal.



# Supervisory approaches

## γ Possession based

- Only if the representation of e-money is located on a device in the physical possession of the hands of the consumer, it is e-money; otherwise banking

## γ Functional (UK and NL):

- It is not primarily relevant if the customer holds e-money in his hands but whether the system functions as an e-money system;
- existence of account-based / server based e-money systems is formally acknowledged / agreed



# Are mobile phone telco's emi's?

- γ **The EMI-directive allows for a class of pre-paid payment instruments (those issued at a discount) to remain unregulated**
- γ **None of the local regulators have used this option to exempt mobile phone operators,**
- γ **Therefore, under the current implementations of the EMI-directive, the issuance of pre-paid value by mobile operators qualifies as issuance of e-money or as plain banking**



# What do the operators think ?

## γ European Telecommunications Network Operators' Association (1999):

**“ETNO Members will be heavily involved in the provision of e-money services at two levels:**

- as Network Operator: the party offering transmission capacity, switching and routing which allow e-money systems to operate.
- as potential Issuer: the party that provides the e-money payment services.

**The extent to which ETNO Members fulfil these different roles varies widely, but most either are or are planning to be active in both in the near future.”**



# Regulatory overview : 1

- γ **The real level playing field for e-money in the EU is yet to come:**
- Implementation is finished in one country, pending in the other
  - Definitions of e-money and scope of legislation varies between countries
  - Regulators and supervisors don't all have a complete view of the market and of all the relevant systems and operators



# Regulatory overview : 2

- γ **Different approaches on questions such as:**
- Does the concept of electronic money as a bearer instrument imply that users will need to hold one of the electronic representations of monetary value in their physical possession?
  - Should an exemption be made for a class of e-money issuers that only facilitate the low-value payment of digital content ?
  - How to qualify mobile phone companies that do not issue phone-minutes but electronic money?



# Regulatory overview : 3

- γ **Why is it so different in EU-member states ?**
- e-money legislation needs to be embedded in the existing regulatory frameworks
  - these frameworks in some countries already define the provision of payment instruments as a regulated activity ; in other countries it is the first time that payments activities will be regulated
  - discussion on the implementation of e-money is mostly relevant for countries that at present have no or limited payments regulation (UK and NL)



# Current situation in NL - 1

- γ **Server based, account based e-money may constitute e-money (not necessarily banking):**
  - communicated in formal letter of DNB to 1.1a2
  - waiver for www.bon-system as a small emi
- γ **Compliance discussion is complex:**
  - how to apply legislation when only a part of the business process can be viewed as issuing e-money (mobile phone operators) ?
- γ **Some more rules/legislation coming up...**



## Current situation in NL - 2

- γ **Divergence in compliance activities:**
  - some players head for the official emi-license,
  - other e-money issuers fall under the exemption
  - telco's are still debating definition issues
  - quite a number of players maintain a low profile to avoid regulation and compliance discussions
- γ **Regulated schemes at present suffer a market disadvantage to the systems/players that do not (yet) comply**



# The way forward

- γ **Market: being an emi may not be a bad idea..**
  - in the national or European context there may be much more than just e-money regulation (suspicious transactions, identification rules etc)
  - choose formal status accordingly (and join 1.1a2)
- γ **Regulators/supervisors: think functional !**
  - use the functional approach to understand the market / systems, to achieve technological neutrality and a level playing field
  - ensure equal/effective compliance for all players



# In summary

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## More information:

### Homepage:

<http://www.11a2.nl>

### Position paper:

<http://www.11a2.nl/docs/empp1511.doc/>

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# Premium Rate SMS in NL - 1

## γ Dutch SMS market 2002:

- 4,500,000,000 SMS messages per year
- 230,000,000 premium SMS messages
  - to buy logo's ringtones, vote interactive tv, etc. ;
  - charged on postpaid bill or deducted from pre-paid funds

## γ 2/3 of Premium SMS market is prepaid:

- 154,000,000 SMS's from pre-paid phone's
- 76,000,000 SMS's by deferred payment



# Buying and paying by SMS - 2

- γ **Two delivery models for premium SMS:**
  - delivered by telco operators themselves (54 M)
  - delivered by 3rd party content providers (100 M)
    - (Chipknip payments in 2002: 80 M transactions)
  
- γ **Combining pre-paid telephony with third party billing facilities (SMS, MMS, 0900 ....) turns pre-paid telco funds into e-money as defined in the definition of the EMI-directive**



# Options for mobile operators

- γ **A part of the business falls under the e-money definition**
- γ **Pragmatic solutions can be envisaged....**
  - stopping third party billing for pre-paid clients
  - allowing prolonged time period to comply with rules and to separate business processes
  - buy on the fly .... etc
- γ **... but we should stick to the functional approach to ensure the level playing field**