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E-Money Services within the Meaning of PSD3

What Exactly Will the New Activity Include?

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The Legal Framework and Legislative Overhaul

1. European legislators are working diligently to overhaul European payment services law.

2. The final versions of the new Payment Services Regulation (PSR) and the third Payment Services Directive (PSD3) are expected to be adopted at the end of 2025 or early 2026.

3. One of the main concerns of the proposed revisions is the abolition of the Second E-Money Directive (EMD2).

4. The provisions on e-money are being incorporated into the new PSD3 and PSR.

5. The EU Commission found that differences in the practical interpretation of PSD2 and EMD2 by supervisory authorities were exploited by applicant companies, particularly regarding the distinction between payment and e-money products.

The New Regulation of Payment and E-Money Services

1. In the future, all supervisory and civil law provisions relating to payment services and e-money services are to be regulated uniformly by PSD3 and PSR.

2. The term "e-money institution" will no longer exist.

3. Instead, payment institutions will be able to apply to BaFin or the competent authority for a license to provide e-money services exclusively or in addition to payment services.

4. The integration of the regulatory treatment of e-money business occurs through the introduction of the new term "e-money services".

5. E-money services represent a new and regulated activity under payment services law.

Definition and Scope of "E-Money Services"

1. E-money services are defined to include the issuance of e-money.
2. The definition also covers the maintenance of payment accounts for storing e-money units.
3. Furthermore, e-money services include the transfer of e-money units.
4. E-money services would therefore include not only the original issuance of e-money, but also downstream services related to the storage and transfer of e-money units.
5. It is striking that the definition in the current PSD3 draft does not separate the three different activities (issuance, maintenance, and transfer) with an "or".

Capital Requirements and Uniformity

1. The draft PSD3 sets a uniform initial capital of €400,000 for payment institutions providing e-money services.

2. This capital requirement applies regardless of whether the institution issues e-money itself or only provides transfer services related to third-party e-money.

3. The draft PSD3 distinguishes between payment institutions that offer e-money services and those that do not when calculating the required own funds.

4. Institutions that exclusively offer e-money services must always apply Method D.

5. Under Method D, the institution's own funds must always amount to at least 2% of the average e-money in circulation.

Demarcation Issues and Non-Issuer Activities

1. The uniform provisions regarding capital requirements lead to the conclusion that the provision of e-money services can only be uniform.

2. Consequently, simply offering a storage facility for third-party e-money units in a payment account would likely not be classified as an e-money service.

3. Services provided by payment institutions that do not themselves act as e-money issuers would nevertheless be covered by the new PSD3 and PSR regulations as regulated activities.

4. E-money units should always qualify as money according to the new PSD3 definitions, meaning they are potential subjects of traditional payment services.

5. Storing and transferring third-party e-money could constitute deposit and withdrawal business (No. 1 and/or 2 of Annex I to PSD3), requiring a payment institution license, but not a license for e-money services.

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