

172 newsletter



Financial Services Authority

Electronic money: Perimeter guidance

February 2003

About this newsletter

This newsletter provides a summary of FSA Consultation Paper 172.

This paper is particularly relevant for e-money insurers and potential insurers of e-money.

- You can download CP172 from our website – see details below

Alternatively, to order hard copies of the Consultation Paper:

- Phone our helpline on 0845 608 2372, quoting reference CP172
- Copies are available at £10 each
- Please allow five working days for delivery

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The Financial Services Authority
 25 The North Colonnade
 Canary Wharf
 London
 E14 5HS

Main switchboard: 020 7676 1000
 Fax: 020 7676 1099
 Website: <http://www.fsa.gov.uk/>
 CP172 Resource page: <http://www.fsa.gov.uk/pubs/cp/172/>
 Email: cp172@fsa.gov.uk

Executive summary

In April 2002 we introduced a regime of rules and guidance for electronic money issuers. This regime was designed to fulfil the UK's obligation to implement the EU Directives on electronic money. Electronic money is defined in UK law as "monetary value...which is:

- stored on an electronic device;
- issued on receipt of funds; and
- accepted as a means of payment by persons other than the issuer."

Most of our rules and guidance on e-money are in a specialist sourcebook (ELM) which you can find on our website www.fsa.gov.uk under 'FSA Handbook of Rules and Guidance'. However, we have also issued a block of 'perimeter guidance.' This guidance is intended to help people understand whether any of their proposed activities involve issuing e-money or not. It also helps somebody using a particular prepaid electronic payments mechanism to understand its status under the Financial Services and Markets Act 2000 (FSMA). You can find this perimeter guidance in Appendix 3 to our Authorisation Manual (AUTH), in the same section of our website as ELM.

Deciding whether a scheme involves e-money

In deciding whether a particular scheme involves e-money or not, we shall consider the substance of the scheme. In particular it will be necessary to consider whether the scheme involves:

- the issue of prepaid electronic monetary value that the holder can spend with third parties; or
- the provision by the issuer of some other sort of service.

Therefore, in deciding whether a scheme involves issuing e-money, we shall not be influenced by artificial features of a scheme that seek to disguise the payment function as the supply of some other sort of service.

These principles underpin our approach to defining the e-money perimeter set out in this CP and in the draft guidance in Annex 2. They will also underpin our future approach to determining whether particular schemes do or do not constitute the issue of e-money.

This Consultation Paper (CP)

Recent discussions with potential e-money issuers and other interested parties have raised some further questions which we propose to address by adding to our perimeter guidance. The principal questions relate to the use of prepaid airtime on mobile phones to buy Premium Rate Services (PRS). We have already issued individual guidance to certain telephone companies on these matters. The main purpose of this CP is to consult on

superseding the individual guidance we have already presented to these telephone companies with general guidance to be included in our Handbook of Rules and Guidance. The individual guidance issued to these telephone companies was stated to be provisional because of the possibility that, as a result of this consultation, we might be persuaded that our conclusions on PRS should be changed. The other issues discussed in this CP relate to electronic travellers' cheques and e-money backed by funds held in trust accounts.

Prepaid airtime on a mobile phone

Prepaid airtime that may only be used to buy services provided by the telephone company which issues the airtime is not e-money. This is because it is not accepted as a means of payment by persons other than the issuer. We also believe that prepaid airtime used to call PRS numbers does not constitute e-money where:

- the supply of telecoms services by the phone operator and the supply of services by the PRS provider can be seen as a single service; and
- the supply of the airtime and the supply of the PRS take place in the same action.

So where the goods or services or data are delivered to a mobile phone and consumed while the phone is being used, paying for them out of prepaid airtime does not give rise to a use of e-money.

Electronic travellers cheques

Electronic travellers' cheques are smartcards that carry a prepaid balance. They can be used abroad to withdraw foreign currency from ATMs or for making payments at point of sale. Our view is that electronic travellers' cheques that can only be used to withdraw cash from ATMs owned by their issuer do not constitute e-money. However, electronic travellers' cheques that can be used to withdraw cash from third parties' ATMs, or to buy goods and services in shops, restaurants and hotels, are likely to constitute e-money.

Trust accounts

Some business models for e-money provide for the float moneys received against the issue of e-money to be invested in a trust account. In our view such trust arrangements are compatible with our regulatory regime and do not affect the regulatory status of the issued electronic monetary value.

Other legislation

We believe that the guidance issued with this CP is compatible with the European e-money directives. However, we have not received from the European Commission any formal statement of legislative proposals relating to e-money on mobile phones.

Your response

The consultation period ends on 30 May 2003, after which we will publish a Policy Statement in response, together with the definitive version of the new Handbook text.

Consumers

This document will be of interest to consumers. It addresses a range of perimeter issues which clarify the dividing line between what does, and what does not, fall within the regulated activity of issuing e-money. So it ties in with our market confidence, public awareness and consumer protection objectives. For example, consumers need to be confident that, where they use prepaid airtime as e-money, they are protected not only by the appropriate prudential rules but also by the specific consumer protection measures that apply to e-money. We also believe that it is appropriate to raise public awareness of what products are within, and which are outside, our e-money regime.

The FSA invites comments on this Consultation Paper. Comments should reach us by 30 May 2003. Comments may be sent by electronic submission using the form on the FSA's website, which can be found at:

www.fsa.gov.uk/pubs/cp/cp172_response.html).

Alternatively, please send comments in writing to:

Dominic Peachey
Prudential Standards Division
The Financial Services Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

Telephone: 020 7676 0488

Fax: 020 7676 9711

E-mail: cp172@fsa.gov.uk

It is the FSA's policy to make all responses to formal consultation available for public inspection unless the respondent requests otherwise.

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