

LAW 3148/2003

“Accounting Standardisation and Audit Committee, replacement and supplementation of the provisions on electronic money institutions, and other provisions”

CHAPTER I

Article 10

Cooperation between authorities

The Accounting Standardization and Audit Committee, the Bank of Greece, the Hellenic Capital Market Committee and the Body of Prosecution of Financial Crime cooperate between each other for the efficient exercise of their responsibilities. Each of the authorities may transmit to the others information or data that are useful for the conduct of their tasks. They may sign protocols of cooperation, in the frames of which they may establish joint task forces for the examination of issues of common interest.

CHAPTER II
TAKING UP, PURSUIT OF AND PRUDENTIAL SUPERVISION OF THE BUSINESS
OF ELECTRONIC MONEY INSTITUTIONS

Article 14

Amendment to the provisions of Law 2076/1992 (Government Gazette 130A)

1. Article 1 of Law 2076/1992 shall be replaced as follows:

“Article 1

This law is aimed at incorporating into the Greek banking legislation the provisions of Directive 2000/12/EC of the European Parliament and of the Council “On the taking up and pursuit of business of credit institutions” (L126/26 May 2000) and the provisions of Directive 2000/46/EC of the European Parliament and of the Council “On the taking up, pursuit of and prudential supervision of the business of electronic money institutions” (L275/27 October 2000).”

2. Para. 1 of Article 2 of Law 2076/1992 shall be replaced as follows:

“1. "Credit institution" shall mean:

- a) an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credit for its own account; or
- b) an electronic money institution, within the meaning of para. 16”.

3. At the end of Article 2 of Law 2076/1992, new paras. 16 and 17 shall be added as follows:

“16. "Electronic money institution" shall mean an undertaking other than a credit institution within the meaning of item (a) of para. 1 of this Article, which issues means of payment in the form of electronic money.

17. "Electronic money" shall mean monetary value as represented by a claim on the issuer, which is:

- a) stored on an electronic device;
- b) issued on receipt of funds; and
- c) accepted as means of payment by undertakings other than the issuer”.

4. Para. 1 of Article 3 of Law 2076/1992 shall be replaced as follows:

“1. This law shall apply to all credit institutions, without prejudice to the provisions of paras. 2 and 3 of this Article and Articles 20a to 20g”.

5. After Article 4 of Law 2076/1992, a new Article 4a shall be added as follows:

“Article 4a

Restrictions on the issuance of electronic money

1. Persons or undertakings that are not credit institutions, within the meaning of this law, shall be prohibited from carrying out the business of issuing electronic money. Firms that have

been granted a waiver under Article 20f shall not be prohibited from issuing electronic money.

2. Issuance of electronic money on receipt of funds less than the monetary value issued shall not be allowed.

3. The electronic storage device at the disposal of bearers for carrying out payments shall be subject to a maximum storage amount of €300.

4. The funds received by electronic money institutions shall be immediately exchanged for electronic money. Such receipt of funds shall not constitute acceptance of deposits or other repayable funds.

5. In the event of violation of the prohibition referred to in para. 1 of this Article, the sanctions referred to in para. 3 of Article 4 of this law shall be imposed”.

6. After Article 4a of Law 2076/1992, a new Article 4b shall be added as follows:

“Article 4b
Redeemability

1. A bearer of electronic money may, during the period of validity, ask the issuer to redeem it at par value in coins and banknotes or by a transfer to a bank account free of charges other than those strictly necessary to carry out that operation.

2. The contract between the issuer and the bearer shall clearly state the conditions of redemption, including the threshold for redemption. Such threshold may not exceed €10”.

7. The first sentence of Article 6, para. 1(a) of Law 2076/1992 shall be replaced as follows:

“The persons seeking authorisation shall submit an application to the Bank of Greece and, at the same time, deposit in cash the paid-up initial capital prescribed in Articles 5 and 20a”.

8. Para. 1 of Article 10 of Law 2076/1992 shall be replaced as follows:

“1. A credit institution that has been established and operates in Greece may set up a branch in another Member State of the European Communities, provided that the branch’s activities are among those listed in Article 24 or are related to the issuance of electronic money and are covered by the authorisation of the credit institution to operate in Greece, according to the procedure referred to in paras. 2-6 of this Article”.

9. Para. 1 of Article 11 of Law 2076/1992 shall be replaced as follows:

“1. A credit institution that has been established and operates in another Member State of the European Communities may carry out the activities provided for in Article 24 or the activity of issuing electronic money through a branch in Greece, provided that the activities of such branch are covered by the authorisation of the credit institution to operate in the home Member State; the competent authority of the home Member State shall communicate to the Bank of Greece all the information referred to in paras. 2 and 4 of Article

10, as well as detailed information on the deposit guarantee scheme of the home Member State, provided that this scheme also covers deposits with the branch to be established in Greece. Pending the harmonisation of the relevant provisions, the requirement to communicate information on the guarantee scheme shall apply to electronic money institutions only if there is relevant coverage in the home Member State’.

10. Para. 1 of Article 13 of Law 2076/1992 shall be replaced as follows:

‘‘1. A credit institution established and operating in Greece that wishes to provide services for the first time in another Member State without establishing a branch therein shall inform the Bank of Greece on the activities (from those listed in Article 24) which are related to the services it intends to provide or on the activity of issuing electronic money’’.

11. Para. 3 of Article 19 of Law 2076/1992 shall be replaced as follows:

‘‘3. Without prejudice to the provisions of para. 1, credit institutions having their head offices and operating in other Member States of the European Communities and carrying out in Greece activities from those listed in Article 24 or the activity of issuing electronic money, either through branches or through the provision of services without establishing a branch in Greece, may carry out such activities in the same manner as in the home Member State, provided that they do not infringe the provisions of the capital market and mortgage credit legislation aimed at protecting investors and consumers of bank products and services, as well as other provisions aimed at protecting the general good’’.

Article 15

Addition of a special chapter on electronic money institutions

After Chapter V of Law 2076/1992, a new Chapter VI shall be added as follows, former Chapter VI being renumbered Chapter VII:

‘‘CHAPTER VI

SPECIAL ARRANGEMENTS ON ELECTRONIC MONEY INSTITUTIONS

Article 20a

Terms and conditions of establishment and operation of electronic money institutions

1. Electronic money institutions may be established and operate only in the form of *sociétés anonymes*.
2. The Bank of Greece, in order to grant authorisation for the establishment and operation of an electronic money institution, shall require payment in cash of an initial capital of at least €3,000,000, to be deposited with the Bank of Greece, as specified in Article 6.
3. The own funds of an electronic money institution shall, throughout its operation, not fall below the minimum initial capital required each time.
4. Without prejudice to the threshold referred to in para. 3:
 - a) electronic money institutions shall have, at all times, own funds which are equal to or above 2% of the higher of either i) the current balance of, or ii) the average balance of the

preceding six months of, the total amount of their financial liabilities related to outstanding electronic money;

b) where an electronic money institution has not completed a six months' period of business, including the day it starts up, it shall have own funds which are equal to or above 2% of the higher of either i) the current balance of, or ii) the six months' targeted balance of, the total amount of its financial liabilities related to outstanding electronic money.

The six months' targeted amount referred to in para. 4(b) above shall be evidenced by the institution's business plan, subject to any adjustment to that plan having been required by the Bank of Greece.

5. The thresholds referred to in paras. 2 and 4 may be adjusted by a decision of the Bank of Greece. At all events, the initial capital may not be less than €1,000,000.

Article 20b

Restrictions on activities of electronic money institutions

1. The business activities of electronic money institutions other than the issuing of electronic money shall be restricted to:

a) the provision of closely related financial and non-financial services such as the administering of electronic money by the performance of operational and other ancillary functions related to its issuance, and the issuing and administering of other means of payment but excluding the granting of any form of credit;

b) the storing of data on the electronic device on behalf of other undertakings or public institutions in public law.

2. Electronic money institutions shall not have any holdings in other undertakings except where these undertakings perform operational or other ancillary functions related to electronic money issued or distributed by the institution concerned. A decision of the Bank of Greece may specify that any qualifying holding in the share capital of such undertakings shall be subject to its prior approval.

Article 20c

Limitations of investments of electronic money institutions

1. Electronic money institutions shall have investments of an amount of no less than their financial liabilities related to outstanding electronic money in the following assets only:

a) asset items which, according to the provisions of Chapter VI, para. 1(a), items (1) through (4), of Bank of Greece Governor's Act 2054/18 March 1992 (Government Gazette 49A) attract a zero credit risk weighting and are sufficiently liquid;

b) sight deposits held with Zone A credit institutions, as defined by the provisions of para. 1(b) of Chapter II of Bank of Greece Governor's Act 2054/92, as applicable;

c) debt instruments, according to Article 2, para. 19, of Law 2396/1996 (Government Gazette 73A). Such instruments shall:

i) be sufficiently liquid;
ii) not be covered by para. 1(a) of this Article;
iii) be recognised as qualifying items, within the meaning of Article 2, para. 25, of Law 2396/1996; and

iv) be issued by undertakings other than undertakings which have a qualifying holding in the electronic money institution concerned or which must be included in those undertakings' consolidated accounts, according to the applicable legislation.

2. Investments referred to in paras. 1(b) and 1(c) may not exceed 20 times the own funds of the electronic money institution concerned and shall be subject to limitations which are at least as stringent as those established by the provisions of Bank of Greece Governor's Act 2246/1993 (Government Gazette 198A) on the supervision and control of credit institutions' large exposures.

3. For the purpose of hedging market risks arising from the issuance of electronic money and from the investments referred to in para. 1, electronic money institutions may use sufficiently liquid interest-rate- and foreign-exchange-related off-balance-sheet items either in the form of exchange-traded (i.e. not OTC) derivative instruments, within the meaning of Article 2, para. 14, of Law 2396/1996, where they are subject to daily margin requirements, or in the form of foreign exchange contracts with an original maturity of 14 calendar days or less. The use of derivative instruments according to the first sentence hereof is permissible only if the full elimination of market risks is intended and, to the extent possible, achieved.

4. The Bank of Greece may impose appropriate limitations on the market risks electronic money institutions may incur from the investments referred to in para. 1 of this Article.

5. For the purpose of applying para. 1, assets shall be valued at the lower of cost or market value.

6. If the value of the assets referred to in para. 1 of this Article falls below the amount of financial liabilities related to outstanding electronic money, the Bank of Greece shall ensure that the electronic money institution in question takes appropriate measures to remedy that situation promptly. To this end, and for a temporary period only, the Bank of Greece may allow the institution's financial liabilities related to outstanding electronic money to be backed by assets other than those referred to in para. 1, up to an amount not exceeding the lower of:

- a) 5% of these financial liabilities; or
- b) the institution's total amount of own funds.

Article 20d

Sound and prudent operation of electronic money institutions

Electronic money institutions shall have sound and prudent management, administrative and accounting procedures and adequate internal control mechanisms,

responding to the financial and non-financial risks to which the institution is exposed, including technical and procedural risks as well as risks connected to its co-operation with any undertaking performing operational and other ancillary functions related to the institution's business activities.

Article 20e

Verification of electronic money institutions' compliance with requirements

Compliance with the requirements set out in the preceding article and with the overall requirements and limitations specified as relevant to the activities of electronic money institutions shall be subject to supervision and control by the Bank of Greece, decisions of which shall specify the prudential supervision data and information that electronic money institutions are required to provide it with, as well as the details and procedure of verification of their compliance with such requirements and limitations.

Article 20f

Waiver

1. Without prejudice to the provision of Article 55, para. 21 of the Statute of the Bank of Greece, the latter may waive application of the provisions of this law to electronic money institutions in cases where either:

a) electronic money issuance generates a total amount of financial liabilities related to outstanding electronic money that normally does not exceed €3,000,000 and never exceeds €4,000,000; or

b) the electronic money issued by the institution is accepted as a means of payment only by any subsidiaries of the institution, within the meaning of Article 42e, para. 5, of Codified Law 2190/1920, which perform operational or other ancillary functions related to electronic money issued or distributed by the institution; or

c) the electronic money issued by the institution is accepted as a means of payment only by a limited number of undertakings, which can be clearly distinguished by:

i) their location in a limited local area; or

ii) their close financial or business relationship with the issuing institution, such as a common marketing or distribution scheme.

2. The waiver conditions referred to in items (b) and (c) of the preceding paragraph shall be recognised as such, provided that electronic money issuance generates a total amount of financial liabilities related to outstanding electronic money that does not exceed €3,000,000. The Bank of Greece may adjust the waiver thresholds and ceilings, which, however, may not exceed, in the case of item (a), the amounts of €3,000,000 and €4,000,000 respectively.

3. The following shall apply to electronic money institutions for which a waiver has been granted under paras. 1 and 2:

- a) the electronic storage device at the disposal of bearers for the purpose of making payments shall be subject to a maximum storage amount of €150;
- b) such electronic money institutions shall submit to the Bank of Greece, within three months from the end of every calendar year, a report on their activities, which shall include the total amount of their financial liabilities related to electronic money and such other data as may be specified by decisions of the Bank of Greece; and
- c) such electronic money institutions shall not benefit from the mutual recognition arrangements provided for in this law.

Article 20g

Supplementary application of provisions

1. Without prejudice to the provisions of paras. 2, 3 and 4, electronic money institutions shall be subject, by way of analogy, to the provisions of this law on credit institutions.
2. The provisions of Articles 5, 9, 14, 15, 16, 23, 24 and 27 through 36 of this law shall not apply to electronic money institutions.
3. The arrangements on mutual recognition provided for in Chapter III of this law shall not apply to activities of electronic money institutions other than the issuance of electronic money.
4. Electronic money institutions shall only be subject to references to credit institutions included in:
 - a) Codified Law 2190/1920;
 - b) Law 2331/1995 (Government Gazette 173A) and the other laws on the prevention and suppression of money laundering;
 - c) Law 2789/2000 (Government Gazette 21A); and
 - d) Presidential Decrees 267/1995 (Government Gazette 149A) and 33/2000 (Government Gazette 27A)''.

CHAPTER III
OTHER PROVISIONS

Article 18

Companies intermediating in fund transfers

1. Companies intermediating in fund transfer shall operate in the form of *sociétés anonymes* after obtaining an authorisation from the Bank of Greece.

The Bank of Greece shall grant such authorisation after reviewing the qualifications of the company's bodies and officers, the adequacy of its internal organisation, as well as the safeguards for the transparency of the transactions to be carried out by the company.

To obtain such authorisation, applicants shall deposit a minimum paid-up capital of €150,000; this amount may be adjusted by a Bank of Greece Governor's Act. A decision of the Bank of Greece published in the Government Gazette shall specify the terms and conditions of operation, audit and supervision of such companies. A similar decision may provide for the possibility of investing the capital of the company in sufficiently liquid assets and of depositing a part of the capital with a special blocked account as guarantee against the sanctions provided for in para. 2.

Companies intermediating in fund transfers that already operate shall comply with the provisions of this paragraph within a time limit to be fixed by a decision of the Bank of Greece.

2. The Bank of Greece may impose the following sanctions on any such company that violates the provisions of this article, the regulatory and individual acts of the Bank of Greece issued in implementation hereof and the applicable legislation in general:

- a) administrative fines;
- b) temporary suspension of operation; or
- c) revocation of the authorisation of operation.

Administrative fines may be equal to: a) an amount not to exceed 30% of the value of the violation concerned; or b) a lump sum not to exceed €150,000, and shall constitute government revenue.

3. The powers of the Bank of Greece hereunder shall be exercised through acts of its Governor or the bodies empowered thereby.

4. Item (f) of Article 1 of Law 2331/1995 shall be replaced as follows:

“f. "Competent Authority" shall mean the Bank of Greece for credit institutions, financial leasing companies, factoring companies, venture capital companies, bureaux de change and companies intermediating in fund transfers; the Ministry of Development for insurance companies; and the Capital Market Committee for the other financial institutions”.