



## **sQuidcard Limited Regulatory Environment**

sQuidcard Limited is an issuer of e-money. The issuing of e-money is a regulated activity under the Financial Services and Markets Act 2002. This Act implemented into UK law the European Commission E-Money Directive adopted in 2001. The regulations are enforced in the UK by the Financial Services Authority

sQuidcard was issued with a Small E-Money issuers certificate by the FSA in November 2007. It is listed on the FSA register <http://www.fsa.gov.uk/register/eMoney.do>. sQuidcard operates within the conditions set out within its certificate and provides certain operational information to the FSA in compliance with its Provision of Information requirements.

sQuidcard is also registered with HM Revenue and Customs under the Money Laundering Regulations

## **E-Money Regulatory developments**

### **Background**

In October 2008, the European Commission published proposals to revise E-Money Directive (EMD) which was adopted at an EU level in 2001 and implemented in the UK through the Financial Services and Markets Act (FSMA) in 2002. The main objectives of the proposal have been to:

- Enable innovation and the design of new and secure electronic money services
- Provide market access to new players and foster real and effective competition between all market participants
- Modernise the provisions of the EMD ensuring consistency with the Payment Services Directive (PSD)

The key factors the Commission proposal revises are:

- The clarification of the definition of e-money
- Lightening of the prudential regime and aligning them more closely with the PSD
- Widening the types of business e-money licensed issuers (ELMI) can undertake
- Improving the safeguarding requirements over funds held by ELMIs on behalf of customers
- Clarifying the e-money redemption requirements
- Maximising harmonization
- Allowing ELMIs to set up branches in other member states under the passporting provisions
- Clarifying the anti money laundering position

**HM Treasury issued a Consultation document in January 2009 asking for responses to the proposed revisions to the EMD. sQuidcard has provided a response, summarised below.**

**sQuid position is generally supportive of the aims of the revision and the UK government proposed response to it. The principles applied by sQuidcard in its response are:**

- To support the development of E-money as a trusted and respected payments and value storage facility for low value payments, open to all, with clarity over required customer safeguards
- To support the alignment of the EMD with the PSD and clarification of the position and regulatory regime applying to both e-money issuers and other payment service providers
- To promote sQuid's position as a pure E-money provider in the UK and elsewhere

**Consultation response :Questions and responses:**

*1 Do you agree that the proposed new definition of e-money, and the exemptions for limited networks and digital payments where the operator is not acting only as an intermediary, are positive developments?*

Background – Revision seeks to make the definition of e-money simpler and to include account based systems similar to sQuid where it has to date been specifically identified as E-money in the UK legislation has been treated differently across the EU. The revision also removes from scope of the EMD limited (either to a small range of service providers or in the nature of good supplied) networks and services based on telecom or IT equipment e.g. mobile devices where the operator does not act as an intermediary between the user and the supplier of goods.

sQuid response – YES - this ensures other accounts based systems like sQuid, elsewhere in Europe, will be treated as in scope for the EMD as sQuid is today and the exemption for limited network may apply to specific schemes that sQuid may be able to deliver. sQuid believes that any party holding funds for settlement to third parties (outside of closed schemes) should not benefit from any exemption from regulation.

*2 Do you agree that the exemption for digital payments could be further refined, with the aim of achieving technological neutrality between digital and material goods, and if so, how?*

Background – Payment services directive does not exempt digital payments where the payment service operator acts only as an intermediary between the user and the goods supplier. UK government sees this as inconsistent with the exemption suggested for the EMD and is looking to refine the scope of the EMD to provide technological neutrality between digital and material goods

sQuid response – YES -sQuid acts as an intermediary between the service user and the supplier of goods. sQuid does not make any distinction between the nature of goods and therefore supports technological neutrality in respect of the difference between digital and material goods. However this would be complex to achieve because of the difficulties in defining what is a digital versus material good.

*3 Do you agree that the proposed definition of outstanding e-money should be based on float (i.e. financial liabilities in issue at a point in time)?*

Background – new EMD definition of outstanding e-money liabilities is based on the monthly average of the prior 12 months liabilities. UK government is suggesting that it would be better to use the e-money float as the definition.

sQuid response – YES sQuid would regard the e-money float as a better definition as it is easier to quantify and where averages are used in measurement in rapidly growing entities or highly seasonal this maybe misleading.

*4 Do you agree with the Commission's proposed change to the status of ELMIs from credit institutions to financial institutions?*

Background – E-money issuers are currently defined as credit institutions under the Capital Requirements Directive (CRD) but cannot take deposits (they are not banks) which is inconsistent with the generally understood view of a credit institution. The suggestion is to define E-money issuers as Financial Institutions with the result that the CRD does not apply

sQuid response – YES sQuid welcomes the clarification of its position as a non –deposit taking financial institution with the more proportionate prudential regime from the PSD not tied to the CRD

*5 Do you agree that Sterling payments should remain outside the scope of the Regulation? Please give reasons.*

Background – EU was concerned that cross border payment in Euro were subject to inconsistent and higher charges than national payments. Regulation 2560 was proposed to reduce the level of charges for cross border transactions and promote the internal market. This regulation covered the Euro with opt ins available for other EU currencies. The UK has not opted in due to concerns that to do so would in fact increase the costs of national payments to align with extra costs incurred in delivering international payments.

sQuid response – YES – sQuid would be concerned that opting in the GBP may result in higher national payments charges for little benefit.

*6 Do you support the Commission proposal to align the qualitative EMD prudential requirements with those of the PSD?*

Background – The prudential regime for e-money institutions is closely related to those for credit institutions (see 4 above) and the Commission sees this as excessive for ELMI's. The Commission wants to bring into line the prudential requirements existing under the PSD to apply to ELMI's.

sQuid Response – YES on the basis that sQuid supports a thorough, clear and more closely related approval procedure appropriate for its payment service

*7 Do you support the Commission proposal to reduce initial capital from €1m to €125,000?*

Background – Initial capital requirements would be reduced from Euro 1M to Euro 125K.

sQuid response – NO – sQuid recognizes the difficulty and costs of setting up a robust safe and secure payment service. It would regard the higher initial capital requirement as reasonable in the light of the investment firms would require to create a scaleable service. For those businesses not wishing to develop a scaleable product they may take advantage of the Limited network exemption to operate.

*8 Do you agree that Method D own funds for e-money institutions should be based on float (i.e. financial liabilities in issue at a point in time) rather than on payment volume?*

Background – The revised EMD effectively suggest the use of a sliding scale calculation of ongoing capital requirements based on the payment volume. UK government want this to be more simply based on the e-money float.

sQuid response – YES – the risk to the end user is more accurately reflected in the value of the float rather than payment volumes and in an environment where individual users are happier to top up small amounts regularly, whilst spending regularly and maintain a low float balance, a capital requirement based on the payment volume rather than the float maybe disproportionately high versus the risk of loss the user.

*9 Do you support the Commission proposal to remove the prohibition on mixed business for ELMIs?*

Background – the current EMD restrict the ability of ELMIS to do any business other than issuance of e-money and related services. The revised EMD would open these activities to include those defined within the PSD.

sQuid response – YES - provided adequate protection in terms of client funds are ring fenced adequately as those held by sQuid are already.

*10 Do you support the Commission proposal to extend the PSD safeguarding requirements to ELMIs and agree that PSD Article 9(2), enabling a representative portion to be safeguarded, should also be extended to ELMIs?*

Background – PSD implementation in the UK requires payment institutions to protect client funds where they exceed GBP50. PSD article 9(2) permits a representative portion of funds to be safeguarded where that portion is variable or unknown.

sQuid response – YES since sQuid already does ring fence customers funds in total and agrees that allowing a representative proportion to be safeguarded will assist ELMI's in extending their types of business. However, it would be necessary for safeguarding requirements and individual issuer practice to be very transparent to service users to ensure confidence and limit confusion

*11 Do you agree that a more appropriate EMD waiver criterion would be one based on float (i.e. outstanding liabilities in issue at any time) rather than payment volume, and with a minimum threshold of €5-6m, as contained in the existing EMD?*

Background – revised EMD suggests defining the satisfying criteria for an ELMI to operate under a waiver would be based on the average of the prior twelve months

payment transactions being less than Euro 3M a month. UK government suggests that this should be based on the value of the e-money float of less than Euro 5M to Euro 6M.

sQuid response – YES – float is a closer measure of the level of risk to the end user for its service so it would be appropriate to use that as the qualifying measure.

*12 Do you support the Commission's proposed clarification of the redeemability requirements?*

Background – proposed revision suggests no limit on redeemability and allows this to be set contractually between the parties involved. UK rules currently set a minimum of Euro 10 and 1 year. UK governments position is that leaving this purely to the contract between parties may allow service providers to set excessive limitations to the detriment of consumers.

sQuid response – YES – it is reasonable to allow e-money issuers to set appropriate redemption rights suitable for the market they operate in and provided this is transparent and obvious to service users this may develop into a service differentiator

*13 Do you support the Commission's proposed increase in threshold values beneath which e-money issuers need not comply with full anti-money laundering due diligence requirements?*

Background – EMD revision brings requirements into line with the PSD i.e Euro3000 total transactions in a year on devices where the the value can be recharged.

sQuid response - YES

*14 Do you consider the transitional provisions in the Commission proposal to be appropriate?*

Background – EMD proposal is to allow existing authorized ELMI's to continue operating without new authorization but would need to submit all appropriate information to the regulating authorities within six months of the revisions coming into force. UK government recognizes it is important that both firms and regulators have enough time to adjust to the new requirements. UK government is looking to ensure existing firms will be grandfathered into the new regime.

sQuid response – YES

*15 Do you agree that the FSA and FOS should take responsibility for the applicable aspects of Articles 6-10 (including complaints procedures, cooperation with other Member State authorities, and penalties) in the Commission's proposed revision of Regulation 2560?*

sQuid response – YES

For any further enquiries please email us at: [info@squidcard.com](mailto:info@squidcard.com) .

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