Single Rulebook Q&A

Question ID	2020_5566
Status	Final Q&A
Legal act	Directive 2009/110/EC (EMD)
Topic	Not applicable
Article	2 and 3
Paragraph	2 and 4, respectively
Subparagraph	-
COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations	Not applicable
Article/Paragraph	Not applicable
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Disclose name of institution / entity	No
Type of submitter	Competent authority
Subject matter	Topping-up e-money accounts with voucher-based products
Question	If an e-money institution (EMI) sells, through an external network of points of sale, pre-paid non-reloadable vouchers of a fixed value that can only be used to top-up e-money accounts opened with such EMIs, shall the sale of such vouchers be considered as distribution of e-money for the purposes of Directive 2009/11/EC (EMD2)?
Background on the question	Some EMIs currently sell via physical points of sale non-reloadable vouchers, available at fixed face value that can only be used to top-up clients' e-money accounts. According to this business model, vouchers are distributed upon receipt of cash from clients and are not accepted in payment by any other person than the issuer. Once used to top-up the e-money account, the correspondent value can be used to purchase goods and services at several partner shops (physical and online) and, in certain cases, to withdraw cash from ATM.The distribution network transfers the clients' fund to the EMIs without delay, after the voucher is issued.Such EMIs claim that the pre-paid vouchers do not qualify as e-money given that they can only be used to load the e-money accounts and therefore they do not meet the definition of e-money set forth by Article 2(1) of the EMD2 (i.e."an electronically, including magnetically, stored monetary value as represented by a claim on the issuer

	which is issued on receipt of funds for the purpose of making payment transactions as defined in point 5 of Article 4 of Directive 2007/64/EC and which is accepted by a natural or legal person other than the electronic money issuer”). As a consequence of this approach, the sellers of such vouchers cannot be deemed as distributors of e-money.This is particularly relevant in case of EMIs operating on a cross-border basis; in this case, the engagement of distributors has significant implications under both sectorial legislation (i.e. EMD2 and PSD2) and AML/CFT regulation as the provision of services via a distributor can qualify as “establishment”, in accordance with the criteria set forth in the EBA Opinion dated 24 April 2019 (EBA-Op-2019-03) and in the national AML legal framework. More specifically, EMIs operating in another Member State through an establishment shall comply with:additional reporting requirements in favor of the national competent Authority of the host Member State, where the option set forth in Article 29(2) of PSD2 has been exercised in such host Member State;the AML/CFT rules of the host Member State, including the obligation to appoint a central contact point under Delegated Regulation (EU) 2018/1108, if required so.Although the voucher itself is not accepted by a natural or legal person other than the electronic money issuer, the additional operational steps added to reload the e-money account do not alter the unity of the top-up; all these steps are strictly linked as they are intended to achieve a single result (i.e. topping up e-money account). The circumstance that the distribution network without delay transfers the clients’ fund to the EMIs further supports our reasoning.Moreover, setting an artificial distinction between the selling of pre-paid vouchers and the issuance of e-money would be undesirable since it would create room for regulatory arbitrage from both the prudential and the AML perspective.Finally, the suggested interpretation would ensure compliance with recital 10 of the EMD2 that states that “distribution of e-money” should be understood as “selling or reselling electronic money products to public, providing a means of distributing electronic money to customers, or of redeeming electronic money on the request of customers or of topping up customers’ electronic money products, through natural or legal persons on their behalf, according to the requirements of their respective business models”, which would be otherwise easily circumvented.
Final answer	The sale of “prepaid vouchers” as described by the questioner is to be considered as distribution of electronic money according to Article 3(4) of Directive 2009/110/EC (EMD2) and Recital 10 of EMD2. The monetary value as represented in the “prepaid vouchers” is to be qualified as electronic money in accordance with Article 2(1) of EMD2. **Disclaimer:**

	The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.
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