

**Comments from the Danish Government on the Commission's consultation process concerning the E-money Directive**

16 July 2004

Referring to the consultation paper of 10 May 2004 from the European Commission on whether mobile phone activity involves issuance of "electronic money", the Danish Government hereby gives its comments.

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The Commission has asked several questions, focusing on the business models of the mobile operators. The Danish Government will primarily comment on general matters of principle. Where relevant, references to specific questions are given. Referring to question 12, this paper is concluded with a summary of the Danish sector specific regulation concerning telecom operators.

Ref. 47121

Doc-id 290602

According to the consultation paper, the Commission has initiated the hearing to make sure that EU rules are clear, proportional and are applied consistently throughout all Member States with a view to encourage investment in the electronic communications sector and the development of new and innovative services. The Danish Government welcomes the consultation and the possibility for Member States and all relevant stakeholders to comment on the rules and developments in this area.

The Danish Financial Business Council concluded on 24 May 2004 that telecom operators' use of prepaid air-time in some instances is to be considered as e-money. The Danish Government recognises that there are many aspects to be considered when contemplating the future policies in this area.

At this stage, however, the ICT sector in Denmark continues to have concerns regarding the consequences of the European rules about e-money. The rules do not seem to accommodate the technological development in the ICT sector, especially the new types of payment via the mobile phone.

From an ICT perspective, a major new market is emerging in electronic services, both in the current mobile market and in the emerging 3G-market. To ensure the competitiveness of the actors in the European markets, it is necessary that the legal framework is designed in such a way that it allows these markets to evolve. Cheap and flexible payment solutions will be fundamental to improve the conditions of the European producers of electronic content services thus strengthening Europe's strategic position in the global market. At the same time competition in the ICT sector and the financial sector will be improved.

The issue has been discussed on several occasions at European level, primarily in the framework of The Information Society General Directorate: The revision of the eEurope 2005 Action Plan, several Commission communications, the blue print on Mobile Payments from the Mobile Communications & Technology Platform, the Lisbon Strategy etc.

The development of attractive new services is also one of the top priorities of eEurope 2005. A priority that has been reinforced by the European Telecommunications Ministers at the Council Meeting on 10 June 2004.

The above mentioned issues concerning the ICT sector have a broader perspective because the need for cheap and flexible payment solutions applies to several other business sectors. At the same time, it is important that new technologies are implemented in a way that ensures that all relevant aspects concerning with payments in general, including consumer protection, trust, security, proportionality (risk and value), financial stability, sectoral and technological neutrality etc., are taken into account.

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### **Impact of the E-money Directive on the ICT sector**

Prepaid air-time has been a major driver in the Danish mobile market. Consumers, and particularly young users, have evidently welcomed these easily accessible and low priced products.

The Commission asks for evaluations of operational and business consequences with respect to competitiveness and future development of new services and new technologies (question 19).

As far as the Danish Government is informed, the issue has been discussed in several Member States and the interpretations of the E-Money Directive have not been similar. These interpretations relates primarily to the definition of e-money and the interpretations regarding the implemented waivers.

The consequences could be an uneven playing field for competition between the Member States and between traditional sectoral borders. The Danish Government therefore welcomes the Commissions attempt to reach a common understanding on the definition of e-money regarding prepaid air-time and how to interpret the waivers.

In some countries the mobile operators will be seen as issuers of electronic money and as a consequence they are obliged to comply with the rules regarding e-money. This might result in prepaid air-time no longer being a viable business model for providing services. A worst case scenario is that the mobile operators decide to close down prepaid activities with regard to delivery of services from 3rd parties (content providers delivering for instance a ring tone).

Another consequence of the e-money rules might be that some operators choose "a walled garden" strategy, delivering all kinds of services themselves.

In a highly diversified market with fierce competition this might turn out to be a costly strategy, which will primarily benefit strong players (for instance earlier state monopolies). It will strengthen the inclination for content providers to sell electronic services through a mobile operator. In addition, the subcontractor model will most likely lead to higher prices to the detriment of the consumers.

It should be taken into account that it is questionable whether mobile operators are ready to take larger economic risks in developing content. It seems quite obvious that content providers themselves would be more willing to take such risks. Consequently, the subcontractor model could slow down innovation in the whole ICT sector and thereby be an obstacle to the European growth.

Furthermore, either scenario is likely to have negative consequences for the framework conditions for innovation and the access to electronic supply channels in the content provider industry in general.

There are different rules concerning prepaid and post-paid services, which reflect different concerns for protection. Regarding micro payment solutions (characterized by small value/amounts and onetime delivery) there is a need for further analysis on all relevant concerns in the different situations, including the need for protection.

### **Possible future solutions**

The Commission also asks for viewpoints on interim solutions and long-term approaches (question 20 and 21).

The EU is about to pass new legislation in this field (a new legal framework for payments in the internal market) and rules on money laundering.

Consequently, it is of major importance that the relevant issues are addressed simultaneously and as soon as possible. All kinds of relevant aspects, which apply to the ICT sector and payments in general must be analysed to create a coherent, consistent general legislation across different sectors. This is a prerequisite to establish viable long-term solutions.

The aspects includes among others:

- consumer protection,
- usability,
- trust,
- security,
- interoperability,
- innovation,
- competition,
- proportionality (risk and value),
- financial stability,
- sectoral neutrality, and
- technological neutrality.

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The European markets of content providers, mobile operators (3G in particular) and suppliers of alternative payment solutions have after a period of recession begun to show small signs of recovery. In this context it is necessary to analyse the activity structures in various sectors using and/or providing payment solutions.

If content production, originated in a European cultural and economic context, is to cope with the global competition and globalisation in terms of innovation and growth, the EU must facilitate optimal conditions (with reference to the Lisbon Strategy and the eEurope 2005 Action Plan).

Thus in the short run it is necessary to address the rules on micro payments.

A supportive regime for micro payments will procure access to different payment channels and will stimulate a positive development of the markets of content providers and telecom operators and facilitate the use of e-payment solutions for providers of goods and services in general. These effects will further stimulate the general development of the internal market and the take-up of e-business. Furthermore, secure and protected payment solutions are vital for the smooth functioning of the emerging digital economy.

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A practical consideration in the short run could for instance be to look into the interpretation of the definition of e-money and the interpretation of the possibilities in the waivers of the E-money Directive in order to level the playing field between Member States.

To conclude, the Danish Government is in full support of the need for further analysis of the whole payment area in order to secure that rules comply with the needs of the emerging digital economy and the Information Society.

./. Please find annex 1 enclosed.

## **Annex 1: Danish consumer regulation in the telecommunications sector**

In Denmark consumer protection is covered by the Act on Competitive Conditions and Consumer Interest in the Telecommunications Market, last consolidated in Act No. 661 of 10 July 2003. Firstly, the Act empowers the Minister for Science, Technology and Innovation to lay down rules on consumer protection in different areas. Moreover, the Act contains rules about access for end-users to free carrier selection and number portability.

According to the above-mentioned act, specific rules for consumer protection are laid down in Executive Order No. 666 of 10 July 2003 on the Provision of Communications Networks and Services. The purpose of the rules is to oblige providers of public electronic communications networks or services to end-users to ensure a number of basic user rights in connection with agreements on delivery of electronic communications networks or services to end-users.

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The Executive Order contains rules about:

1. Requirements to be met by owners of electronic communications networks and providers of voice telephony services
2. Common terms for the provision of public electronic communications networks and services to end-users
3. Functions and facilities
4. Secrecy, processing of traffic and location data, security and duty to give information

**Ad. 1.** These requirements are for example that it must be possible to make calls free of charge to the public emergency service (112) and make calls to the USO provider's text telephone service and the emergency call number of that service. It is also a requirement that end-users shall have access to a call-based charge advice facility.

**Ad. 2.** It is a requirement that a contract is made as a basis for any customer relationship with an end-user. In addition, the contract must contain certain information.

The end-users must be informed of changes in the terms and relevant prices applicable to the provision at a notice allowing the end-user to terminate the agreement with effect, at the latest, from the date on which the change enters into force.

Also the end-user shall be entitled at any time to terminate the contract after mostly six months without further costs.

Further rules apply to:

- The disconnection of the line that the end-user does not pay
- The certifying of providers charging, billing and invoicing systems associated with the provision
- The providers handling of complaints

**Ad. 3.** Providers must offer functions and facilities such as:

- Referral to new numbers and forwarding of calls to new numbers
- Stopping of call forwarding from a third party
- Access to current billing data
- Tariff-grouped billing and itemized billing
- Billing control arrangement
- Barring
- Barring of access to information and content services
- Current monitoring of billing fluctuations

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