Electronic Payments In The German Public Sector – Legal Issues

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Abstract: *The paper tries to analyse more closely why although there are no major general legal restrictions for electronic payments in Germany, schemes developed for e-commerce have not yet been transferred to the field of payments to or even from public authorities and why mobile payment schemes do not play any role at all in the public sector at present. Traditional commercial bank money has remained the most prominent means of payment, and this situation will hardly change in the near future since whereas a general" electronification" of payments might take place within the next years, current German projects for introducing and strengthening e-government do not extend to the introduction of m-payment systems but are restricted to adapting traditional payment instruments to standards established in e-commerce transactions.*

Keywords: E-money, E-money institution, means of payment, legal tender, commercial bank money, m-payment

1. Introduction

The following analysis will focus upon the current status of electronic (or e-)payments within the German economy and the German legal system. The section on background material will deal with some general issues of e-payments, e.g. various modes and means of such payments. Next, the European legal framework will be looked at, and the implementation of the relevant EC directives as well as the development of several payment instruments by the German banking sector will be discussed more closely. The section on findings tries to find out some reasons why German public authorities hesitate to use e-payments or even mobile payments in their financial transactions with the public. The paper concludes by listing up necessary conditions if traditional monetary transactions may be modified or even substituted by digital means and modes of payments

2. Background Material

2.1. E-payments are payments that are initiated and processed electronically. Common to all forms of e-payments is the automation of the payment transaction. E-payments focus on the relationship between the payer and the payment provider. They differ from e-invoicing which deals with the automation of the billing process between the payer and the beneficiary. Further on, e-reconciliation involving the electronic communication of balance and payment information from the payment provider to the beneficiary for book-keeping purposes, is already widely used, particularly between large companies and their banks. Relating to e-payments in a narrow sense, an abundance of heterogeneous initiatives has emerged in recent years. These consist of traditional payment instruments that have been adapted for e-commerce, and new payment instruments and services that are still in an early adoption phase. Till now, credit cards have remained the single most used payment instrument on the internet.

2.2. A payment may generally be understood as a payer's transfer of a monetary claim on a party acceptable to the beneficiary. For a (retail) transaction, the acceptable monetary claim is normally either money provided by a central bank or deposits/liabilities at a financial institution. A monetary claim that is accepted by the beneficiary shall be referred to as the means of payment. Tools for the payer to initiate the transfer of the means of payment are called payments instruments. There is a wide range of those instruments for transactions at the point of sale (such as debit or credit cards, see below, 3.5.), for transactions to pay invoices, and to generally transfer funds between two or more economic agents (such as credit transfer orders, either at the counter or online, see below, 3.5.).

In most cases, the payment instrument and the means of payment are different. The most prominent exception is cash (i.e. banknotes and coins which are legal tender). Where the means of payment differs from the payment instrument, an infrastructure for effecting the transfer of the means of payment from the payer to the payee is required. The infrastructure for the transfer of monetary liabilities between financial institutions is the interbank funds transfer system. Two other aspects are also important when a payment is made on the basis of an invoice: the delivery of the invoice to the payer and the payee's reconciliation of invoices sent and payments received.

In principle, information and telecommunications technology allows the entire payment process to be fully automated, including the provision of electronic means of payment. The migration towards the provision of payment services on a fully electronic and highly automated basis is called the electronification of payments.

2.3. Common to new payment instruments and services is the use of IT technologies that were previously not available for payment purposes. Such a new means is electronic or e-money defined broadly by the European Central Bank (ECB) as "an electronic store of monetary value on a technical device that may be widely used for making payments to undertakings other than the issuer without necessarily involving bank accounts in the transaction, but acting as a prepaid bearer instrument" (ECB, 2003). In this definition, electronic value is comparable to cash and can be stored, for instance, on a smart card (card-based schemes) or on a personal computer (software-based schemes). E-money has become a new means of payment through legislation. In the member States of the European Union and the European Economic Area, the issuance of e-money is restricted to credit institutions and to companies – types of "narrow banks" – that fall under the relevant implementations of the Electronic Money Directive (see below, 3.1.).

2.4. Several initiatives have emerged for making payments from mobile phones, too, sometimes being referred to as m-payments. Such schemes mainly offer solely a new payment channel to effect a credit transfer or a direct debit of funds (commercial bank money, not central bank money) at a financial institution. Some others also offer pre-payment solutions with accounts that are accessible via mobile phones. The funds on the account (e-money or other non-traditional means of payment) are used to pay for products and services (CPSS, 2004).

Most m-payment initiatives follow a simple model where a customer (payer) first identifies him/herself to a merchant (beneficiary) by providing his/her phone number or by calling the merchant. This person forwards the payment and customer information to the payment service provider (e.g. through the mobile phone network). The provider then presents the payment information to the payer for confirmation and upon confirmation (e.g. with a Personal Identification Number, PIN) records the transaction. The communication between the customer and the payment provider and/or merchant can take place through phone calls and/or short messages (SMS). The paid amount is collected by direct debit (see below, 3.5.) from the payer's account and credited to the beneficiary's account. Operational examples of this model in the EC include Paybox (Austria). Former activities of this enterprise in Germany were brought to an end in 2003 (below, 3.8.1.).

Models that offer more advanced customer identification methods incorporate the information in the mobile phone's Subscriber Identity Modul (SIM) card, or are based on dual-slot mobile phones where a second smart card is needed for the payment application. No such model has been used in Germany.
Mobile devices are well positioned for payment-related activities, as they are personalised, permanently carried around, designed to be connected, and – not the least – as the penetration level of digital mobile telephones is higher than that of personal computers in Europe. It is also possible to use mobile phones for all types of payment: at both manned and unmanned payment terminals, for internet payment, and, in a few schemes, also for payments between individuals. Initiatives launched to promote inter-operability between different m-payment solutions include the MOBEY forum, the Mobile electronic Transactions (MeT) initiative, the Mobile Payments Forum and PayCircle. The aim of these fora is to encourage the use of mobile technology in financial services and to act as a link between the various standardisation bodies in the mobile telecommunications and financial industries (Borchers, 2003).

3. Main Arguments: General legal framework

3.1. A number of "directives" – binding legal acts to be transformed into the national law of EC members within a certain time limit - have been adopted by the European Parliament and the Council to increase confidence in e-commerce and to promote the development of online provision of products and services. The three most important directives related to e-payments are:

The (general) E-commerce Directive (2000/31/EC of 8 June 2000) aimed at ensuring the "free movement of information society services between (EC) Member States". The directive promotes the free movement of online services through the supervision of service operators in the Member State in which they are established ("country-of-origin" principle). Further on, it introduces transparency measures for commercial communications and "electronic contracting", and ensures recognition of the legal validity of contracts concluded electronically.

The (specific) E-money directive (2000/46/EC of 18 Sept. 2000) introduces a minimum set of harmonised prudential rules for e-money issuance and applies the arrangement for the mutual recognition of home Member State supervision provided for in Directive 2000/12/EC on behalf of credit institutions also to e-money institutions.

Finally, the E-signatures Directive (1999/93/EC of 13 Dec. 1999) sets the framework regarding the conditions applying to electronic signatures. The Directive ensures that all EC Member States accept the legal validity of an electronic signature, and that all services relating to electronic signatures can be provided on the Internal Market without national obstacles.

In 1997 already, the EC Commission published a Recommendation (97/489/EC) concerning transactions by electronic payments instruments and in particular the relationship between issuer and holder. Its main rules are dealing with an appropriate division of liability between the consumer (payer), the merchant (payee) and the payment service provider.

The European Central bank sees its role mainly in promoting the efficiency and security of the associated instruments and systems, pursuant to its statutory responsibility "to promote the smooth operation of payment systems" (art. 105 par. 2 tir. 4 of the EC Treaty). The tasks of the ECB also include the safeguarding of the monetary policy transmission mechanism and the unit-of-account function of (e-)money, as well as the maintenance of systemic stability. Based on discussions with market participants, it intends to act both as a catalyst and as an overseer, but neither as a regulatory authority nor as an institution which issues e-money by itself (ECB 2003).

3.2. The E-money Directive was implemented in Germany with effect from 1 July 2002 by the Fourth Financial Market Promotion Act. Prior to the adoption of this Directive, key criteria for the issuance and administration of e-money had already been laid down by the Sixth Act Amending the Banking Act entered into force 1 Jan. 1998. By adding two new kinds of banking activities to sec. 1 (1) 2 of the Banking Act, "prepaid card business" and "network money business" were made subject to prudential supervision in Germany at that time. Partial exemptions from general rules could be granted for enterprises operating prepaid card businesses only if the limited use and dissemination of those cards indicated that they were unlikely to pose a threat to the payment system.

3.2.1. The implementation of the E-money Directive in 2002 led to the creation of a new type of credit institution which, under EC law, is subject to less stringent supervisory rules as long as that enterprise confines itself to issuing (and administering) electronic payment units. What were previously known as "prepaid card business" and "network money business" have been combined into a single "banking business" type which is now called "e-money business" (sec. 1 [1] 2 no. 11 of the Banking Act). This modification was caused by the impossibility to draw a clear line between the two formerly separate types of business. The new definition of "e-money business" is based on the definition contained in the E-money Directive, but it also takes due account of the ancillary business that e-money institutions are permitted to engage in, by including the term "administration" (of e-money). In addition, all pre-

paid value units stored on electronic data media in the form of a claim against the issuing agency and which are accepted by third parties as a means of payment without being legal tender are deemed to be e-money. For legal reasons, there is also a precise definition of the term e-money institution in sec. 1 (3d) 4 of the Banking Act.

The provisions on the "European passport" do not apply only to credit institutions but to e-money institutions as well. I.e. both kinds of enterprises established within the EC or European Economic Area (EEA) and invoking the fundamental freedom to set up branches in other Member States or the freedom to provide services throughout the European Union (and EEA) are only supervised by the supervisory authority in their home country.

The minimum initial capital has been set at 1 mio. € (sec. 33 of the Banking Act). The own funds requirements which e-money institutions are required to meet on an ongoing basis must make up at least 2 % of the current amount or the average of the sum of its liabilities over the preceding six months on the basis of still unused e-money, whichever figure is higher.

Limiting e-money issuers to credit institutions and thereby subjecting them to banking supervision might reduce the risk of solvency or liquidity problems. Furthermore, credit institutions have direct access to central bank credit facilities. Supervision requires credit institutions to have adequate risk management and control systems in place, which should help to improve security, too.

3.2.2. At the moment, there is no promotion of e-money products or schemes in Germany by foreign vendors about which the relevant authorities – i.e. the Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht [BaFin], established in 2002, the Bundesbank or the Federal Office for Security in Information Technology (Bundesamt für Sicherheit in der Informationstechnik) – have concerns. However, it would be difficult, if not impossible, to apply or even enforce regulatory measures relating to cross-border e-money "products" or payments, whether in € or foreign currency, offered in Germany if the issuer or other participants in the scheme were domiciled in one or more different (foreign) countries or jurisdictions. Only if the operator is using a German agent it might be possible to regard the agent conducting the business as being subject to national supervision. Therefore, the resolution of this kind of problem requires international cooperation among the competent authorities. But nevertheless, the Federal Financial Supervisory Authority recently decided that third-country institutions which intend to provide financial services to German customers from outside the country must apply for its authorization because they will be doing business "within Germany" according to sec. 32 of the Banking Act.

3.3. In Germany, there is no general ruling on whether authorisation is required to operate payment systems via mobile telephones or the internet. But pursuant to sec. 1 (1a) 2 no. 6 of the Banking Act, enterprises which provide money transmission services need authorisation for conducting this type of "financial service". Thus, the Federal Financial Supervisory Authority has to check every single system on a case-by-case basis to ascertain whether money transmission services are involved. Operation of such payment systems without prior authorisation may lead to fines or even criminal sanctions. Since 2002, the issuance and administration of credit cards have been deemed to be "financial services", too (sec. 1 [1a] 2 no. 8 of the Banking Act) and therefore subject to prudential supervision.

No particular problems have arisen relating to the clearing and settlement arrangements for internet and mobile payment schemes. Neither the Federal Financial Supervisory Authority nor the Bundesbank have taken particular steps to influence the design and operation of those payment schemes because both of them think it should be left open to the market participants to develop and offer solutions which best serve customer requirements in a process of mutual competition. Banking supervisory provisions, moreover, do not contain any specific regulations governing risk management in the case of providers of e-payment systems. However, sec. 25a of the Banking Act states, among other things, that credit as well as other financial institutions should have in place suitable arrangements for managing, monitoring and controlling risks and arrangements for compliance with legal provisions. Pursuant to this section, the Federal Financial Supervisory Authority has issued, for example, a circular stipulating general regulations governing outsourcing.

Till now, the features of internet and mobile payments "products" available in Germany are not perceived to make them particularly attractive for money laundering (e.g. performance of micropayments, limitation of value of purchases, identification of the parties involved, clearing and settlement via the banking system, etc).

3.4. In spring 2004, the EC Commission published a consultation paper on the treatment of mobile operators under the E-money Directive, considering the nature of pre-paid mobile phone cards, because of divergent interpretations of EC rules by national authorities. According to a preliminary analysis, prepaid phone cards would be covered by the Directive, when the electronic value stored on them is used to purchase products and services other than traditional communications, offered by third parties ("merchants") rather than directly by the phone companies. Given this conclusion, it should be analyzed whether it is necessary for the rules which apply to e-money to be applied in full to prepaid phones cards (European Commission, 2004a). But there seems to be a basic difference between those "scratch cards" and other e-money based on cards ("electronic purses" like GeldKarte in Germany, see below, 3.6.) or former pilots of network-based e-money (like DigiCash) where e-value is stored on a chipcard or hard disk of a personal computer (Godschalk, 2004). So, account-based systems like prepaid cards of mobile operators or PayPal (see below, 3.8.4.) should better be the object of a "regulation light" which could be implemented by a harmonisation of the already existing practice of waivers from some burdensome and inadequate requirements of the E-money Directive.

3.5. Traditional payment instruments in the EU adapted to the internet and mobile networks are credit cards, credit transfers and debit instruments (such as direct debits or debit cards). Credit cards allow customers to make purchases and/or withdraw cash as credit from the issuing credit card company. In Germany, these activities are restricted to financial institutions since 2002. The credit granted by the card issuer is either settled in full by the end of a specified period (generally 30 days), or in part, with the remaining balance extended as credit. A credit transfer is an instruction from the payer to his/her bank to debit his/her bank account and to credit the beneficiary's bank account. Online credit transfers can be initiated though e-banking applications. Finally, direct debits are preauthorised debits on the payer's bank account that are initiated by the beneficiary and are often used for recurrent payments, relating, e.g., to utility bills (for water or electricity). Debit cards may offer additional security features for payments owing to the presence of the card. The cardholder authenticates his/her identity with the help of a card reader connected to the personal computer. They provide a convenient way to present the cardholder information needed to initiate a direct debit being embedded in the chip on the card. A dedicated terminal is required to read the information on the debit card, and possibly to verify whether the card is still valid and whether the transaction would exceed any usage limits set for the card.
3.6. GeldKarte is the electronic purse used by the entire German banking sector and supported by all four German banking associations (cooperative banks, private banks, public sector banks, savings banks).

3.6.1. This kind of backing makes the GeldKarte function a particularly secure and reliable method of payment usable for a variety of operations, in particular for small amounts. The operator of the scheme is the Central Credit Committee, the umbrella organisation of the leading associations in the German banking sector. The issuers (of both the cards themselves and the value on them) are solely credit institutions (including savings banks). The GeldKarte is linked to the holder's personal bank account the microchip being fitted to the card. It can be loaded with up to 200 € per card. As a rule, the money will come either from the cardholder's account by means of online authorisation using a PIN, or against cash (banknotes or coins) for customers without an account (stand-alone or "white" GeldKarte). The value loaded is credited to an e-purse clearing account. Payment by both types of GeldKarte takes place offline and without the use of a PIN. The value of the transaction is transferred from the customer card to the "retailer" (merchant) card within the transaction terminal. The value received is then normally transferred once a day by the retailer to the relevant recording centre for settlement. The details of payment transactions are stored only on the card itself. The settlement systems of the bank only register the current balance of the card. So only the holder knows what the money has been spent on.

3.6.2. The Geldkarte system is, in principle, based on a trilateral contractual structure, but the number of intermediaries involved and the combinations to be considered lead to a much greater number of

contractual relationships. All documentation concerning (1) the issuing bank/cardholder relationship, (2) the retailer/bank relationship and (3) the rights and duties between the banks involved is defined in a general agreement concluded by the banking associations but binding upon all individual banks that are members of those associations.

The standard terms and conditions ("Allgemeine Geschäftsbedingungen") to be used between issuing bank and cardholder specify that, in the event of losing the card, the holder has no protection against loss of value as any finder, thief etc may use the stored value. Thus, the respective clause renders the situation legally comparable to a loss of notes and coins (legal tender). Till now, there are several hotlines allowing cardholders to block reloading in the event of loss.

3.6.3. At the end of 2004, the Regulatory Authority for Telecommunications and Post (RegTP) decided to allocate a specific nationwide telephone number (116 116) for the immediate blocking of electronic authorisations to an association called Sperr e.V. the purpose of which is to foster security in the information society. Allocation by RegTP is solely a decision about the right to use the number. Its implementation and operation of the centralised service are to be organised by the allocee itself. The conditions of allocation require service to begin within 180 calendar days of allocation. The number must be free of charge when dialled within Germany and also fax-enabled in respect of non-discriminatory treatment of persons with speech or hearing handicaps. Access to service must be possible from abroad, too. The number will enable electronic authorisations for credit and other cards, mobile phones, electronic signatures etc to be blocked immediately by a central office. Blocking will be effected by one call only notifying loss or theft (RegTP, 2004).

3.7. Early in 2004, the EC Commission took an action is to analyse the feasibility of a single phone number in the EU for the notification of lost/stolen payment cards since at present, many "blocking numbers" to report lost and stolen cards exist in Europe. Several different numbers often co-exist within the same country as has been the case in Germany, too. This situation does not enhance the efficiency of the notification process and increases the likelihood of misuse. The notification of the loss or theft of a card is very important for consumers, who normally cease to be liable for the losses incurred by the banks after the notification. Prompt notification is equally important for banks, which can take action to stop their losses. Mechanisms for prompt notification should therefore be available.

All EU citizens might benefit from a single "Card Stop" phone number at EU level, which should be easy to remember (a short number or a number with mnemonic value) and should not replace existing systems. Instead, the calls made to this number should be routed to existing schemes/banks for the blocking. The Commission recently established an informal Group of national and international "card stop" service providers and telecommunication companies (Card Stop Europe Group). The works of the Group are still in progress (European Commission, 2004b).

3.8. In the following chapter, some recent development in the field of electronic payments in Germany will be described somewhat more exactly:

3.8.1. Paybox solutions AG discontinued its mobile payment system "paybox" in Germany at the beginning of 2003. The Austrian subsidiary of paybox.net AG was taken over by an Austrian mobile phone operator in the same year and continues doing business there. Paybox is a system for payment via mobile phone on the internet as well as at points of sale. Peer-to-peer payments between paybox users are also possible. In order to be able to participate in the system, the customer has to be registered with paybox (including the direct debit authorisation for the customer account – today exclusively with an Austrian bank) and possess a PIN provided by paybox. Registration with paybox is performed using an SSL-encoded data line. The paybox procedure uses the buyer's mobile phone number. By means of the SIM chip inside the phone, the customer can be identified and communication is performed through a secure channel within the operator's (GSM) mobile network.

3.8.2. The local m-payment procedure Street Cash provided by inatec in Leipzig, Saxony, and integrated into a multipayment platform is based on text messaging and can be operated with all SMS-compliant mobile phones. The scheme allows bills to be paid by SMS. The messages are encoded over

the GSM network and securely dispatched. No personal data of the customer are transmitted during the underlying payment transaction. The money transferred to the merchant is debited to the giro or credit card account that has been indicated by the customer.

3.8.3. A German limited company (NCS mobile payment Bank GmbH) was the first independent mobile phone provider within the EC which was authorised by the Federal Financial Supervisory Authority in Oct. 2004 to operate an E-money business. As an e-money institution, NCS is allowed to offer non-telecommunication goods and services via the mobile phone of customers by way of a system called Crandy. NCS uses traditional payments instruments like direct debits adding a conformation via mobile phone.

3.8.4. PayPal (Europe) Ltd is a private limited company incorporated in the UK. PayPal Inc. (which is a parent company of PayPal (Europe) Ltd) was acquired by eBay in October 2002, and is located in California, USA. PayPal allows any business or consumer with an e-mail address to securely, conveniently and cost-effectively send and receive payments online. Its network builds on the existing financial infrastructure of bank accounts and credit cards to create a global, real-time payment solution. PayPal's service, which lets users send payments for free, can be used from personal computers or web-enabled mobile phones. PayPal (Europe) Ltd. is authorised and regulated by the Financial Services Authority in the United Kingdom as an electronic money institution under the E-money Directive and the UK Financial Services and Markets Act of 2000. This authorisation in one EC member State also allows PayPal (Europe) Ltd. to provide its service in all other EC countries. So, the "European passport" application for PayPal (Europe) Ltd. has been approved for Austria, Belgium, France, the Netherlands and Germany, the Federal Financial Supervisory Authority acting under sec. 53b of the German Banking Act (Hinrichs et al., 2004).

4. Findings: Legal requirements and restrictions relating to the use of electronic and mobile payments in the German public sector

4.1. Although there are different rules for each of the various levels of the German State – Federation, States, regional or local public bodies -, the provisions concerning payment instruments and means of payments are very similar. First of all, national monetary law defines the items which can be qualified as legal tender, i.e. each payee is under an obligation to accept these items (banknotes or coins denominated in €) as final payment of a monetary debt from any payer. Exceptions to this rule focussing on money issued by a central bank are twofold: Either parties of a legal relationship agree that payments may or even have to be made in another way, i.e. by other usual means of payment (like credit transfer, direct debit etc). Or the legislature enacts specific provisions relating to payments by or to public authorities. Then, payments in commercial bank money lead to the same result like payments made by delivering legal tender to the payee. In Germany, nearly every payment made by Federal, State, regional or local public bodies takes place using commercial bank money and, therefore, cannot be accomplished without the active participation of a credit institution. To perform this intermediate activity, the bank must get a licence for this type of "banking business" (sec. 1 [1] 2 no. 9 of the Banking Act). Thus, the beneficiary will get cash only because of his/her contractual relationship with his/her bank.

4.2. German public authorities are allowed to use electronic signatures in several cases instead of hand-written ones. But nevertheless, the laws in force do not permit these authorities to use electronic or even mobile payments whether the payee be another public body, an enterprise or a private person.
There are, however, some developments regarding the use of non-traditional payment instruments and means of payments between private persons or enterprises on the one hand and public authorities on the other one. Several provisions enacted recently in German States, e.g. in Lower Saxony, do no longer restrict those kind of payments to cash or delivery of cheques but provide for new instruments and means, although these will be equally available only under certain conditions and up to a certain limit. In particular, the use of credit cards is not allowed if an obligation resulting from public law (e.g. taxes or charges) has to be fulfilled (Rose, 2004).

Another development is taking place in the field of activities of public enterprises, public utilities or other infrastructure services. In those cases, legal relations between public entities (whether organized

as public law organisations or as private law companies) and their users are guided by private law contracts. Monetary obligations often result in mere micropayments, so the use of cards, in particular the GeldKarte, does not pose major economic or legal problems if the scheme has already been successful in the private sector. E-payments of this kind will get more importance where local authorities (cities or counties) offer cultural, touristic or recreational services to a lot of (local or foreign) customers for few sums of money.

4.3. M-payments in a narrower sense, however, will in the near future hardly be a prominent issue of public authorities, neither as payers nor as payees. Projects like m-parking, m-ticketing etc were not continued after a pilot phase, and moreover, even if these had been successful, there would remain the problem how to apply those schemes to the core of public activities and to bigger sums to be transferred. Although non-traditional payment instruments and means of payments could be given a status similar to cash by way of (Federal) legislation, this would not lead automatically to a substitution of traditional forms since such a grave modification of the legal framework of monetary obligation would work only when the bigger part of the population would accept this change. As long as issues of anonymity, confidentiality and security – to name the most essential ones – will remain at the centre of a critical debate, the number of users of new (alternative) instruments and means will be too small for crossing the threshold to a general electrification of payments.

5. Conclusions

For these reasons, it is hardly surprising that the „Master Plans“ designed by the Federal Government as well as by its State counterparts do not mention the (e- or m-)payments issue in a prominent way. As far as these strategy papers deal with monetary or financial aspect of E-Germany at all, they propose the adaptation of traditional payment instruments and the establishment of platforms to bundle various forms of them (ibi research, 2004). Further steps towards a full electronification of payments or the promotion of m-payments for a broad variety of areas of public interest seem to be far apart. Whether technological developments like “next generations” within the mobile telephony sector will change this conservative attitude remains an open question (Karsch, 2004). From a (EC law as well as national) legal point of view, the core issue will be whether the “creation” of money accepted as final payment of monetary debt although not being legal tender will remain the exclusive domain of banks (credit institutions) or whether the provisions permitting the establishment of specific e-money institutions will be the first sign of a fundamental change adding a third type of money to the existing ones, e.g. central bank and commercial bank money. A German proverb says: “Geld ist nur, was gilt” (There is only valid money or no money at all). So where could the necessary validity of e-money come from? How might the qualities of legal tender (guaranteed by central banks) or of commercial bank money (accepted nearly in the same way as notes and coins because of a strong and effective regulation of the banking sector) be secured when a real object of monetary transfer will no more? As long as there will be no persuasive answer to this question, m-payments must not be a central part of any eGovernment projects.

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