



**RIGA
GRADUATE
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LAW**

“Comparative analysis of EMI licencing and authorisation between the Baltic States”

MASTER’S THESIS

AUTHOR: Angela Martina Christecia Langi
LL.M 2022/2024 year student
Student number M022010

SUPERVISOR: Jaroslaw Beldowski
LL.M

DECLARATION OF HONOUR:

I declare that this thesis is my own work, and that all references to, or quotations from, the work of others are fully and correctly cited.

(Signed)

Research question:

How does the process of obtaining an electronic money institution license differ in Lithuania, Latvia, and Estonia?

What are the legal challenges in authorization process of an electronic money institution in Lithuania, Latvia and Estonia?

ABSTRACT

The EU has a framework in place to regulate electronic money services, primarily governed by the Directive 2009/110/EC (Electronic Money Directive, EMD). This directive lays down the legal framework for the issuance of electronic money and the operation of electronic money institutions within the EU and has to be implemented in national laws of the Member States. The Baltic countries have recently been a “hub” for electronic money institutions (EMI), due to regulatory sandboxes and comprehensive authorization process. However, there is a big discrepancy between the operating EMIs, with Latvia and Estonia having only a few and Lithuania being a leader for licensed EMIs, because of regulatory benefits and more business-driven approach. The thesis focuses on comparing the authorization process for EMIs in the Baltics and legal challenges affecting the authorization process that may arise from external factors, that are derived from practice of already operating EMIs, as well as finding the potential challenges that may arise when the new Payment Service Regulations package from EU comes into force.

Keywords: e-money, PSD3, PSD2, electronic money institution license, EMI license in Baltics.

SUMMARY

This research is aiming to compare the authorization procedures for electronic money institutions (EMIs) among the Baltic states and identifies potential legal issues resulting from outside influences. The study also attempts to examine the possible difficulties that can emerge from the EU's new set of Payment Service Regulations.

In the first section, *introduction*, examines how EMIs have developed in the European Union (EU) and how they have affected the financial services sector. The notion of electronic money—digital currency kept on cards and cell phones, for example—is covered, along with how it has opened the door for creative payment methods. In the expanding electronic money industry, the chapter further emphasises the necessity of rules and safeguards for consumer protection and financial stability. It looks more closely at the problems caused by fraud as well as the growth of electronic payments in the EU.

In the second chapter, the author focuses on the definition and laws governing electronic money, or "e-money," in the European Union. That is to emphasise that e-money needs the appropriate licence and is issued by financial institutions that are subject to regulation. In particular, the author reviews how the EMIs are regulated. That is to focus on the significance of EU directives and regulations such as Directive 2009/110/EC (EMD), Directive (EU) 2015/2366 (PSD2), and SEPA Regulation (EU) No 260/2012. The chapter is summarised with the EU's authorization procedure and licencing criteria for EMIs.

In the third chapter, the author provides an overview of the licensing process for EMIs in Lithuania, Latvia, and Estonia by their respective financial authorities. The aim of this chapter is to review the implementation of EU directives and regulations in each of the Baltic states in accordance with their respective national standards.

In the fourth chapter, the author delves into the analysis of each jurisdiction's framework for EMI licensing and authorization. The regulatory frameworks for financial services, notably in the FinTech industry, are favorable in Lithuania, Latvia, and Estonia. Lithuania is notable for its extensive licensing assessment process and safe payment method. EMI and FinTech companies can find support and cooperation in Latvia, albeit their approval procedures can be more stringent. Leading the way in digital innovation, Estonia offers EMIs and digital enterprises a welcoming environment. In broad terms, the financial services sector has prospects for expansion and innovation in all three of these nations.

Finally, the fifth chapter revealed the legal issues surrounding EMI operations in the Baltic States and their impact on the licensing process. It delves into the legal aspects of EMI operations, covering topics such the necessity for more stringent review during licensing and compliance with AML/CTF laws. Followed by problems with reliance on commercial banks, capital for registration, and licensing regulations are also discussed in this chapter. Also discussed are the variations in the meaning of e-money and the possibility of misunderstandings between EMIs and Payment Institutions (PIs). The chapter finishes by discussing the difficulties of PSD3, the third Payment Services Directive, while simultaneously recognizing PSD3's ability to address existing issues and promote market innovation.

In the conclusion, it finally revealed that Lithuania is the most favorable in regard to the licensing procedure for electronic money institutions in the Baltic states. With extensive permission procedures and assistance from the Bank of Lithuania, Lithuania provides the best environment for EMI licensing and operations. The mechanisms for regulating EMIs in these

states are identical, with only slight changes in documentation requirements. Subsequently, the emerging issues in the world of digital banking, including cybersecurity, consumer protection, data protection, and AML/CTF compliance, regulatory frameworks are constantly changing. These elements could affect the authorization procedure and result in more stringent guidelines and specifications. The location of a company entering the European e-money market is ultimately a crucial strategic option because it affects the authorization procedure and the kinds of operations that are permitted for an EMI.

TABLE OF CONTENTS

Abstract.....	3
Summary.....	4
Table of Contents	6
1. Introduction	7
2. Navigating Electronic money and EMI in EU	10
2.1. Electronic money definition	13
2.2. Electronic Money Institutions	16
2.2.1. Synopsis of EU directives and regulations governing EMIs.....	19
3. National legal frameworks for EMI licensing and authorization in Lithuania, Latvia and Estonia.	25
3.1. Lithuania.....	27
3.2. Latvia	29
3.3. Estonia	32
4. Comparative Analysis of EMI Licensing and Authorization.....	34
4.1. Lithuania’s EMI license and regulatory sandbox	35
4.2. Latvia’s EMI license, Innovation Hub and Regulatory Sandbox	41
4.3. Estonia’s EMIs and digital business environment.....	45
5. The Implications and Legal Issues of the Process of Authorization of the EMI in the Baltics	48
5.1. The legal issues arising from EMI operations among the Baltic States and their impact on licensing process	49
5.2. The potential legal challenges of authorization of EMIs under new EU law in the Baltics	52
6. Conclusion.....	56
Bibliography	59
Primary Sources.....	59
Secondary Sources	61

1. INTRODUCTION

The emergence of electronic money institutions (EMIs) in the European Union (EU) has brought a notable transformation in the financial services industry, namely in the areas of digital transactions and fintech innovation. At its core, electronic money is digital currency that is stored electronically on things like cards, smartphones, and computers. With the advent of electronic money, which came before the formal establishment of electronic money institutions, the groundwork was laid for the development of innovative payment solutions that go beyond the conventional cash-based economies. At its core, electronic money is digital currency that is stored electronically on things like cards, smartphones, and computers.¹

To differentiate itself from traditional currency, electronic money is only available in digital form and is typically issued and managed by licensed institutions, enabling consumers to make cashless payments using money stored on a card, phone, or over the internet.² This type of currency makes it possible to conduct transactions in a seamless and instantaneous manner, providing consumers and businesses alike with convenience and high levels of efficiency. The rise in popularity of electronic money and the requirement for precise regulations and safety measures in the financial industry led to the need to regulate electronic money institutions.

As the usage of electronic money increased, worries about financial stability, consumer protection, and regulatory control became critical. However, electronic payments in the EU have been steadily increasing over the last couple of years, reaching more than €240 trillion in value. New suppliers, enabled by digital technologies, have joined the market, particularly those offering 'open banking' services, which include securely exchanging financial data between banks and financial technology businesses ('FinTechs'). But it led to more sophisticated forms of fraud, putting customers at risk and undermining confidence in the whole financial system.³

Given these obstacles, legislators realised how important it was to establish a strong regulatory framework to control how Electronic Money Institutions operated. Authorities aimed to reduce risks, improve transparency, and promote trust in electronic money systems by formally granting licenses and supervising Electronic Money Institutions.⁴ Regulators also wanted to encourage new ideas and market competition while keeping the financial system safe. The latter made sure that electronic money services could continue to grow. Understanding the

¹ "E-Money Services - Fintech Latvia." Fintech Latvia, April 23, 2023. Available at: <https://fintechlatvia.eu/mi-eni-2/e-money-services/>. Accessed March 30, 2024.

² Finance. "E-Money," n.d. Available at: https://finance.ec.europa.eu/consumer-finance-and-payments/payment-services/e-money_en. Accessed March 30, 2024.

³ Finance. "Financial Data Access and Payments Package," n.d. Available at: https://finance.ec.europa.eu/publications/financial-data-access-and-payments-package_en. Accessed March 30, 2024.

⁴ *Ibid.*

regulatory frameworks that govern the licensing and authorization processes of these institutions is of the utmost importance.⁵ While EU directives do establish a structural framework for regulation, the implementation and interpretation of these directives within the national legal systems of individual member states remains autonomous.

The Baltic countries have recently been a hub for payment institutions and EMIs. Since Latvia, Lithuania and Estonia are all members of the European Union, it is possible that the fundamental concepts related to EMIs may be the same across all Baltic states. Nevertheless, there may be some subtle variations in the manner in which EMIs are currently licensed, supervised, and regulated throughout the region. Even in practice, compared to Latvia and Estonia, Lithuania is a leader of all Baltic States with regard to EMI license issuance and overall operations. As per the latest data, there are 84 EMIs, generating most income. The number of licensed EMIs is higher than registered EMIs, that offer limited financial activities.⁶ Therefore, there must be a reason for such discrepancy in quantity of operating EMIs throughout all the Baltics, either regulatory or business-wise, if Lithuania is chosen as a primary destination for EMI operations.

The purpose of this dissertation is to conduct an in-depth comparative examination of the licensing and authorization processes for electronic money institutions between three Baltic countries, namely Lithuania, Latvia, and Estonia. Further on the thesis focuses on current EMI licensing process differences in Latvia, Lithuania and Estonia, as well as establishes the factors that currently complicate the process of obtaining the EMI license. After the examination of authorization and licensing process is conducted, it is necessary to analyse the available regulatory sandboxes in every country, to determine the benefits of each, consequently finding an answer to why EMIs prefer Lithuania. It is necessary to note that in 2023, the proposal for regulatory amendments of current EU directives governing EMI authorization process and requirements for obtaining the license was introduced⁷, therefore the analysis also is focused on potential challenges that could impact authorization process and operations of the EMI.

The structure of this thesis is as follows. Chapter one includes the analysis of the complex world of e-money and EMIs in the EU. It provides an initial examination of the basic definitions of electronic money and electronic money institutions, establishing the necessary foundation for a deeper look into their respective functions and activities. The chapter also

⁵ *Ibid.*

⁶ European Banking Authority. "Payment Institutions Register," n.d. Available: <https://euclid.eba.europa.eu/register/pir/search>. Accessed on March 1, 2024.

⁷ European Commission - European Commission. "Payment Services: Revised Rules to Improve Consumer Protection and Competition in Electronic Payments," June 28, 2023. Available at: https://ec.europa.eu/commission/presscorner/detail/en/qanda_23_3544. Accessed May 2, 2024.

analyses the legal framework that governs electronic money and electronic money institutions (EMIs) in the European Union, offering a thorough overview of the main rules and regulations that influence the business. Furthermore, it examines the influence of technological progress on the development of electronic money and electronic money institutions (EMIs) in the region. Such an overview explores the fundamental principles and rules that influence the current European Union's policy on electronic payments, in particular, Directive 2009/110/EC (EMD), Directive (EU) 2015/2366 (PSD2), and the SEPA Regulation (EU) No 260/2012. These legal instruments establish the set of rules and regulations that govern the operations of EMIs, outlining their entitlements, responsibilities, and the range of activities they are allowed to engage in. Furthermore, the overview explores the involvement of regulatory bodies, such as the European Banking Authority (EBA) and national competent authorities, in monitoring and ensuring adherence to these directives. Lastly, the subject matter takes in the national legislative frameworks that regulate EMI licensing and authorization in Lithuania, Latvia, and Estonia. Therefore, an examination of these directives and rules illustrates how the overall regulatory structure of the European Union impacts the operations of electronic money institutions. Moreover, it is crucial to evaluate the legal requirements for acquiring a license as an electronic money institution in order to conduct a thorough comparison of regulatory measures. The main elements of the national laws governing the licensing and approval of electronic money institutions in Estonia, Latvia, and Lithuania will be reviewed in order to commence this examination.

The second chapter of the thesis examines the regulatory framework that governs electronic money institutions (EMIs) in the European Union. This study provides a detailed analysis of the procedures involved in acquiring a license or authorization for Electronic Money Institutions (EMIs) in Lithuania, Latvia, and Estonia. In addition, the analysis further examines how these regulatory measures affect the growth and innovation of the fintech business in the region. It also examines the progression of regulations and licensing prerequisites throughout time, emphasising the contributions made by regulatory entities such as the Bank of Lithuania, the Financial and Capital Market Commission in Latvia, and the Financial Supervisory Authority in Estonia. The main goal of this chapter is to offer a thorough comprehension of the regulatory framework that governs Electronic Money Institutions in the Baltic nations and the differences in the evaluation process and laws. In order to accomplish this, the legislative frameworks at both the European Union and state levels will be carefully examined.

The third chapter of the thesis focuses on the examination of legal issues concerning Electronic Money Institution (EMI) licensing, that can arise from various regulatory, operational, and market-related factors in the Baltic region. The following part focuses on

analysis of the challenges and gaps in current regulatory standards set by financial authorities and includes the research of regulatory changes reflecting evolving market conditions, technological advancements, and emerging regulatory priorities.

The thesis is based on doctrinal legal research, focusing on the analysis and interpretation of legal sources such as EMI licensing requirements in Baltic region, applicable case law, EU regulations and directives, and legal commentary to further interpret legal principles and rules. This method of legal research would be primarily used to understand the existing law and how it applies to specific legal issues that may be connected with EMI licensing process. For the purposes of the before mentioned analysis of different legal acts, the comparative legal analysis research method shall be used, including the systematic comparison of EMI licensing legal framework across the Baltic region. Consequently, the similarities and differences will be identified and the reasons behind legal variations will be analysed to evaluate the effectiveness of different legal approaches.

2. NAVIGATING ELECTRONIC MONEY AND EMI IN EU

The history of money traces back to the primitive way humans conducted barter systems in the ancient economy. In the coinage era, the Greek and Roman civilizations facilitated their trade with commodity money.⁸ Throughout the development of trade, fiat currency evolved and became authorised by the government in the modern era. Nowadays, different technological advancements have led to enhanced payment convenience and digital transactions shape how money moves, changing the overall future of financial services and replacing the ways how initially individuals utilized money, replacing the need for coins, change, signatures, and PINs for daily and business transactions. Electronic money (e-money) is a new concept that refers to any monetary value stored electronically, that is typically issued by a regulated financial institution, such as banks, electronic money institutions, or payment service providers, which can be subsequently used to make payments for goods and services or to transfer funds electronically. Unlike physical cash, e-money exists *only* in electronic form and is usually stored on electronic devices or systems, such as prepaid cards, mobile wallets, or online accounts.⁹

Beyond traditional monetary forms, electronic money offers various advantages like instantaneous transactions and enhanced security. It is extremely wide used and accessible

⁸ Meadows, Andrew, and Kirsty Shipton. *Money and Its Uses in the Ancient Greek World*. Oxford University Press, 2001.

⁹ Bloomenthal, Andrew. "What Is Electronic Money or eMoney?" Investopedia, March 6, 2024. Available at: <https://www.investopedia.com/terms/e/electronic-money.asp>. Accessed March 30, 2024.

because users can access their funds from anywhere at any time, as long as they have access to the internet or a mobile network. From chip cards to sophisticated software platforms, electronic money encompasses a diverse array of electronic store-of-value methods that enable seamless payments to entities far beyond the issuer's domain, all without the need for traditional bank account involvement.¹⁰

Due to the fact that electronic money has been developing rapidly in the course of last years, the legal uncertainties may also arise, since due to the technological progress the laws shall also be accordingly amended and developed. The first introduction of licensing rules for Electronic Money Institutions in the European Union may be traced back to the early 2000s. During that period, the regulatory framework mostly centred on national legislation, with each member state of the European Union having its own specific rules and regulations governing the issuance of electronic money and the functioning of Electronic Money Institutions.¹¹

The concept of electronic money has emerged as a cornerstone of modern financial transactions, leading to a revolutionary strategy for regulating financial services. In 2001, the so-called Lamfalussy approach proposed the implementation of a new strategy with the intention of enhancing the regulatory process in the financial services industry in order to make it more efficient and expedient. The Lamfalussy regulatory approach consisted of four institutional levels. Level 1 requires that the European Parliament and Council accept the fundamental laws proposed by the Commission through the customary co-decision procedure. Because this technique is typically difficult and time-consuming, the Lamfalussy study suggests utilizing it exclusively to establish framework concepts. At level 2, the Commission can adopt, adapt, and update technical implementing measures with the assistance of consultative bodies comprised mostly of EU country representatives. This permits the Council and Parliament to focus on the essential political issues, while the technical implementation aspects may be worked out later by the Commission. At level 3, national supervisory committees advise the Commission on level 1 and 2 acts and issue guidelines for rule implementation. At level 4, the report advocates for the Commission to play a stronger role in ensuring national governments correctly enforce EU rules.¹²

¹⁰ European Central Bank. "Electronic Money," July 24, 2023. Available at: [https://www.ecb.europa.eu/stats/money_credit_banking/electronic_money/html/index.en.html#:~:text=Electronic%20money%20\(e%2Dmoney\),involve%20bank%20accounts%20in%20transactions](https://www.ecb.europa.eu/stats/money_credit_banking/electronic_money/html/index.en.html#:~:text=Electronic%20money%20(e%2Dmoney),involve%20bank%20accounts%20in%20transactions). Accessed March 1, 2024.

¹¹ Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (Text with EEA relevance), *OJ L 267*, 10.10.2009, p. 7–17. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32009L0110>. Accessed March 30, 2024.

¹² Finance. "Regulatory Process in Financial Services," n.d. Available at: https://finance.ec.europa.eu/regulation-and-supervision/regulatory-process-financial-services_en. Accessed on March 1, 2024.

In essence, the approach for level 1 basically highlights the basic regulation, which empowers the need for level 2 by which the Commission can put in place a measure and implementation. The structure of this thesis is as follows. When the Treaty of Lisbon went into effect in 2009,¹³ delegated acts, implementing acts, or measures were used to ensure uniform conditions for implementing basic acts.¹⁴ Subsequently, level 3 involves national supervisors advising the Commission on adopting acts and issuing implementation guidelines. At this current level, it created the European Systemic Risk Board (ESRB) to monitor big-picture risks in the financial system.

As part of this overhaul, three new European supervisory authorities (ESAs) were established, namely, The European Banking Authority (EBA); The European Securities and Markets Authority (ESMA); and The European Insurance and Occupational Pensions Authority (EIOPA).¹⁵ As a result, from level 1 all the way up to level 3, the approach to regulating the digital financial system paved the way for its provisional, applicable rules and its governing committees.

In order to streamline and standardise processes between member states and guarantee the safety of consumers, the European Union established rules with the purpose of harmonising the standards for Electronic Money Institutions licensing. The primary directive in this context is Directive 2009/110/EC, also referred to as the Electronic Money Directive (EMD). The directive, implemented in 2009, created a thorough structure for the issuing of digital currency and the functioning of Electronic Money Institutions within the European Union.¹⁶ The document delineated the standards and protocols for acquiring authorization as an Electronic Money Institutions and established the necessary capital prerequisites to guarantee financial stability and safeguard customer interests. It establishes a standardised method for granting licenses across the Union, with the goal of ensuring fair competition and encouraging innovation in the electronic money market.¹⁷ Looking forward, navigating the licensing and authorization for digital transactions in the context of this dissertation provides an overview of how the institutions practice while adhering to the regulatory framework. The regulatory

¹³ Article 290 of the Treaty on the Functioning of the European Union (Consolidated version 2012), *OJ C 326*, 26.10.2012. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012E/TXT>. Accessed March 1, 2024.

¹⁴ *Ibid*, Article 291.

¹⁵ *Ibid*.

¹⁶ Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (Text with EEA relevance), *OJ L 267*, 10.10.2009, p. 7–17. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32009L0110>. Accessed March 1, 2024.

¹⁷ “EU Regulation of Electronic Money—Essentials,” December 5, 2023. Available at: <https://www.lexisnexis.co.uk/legal/guidance/eu-regulation-of-electronic-money-essentials>. Accessed March 25, 2025.

framework was enhanced by subsequent directives, such as Directive (EU) 2015/2366 (known as PSD2) and the SEPA Regulation (EU) No 260/2012. These directives addressed different aspects of electronic payments, including payment services, consumer rights, and the integration of payment systems within the Single Euro Payments Area (SEPA).

2.1. Electronic money definition

As the predecessors of the current Directive 2009/110/EC, Directive 2000/46/EC defines electronic money as the electronic counterparts for coins and banknotes that are kept on electronic devices like computer memory or chip cards. Electronic money exists only in digital form that may be regarded as a monetary value backed by fiat currency and therefore may be also exchanged into a physical and tangible form; however, electronic money is primarily used for electronic transactions.¹⁸

When the Directive 2009/110/EC was introduced, the definition of e-money was not precise, requiring only the money to be stored on an electronic device, therefore technically limiting the definition to only one form of e-money – cards. Currently, in accordance with Article 2(2) of the Directive 2009/110/EC, electronic money is also specified as a money stored 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 and which is accepted by any other natural or legal person, different from the original electronic money issuer.¹⁹

Electronic money is issued by the regulated financial institution, thus, for a company to issue an instrument classified as electronic money, they need to apply for the relevant license, where-money issuers are subject to strict regulatory oversight and must comply with applicable financial regulations, bank rules and strict anti-money laundering (AML) and know-your-customer (KYC) requirements. Regulators ensure that e-money issuers maintain adequate safeguards to protect consumers' funds and ensure the stability of the financial system, not only by obliging the institutions to follow the general regulatory requirements, but also to establish the appropriate technological and organizational means to protect information of the individual,

¹⁸ Directive 2000/46/EC of the European Parliament and of the Council of 18 September 2000 on the taking up, pursuit of and prudential supervision of the business of electronic money institutions, *OJ L 275*, 27.10.2000, p. 39. Available at: <https://eur-lex.europa.eu/eli/dir/2000/46/oj>. Accessed on March 25, 2024.

¹⁹ European Central Bank. “Electronic Money,” July 24, 2023. Available at: https://www.ecb.europa.eu/stats/money_credit_banking/electronic_money/html/index.fi.html. Accessed March 29, 2024.

encrypt the transaction and prevent fraud. The European Central bank categorises electronic money into hardware-based and software-based variants based on the technology used for storing monetary value, as determined by the technology employed for storing monetary value.²⁰

Hardware-based products use personal physical devices, such as chip cards, that are equipped with security features based on hardware. It is also often called a smart card. As an illustration, Smartcards can be categorized based on their purpose and the technology they incorporate. In terms of purpose, there are single-purpose cards, closed-system or limited-purpose cards, and multipurpose cards. Single-purpose cards, like magnetic stripe cards, are tailored for specific transactions such as purchasing telephone calls, accessing public transportation, or using parking facilities, often involving the same entity as the issuer and service provider. Closed-system or limited-purpose cards are commonly used at a restricted set of points of sale within specific locations such as university campuses or football stadiums. Multipurpose cards provide flexibility by accommodating a variety of functions and vendors, offering versatility in usage.²¹ This type of card is typically utilised for public transport systems or for making small purchases from retailers. There is a microchip embedded into these cards that may safely retain monetary value. In order to complete a transaction, the microchip can be touched or waved in close proximity to a card reader. These devices facilitate transactions via readers without requiring real-time network connectivity to a remote server.²²

Software-based products use specialist software that runs on typical personal devices, for example personal computers and tablets. To facilitate the transfer of monetary values, the personal device must normally establish an internet connection with a distant server that manages the usage of purchasing power. Among the many examples of software-based electronic money products, a mobile payment application, such as PayPal or Apple Pay, is an example. Users are able to save their cash digitally, transfer money to other users, and make purchases at participating businesses through the use of these applications, which run on mobile devices such as smartphones and tablets. These devices establish online connections with remote servers to manage the transfer of monetary values.²³ Certain schemes integrate components that combine both hardware and software-based features to optimise functionality.

²⁰ European Central Bank. "Electronic Money," July 24, 2023. Available at: [https://www.ecb.europa.eu/stats/money_credit_banking/electronic_money/html/index.en.html#:~:text=Electronic%20money%20\(e%2Dmoney\),involve%20bank%20accounts%20in%20transactions](https://www.ecb.europa.eu/stats/money_credit_banking/electronic_money/html/index.en.html#:~:text=Electronic%20money%20(e%2Dmoney),involve%20bank%20accounts%20in%20transactions). Accessed March 2, 2024.

²¹ Athanassiou, Phoebus, and Natalia Mas-Guix. "Electronic Money Institutions - Current Trends, Regulatory Issues and Future Prospects." *SSRN Electronic Journal*, 2008. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1000855. Accessed March 2, 2024.

²² *Ibid.*

²³ *Ibid.*

Overall, it is important to note that electronic money has certain characteristics, that makes it distinct from fiat currency, these characteristics imply:

- (1) Electronic money exists only in digital or electronic form. It is not actual cash, like coins or banknotes, but rather a claim against the issuer for the specified amount.
- (2) E-money is typically issued and regulated by financial institutions, such as banks, electronic money institutions, or other payment service providers. These institutions ensure that the funds backing the electronic money are held securely and are available to be accessed by the holders of the funds.
- (3) E-money is a “stored” money, which implies that users can access and spend electronically. The value of e-money is usually denominated in a specific currency, such as euros or dollars, and users can use it to make purchases or transfer funds within the issuer's network or with participating merchants, including the instant availability of conversion of the stored funds for the desired value.
- (4) E-money usually operates on a prepaid basis, meaning that the funds are accordingly loaded onto the electronic devices or accounts of the user before they can make any payments. The money may be used for various payment transactions, including online purchases, in-store payments with contactless technology, peer-to-peer transfers, bill payments, and etc.
- (5) In most cases, e-money systems offer a high degree of interoperability, allowing users to make payments and exchange the funds across different platforms, networks, or jurisdictions instantly, which also enhances the utility and convenience of e-money by enabling transactions between different service providers and payment networks, making the overall concept of e-money extremely attractive to businesses and individuals.²⁴

It clear that the concept of e-money is quite complex, and the definition is relatively broad, since it refers to currency that exists only in electronic form, that can be stored and transacted electronically through various devices in means, instead of usual exchange of fiat currency. It may exist in variety of forms electronically, starting from the bank deposits, prepaid cards to cryptocurrency, that is developed in a certain way and exchanged on special platforms. Technological progress of e-money types and devices it is stored on also shapes the definition over time, therefore, electronic money shall not be limited to every type included in the

²⁴ Kholmirov, Begali. 2023. “The Concept, Importance and Characteristics of Electronic Currency”. *TSUL Legal Report International Electronic Scientific Journal* 3 (1):37-43. Available at: <https://legalreport.tsul.uz/index.php/journal/article/view/103>. Accessed March 2, 2024.

regulatory provisions, but they must be interpreted in accordance with the technological development as well.

2.2. Electronic Money Institutions

Generally, an EMI is a financial institution that has permission to issue electronic money as a digital payment instrument used for transactions. Article 2(1) of the Directive 2009/110/EC defines an EMI as a legal entity authorized to issue e-money.²⁵ It is important to note that Second Electronic Money Directive (EMD2) specifies, that any legal person that has been granted authorisation to issue electronic money may be regarded as an EMI. Thus, credit institutions, as well as other financial and non-financial entities may also deal with e-money and perform the respective financial transactions with it, if they have been licensed accordingly, making the scope of EMIs very extensive.²⁶

Alongside issuing electronic money, electronic money institutions may participate in any of the following activities, including, the provision of payment services as indicated in the PSD2 Directive, precisely, services which enable cash to be placed on a payment account, as well as all the procedures required for maintaining a payment account, services allowing the withdrawal of cash from a payment account, as well as all of the processes required to operate a payment account.²⁷ The scope further extends to execution of different payment transactions (e.g. transfers of funds from a payment account with the user's payment service provider or another payment service provider, direct debits and one-time direct debits, processing payment transactions using a payment card or a similar device, the execution of credit transfers, including standing orders), executing payment transactions with a credit line that covers the funds for a payment service user, issuing payment instruments, money remittance and operation of payment services. What is also important is that business activities other than the issuance of electronic money are also permitted for EMI, if the activities are done in compliance with the applicable EU and national laws of the EMI.²⁸

Financial institutions providing electronic money services often rely on the freedom of establishment provided by Article 49 TFEU to expand their operations across multiple EU countries and access a larger market. Article 49 of the Treaty on the Functioning of the

²⁵ Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC Text with EEA relevance, *OJ L* 267, 10.10.2009, p. 7–17. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32009L0110>. Accessed March 2, 2024.

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Ibid.*, Article 9.

European Union (TFEU) guarantees the freedom of establishment, allowing individuals and companies to establish themselves in any EU member state and to provide services across borders.²⁹ In the light of this, freedom of establishment fosters competition, encourages innovation, and enhances consumer choice in the digital payments market. Ultimately, this enables the Electronic Money institutions to offer its services in other member states without the requirement for individual licenses in each jurisdiction.

The increasing number of digital transactions highlights the relevance of Electronic Money Institutions in facilitating digital finance. The European Union recognises the Electronic Money Institution for the distribution and management of electronic money.³⁰ For example, selling directly, as well as setting up channels for consumers to add money to electronic money goods. Credit Institutions on the other hand, refers to entities which primarily receive deposits.³¹ Notably, based on the 2008 assessment, the Commission suggested that prudential regimes for Electronic Money Institution and Credit Institutions seemed closely similar under Directive 2006/48/EC.³² As of now, the legal framework which regulates the Electronic Money Institution is Directive 2009/110/EC, while Directive 2013/36/EU, known as Capital Requirements Directive (CRD IV), regulates Credit Institutions. Although credit institutions and other types of financial and non-financial institutions can issue electronic money, the regulatory requirements and risk management practices create a distinct landscape for electronic money issuance.³³

²⁹ Article 49 of the Treaty on the Functioning of the European Union (Consolidated version 2012), *OJ C 326*, 26.10.2012. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012E/TXT>. Accessed March 2, 2024.

³⁰ Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC Text with EEA relevance, *OJ L 267*, 10.10.2009, p. 7–17, para 10. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32009L0110>. Accessed March 2, 2024.

³¹ Article 4 of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast) Text with EEA relevance, *OJ L 177*, 30.6.2006, p. 1–200. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32006L0048>. Accessed March 1, 2024.

³² COM (2008) 627 final, proposal for a Directive of the European Parliament and of the Council of on the taking up, pursuit and prudential supervision of the business of electronic money institutions, amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC Text with EEA relevance. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52008PC0627>. Accessed March 1, 2024.

³³ European Central Bank. “Electronic Money,” July 24, 2023. Available at: [https://www.ecb.europa.eu/stats/money_credit_banking/electronic_money/html/index.en.html#:~:text=Electroni,c%20money%20\(e%2Dmoney\),involve%20bank%20accounts%20in%20transactions](https://www.ecb.europa.eu/stats/money_credit_banking/electronic_money/html/index.en.html#:~:text=Electroni,c%20money%20(e%2Dmoney),involve%20bank%20accounts%20in%20transactions). Accessed March 1, 2024.

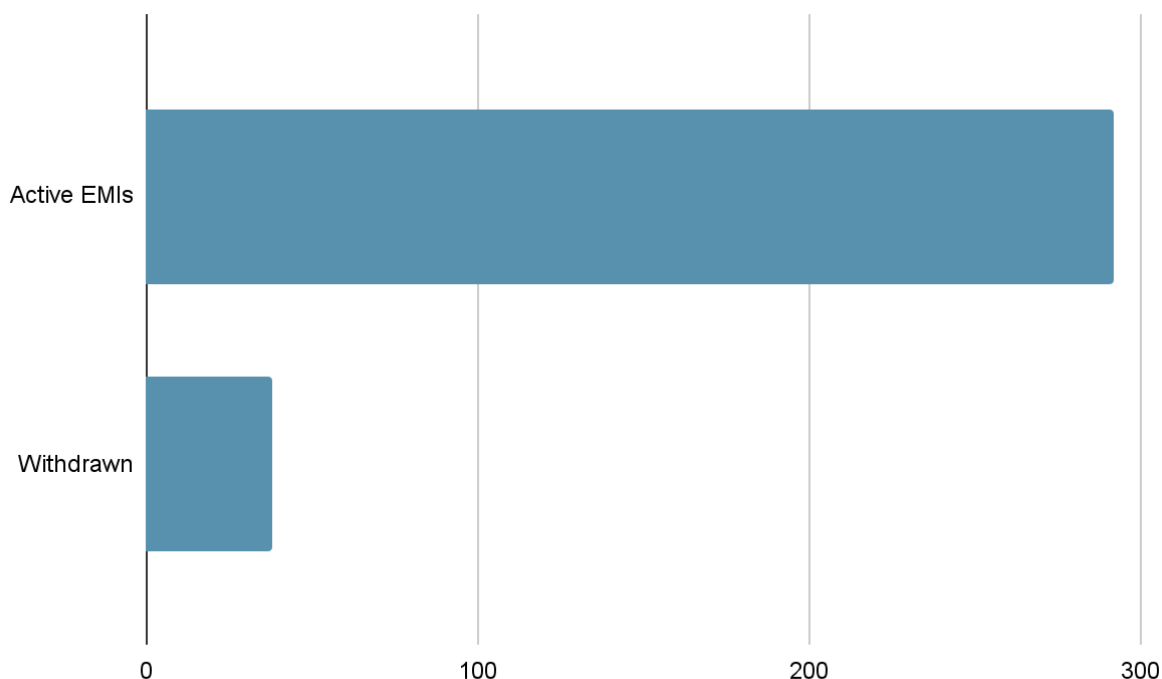


Figure 1. Snapshot of the status of EMIs for the issuing, distribution, and redemption of electronic money.³⁴

As of March 2024, the database that the European Banking Authority maintains suggests that there are currently 292 active electronic money institutions authorised to issue electronic money as pertains to Article 3(4) of Directive 2009/110/EC.³⁵ On the other hand, there have been 38 EMIs that have ceased operations.³⁶ This further demonstrates the significance these institutions have for encouraging financial innovation while keeping the European Single Market accessible while complying with consumer rights under the Treaty on the Functioning of the European Union (TFEU). Both Article 12 and 169 of the TFEU highlight the importance of consumer policy as it shares responsibility between the EU and its member states.³⁷ Ultimately, this mutually beneficial relationship between financial innovation and regulatory vigilance highlights the determination of EU authorities to foster a digital financial ecosystem that is both dynamic and secure.

The landscape for Electronic Money institutions at the EU level is subject to a resilient oversight system that has the purpose of protecting consumers, maintaining the integrity of the market, and ensuring financial stability, respectively. Among the fundamental components of

³⁴ European Banking Authority. “Payment Institutions Register,” n.d. Available at: <https://euclid.eba.europa.eu/register/pir/disclaimer?returnUrl=%2Fpir%2Fsearch>. Accessed March 2, 2024.

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ “Consumer Protection - EUR-Lex,” n.d. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:consumer_protection. Accessed March 1, 2024.

this system are the various pieces of legislation that were adopted by the European Union in order to harmonise norms among member states. These pieces of legislation include Directive 2009/110/EC, Directive (EU) 2015/2366, and SEPA Regulation (EU) No 260/2012. For the purpose of analysing how the landscape of electronic money institutions flows down into the national level, the three Baltic States, which include Lithuania, Latvia, and Estonia, serve as the focal point, because currently, the Baltic States offer a favourable environment for establishing an EMI, not only in terms of business operations simplicity and regulatory sandboxes, but also in terms of obtaining the license.

2.2.1. Synopsis of EU directives and regulations governing EMIs

A number of directives and regulations that support consumer protection, transparency, and the integrity of the financial system have an impact on the regulatory environment surrounding financial services in the European Union (EU). This section offers a concise summary of the rules and regulations that the European Union has established to control organisations that deal with electronic money. To run an electronic money institution, Directive 2009/110/EC (EMD), Directive (EU) 2015/2366 (PSD2), and the SEPA Regulation (EU) No 260/2012 are three pieces of legislation that are essential in regulating different parts of the financial system. Electronic money institutions not only are under strict supervision of financial regulatory authorities of EU Member States, but also must adhere to regulations concerning anti-money laundering and anti-terrorist financing (AML/CTF) due to the nature of their operations involving money, therefore also strong AML/CTF policies and structure, as well as know-your-customer (KYC) performance is one of the requirements to obtain the license.³⁸

In addition, given that the electronic money institution handles people's private information, the institutions must also follow Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (GDPR), in terms of safeguarding the personal and sensitive data of the customers, adhering to the principles of data protection principles outlined in GDPR, such as lawful, fair, and transparent data processing, data minimization, accuracy, and storage limitation. EMIs must ensure that customers have provided informed and unambiguous consent

³⁸ Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC Text with EEA relevance, *OJ L* 267, 10.10.2009, p. 7–17, para 11. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32009L0110>. Accessed March 1, 2024.

for specific processing activities, let customers exercise their rights outlined in the GDPR and report data breaches to the relevant data protection authority without any delay, and to ensure appropriate technical and organisational measures for data transfers and data storing.³⁹

2.2.1.1. Directive 2009/110/EC (EMD)

This section of the chapter details the important part of EU regulatory framework on Electronic Money Institutions that also has shaped the authorization process in EU member states' national legal systems. Critical areas like operations, supervision, and market conduct are the centre of attention in the fight to safeguard the European financial system. The goal of the Directive 2009/110/EC - electronic money directive (EMD) involves the promotion of a single market for electronic money services across the European Union (EU) by outlining the rules controlling the management and operations of electronic money institutions.⁴⁰

Directive 2009/110/EC regulates the overall supervision of the business of electronic money institutions, consequently adopted in response to the rapid development of various pre-paid electronic payment products, intended to create a clear regulatory framework to strengthen the internal market of the EU, at the same time focusing on the EMI supervision on a supranational level, coordinating national provisions to establish a unified approach.⁴¹

EMD shall be applicable to the subject matter related to electronic money institutions (and the entities that fall under the definition of EMIs by national laws as well) and their branches, if located within the EU, even if the headquarters are located outside the EU.⁴² It also applies to other financial institutions, such as the European Central Bank and national central banks, that are a direct supervisory authority of electronic money institutions in EU. Since Directive 2007/64/EC (on payment services in the internal market)⁴³ up until now under

³⁹ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) Text with EEA relevance, *OJ L 119*, 4.5.2016, p. 1–88.

⁴⁰ Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (Text with EEA relevance), *OJ L 267*, 10.10.2009, p. 7–17. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32009L0110>. Accessed April 4, 2024.

⁴¹ *Ibid.*

⁴² *Ibid.*, Article 1 (b).

⁴³ Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (Text with EEA relevance). Available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32007L0064>. Accessed April 4, 2024.

Directive 2015/2366 (on payment services in the internal market),⁴⁴ the Electronic Money Institutions are subjected to prudential requirements under these two legal acts. Ultimately, Directive 2009/110/EC, also known as EMD, introduces reasonable financial regulations to facilitate easy market access. For instance, this regulation specifies the initial capital requirement for Electronic Money Institutions all over the EU. The initial capital requirement to establish an Electronic Money Institution should be a minimum of 350,000 euros, which is notably lower than the 5 million euros required for other financial institutions.^{45,46}

In principle, the EMD attempts to facilitate the development of new, creative, and secure e-money services, offer market access to new enterprises, and promote effective competition among all market players. It modernises EU e-money standards, bringing the prudential framework for e-money institution in line with the PSD's payment institution criteria. It introduces appropriate prudential criteria to make it easier to enter the market. This includes the outline initial capital requirement mentioned in a paragraph above and new rules on calculating own funds.⁴⁷ The institutions covered by the scope of the EMD include banks, e-money institutions, the European Central Bank and national central banks. The activities which e-money institutions are permitted to carry out providing payment services and granting credit related to these payments.⁴⁸

2.2.1.2. Directive (EU) 2015/2366 (PSD2)

In recent years, electronic payments have become prominent in this digitalization era. The more progress the technology makes, the more risk comes with it. Eventually, new

⁴⁴ Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (Text with EEA relevance), *OJ L 337*, 23.12.2015, p. 35–127. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32015L2366>. Accessed April 9, 2024.

⁴⁵ Article 4 of Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (Text with EEA relevance), *OJ L 267*, 10.10.2009, p. 7–17. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32009L0110>. Accessed April 9, 2024.

⁴⁶ Article 12 of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC Text with EEA relevance, *OJ L 176*, 27.6.2013, p. 338–436. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013L0036>. Accessed April 9, 2024.

⁴⁷ Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (Text with EEA relevance), *OJ L 267*, 10.10.2009, p. 7–17. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32009L0110>. Accessed April 9, 2024.

⁴⁸ *Ibid.*

vulnerabilities will emerge as electronic transactions continue to grow in volume. In light of these, the regulatory framework must also be addressed in order to mitigate the risk associated with electronic payments. This section of the chapter details a newer regulation for payment services. Since 2007, the European Union has laid down a framework to separate the category between payment institutions and electronic money institutions.⁴⁹ For instance, payment institutions are limited to the issuance of electronic currency per this directive. In order to provide payment services across the Union, payment institutions are required to comply with a comprehensive and stringent set of conditions, regardless of the specific jurisdiction or location within the EU.⁵⁰ These conditions include capital requirements, governance standards, and operational and security measures to ensure the protection of consumers' funds.

Directive 2007/64/EC (PSD1) serves as the legal foundation for payment services within the European Union which was then repealed by Directive 2015/2366, known as PSD2.⁵¹ Directive (EU) 2015/2366 (PSD2) sets new rules for payment services that highlight licensing regimes, transparency, rights and obligations, and stringent security requirements. In light of licensing regimes, the basic scope laid out in Article 5 on this directive outlines the application process for obtaining authorization as a payment institution within the European Union. However, those who include open banking or third parties for the performance of operational functions are subject to Article 20 in this directive.⁵²

In this harmonised payment market, the provisions in this directive point out the transparency and information requirements for payment service providers. As outlined in Article 49, the information that the payee's payment service provider must provide to the payee immediately after the execution of a payment transaction. It includes a reference that allows the payee to identify the payment transaction, along with any relevant details about the payer and accompanying information.⁵³ This should also include the amount of the payment transaction in the currency available to the payee, and any charges associated with the payment transaction that the payee is required to pay, including a breakdown of these charges if applicable. Thus,

⁴⁹ Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC Text with EEA relevance, *OJ L 337*, 23.12.2015, p. 35–127, para. 26. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32015L2366>. Accessed April 10, 2024.

⁵⁰ Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC Text with EEA relevance, *OJ L 337*, 23.12.2015, p. 35–127. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32015L2366>. Accessed April 10, 2024.

⁵¹ *Ibid.*

⁵² *Ibid.*

⁵³ *Ibid.*

conditions and information requirements for payment services, including charges, must be clearly provided to the payer.⁵⁴

Further, it proposes that transactions involving payment service providers situated outside the European Economic Area (EEA) should be subject to the transparency and information obligations and rights specified in the Directive for payment service providers. The aim is to prevent inconsistencies among Member States' approaches, which could have a negative impact on the goals set in both Article 12 and 169 of the TFEU concerning consumer policy. Subsequently, the directive suggests a stringent security measure. The required data protection and security standards specified in this Directive must be followed by payment service providers including Electronic Money Institutions.

Citing back the level 3 to the Lamfalussy approach, it is worth mentioning that the European Banking Authority (EBA) plays a role in specifying the requirements of common and open communication standards. The role of the European Banking Authority (EBA) is strengthened through this directive. For the purpose of improving the regulatory framework and fostering collaboration among national authorities, the directive suggests improving transparency. For instance, the European Banking Authority is sought to establish and maintain an official registry of approved payment institutions. This registration ensures transparency and facilitates regulatory control by acting as an extensive public database. By this means, collaborating with National authorities to regularly update this registry so that it accurately reflects the current status of authorised payment institutions.⁵⁵

Secondly, the directive suggests the European Banking Authority plays a vital role in mediating disagreements that may arise among national authorities. Aligned with Regulation (EU) No 1093/2010, European Banking Authority is expected to help mediate disputes between national authorities when working together across borders. As well, it should come up with a set of possible rules for working together and sharing data.⁵⁶ In the light of this, providing a platform for dispute resolution, the European Banking Authority promotes consistency and harmonisation in the application of regulatory standards across member nations. Furthermore, the European Banking Authority is mandated to develop regulatory technical standards that encompass a variety of payment service-related subjects. To safeguard the security and integrity of electronic transactions, thus defining standards for robust consumer authentication and secure communication channels.⁵⁷ All payment service providers operating in the European Union are obligated to comply with these criteria. In regard to collaborating with national

⁵⁴ *Ibid.*

⁵⁵ *Ibid*, para 42.

⁵⁶ *Ibid*, para 41.

⁵⁷ *Ibid*, para 93.

authority, the directive also suggests that these standards would enhance communication and collaboration among regulatory organisations through the timely sharing of relevant information and the enhancement of supervisory techniques.

This ensures that the relevant actors, such as payment service providers and regulatory bodies, in the context of those services can communicate securely with one another. This directive thus applies to all account-servicing payment service providers to enable the provision of online payment services such as the Electronic Money Institutions. In addition to that, it also introduces the SEPA scheme through the Regulation (EU) No. 260/2012.⁵⁸

2.2.1.3. SEPA Regulation (EU) No. 260/2012

The persistence of certain legacy payment services in euros in select Member States over the years indicates the demand for direct debit products denominated in euros within the European Union. Since its enactment in 2012, the Single Euro Payments Area (SEPA) Regulation has established the regulations and technical requirements for credit transfers and direct debit transactions in euros within the Single Euro Payments Area. Ultimately, international bank account numbers (IBAN), bank identifier codes (BIC), and a financial messaging standard are now required for all euro transfers.⁵⁹

Regarding direct debits, the regulation mandates that the payer must provide consent to both the payee and the payer's payment service provider, either directly or indirectly via the payee. Additionally, mandates, including modifications or cancellations, are to be stored by the payee or a third party on behalf of the payee.⁶⁰ In light of this, the goal is to further develop common payment services across the Union in order to replace the existing national services that are associated with payments converted to euros. The regulation seeks to improve the efficiency and security of cross-border payments within the eurozone.

⁵⁸ *Ibid*, para 76.

⁵⁹ Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009 Text with EEA relevance, *OJ L 94*, 30.3.2012, p. 22–37.

⁶⁰ Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC Text with EEA relevance, *OJ L 337*, 23.12.2015, p. 35–127, para. 76. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32015L2366>. Accessed April 10, 2024.

3. NATIONAL LEGAL FRAMEWORKS FOR EMI LICENSING AND AUTHORIZATION IN LITHUANIA, LATVIA AND ESTONIA.

Directive 2009/110/EC (EMD) provides a clear view regarding issuance, distribution, and redemption of electronic money. For instance, the issuance of electronic money authorised for electronic money institutions is by means an electronic surrogate for coins and banknotes, which is to be used for making payments, usually of limited amounts.⁶¹ Subsequently, by means of distributing electronic money to customers, electronic money institutions distribute electronic money in a variety of ways, including selling or reselling electronic money products to the general public.⁶² Ultimately, when customers request to redeem their electronic money, electronic money institutions facilitate the process of converting the electronic money into fiat currency or transferring it to another payment instrument, based on the customer's preference.⁶³ In addition to facilitating the redeeming process, EMIs offer services for topping up customers' electronic money products. This allows customers to add funds to their accounts using various methods, like bank transfers, card payments, or other electronic means. Natural persons (individuals) or legal persons (companies) can perform these operations on behalf of the electronic money institutions, following the specific business models and operational requirements.⁶⁴

All these directives are transposable within the scope of national competent authorities. EU directives require adoption by Member States to be implemented into national laws as they are not directly applicable, provided that Member States choose the form and means of achieving the aim of the directive and meet the deadline of the transposition.⁶⁵ In order to ensure uniform application and adherence to EU standards across all member states, Level 4 of the Lamfalussy approach advocates that national competent authorities administer and enforce compliance with transposed directives. In Lithuania, alongside the Law on the Bank of

⁶¹ Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC Text with EEA relevance, *OJ L 267*, 10.10.2009, p. 7–17, para 13. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32009L0110>. Accessed April 4, 2024.

⁶² Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC Text with EEA relevance, *OJ L 267*, 10.10.2009, p. 7–17, para 10. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32009L0110>. Accessed April 4, 2024.

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ “EU Single Market Directives — Incorporation in National Law | EUR-Lex,” n.d. Available at: <https://eur-lex.europa.eu/EN/legal-content/summary/eu-single-market-directives-incorporation-in-national-law.html>. Accessed April 4, 2024.

Lithuania; Law on Electronic Money and Electronic Money Institutions; and the Law on Payments, it paved its way into the national law in regard to issuing licenses to electronic money and payment institutions. As for Latvia, the directive applies under Latvia’s Law on Payment Services and Electronic Money (*Maksājumu pakalpojumu un elektroniskās naudas likums*). As for Estonia, the directive applies under Estonia’s Financial Supervision Act (*Finantsinspeksiooni seadus*).

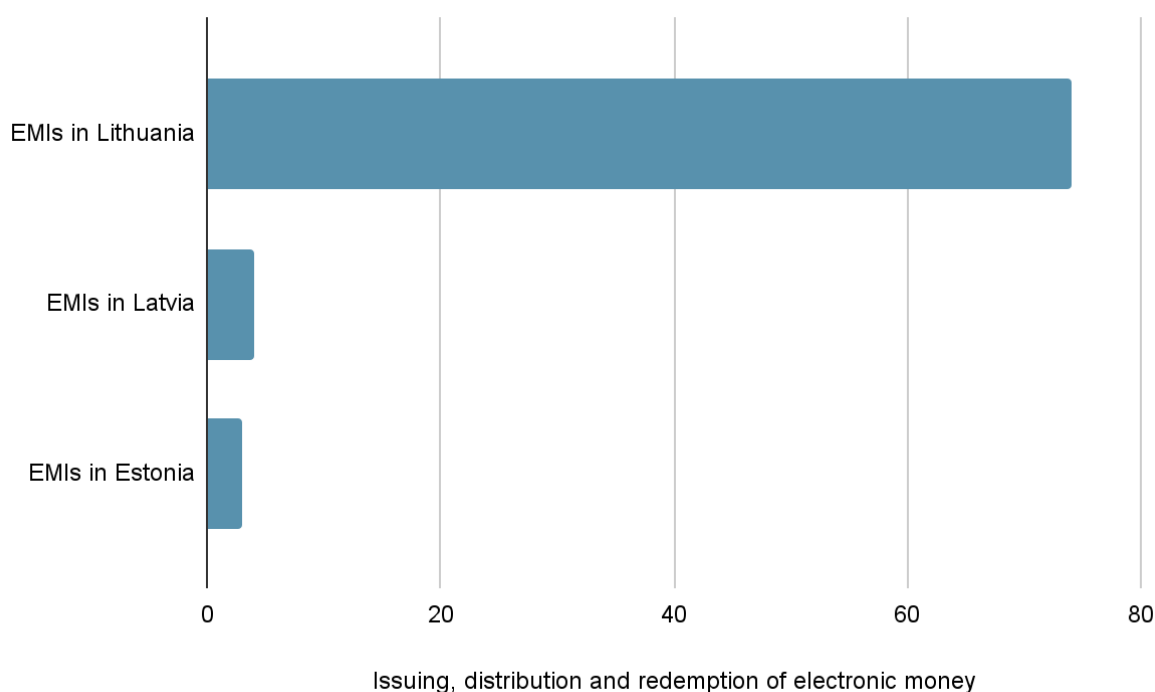


Figure 2. Snapshot of active EMIs in the Baltic States that are authorised for the issuing, distribution, and redemption of electronic money.⁶⁶

There is a gap in the number of Electronic Money Institutions between these three Baltic States. Lithuania boasts a total of 74 active and authorised institutions engaged in the issuance, distribution, and redemption of electronic money. On the other hand, Latvia and Estonia, despite the fact that they are still an active participant in the digital banking sector, appear to have a more limited representation, as there are only four Latvian and three Estonian Electronic Money Institutions that are authorised for the issuing, distribution, and redemption of electronic money. For the purpose of further comparative analysis of legal and business environment of EMI licensing, this chapter examines the applicable laws and regulations to electronic money,

⁶⁶ European Banking Authority. “Payment Institutions Register,” n.d. Available: <https://euclid.eba.europa.eu/register/pir/disclaimer?returnUrl=%2Fpir%2Fsearch>. Accessed March 1, 2024.

EMI establishment and licensing, as well as necessary procedures laid down in laws of each Baltic State, to establish similarities and differences that would be used for comparative analysis.

3.1. Lithuania

EMIs operations and licensing in Lithuania is regulated by the Bank of Lithuania and Republic of Lithuania Law on Electronic Money and Electronic Money Institutions. Electronic money institution is defined in the Law on Electronic Money and Electronic Money Institutions as a public limited liability company or a private limited liability company that has been issued an electronic money institution license or an electronic money institution license for restricted activities entitling it to issue electronic money in the Republic of Lithuania and/or other Member States.⁶⁷ To establish an EMI in Lithuania a minimum capital is required, that shall be no less than EUR 350 000. This requirement however does not apply if EMI operated with restricted activities. The preceding six months average outstanding electronic money of the EMI for which a payment institution license for restricted activities has been issued (operations may be carried out only in Republic of Lithuania) may not exceed EUR 900,000 per month, with the exception of the case specified in paragraph 7 of Article 12 of the Law on Electronic Money and Electronic Money Institutions. If an institution exceeds the limit, they must apply to the Bank of Lithuania for an EMI license for unlimited activity within 30 days.⁶⁸

In Lithuania, the acceptance of money from clients in the electronic domain and holding it in payment accounts for an extended period of time, as well as issuing electronic money and then reclaiming it, can only be done by credit institutions, electronic money institutions (EMIs), and some other institutions - electronic money issuers.⁶⁹ The EMI license in the Republic of Lithuania authorizes the institution to issue electronic money and offer the payment services defined to in Article 5 of the Payments Law. For example, placing and withdrawals of cash onto/from the account in the EMI, execution of payment transactions, execution of payment transactions where the funds are covered by a credit line for a payment service user, carrying out of payment transactions in which the payer's permission to execute a payment transaction is given via any telecommunications terminal equipment, digital or IT device, and the payment

⁶⁷ Lietuvos Respublikos elektroninių pinigų ir elektroninių pinigų įstaigų įstatymas (The Republic of Lithuania Law on Electronic Money and Electronic Money Institutions) (22 December 2011). Available at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/573b9080166911eaaad00dac7ebcb2435?jfwid=j4ag32ex>. Accessed April 4, 2024.

⁶⁸ *Ibid*, Article 12 (7).

⁶⁹ Lietuvos Bankas. "Authorisation of Electronic Money Institutions". Available at: <https://www.lb.lt/en/authorisation-of-electronic-money-institutions#ex-1-1>. Accessed 29 March, 2024.

is made to the telecommunications network or IT system operator, who acts solely as an intermediary between the supplier of goods or services and the payment service user⁷⁰, as specified in the license provided by the competent authorities to the electronic money institution. On the other hand, the activities of Lithuanian EMI are not limited to e-money issuance and payment services provisions. EMIs can as well grant credits related to payment services, provide services closely related to e-money (e.g. currency exchange), pursue other legitimate commercial activities stated in the law.⁷¹ The electronic money institution license issued in Lithuania will also be valid in other EU Member States, adhering to the EU unified market principle.⁷²

To obtain the license a potential EMI must undergo the process of authorisation by the Bank of Lithuania, consisting of certain sequence of actions.⁷³ The first part of getting the license involves the business model presentation to the Bank and overall risk assessment of the future EMI, whereas the authorities evaluate the proposed activities in accordance with the regulatory requirements. The second step is the document submission, that includes the list of the documentation provided in Article 13 of Law on Electronic Money and Electronic Money Institutions, that include the incorporation documents of the company, business plan, corporate governance structure, AML/CTF measures that would be undertaken and the proof of applicable qualifications, good reputation and experience of the board members and stakeholders.⁷⁴ The next step is the assessment of the submitted package of the documents to the Bank of Lithuania, whereas the assessment also involves the detailed check of the corporate governance and compliance measures, that merely influences the decision-making process of the Bank to issue or decline the license.⁷⁵ Article 13 (4) of the Law on Electronic Money and Electronic Money Institutions specifically outlines that the license shall be issued only to that legal entity, that not only has submitted all of the required documents, but also has put in place the comprehensive compliance and management procedures, that are tailored to the complexity

⁷⁰ Lietuvos Respublikos mokėjimų įstatymas (The Republic of Lithuania Law on Payments) (28 October 1999). Available at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/Off5fa2098fb11e58856802eb9fdffa1?jfwid=j1u6bxqcd>. Accessed April 4, 2024.

⁷¹ *Ibid*, Article 12.

⁷² Lietuvos Respublikos elektroninių pinigų ir elektroninių pinigų įstaigų įstatymas (The Republic of Lithuania Law on Electronic Money and Electronic Money Institutions) (22 December 2011). Available at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/573b9080166911eaad00dac7ebcb2435?jfwid=j4ag32ex>. Accessed March 29, 2024.

⁷³ Lietuvos Bankas. “Authorisation of Electronic Money Institutions”. Available at: <https://www.lb.lt/en/authorisation-of-electronic-money-institutions>. Accessed March 29, 2024.

⁷⁴ Article 13 of Lietuvos Respublikos elektroninių pinigų ir elektroninių pinigų įstaigų įstatymas (The Republic of Lithuania Law on Electronic Money and Electronic Money Institutions) (22 December 2011). Available at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/573b9080166911eaad00dac7ebcb2435?jfwid=j4ag32ex>. Accessed April 4, 2024.

⁷⁵ *Ibid*.

of the functions of the EMI.⁷⁶ It is also necessary to understand that the application for license and overall operations of an EMI shall also be compliant with Civil Code of the Republic of Lithuania, the Law on Payments, legal acts of the European Union and of the competent authority - Bank of Lithuania and any of its instruments of incorporation. The Law on Financial Institutions, the Law of the Republic of Lithuania on Companies and other laws shall apply to an electronic money institution to the extent when the Law on Electronic Money and Electronic Money Institutions does not provide otherwise.⁷⁷

Following examination of the application, the appropriate authorities will decide whether to provide an electronic money institution license or not. Upon approval, the institution will be able to operate as a regulated entity in the electronic money market, providing services to clients, provided it remains compliant under national measures, PSD2, EMD, and the latest anti-money laundering measures. However, if the application is denied, the applicant may have the opportunity to address any deficiencies and reapply for a license in the future, undergoing the evaluation process all over again.⁷⁸

To conclude, the overall process of getting an EMI license in Lithuania takes up to three months, as stipulated in the law.⁷⁹ The process is relatively simple and the potential EMIs are not subject to any disproportionate regulatory burden or requirements. In general, if all of the documents are submitted correctly, the requirement of the minimum capital is fulfilled and the compliance measures are in place, after the evaluation – the EMI license may be issued and the EMI can freely operate in EU, if not applied for the restricted license. The overall statistics of current EMIs in Lithuania shows, that Lithuania may be regarded as Baltic hub for EMIs and regulators are eager to issue licenses and attract funds to the country.

3.2. Latvia

The authorities that oversee the process and supervision of the EMIs in Latvia are Financial and Capital Market Commission of the Republic of Latvia (FCMC), which in conjunction with Latvijas Banka is the primary financial regulatory authority in the country that outlines the licensing process EMIs issue and takes a decision on license issuing within three months after receiving all the documentation required. Payment regulations in Europe allow local EMIs to operate across the EU after obtaining a license in Latvia.

⁷⁶ *Ibid*, Article 13 (4).

⁷⁷ *Ibid*, Article 11 (4).

⁷⁸ *Ibid*, Article 15.

⁷⁹ Lietuvos Bankas. “Authorisation of Electronic Money Institutions”. Available at: <https://www.lb.lt/en/authorisation-of-electronic-money-institutions>. Accessed March 29, 2024.

According to Latvia's legislation, electronic money (e-money) is defined as digitally stored monetary value stored in smart cards or computer memory. It is issued upon receiving funds from the holder of the electronic money for the purpose of payment, and it represents a claim on the issuer. As payment, natural or legal entities other than the electronic money issuer accept this form of currency.⁸⁰ The provisions regarding the Licensing and Registration of Electronic Money Institutions as per outline the prerequisites for institutions to commence operations in Latvia. According to Section 4(1), institutions are mandated to obtain a license from the FCMC before initiating operations, unless the electronic money institution does not need a license of FCMC which pertains to Sections 5.⁸¹ The license granted for EMI's in Latvia allows companies to provide payment services, including money remittance, issue of payment instrument and maximum monthly payments of 3 000 000 EUR, however, there are some limitations with e-money issuance, for example, the maximum amount of e-money in a circulation shall not exceed 2 000 000 EUR and shall be in a closed loop only.⁸²

Whereas an institution may not require a license from FCMC if they fall under certain specified categories or meet specific criteria. In this case, the electronic money institution must ensure that the average amount of electronic currency in circulation does not exceed two million euros (restricted operations license, that is valid only in the Republic of Latvia).⁸³ Once licensed, institutions are bound to conduct activities specified in their EMI license, however, they may engage into additional business activities, that do not concern e-money. The Law on Payment Services and Electronic Money specifically defines the three types of legal persons that may be regarded as an electronic money institution, namely a commercial company which has received the license for the issuing of electronic money, a legal person that does not need to receive the license for the issuing of electronic money, as well as branch of a foreign (non-Member State) electronic money institution that has gained a license for the issuance, distribution, and redemption of electronic money in Latvia.⁸⁴

⁸⁰ Section 1(2)(2) Latvijas Republikas Maksājumu pakalpojumu un elektroniskās naudas likums (The Republic of Latvia Law on Payment Services and Electronic Money) (17 March 2011). Available at: <https://likumi.lv/ta/id/206634-maksajumu-pakalpojumu-un-elektroniskas-naudas-likums>. Accessed April 1, 2024.

⁸¹ Section 5 Latvijas Republikas Maksājumu pakalpojumu un elektroniskās naudas likums (The Republic of Latvia Law on Payment Services and Electronic Money) (17 March 2011). Available at: <https://likumi.lv/ta/id/206634-maksajumu-pakalpojumu-un-elektroniskas-naudas-likums>. Accessed April 1, 2024.

⁸² *Ibid*, Section 5(1).

⁸³ *Ibid*, Section 5(1)(10).

⁸⁴ Section 1(2)(1) Latvijas Republikas Maksājumu pakalpojumu un elektroniskās naudas likums (The Republic of Latvia Law on Payment Services and Electronic Money) (17 March 2011). Available at: <https://likumi.lv/ta/id/206634-maksajumu-pakalpojumu-un-elektroniskas-naudas-likums>. Accessed April 1, 2024.

The overall licensing process seems relatively simple at the first glance, however in practice – Latvia’s regulatory authorities request a variety of documents to be submitted. The process to obtain the license may be divided into four primary steps, namely: (1) Preparation to submit the application, which includes the respective meeting and presentation of the idea of the EMI to regulators, as well as relevant documentation related to stakeholders, origin of funds, regions of operations and prospective compliance matters. During this stage the regulators also give their opinion and advice on whether the EMIs projected activities meet the goals of the regulators; (2) Submission of application for the license, adhering to principles of the Law on Payment Services and Electronic Money, as well as FCMC regulations⁸⁵, that include standards on requirements and documents for submission, such as business plan and commercial activity plan for the future three years, information about internal technological systems, organizational structure and risk assessment; (3) Assessment of the application is a third step, where Latvijas Banka assesses the application's substance and allows the applicant to follow the process, if needed, additional clarifications may be asked; (4) Authorisation receipt, where Latvijas Banka completes the application review and makes a decision of refusal or to give authorization.⁸⁶

The capital requirements also are in accordance with the EU Directives, which include the provision of own funds of at least of 350 000 EUR *on the day of receiving the license*, as provided in the Section 12 of the Law. Qualification requirements for granting an electronic money license for institution include not only having a minimum initial capital specified in the EMD, but as well as Section 35 of Latvia's Law on Payment Services and Electronic Money.⁸⁷ That requirement stipulates that an EMI should guarantee that its own funds are consistently higher than or equivalent to the own funds’ requirement calculated by the regulators.⁸⁸

The Law on Payment Services and Electronic Money sets out the list of documents to be submitted. To receive a license in Latvia, an applicant shall provide the business plan and description of commercial activities, including the payment emission plan. The applicant shall also present a risk assessment and that the future EMI has implemented an internal control system, consisting of the respective AML/CTF measures, system management internal control and measures taken for dealing with sensitive data, quality and security controls, that will be

⁸⁵ Latvijas Bankas noteikumi (Regulations of the Bank of Latvia): Latvijas Bankas noteikumi Nr. 270, Latvijas Vēstnesis.

⁸⁶ Latvijas Banka. “Licensed Electronic Money Institution,” n.d. Available at: <https://www.bank.lv/en/operational-areas/licensing/electronic-money-institutions/licensed-electronic-money-institution>. Accessed March 30, 2024.

⁸⁷ *Ibid.*

⁸⁸ Section 12 and 35 Latvijas Republikas Maksājumu pakalpojumu un elektroniskās naudas likums (The Republic of Latvia Law on Payment Services and Electronic Money) (17 March 2011). Available at: <https://likumi.lv/ta/id/206634-maksajumu-pakalpojumu-un-elektroniskas-naudas-likums>. Accessed March 30, 2024.

further checked by the regulators.⁸⁹ Section 20 of the Law outlines the requirements for key roles in the institution, including the chairperson and members of the management board and council.⁹⁰ These individuals must possess adequate education and experience in managing a payment institution to make significant decisions on behalf of the institution. Additionally, individuals involved in the management, as well as shareholders holding 10% or more of the share capital or voting rights, must have a good reputation and a clean criminal record.⁹¹

It is important to note, that in Latvia, the management board and shareholders of an EMI are duly checked by the regulators upon application. Pursuant to the application evaluation, the regulatory authorities will check the commercial activity of the applicants, the origin of their funds and operations with the funds, paying careful attention to applicant identities.⁹² These requirements are put in place to ensure that those in key roles have the necessary qualifications and integrity to make sound decisions for the institution. This contributes to preserving the stability of the financial system in Latvia.

3.3. Estonia

The Estonian Financial Supervision Authority, or *Finantsinspektioon*, is responsible for supervising a wide variety of financial institutions that operate in Estonia. Just like any other financial supervisory, the mission of this organisation is to protect the financial system and guarantee that all parts of the financial industry are operating in accordance with regulatory standards. Given the different functions of financial institutions within the financial ecosystem, they are subject to rules that are particular to what they do. That being said, the *Finantsinspektioon* oversees a wide range of financial institutions and markets, including banks, insurance companies, investment firms, investment and pension funds, payment institutions, and, of course, electronic money institutions.⁹³ According to Estonia's legislation on e-money and EMIs - The Payment Institutions and E-money Institutions Act (further referred to as "the Act"), electronic money is defined as a form of currency that is kept electronically on a device or medium and represents a claim for a certain amount of money against the entity that issued

⁸⁹ Section 11 Latvijas Republikas Maksājumu pakalpojumu un elektroniskās naudas likums (The Republic of Latvia Law on Payment Services and Electronic Money) (17 March 2011). Available at: <https://likumi.lv/ta/id/206634-maksajumu-pakalpojumu-un-elektroniskas-naudas-likums>. Accessed March 30, 2024.

⁹⁰ *Ibid*, Section 20.

⁹¹ *Ibid*, Section 21.

⁹² *Ibid*.

⁹³ "Estonian Financial Supervision and Resolution Authority | FSA," n.d. Available at: <https://www.fi.ee/en/estonian-financial-supervision-and-resolution-authority>. Accessed March 22, 2024.

it.⁹⁴ The “entity” in question shall be understood as registered and licensed entity in accordance with Estonian laws to issue electronic money.⁹⁵

Estonian laws permit the following legal forms for the EMI: an EMI may be either public or private limited corporation whose primary operation is the issuance of e-money under its name.⁹⁶ The Payment Institutions and E-money Institutions Act allows an EMI, holding a license issued in Estonia to engage in various activities, pursuant to e-money issuance, such as - provide payment services, granting loans for payment services if conditions, offering ancillary services related to e-money or payment services, operating payment systems, other activities not related to e-money unless otherwise specified by law.⁹⁷ Section 14 (3) of the respective Act stipulates as that the license for issuing e-money shall be issued to a company founded in Estonia, requiring that EMI holding Estonia’s license shall be firstly registered in Estonia’s register of enterprises and have its principal place of business in Estonia.⁹⁸ The share capital of an e-money institution in accordance with the Act is 350 000 EUR, which also matches the standardized requirement under the Directive 2009/110/EC.⁹⁹

To apply for an operating EMI license in Estonia, the applicant is required to submit a written application to *Finantsinspeksioon*, together with the supplementary information necessary under the Payment Institutions and E-money Institutions.¹⁰⁰ In order to apply for the EMI license, an entity registered in Estonia is required to submit the following documents: incorporation documents of the entity, a proof of the existing share capital or to be paid share capital, an action plan regarding the planned e-money service provision, a business plan, accounting data, identification information on the applicant and any shareholders, certification of their education and conformity for the position, technical and organizational measures for security and technical description of functioning payment system (prior approved and analysed by Estonian Bank), information on auditors and other documents, indicated in the law.¹⁰¹ Compared to other Baltic countries, as previously mentioned, the regulatory authorities expect the EMI, willing to get an EMI license in Estonia to also present a legitimate proof of physical

⁹⁴ Makseasutuste ja e-raha asutuste seadus I (The Republic of Estonia’s Payment Institutions and E-money Institutions Act) (17 December 2009). Available at: <https://www.riigiteataja.ee/akt/107122017003>. Accessed March 22, 2024.

⁹⁵ *Ibid*, § 14 (1)

⁹⁶ *Ibid*, § 7 (1).

⁹⁷ *Ibid*, § 7.

⁹⁸ *Ibid*, § 14.

⁹⁹ *Ibid*, § 64.

¹⁰⁰ “Operating Licenses for Payment Institutions and E-Money Institutions | FSA,” n.d. Available at: <https://www.fi.ee/en/payment-and-e-money-services/applying-operating-licence-payment-services/operating-licences-payment-institutions-and-e-money-institutions>. Accessed on March 30, 2024.

¹⁰¹ § 15 Makseasutuste ja e-raha asutuste seadus I (The Republic of Estonia Payment Institutions and E-money Institutions Act) (17 December 2009). Available at: <https://www.riigiteataja.ee/akt/107122017003>. Accessed March 14, 2024.

base and operational setup in the country of application. This includes having an actual physical office, skilled employees, and business management in place in Estonia.¹⁰² Therefore, in the process to obtain the license in Estonia not only the careful evaluation of the submitted application and documents is performed, but as well additional check on the physical presence of the EMI is one of the legal requirements for successful operations of an EMI.

After the document submission the *Finantsinspektion* decides on whether the information provided in the documents is in accordance with the Law. Before making a decision the *Finantsinspektion* may conduct on-site inspections, order the performance of an audit, consult state databases and registers to verify the information provided.¹⁰³ The refusal of the EMI license can be granted under the following conditions: the requirements of the legislation are not met, the funding of the EMI is not legitimate and the proof of it cannot be provided, the applicants do not have enough experience and funds to ensure the operations of EMI, the business plan submitted looks like the operations are planned in another Member State, the applicant and other indicated persons have connections to criminal proceeds, AML/TF, internal rules are not enough to comply with the set regulatory standards.¹⁰⁴

4. COMPARATIVE ANALYSIS OF EMI LICENSING AND AUTHORIZATION

The national legal framework for licensing and authorization for an electronic money institution derives from the European Union unified legal framework. It is said that Directive 2009/110/EC (EMD), Directive (EU) 2015/2366 (PSD2), and SEPA Regulation (EU) No. 260/2012 had to be transposed into the Member States' national laws.

Even though the laws governing electronic money institutions transferred to member states are similar, the three Baltic states differ in several ways. Although the process at the first glance looks understandable and similar, considering the incorporated rules from the EU Directives (e.g. capital requirements of 350 000 EUR, certain operations that are allowed or limited), there are distinctions that include the way regulatory frameworks are established, the infrastructure that facilitates financial services, the functioning of the market, and country-

¹⁰² Capital, Buckingham. "Procedure to Obtain the Payment Institution and E-Money License Estonia/EMI License in Estonia." Buckingham Capital, March 14, 2022. <https://www.buckinghamcapitalconsulting.com/post/2019/08/06/how-to-apply-for-payment-institution-or-electronic-money-institution-emi-license-in-eston>. Accessed April 11, 2024.

¹⁰³ § 17 Makseasutuste ja e-raha asutuste seadus1 (The Republic of Estonia Payment Institutions and E-money Institutions Act) (17 December 2009). Available at: <https://www.riigiteataja.ee/akt/107122017003>. Accessed April 6, 2024.

¹⁰⁴ § 19 Makseasutuste ja e-raha asutuste seadus1 (The Republic of Estonia Payment Institutions and E-money Institutions Act) (17 December 2009). Available at: <https://www.riigiteataja.ee/akt/107122017003>. Accessed April 6, 2024.

specific factors, such as compliance reputation and the approach to innovative solutions. This chapter presents a comparative analysis of the licensing and authorization processes governing electronic money institutions in the Baltic States, including the analysis of major differences in authorization process, as well as available “regulatory sandboxes” that may help in obtaining the license and maintaining further operations, offering favourable legislative conditions for new players of financial market, to establish the potential problematic aspects in EMI licensing and define existing complications in legal and business sides.

4.1. Lithuania’s EMI license and regulatory sandbox

The Law on the Bank of Lithuania in Lithuania specifies the financial institutions that are subject to their supervision. In light of this, electronic money institutions are included among the supervised financial market participants.¹⁰⁵ One of the Bank of Lithuania's strategic orientations for 2022-2025 is to provide a favourable regulatory and supervisory environment for the supply of financial services, as well as to promote financial sector innovations. The Bank of Lithuania, in collaboration with institutions from other countries, intends to establish Lithuania as the Nordic and Baltic financial technology hub.¹⁰⁶

With the validity of EMI license in Lithuania, which is valid in the issuing member state as well as in other EU member states,¹⁰⁷ organisations are authorised to issue electronic money and offer the payment services described in the license and engage in other activities in EU. This principle is also referred to as “passporting rights” that allows the EMI licensed in one EU member state to typically operate and conduct business across the EU under passporting rights, which allow them to provide services in other member states without needing separate authorizations and licenses.¹⁰⁸ Since Lithuanian EMIs fall under the following principles, it facilitates cross-border operations and promotes competition and innovation in the payments industry, making Lithuania as an attractive jurisdiction for establishing an EMI, due to comparatively lower business establishment costs than in other EU countries, at the same time offering the possibility to operate all over the EU.

¹⁰⁵ Article 42 (1) Lietuvos Respublikos elektroninių pinigų ir elektroninių pinigų įstaigų įstatymas (The Republic of Lithuania Law on Electronic Money and Electronic Money Institutions) (22 December 2011). Available at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/573b9080166911eaad00dac7ebcb2435?jfwid=j4ag32ex>. Accessed April 4, 2024.

¹⁰⁶ Lietuvos Bankas. “Mission, Vision, Values More.” Available at: <https://www.lb.lt/en/mission-vision-values#ex-1-3>. Accessed April 4, 2024.

¹⁰⁷ Article 49 of the Treaty on the Functioning of the European Union (Consolidated version 2012), *OJ C 326*, 26.10.2012. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012E/TXT>. Accessed April 4, 2024.

¹⁰⁸ “Understanding Equivalence and the Single Passport in Financial Services: Third-Country Access to the Single Market | Think Tank | European Parliament,” n.d. Available at: [https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI\(2017\)599267](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2017)599267). Accessed April 4, 2024.

Ranking top 10 on the Global Fintech Index,¹⁰⁹ to simplify the process of operating an EMI and entering the market, Lithuania has adopted the regulatory sandbox for new financial technology companies to “test” the regulatory environment. The eligibility criteria for participating in the regulatory sandbox are as follows: (i) genuine innovation; (ii) consumer benefit; (iii) need for testing in a live environment; (vi) readiness for testing; (v) ambition to provide financial services in Lithuania.¹¹⁰ According to the criteria, the meaning of genuine innovation refers to whether the financial innovation is new to the Lithuania’s financial market. It emphasises the potential positive impact that the proposed financial innovation could have on the Lithuanian market, in this case the FinTech ecosystem.¹¹¹ Since 2018, the Bank of Lithuania's regulatory sandbox has provided a structured framework for financial market participants to operate within a *controlled environment*.¹¹² That being said, this regulatory sandbox provides a controlled environment that is secure for financial institutions, entrepreneurs, and other market participants to test new products, services, or business models without the full weight of regulatory constraints. Through the term "new products," the framework delineates financial innovations that are specifically designed for the purpose of testing novel and untested financial services, products, or business models within the market environment of Lithuania, which also may include new EMI providers.¹¹³

The national licensing requirements discussed in point 3.1. of Chapter 3 of the thesis also are not overly complicated from legal perspective. Lithuanian EMI license requirements stipulated in the law are almost the same as in Latvia and Estonia, which include firstly the establishment a public limited company or a private limited company to obtain the license, with registered office in the Republic of Lithuania.¹¹⁴ However, compared to Estonia, Lithuania by the law requires *only* registered office (also referred to as “legal address” for correspondence) for the company applying for the license, therefore, the EMI may be established without having

¹⁰⁹ Findexable. “The Global Fintech Index 2020,” 2019. Available at: https://findexable.com/wp-content/uploads/2019/12/Findexable_Global-Fintech-Rankings-2020exSFA.pdf. Accessed April 4, 2024.

¹¹⁰ Lietuvos Bankas. “Regulatory Sandbox,” 2020. Available at: <https://www.lb.lt/en/regulatory-sandbox>. Accessed March 24, 2024.

¹¹¹ Paragraph 11 of The Regulatory Sandbox Framework of the Bank of Lithuania (19 September 2018). Available at: https://www.lb.lt/uploads/documents/files/EN/our-functions/supervision-of-financial-institutions/sandbox/03-166_2018%2009%2019_EN.pdf. Accessed March 24, 2024.

¹¹² *Ibid.*

¹¹³ Paragraph 5 of The Regulatory Sandbox Framework of the Bank of Lithuania (19 September 2018). Available at: https://www.lb.lt/uploads/documents/files/EN/our-functions/supervision-of-financial-institutions/sandbox/03-166_2018%2009%2019_EN.pdf. Accessed March 24, 2024.

¹¹⁴ Article 11 (2) and (3) Lietuvos Respublikos elektroninių pinigų ir elektroninių pinigų įstaigų įstatymas (The Republic of Lithuania Law on Electronic Money and Electronic Money Institutions) (22 December 2011). Available at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/573b9080166911eaaad00dac7ebcb2435?jfwid=j4ag32ex>. Accessed March 24, 2024.

an actual physical presence, office and employees that would be checked by the regulatory authorities, simplifying the process from the start.

Comparing the documentation list for license application, the lists in all three Baltic countries are similar. However, Article 13 of the Republic of Lithuania Law on Electronic Money and Electronic Money Institutions includes several points on providing the information regarding the business operations of potential EMI, making the law itself more “business oriented”, if compared to other Baltic countries. For example, Lithuanian law specifies the following documents that need to be submitted to obtain the license: business plan and financial forecast for the first three financial years, description of other services, if additional services permitted in law shall be provided and description of business continuity processes with the testing procedure for the following.¹¹⁵ From these provisions we can assume that Lithuania’s EMI evaluation, whether it is fit to obtain a license in big part revolves around projected business operations, that are evaluated additionally to the submitted application. Latvia and Estonia also require business plans, as stipulated in Chapter 3 sections 3.2. and 3.3., however, the business part is only a *small part of the general evaluation* and the list of documents concerning the operations is not that extensive. From the evaluation process of the Bank of Lithuania¹¹⁶ it is clear that the bank firstly evaluates the business plan and associated risks before even moving the application to the next step.

The second criterion pertains to the advantages of financial innovation for consumers, such as convenient, secure, and cost-effective financial services, or other noticeable advantages for consumers. The evaluation determines whether the innovation provides consumers with tangible benefits such as increased convenience, enhanced safety and security, and reduced costs.¹¹⁷ The list of advantages are listed in the key points of Directive (EU) 2015/2366 (PSD2) which includes reducing the cost associated with financial services, as well as attracting FinTech companies to participate in the EU financial market through the Single Euro Payments Area (SEPA) project. Given this, PSD2 is providing guidelines for FinTech businesses to develop their financial innovation and ensure compliance. As Estonia and Latvia, Lithuania also requires an EMI to be compliant with security and AML/CTF provisions before obtaining the license. Of the utmost importance and as one of the obligatory requirements to obtain an

¹¹⁵ Article 13 Lietuvos Respublikos elektroninių pinigų ir elektroninių pinigų įstaigų įstatymas (The Republic of Lithuania Law on Electronic Money and Electronic Money Institutions) (22 December 2011). Available at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/573b9080166911eaad00dac7ebcb2435?jfwid=j4ag32ex>. Accessed March 24, 2024.

¹¹⁶ Lietuvos Bankas. “Authorisation of Electronic Money Institutions”. Available at: <https://www.lb.lt/en/authorisation-of-electronic-money-institutions#ex-1-1>. Accessed March 29, 2024.

¹¹⁷ Lietuvos Bankas. “Regulatory Sandbox,” 2020. Available at: <https://www.lb.lt/en/regulatory-sandbox>. Accessed March 24, 2024.

EMI license is to ensure the safeguards of funds and data and the following evaluation from the regulatory sandbox can benefit the EMI. The license outlines the requirements and obligations that organisations must meet in order to maintain compliance with regulations. This includes reporting obligations, capital requirements, and anti-money laundering measures.¹¹⁸ In this regards, all three Baltic states have similar provisions in the law, whereas the internal control system for AML/CFT prevention shall be drafted in accordance with applicable local laws and security measures shall be implemented.¹¹⁹ However, compared to other Baltic countries, Lithuania specifically pays attention to security and data protection measures for potential EMI. For example, Lithuania Law on Electronic Money and Electronic Money Institutions highlights that the requirements for obtaining the EMI license are to not only have appropriate security mechanisms in place for handling payments, fraud and monitoring of clients and their payments, but as well having procedures for handling sensitive information, data on statistics and action plan in case a security breach takes place.¹²⁰

Lithuania's Electronic Money Institution sector offers advanced solutions for financial market players to simplify reporting processes through RegTech that helps to comply with the reporting provisions for obtaining the license end ensuring the continuity of an EMI operations.¹²¹ RegTech is frequently misinterpreted and confused with FinTech. FinTech involves utilising technologies and software to offer financial services, whereas RegTech involves using new technologies to tackle the complex data environment needed to address regulatory compliance issues.¹²² Before full adoption, RegTech and FinTech businesses can test their products and services in a controlled environment thanks to the Regulatory Sandbox that the Bank of Lithuania established.¹²³ This allows them to ensure their solutions meet the necessary requirements and standards. According to the 2022-2023 report, Lithuania has

¹¹⁸ Article 13(7) Lietuvos Respublikos elektroninių pinigų ir elektroninių pinigų įstaigų įstatymas (The Republic of Lithuania Law on Electronic Money and Electronic Money Institutions) (22 December 2011). Available at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/573b9080166911eaad00dac7ebcb2435?jfwid=j4ag32ex>. Accessed March 24, 2024.

¹¹⁹ *Ibid.*

¹²⁰ Article 13 (6)-(13) Lietuvos Respublikos elektroninių pinigų ir elektroninių pinigų įstaigų įstatymas (The Republic of Lithuania Law on Electronic Money and Electronic Money Institutions) (22 December 2011). Available at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/573b9080166911eaad00dac7ebcb2435?jfwid=j4ag32ex>. Accessed March 24, 2024.

¹²¹ Taujanskaitė, Kamilė, and Jurgita Kuizinaitė. “DEVELOPMENT OF FINTECH BUSINESS IN LITHUANIA: DRIVING FACTORS AND FUTURE SCENARIOS.” *Business, Management and Economics Engineering* 20, no. 01 (April 25, 2022): 96–118. <https://doi.org/10.3846/bmee.2022.16738>.

¹²² Siering, Michael. “Explainability and Fairness of RegTech for Regulatory Enforcement: Automated Monitoring of Consumer Complaints.” *Decision Support Systems* 158 (July 2022): 113782. <https://doi.org/10.1016/j.dss.2022.113782>.

¹²³ Lietuvos Bankas. “Regulatory Sandbox,” 2020. Available at: <https://www.lb.lt/en/regulatory-sandbox>. Accessed March 3, 2024.

launched a data maturity program aimed at changing how authorities collect data.¹²⁴ The Bank of Lithuania is implementing its Data Governance Strategy through the Data Management and Automation Program (DAMAMA). To prepare for this technological transformation, the bank has developed a data management strategy and policy, introduced organisational reforms, conducted data mapping exercises, appointed data owners, and adopted advanced data management practices, by this helping the prospective EMIs to ensure all of the compliance requirements before starting actual operations.¹²⁵

The Bank of Lithuania's payment system offers continuous technical access to the Single Euro Payments Area (SEPA) for licensed payment service providers in the European Economic Area (EEA), including electronic money and payment institutions. CENTROlink facilitates rapid and safe cross-border payments in the SEPA zone, offering real-time transaction processing and secure fund transfers, which enhances efficiency and convenience for businesses and consumers. According to the 2022 report, the value of transactions executed by Payment Institutions and Electronic Money Institutions started from 7 billion euros in 2017, to 317 billion euros in 2022.¹²⁶ It is essentially a payment system that the Bank of Lithuania runs that gives participants, like Electronic Money Institutions, access to more technical capabilities to issue IBAN format accounts and safeguard client funds in the Bank of Lithuania. The significant growth in transaction value over the years highlights the increasing reliance on digital payment systems for financial transactions. This innovative system not only streamlines processes but also ensures the security of funds for all parties involved. In the light of that, it promotes competition and innovation in the European payment market by enabling access to a wide range of payment services, compared to Latvia and Estonia.

The third and fourth criteria enable live testing and to see the readiness of the financial innovation in a real-world setting to validate the effectiveness and viability of the proposed financial innovation.¹²⁷ This means that the FinTech company that wishes to be licensed as an electronic money institution will be given a 6-month testing period, which the Bank of Lithuania may extend to 12 months.¹²⁸ In certain circumstances, the bank must be provided

¹²⁴ Invest Lithuania. "The Fintech Landscape in Lithuania," 2023. Available at: <https://investlithuania.com/wp-content/uploads/LT-Fintech-report-2022-2023.pdf>. Accessed March 3, 2024.

¹²⁵ Lietuvos Bankas. "Data Management at the Bank of Lithuania Enters a New Phase," 2022. Available at: <https://www.lb.lt/en/news/data-management-at-the-bank-of-lithuania-enters-a-new-phase>. Accessed March 3, 2024.

¹²⁶ Invest Lithuania. "The Fintech Landscape in Lithuania," 2023. Available at: <https://investlithuania.com/wp-content/uploads/LT-Fintech-report-2022-2023.pdf>. Accessed March 3, 2024.

¹²⁷ Paragraph 11 The Regulatory Sandbox Framework of the Bank of Lithuania (19 September 2018). Available at: https://www.lb.lt/uploads/documents/files/EN/our-functions/supervision-of-financial-institutions/sandbox/03-166_2018%2009%2019_EN.pdf. Accessed March 3, 2024.

¹²⁸ Paragraph 15 The Regulatory Sandbox Framework of the Bank of Lithuania (19 September 2018). Available at: https://www.lb.lt/uploads/documents/files/EN/our-functions/supervision-of-financial-institutions/sandbox/03-166_2018%2009%2019_EN.pdf. Accessed March 3, 2024.

with justifiable reasons in order for the Bank of Lithuania to grant the extension. In addition, if the FinTech company wishes to apply for an additional license or any other authorization while they are participating in the sandbox, the testing period may be extended until the Bank of Lithuania makes a decision regarding the issuance of such authorization.¹²⁹

Finally, the fifth criteria pertain to financial services, which will be further developed in Lithuania. This regulatory sandbox applies to potential and existing FinTech companies that wish to enter the Lithuanian market. If an electronic money institution has been licensed in another EU member state, they still must notify the competent authority and express their intention to participate in the Lithuanian market to the Bank of Lithuania.¹³⁰ This includes detailed information about the services they plan to offer in Lithuania and how they will comply with local regulations. Legally, an electronic money institution must be a public limited liability company, a private limited liability company from Lithuania or another EU member state, or a branch of an electronic money institution from another country that is based in Lithuania.¹³¹ Through these steps, FinTech companies that are interested in entering the financial ecosystem of Lithuania are required to demonstrate that they are prepared within a period of six months or longer. Consequently, this criterion is centred around the preparedness of the candidate to perform live testing of the innovation while still following the criteria set by national regulators.

This thorough review process ensures that only qualified applicants are granted the necessary licenses to operate as electronic money institutions. That could lead to the conclusion that notwithstanding the strict regulatory framework at the first glance, Lithuania offers the most favourable environment for the EMIs even in terms of the regulatory sandbox and overall support during the process of obtaining the license or entering the market, offering various legal and technological solutions that may benefit an EMI. In case one of the following requirements is not enough for standard EMI license, the license for restricted activities may be issued to the applicant. Limited license holders have fewer alternatives when it comes to managing average outstanding e-money and/or processing payments, but they are also subject to less onerous licensing and governance regulations that does not require such detailed description of business operations and the financial projection requirements are simplified – only for one year, but instead a description of e-money issuance activity management will be evaluated more carefully. The security requirements however are not simplified.¹³² However, it is necessary to

¹²⁹ *Ibid.*

¹³⁰ Article 19 of Lietuvos Respublikos elektroninių pinigų ir elektroninių pinigų įstaigų įstatymas (The Republic of Lithuania Law on Electronic Money and Electronic Money Institutions) (22 December 2011). Available at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/573b9080166911eaad00dac7ebcb2435?jfwid=j4ag32ex>. Accessed March 29, 2024.

¹³¹ *Ibid.*, Article 2(1)(2).

¹³² *Ibid.*, Article 14.

note that for EMI to be eligible to apply for the unrestricted license and operate not only in Lithuania – a clear business strategy, financial forecast and strong internal security measures shall be implemented beforehand, since the country prioritizes consistent business operations and innovation possibilities.

4.2. Latvia's EMI license, Innovation Hub and Regulatory Sandbox

Latvia is also not an exception to providing support and favourable regulatory environment for EMI and FinTech companies. Latvia's FinTech businesses operate in several fields, including payments, loans, cryptocurrency, and crowdfunding. Startups demonstrate that collaboration, not competition, along with a supportive infrastructure and regulatory framework, promotes the growth of innovative companies and strengthens Latvia's reputation as a FinTech hub.¹³³ As of 2023, Latvijas Banka and the Financial and Capital Market Commission (FCMC) have merged to form a single, unified, organisation that oversees and manages the financial industry.¹³⁴ By the end of the day, the purpose of this is to improve efficiency, fortify monitoring, and streamline regulatory procedures pertaining to Latvia's financial industry. Assuring regulatory compliance, the organisations seek to foster stability and growth within the financial sector.

The process of obtaining the EMI license in Latvia is similar to Lithuania and Estonia, as established in Chapter 3.2. of the thesis. For example, like Lithuania, Latvian Law on Payment Services and Electronic Money also requires an applicant to submit a business plan with three years forecast on operations and detailed description of payment services that shall be provided. However, at the same time it also may be clearly established that financial part of the operations will be carefully evaluated prior to issuing a license, for example, compared to other Baltic countries Latvia requires to submit a draft balance, draft profit or loss account and draft calculation of capital adequacy, by that ensuring that financial readiness of the EMI is not posing any risk to the financial system as a whole.¹³⁵ This requirement on one hand is acceptable from the standpoint of financial stability, nevertheless, from the other hand it creates an

¹³³ “A Look at the State of the Country’s FinTech Ecosystem, Sharing Key Growth Metrics and Emerging Trends.” *The Pulse of FinTech Industry in Latvia*, 2022. https://fintechlatvia.eu/wp-content/uploads/2022/11/Fintech_report_web.pdf, p. 10.

¹³⁴ “Integration of Latvijas Banka and the Financial and Capital Market Commission,” n.d. Available at: <https://www.bank.lv/en/about-us/integration-of-latvijas-banka-and-the-fcmc>. Accessed March 3, 2024.

¹³⁵ Section 11 (2) Latvijas Republikas Maksājumu pakalpojumu un elektroniskās naudas likums (The Republic of Latvia Law on Payment Services and Electronic Money) (17 March 2011). Available at: <https://likumi.lv/ta/id/206634-maksajumu-pakalpojumu-un-elektroniskas-naudas-likums>. Accessed March 3, 2024.

additional burden for the applicant, because financial numbers are relative and do not reflect the future changes in financial market. The Law on Payment Services and Electronic Money requires internal security measures to be implemented for safeguarding the payment provisions and a sound internal risk management system for overall EMI management and accounting.¹³⁶ Compared to Lithuania, Latvia's requirements to obtain the EMI license do not mention the procedures for handling data and the security measures shall be regarded as "adequate", which makes it unclear on how the measures will be evaluated in practice, for example, based on the business plan, plan of transactions that will be executed etc. The specific attention is also paid to the execution of payments from another provider and security requirements for that matter (for example, having potential contracts and guarantee insurance policies, or another guarantee from that payment provider).¹³⁷ Compared to Lithuania, where the process is more focused on the actual internal security policies and measures of the EMI, the internal procedure and security requirement in Latvia seems more complicated and requires considering the potential partner payment providers even before the EMI can start operations.

The other distinction from Lithuania and Estonia is that one of the most important factors to obtain the EMI license is the information on the board and shareholders of the potential EMI. Estonia and Lithuania also require the submission of the following information as part of the licensing process, but Latvian law is *specifically* focused on evaluating the suitability of the beforementioned persons to run an EMI, including not only a background check on criminal proceedings against this person, but also evaluating a risk of potential civil liability that may be caused by this person to the EMI, adverse media information and other factors, that may put the EMI and Latvian financial market at risk.¹³⁸

The other criteria that may differ from other Baltic states is the actual compliance evaluation of the EMI in terms of AML/CTF measures. In fact, due to the gaps in compliance, indicated by the last Moneyval assessment of the Republic of Latvia in 2018¹³⁹, the regulatory

¹³⁶ Section 11 (4) and (5) Latvijas Republikas Maksājumu pakalpojumu un elektroniskās naudas likums (The Republic of Latvia Law on Payment Services and Electronic Money) (17 March 2011). Available at: <https://likumi.lv/ta/id/206634-maksajumu-pakalpojumu-un-elektroniskas-naudas-likums>. Accessed March 3, 2024.

¹³⁷ Section 38 Latvijas Republikas Maksājumu pakalpojumu un elektroniskās naudas likums (The Republic of Latvia Law on Payment Services and Electronic Money) (17 March 2011). Available at: <https://likumi.lv/ta/id/206634-maksajumu-pakalpojumu-un-elektroniskas-naudas-likums>. Accessed March 30, 2024.

¹³⁸ Section 21 Latvijas Republikas Maksājumu pakalpojumu un elektroniskās naudas likums (The Republic of Latvia Law on Payment Services and Electronic Money) (17 March 2011). Available at: <https://likumi.lv/ta/id/206634-maksajumu-pakalpojumu-un-elektroniskas-naudas-likums>. Accessed March 30, 2024.

¹³⁹ MONEYVAL. "Anti-Money Laundering and Counter-Terrorist Financing Measures Latvia ." Council of Europe, July 2018. Available at: <https://rm.coe.int/moneyval-2018-8-5th-round-mer-latvia/16808ce61b>. Accessed March 30, 2024.

requirements for AML/CTF matters have also become stricter for EMIs, indicating problems with monitoring the agents' compliance with AML/CTF provisions. That however potentially has been fixed from the regulators' perspective by amending the necessary laws and requiring a careful check on all of the related parties and partners when issuing a license, however, that will be actually known only after the new Moneyval assessment will be completed and we cannot exclude the possibility of change in the law to make the following requirements even more strict for future EMIs.

Latvijas Banka (the national Bank of Latvia) outlines that there is also a regulatory sandbox, that provides a unique regulatory framework that supports the promoters of innovative ideas, project teams, and start-ups to collaborate with Latvijas Banka to explore new business models or services before launching them on the financial market or evolving the business in the European Union.¹⁴⁰ This includes FinTechs and e-money institutions, whereas the Regulatory Sandbox allows present and future financial market participants to “test and verify” the compliance of innovative services with regulatory standards under a specific testing plan approved by Latvijas Banka. Its goal is to assist people in creating a comprehensive approach to navigating the regulatory environment, specifically how the present legal framework applies to unique and new financial services or business models.¹⁴¹ Latvia also has made sure that new EMIs can participate in the innovation hub before obtaining the license. The innovation hub includes the support of Latvijas Banka in the field of innovative technologies, ideas generation and preparation of the required documents, to ensure that the application is prepared in accordance with the law and needs of the EMI, by that simplifying the authorization process later on and ensuring that market participants do not need to obtain separate authorisation from for the introduction of any innovative solutions to the provision of their financial services. Currently, Latvijas Banka identifies the development of FinTech environment as a priority, aiming to attract the high-quality EMIs to Latvia and overall create an innovative financial service market.¹⁴² Compared to Lithuanian regulatory sandbox it seems that Latvia does not focus that much on actual support of operations of the EMI (for example, compared to RegTech technological support of operations and access to SEPA with the help of Bank of Lithuania) , but instead this innovation hub provides the support during application process and document preparation.

¹⁴⁰ Latvijas Banka. “Regulatory Sandbox,” n.d. Available at: <https://www.bank.lv/en/cooperation/support-for-fintech-and-innovations/regulatory-sandbox>. Accessed on March 30, 2024.

¹⁴¹ *Ibid.*

¹⁴² “Innovation Hub - Fintech Latvia.” Fintech Latvia, February 5, 2024. Available at: <https://fintechlatvia.eu/innovation-hub/>. Accessed March 30, 2024.

Despite all the “innovative development possibilities” and support from the regulatory authorities, attention shall be paid to the EMIs that do not require a license of Latvijas Banka and is allowed to operate and be included in the list of registered electronic money institutions. These institutions indeed do require an *authorisation*, which involves strictly limited activities in terms of operations or jurisdictions. In accordance with Latvijas Banka, this institution would be also referred to as “registered electronic money institution”, which activities consequently would be limited to payment instrument issuance or money remittance services.¹⁴³ In practice, majority of EMIs in Latvia fall under the category of registered EMIs, potentially meaning that it is much easier to operate without the license in Latvia and be limited to only one jurisdiction than to receive an actual license from Latvijas Banka.¹⁴⁴ Most institutions prefer the simplified authorization, even though it limits the operations, for example, e-money circulation can only occur inside a confined circle and to a limited degree and can only be supplied in Latvia and to Latvian clients, therefore waving the passporting rights granted under the license.¹⁴⁵

Compared to Lithuania and Estonia, the quantity of registered EMIs in Latvia undeniably shows that the evaluation process may be too strict or potential EMIs cannot meet the requirements indicated by the law, therefore are instead granted a restricted activity license. That however is not surprising, since after the issues with Moneyval and the AML scandals in Latvia several years ago, the regulatory approach for granting an EMI license has become stricter, therefore also leading to potential problems with working with other payment providers across the EU due to high risk of e-money circulation in general.¹⁴⁶ Compared to Lithuania and Estonia – Latvia unfortunately offers less innovative solutions even in terms of regulatory sandbox and does not allow to “test” the actual operating environment that much, instead just focusing on ensuring the compliance before registration or launch of innovative service (e.g. innovative payment system). It is completely understandable that Latvia’s regulatory requirements for establishing an EMI may be stricter and more mature, especially related to compliance matters and origin of funds, however, another problem may arise with the limited possibilities to actually operate in the environment for a while, testing innovative types of payment systems or e-money types, therefore, the restricted activity license is chosen by the applicants beforehand, because it requires less from regulatory perspective and the operations

¹⁴³ Latvijas Banka. “Reģistrēta Elektroniskās Naudas Iestāde,” n.d. Available at: <https://www.bank.lv/darbibas-jomas/licencesana/elektroniskas-naudas-iestades/registreta-elektroniskas-naudas-iestade>. Accessed March 30, 2024.

¹⁴⁴ Lvportals.Lv. “LV Portāls - Cilvēks. Valsts. Likums,” n.d. Available at: <https://lvportals.lv/norises/327780-maksajumu-iestades-strauja-attistiba-un-naudas-atmazgasanas-riski-2021>. Accessed March 30, 2024.

¹⁴⁵ “E-Money Services - Fintech Latvia.” Fintech Latvia, April 23, 2023. Available at: <https://fintechlatvia.eu/mi-eni-2/e-money-services/>. Accessed March 30, 2024.

¹⁴⁶ Fintech Latvia Association. “The Pulse of FinTech Industry in Latvia,” 2022, pp. 61-62. Available at: https://fintechlatvia.eu/wp-content/uploads/2022/11/Fintech_report_web.pdf. Accessed March 30, 2024.

are limited by jurisdiction, consequently offering lower risk in case business operations do not go as planned.

4.3. Estonia's EMIs and digital business environment

In Estonia, the national competent authority is Finantsinspektsioon (Estonian Financial Supervision and Resolution Authority). Currently, Monemon AS, IPF Digital AS, and inHouse Pay AS are the only Electronic Money Institutions licensed by Finantsinspektsioon. The nation primarily handles its financial affairs via electronic channels, ranging from instant payments, contactless payments, electronic invoices, and open banking. First and foremost, Estonia has been at the forefront of digital innovation. The regulatory framework for Estonian Electronic Money Institutions strives to support innovation and the growth of electronic payment services while ensuring financial stability and consumer safety. EMIs help to drive digitization and financial inclusion by providing companies and consumers with easy and effective payment alternatives.

Estonia's digital finance environment is strictly regulated, therefore the process of obtaining the license and legal requirements for licensing an EMI is not that different from before analysed Baltic countries. Even though, compared to Latvia and Lithuania, the Payment Institutions and E-money Institutions Act does not seem to have a lot of provisions that pose additional burden on the applicant in security, financial and compliance matters. The law is more simple and is backed up by the guidelines of Finantsinspektsioon, to make the process of licensing more clear and what is exactly required from the applicant.¹⁴⁷ Like Latvia and Lithuania, Estonia requires a public or private limited company to be established or already operating in Estonia to apply for the EMI license. As indicated before – with local operating operations and management on board, that is a different requirement from two previously analysed Baltic states that require the proof of legal address only.¹⁴⁸ Local operations mean that an EMI must have a board that resides in Estonia with at least two members.¹⁴⁹ For comparison – both Latvia and Lithuania do not require an EMI board to specifically reside in the country of authorization or already have an operating office.

¹⁴⁷ Finantsinspektsioon. "Guidelines | FSA," January 5, 2018. Available at: <https://www.fi.ee/en/juhendid/makseteenused>. Accessed April 11, 2024.

¹⁴⁸ Capital, Buckingham. "Procedure to Obtain the Payment Institution and E-Money License Estonia/EMI License in Estonia." Buckingham Capital, March 14, 2022. <https://www.buckinghamcapitalconsulting.com/post/2019/08/06/how-to-apply-for-payment-institution-or-electronic-money-institution-emi-license-in-eston>. Accessed April 11, 2024.

¹⁴⁹ "EMI License In Estonia." Private Financial Services, December 15, 2021. Available at: <https://www.pfser.com/en/emi-license-in-estonia/>. Accessed April 11, 2024.

To apply for the license to issue e-money in Estonia, firstly a business plan, plan of EMI operations and financial projections must be submitted. The financial forecast requirement purely based on the legal provisions seem less of a burden in Estonia than for example in Latvia, even though Estonia as well requires the applicant to submit accounting information, e.g. – opening balance of the applicant and the overview of revenue and to provide the internal bookkeeping rules already being in place in accordance with the Act.¹⁵⁰ The procedure is therefore similar to Latvia and Lithuania – all countries firstly evaluate the business plan to establish the goal and continuity of the EMI.

Estonia's Payment Institutions and E-money Institutions Act also requires the submission of the information on managers of the applicant, that further will be checked by Finantsinspeksioon. What however is distinct from Latvia and Lithuania is the requirement to also submit information on legal persons in which the holding of the applicant or its manager exceeds 20%, the amount of share capital and areas of activity and the size of the holding of the applicant and each manager.¹⁵¹ For example in Latvia, this information is not requested straightaway upon license application, but is requested on the persons who apply for a qualifying holding.¹⁵² Estonia however requests both and in more detail than Latvia and Lithuania prior to issuing a license.

What also differs from other countries discussed in this chapter in Estonia in EMI licensing process is that pursuant to providing the description of technical and organizational measures for security of data transfers and payments, if the applicant wishes to be engaged in the operation of payment systems - technical, financial and legal principles of the functioning of the payment system shall be reviewed and approved by Eesti Pank (Bank of Estonia) beforehand.¹⁵³ Only after the following approval, the detailed description of the payment system may be added to the documents for the license application.

Estonia also as two other Baltic countries offers the authorization for limited EMI operations or as it is indicated in the Act – low value payment instruments. To be regarded as a low-value payment instrument, the value of single payment transactions made through its use

¹⁵⁰ § 15 and 16 Makseasutuste ja e-raha asutuste seadus1 (The Republic of Estonia Payment Institutions and E-money Institutions Act) (17 December 2009). Available at: <https://www.riigiteataja.ee/akt/107122017003>. Accessed April 11, 2024.

¹⁵¹ § 15 (15) Makseasutuste ja e-raha asutuste seadus1 (The Republic of Estonia Payment Institutions and E-money Institutions Act) (17 December 2009). Available at: <https://www.riigiteataja.ee/akt/107122017003>. Accessed April 11, 2024.

¹⁵² Section 13 (2) Latvijas Republikas Maksājumu pakalpojumu un elektroniskās naudas likums (The Republic of Latvia Law on Payment Services and Electronic Money) (17 March 2011). Available at: <https://likumi.lv/ta/id/206634-maksajumu-pakalpojumu-un-elektroniskas-naudas-likums>. Accessed April 11, 2024.

¹⁵³ § 15 (18) Makseasutuste ja e-raha asutuste seadus1 (The Republic of Estonia Payment Institutions and E-money Institutions Act) (17 December 2009). Available at: <https://www.riigiteataja.ee/akt/107122017003>. Accessed April 11, 2024.

shall not exceed 30 euros, the limit for its use is up to 150 euros, the amount kept on it never exceeds an amount equal to 150 euros.¹⁵⁴ For reference – a licensed EMI may store up to 1000 euros at the most on one device.¹⁵⁵ Compared to Latvia and Lithuania, the law in Estonia not only regulates the general electronic money issuance matters (for example maximum amount in circulation required or the amount of e-money issued in a month), but also single transactions. The jurisdiction of the operations is no different to its neighbours – with authorization the EMI may operate only within the territory of Estonia.

Since providing e-money services does require authorization, which may appear daunting to start-up enterprises looking to deliver novel financial services or products, Estonia has the Finantsinspeksioon Innovation Hub. This Innovation Hub contributes to this by assisting businesses in overcoming the challenges that may occur when bringing a new concept or service to life due to the complexities of financial sector legislation.¹⁵⁶ This definitely makes it easier for innovative companies and solutions to enter the market by allowing businesses in the early stages of their operations to communicate directly with Finantsinspeksioon and providing assistance as far as it is legally possible for explaining the legal framework, and, if necessary, guiding the business through the process of applying for an authorization.

The Innovation Hub is useful for: FinTech businesses, both current and future objects of financial regulations that will implement innovative solutions, companies that offer support for financial sector services but are not directly engaged in financial services, other innovative solutions in the field.¹⁵⁷ Furthermore, the rules issued by the Finantsinspeksioon “Supervision policy of the Financial Supervision Authority” specify the situations under which can grant reasonable relief to monitored businesses in assessing and implementing market entrance and operating requirements. The guidelines do not exempt the supervised entity however from meeting the requirements for financial stability, capital requirements, or customer protection if the requirement arising from the law or the guidelines issued by the relevant authority cannot be met in any other way.¹⁵⁸

¹⁵⁴ § 733¹² Võlaõigusseadus1 (The Republic of Estonia Law of Obligations Act) (26 September 2001). Available at: <https://www.rigigataja.ee/en/eli/506112013011/consolide>. Accessed April 11, 2024.

¹⁵⁵ Finantsinspeksioon. “Operating Licences for Payment Institutions and E-Money Institutions | FSA.” Available at: <https://www.fi.ee/en/payment-and-e-money-services/applying-operating-licence-payment-services/operating-licences-payment-institutions-and-e-money-institutions>. Accessed April 27, 2024.

¹⁵⁶ Finantsinspeksioon. “Innovation Hub | FSA,” n.d. Available at: <https://www.fi.ee/en/finantsinspeksioon/innovation-hub>. Accessed April 27, 2024.

¹⁵⁷ Finantsinspeksioon. “Finantsinspeksiooni Järelevalvepoliitika Uuendusmeelse Finantssektori Soodustamiseks,” n.d. Available at: https://www.fi.ee/sites/default/files/2021-06/FI%20soovituslik%20juhend_Finantsinspeksiooni%20j%C3%A4relevalvepoliitika%20uuendusmeelse%20fi%20nantssektori%20soodustamiseks_KINNITATUD.pdf. Accessed April 27, 2024.

¹⁵⁸ *Ibid.*

Estonia, like Latvia and Lithuania, supports the initiative that allows Finantsinspeksioon and regulatory authorities to connect with businesses that are considering implementing innovative services in the financial sector and want to get feedback on new technologies, ask for guidance, and learn about financial supervisory positions and guidelines for using these solutions. Taking into account the option of e-residency,¹⁵⁹ Estonia's regulatory sandbox does not only offer the benefits of help from the authorities during the application process, but also convenient company management with digital means, what is not offered by Latvia and Estonia. What is also important to note is that Estonia introduced legal requirements for cryptocurrency service providers, that is not offered by two other Baltic countries, offering the support in using cryptocurrency for e-money services as well.¹⁶⁰ Since that unique feature was established and cryptocurrency may be involved in e-money services, Estonia is definitely a leader for e-money service providers that also deal with cryptocurrency, offering more innovative approach compared to Latvia and Lithuania.

5. THE IMPLICATIONS AND LEGAL ISSUES OF THE PROCESS OF AUTHORIZATION OF THE EMI IN THE BALTICS

In all three of the Baltic states, the process of licensing an EMI is relatively straightforward and possible, if all of the documents are filled correctly, the registration capital comes from legitimate funds and internal controls in accordance with the country's law and EU standards are implemented. Similar processes of obtaining the license in Estonia, Latvia and Lithuania partly derive from EU Directives, therefore the process may be considered as harmonized. Although the overall process of obtaining the license in Baltics is quite similar, there are some distinctive features that must be analysed, since the quantity of EMIs in each of the countries, as well as how many of them are licensed and how many are restricted in their operations with authorization differs significantly.

Therefore, to understand the process of why the potential EMI has to undergo stricter or less strict evaluation by the regulators, as well as why in some Baltic countries the EMI environment seems to be flourishing more than others, this chapter covers the analysis of external factors related to EMI operations in the Baltic countries that over the years shaped the

¹⁵⁹ e-Residency. "E-Residency of Estonia | Apply & Start an EU Company Online," September 12, 2023. Available at: <https://www.e-resident.gov.ee/>. Accessed April 27, 2024.

¹⁶⁰ Pott, Toomas. "Estonia Introduces Legislation to Regulate Cryptocurrency Providers." ERR, March 21, 2024. Available at: [https://news.err.ee/1609289883/estonia-introduces-legislation-to-regulate-cryptocurrency-providers#:~:text=A%20new%20bill%20establishing%20legal,Financial%20Supervision%20Authority%20\(Finantsinspeksioon\)](https://news.err.ee/1609289883/estonia-introduces-legislation-to-regulate-cryptocurrency-providers#:~:text=A%20new%20bill%20establishing%20legal,Financial%20Supervision%20Authority%20(Finantsinspeksioon).). Accessed April 27, 2024.

regulatory and licensing process, identifying the current problems that may as well influence the present-day EMI license and authorization process.

5.1. The legal issues arising from EMI operations among the Baltic States and their impact on licensing process

It has been previously established that the legal requirements for obtaining an EMI license in Baltics are firstly derived from applicable EU Directives, that are incorporated into the national laws of Latvia, Lithuania and Estonia and set the ground for common provisions and simplified process in the EU internal market.¹⁶¹ After analysis of local laws, there are some differences from the standpoint of every regulatory authority during the evaluation whether an EMI is eligible for license and providing overall legislative support for new EMIs through innovation hubs and regulatory sandboxes. The differences in the authorization and licensing process derive not only from local laws but also each Baltic country's practice and supervision of existing EMI operations, contributing to the changes in how strict the evaluation process becomes and what is required to obtain the license at all. Therefore, it is necessary to compare the current EMI environment in the Baltic states to establish the challenges that the applicant may face during the EMI licensing/authorization process and overall assessment of the decision to grant license, as well as further in the chapter touching upon the developments in EU law and the potential introduction of PSD3 Regulation, focusing on influence on the EMI authorization process, in case the following legal acts are introduced.

Applicants frequently struggle to demonstrate compliance with particular requirements, which are critical for protecting the financial system. One of the issues that may be regarded as a key challenge during authorization and licensing process of EMIs in all Baltic countries is compliance of the EMI with AML/CTF legislation. In practice, there is still a high risk of EMIs being used for illicit funds, therefore this challenge is justifiable. The most recent case that raises concerns about overall EMI compliance with the respective provisions has officially been published in February 2024, which could act as a direct proof of gaps in the legal system and overseeing the compliance of the EMIs with AML/CTF measures, that may also from the other side indicate that the problem was not addressed enough upon granting license to that specific EMI. For several years, Lithuania-based financial organization provided money laundering services to thousands of criminals across the EU by conducting false financial transactions through a network of shell companies. All the companies were centered around Lithuania-established institution that was allowed to issue electronic money. The funds that were laundered further were integrated into the legal system of Lithuania and Latvia by buying real

¹⁶¹ See Chapter 2.2.1.

estate and vehicles, as well as investing the funds into fictitious projects. Not only the institution possessed a valid license issued by the government, but it as well was established in Lithuania in 2016 by an Italian-based organized crime group.¹⁶²

That means that there is a higher chance that from the regulatory authorities the enhanced due diligence was not performed on members of the board of the EMI and AML/CTF prevention measures implemented in the EMI were not compliant with the law. One of the requirements for obtaining EMI license in all the Baltic countries is the submission of internal control program related to AML/CTF, to assess the potential AML compliance and risk of the future EMI. This case with EMI laundering money through Lithuania and Latvia however could lead to even stricter evaluation of the AML/CTF compliance documents upon authorization/licensing process, which could lead to fewer EMIs that are licensed for operations all around EU, especially taking current anti – money laundering prevention progress and focus in Lithuania,¹⁶³ Estonia¹⁶⁴ and Latvia.¹⁶⁵ In fact, during last 5 years there have been numerous cases of EMI licenses being revoked due to non-compliance with AML/CTF and failure to perform KYC for the clients. Especially Lithuania is a leader in licenses being revoked due to this ground (e.g. UAB PAYRNET¹⁶⁶ and Transactive Systems Ltd¹⁶⁷, UAB TransferGo¹⁶⁸ and others). This may lead to conclusion that compared to Estonia and Latvia, where there may be gaps in oversight of AML/CTF compliance from the Bank of Lithuania, if multiple companies are allowed to ignore anti-money laundering and counter-terrorism financing requirements in the course of their operations, leading to discovery of the matter and revocation of the license.

Currently, the registration capital requirement may be also regarded as a challenge during EMI licensing/authorization process. The capital requirement for an EMI in all three

¹⁶² Europol. “Full-Scale Action against Money Laundering Network via Lithuanian Financial Institution for over EUR 2 Billion | Europol,” n.d. Available at: <https://www.europol.europa.eu/media-press/newsroom/news/full-scale-action-against-money-laundering-network-lithuanian-financial-institution-for-over-eur-2-billion>. Accessed April 27, 2024.

¹⁶³ “Lithuania – KnowYourCountry,” n.d. Available at: <https://www.knowyourcountry.com/lithuania>. Accessed April 27, 2024.

¹⁶⁴ “Estonia – KnowYourCountry,” n.d. Available at: <https://www.knowyourcountry.com/estonia>. Accessed April 27, 2024.

¹⁶⁵ “Latvia – KnowYourCountry,” n.d. Available at: <https://www.knowyourcountry.com/latvia>. Accessed April 27, 2024.

¹⁶⁶ Lietuvos Bankas. “Licence of UAB PAYRNET Revoked for Serious Violations, Bankruptcy Proceedings to Be Initiated More: <https://www.lb.lt/en/news/licence-of-uab-payrnet-revoked-for-serious-violations-bankruptcy-proceedings-to-be-initiated>,” 2023. Available at: <https://www.lb.lt/en/news/licence-of-uab-payrnet-revoked-for-serious-violations-bankruptcy-proceedings-to-be-initiated>. Accessed April 28, 2024.

¹⁶⁷ Griffin, Donal. “UK Payments Firm Loses Lithuanian License Over Money-Laundering Failures.” Bloomberg, June 1, 2023. Available at: <https://www.bloomberg.com/news/articles/2023-06-01/uk-payments-firm-transactive-stripped-of-lithuanian-license?embedded-checkout=true>. Accessed April 28, 2024.

¹⁶⁸ Pathe, Tyler. “TransferGo Hit with €310,000 Fine from Bank of Lithuania for AML Failings.” FinTech Futures, August 8, 2023. Available at: <https://www.fintechfutures.com/2023/08/transfergo-hit-with-e310000-fine-from-bank-of-lithuania-for-aml-failings/>. Accessed April 28, 2024.

Baltic countries is set at minimum of 350 000 EUR¹⁶⁹, that consequently has to be deposited in a bank to open an account for the EMI and prove to the regulatory authorities that this capital exists. The problem arises when this EMI is refused the bank account opening. Firstly, this is influenced by high money-laundering risk of the Baltic countries, the risk of institution itself as discussed above, which would definitely mean that depositing the capital for EMI would be much harder in Latvia, Estonia and Lithuania, based on the latest AML/CFT risk assessments and geographical location.

Secondly, neither PI, nor EMI are not regarded as participants under the Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (Settlement Finality Directive). In fact, by not including PI or EMI (or even a definition remotely close to the following) in the Settlement Finality Directive, it prevents access by PIs and EMIs to payment infrastructures which have been designated under that Directive, making them choose commercial banks as the only option to deposit the initial capital, which are their direct competitors in terms of the provision of services. Here the other problem comes to the picture, EMI is not able to apply for the license without the bank account with the capital, therefore, it may be assumed that EMIs are in fact dependent on other commercial banks to provide similar service and are excluded of participation in financial system if that does not happen.¹⁷⁰

Another problem may arise due to the definition scope of the electronic money, which consequently may lead to more careful evaluation of description of services of the EMI and additional burden whether certain activities in the application in fact constitute electronic money or service.¹⁷¹ Since technology is rapidly developing and there potentially could be new types of electronic money that should be identified as such by the regulator and therefore distinguished from the payment institution services, before granting a license. The case ruled by Court of Justice of the European Union (CJEU), *'Paysera LT' vs. Lietuvos bankas* (Bank of Lithuania) (Case C-389/17) touched upon the definition of electronic money itself and what actions are regarded as issuing electronic money. The important factor that may be seen from this judgement is its connection to recital 8 of the EMD II, stating that the definition of e-money should include electronic money, irrespective of the fact whether it is held on a payment device

¹⁶⁹ See Chapter 3.

¹⁷⁰ Deloitte . "PSD3 and PSR: Minor Update or Major Overhaul?," n.d. Available at: <https://www2.deloitte.com/nl/nl/pages/legal/articles/psd3-and-psr-minor-update-or-major-overhaul.html>. Accessed April 28, 2024.

¹⁷¹ Judgment of the Court (First Chamber) of 16 January 2019, *Paysera LT UAB v Lietuvos bankas*, C-389/17, EU:C:2019:25.

or in the e-money holder's possession, or stored remotely at a server and managed by the holder through a specific account for electronic money.

The CJEU ruled that the services offered are activities related to the issue of e-money and do not constitute payment services if they result in the issuance or redemption of e-money in the same payment transaction. In conclusion, the are e-money-related actions are: redeeming involves sending funds directly to a third-party bank account without going via the e-money holder, and: accepting payment for the product/service means receiving cash.¹⁷² Similar situation with PI issuing e-money potentially without the license to do so may be seen in the case of ABC Projektai UAB v. Lietuvos bankas (C-661/22), where the ruling is still in progress.¹⁷³ These cases are important for consideration during the authorization process because if the payment institution controls the funds received from the clients in the form of electronically stored monetary value, it would be classified as an electronic money institution. Therefore, in the following cases payment institution may be required to obtain an EMI license or consider obtaining it before starting the operations.

5.2. The potential legal challenges of authorization of EMIs under new EU law in the Baltics

In 2023, the European Commission has issued a draft proposal for a Payment Service package, which includes the third Payment Services Directive (PSD3) and a Payment Services Regulation (PSR). Due to emerging use of technology, new types of electronic money and rapid development of EMIs in EU, the legal acts will focus on updated situation. PSD3 addresses the authorization and monitoring of Payment Institutions (PIs) and Electronic Money Institutions (EMIs).¹⁷⁴ The amendments in the law are aimed at strengthening and addressing the challenges in the financial sector due to technology development. However, there of course are some issues that may arise under this Payment Service package. For example, potentially under PSD3, EMIs will need to acquire a new authorization. PSD3 will bring closer the Electronic Money Institutions (EMIs) and Payment Institutions (PI), since they are hard to distinguish, therefore

¹⁷² Opinion of the Advocate General of the Court of Justice of 04 October 2018, Proceedings brought by „Paysera LT“ UAB, C-389/17 (ECLI:EU:C:2018:817).

¹⁷³ The Legal 500. “AG Sets out the Delineation between a Payment Service and E-Money Issuance – Legal Developments,” n.d. Available at: <https://www.legal500.com/developments/thought-leadership/ag-sets-out-the-delineation-between-a-payment-service-and-e-money-issuance/>. Accessed April 28, 2024.

¹⁷⁴ European Commission. “Modernising Payment Services and Opening Financial Services Data: New Opportunities for Consumers and Businesses,” June 28, 2023. Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3543. Accessed April 28, 2024.

making an EMI as a “subcategory” of payment institutions, embedding and eventually at all repealing the existing Directive 2009/110/EC, Directive (EU) 2015/2366 and PSD2, merging the existing and new authorization requirements in one legal act.¹⁷⁵ PSD3 will therefore cover the authorization aspects, for example the information on the application for authorization to be submitted to the National Competent Authority of the country of registration or choice (NCA) remains mostly unchanged, with the exception of certain aspects:

- (1) Business continuity plans should comply with Regulation (EU) 2022/2554 on digital operational resilience (including addressing the information and communication technology risk, taking into account the size and overall risk profile of the EMI, the nature, scale and complexity of their services, activities and operations etc.);
- (2) Security: the new application involves a full risk assessment, including the risk of fraud and illicit use of sensitive and personal data, as well as procedures for exchanging fraud-related data;
- (3) Other applications: PIs must offer an overview of the EU states in which they are filing or intend to submit an application for permission;
- (4) Winding-up plan: PIs must present a winding-up strategy in the event of failure that is tailored to the applicant's expected size and business model.¹⁷⁶

The following requirements already are contained in legal provisions of Latvia, Lithuania and Estonia. However, certain provisions that currently regulate the authorization and licensing process may need to be clarified. For example, if the respective legal acts are aimed at making EMI authorization process more similar to the one that is currently in force for the PI, that also may require additional resources and guidelines from the regulators on what is expected from the institution, that could pose a challenge for new EMIs entering the market and already existing market players.

New proposed legislation also includes the differences in the new e-money definition. The e-money definition under EMD2 referred to the person (one person in this case) with regard to third-party acceptance, whereas the e-money definitions under Article 2 paragraph 34 PSD3 and Article 3 paragraph 50 PSR refer to multiple (more than one) persons with regard to third-party acceptance of e-money. This change to a plurality of third-party acceptors could mean that the criterion of acceptance by third parties would only be met in the future if there were not

¹⁷⁵ Preamble point (5) COM/2023/367 final, Proposal for a Regulation of the European Parliament and of the Council on payment services in the internal market and amending Regulation (EU) No 1093/2010 Text with EEA relevance. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52023PC0367>. Accessed March 28, 2024.

¹⁷⁶ Hansen, Sigrid. “PSD3 Impacts on Payment and Electronic Money Institution Authorization,” June 29, 2023. Available at: https://www.ey.com/en_be/financial-services/psd3-impacts-on-payment-and-electronic-money-institution-authorization. Accessed March 28, 2024.

just one, but at least two acceptors in addition to the main e-money issuer. This would mean that those cases would have been covered by the previous e-money definition under EMD2, would no longer be covered by the new e-money definition, potentially meaning that the national laws also should clarify this matter. This may apply to cases where there are two legally independent companies (for example, belonging to the same group of companies), where one company is only responsible for issuing the e-money and the other one only for accepting it. It remains unclear whether the intention of the legislators in this case was to create a new definition of e-money with the aforementioned scope by expanding the number of third-party acceptors, or adding this situation to the existing definition, especially since nothing can be found on this matter in the recitals.¹⁷⁷¹⁷⁸

In accordance with Article 5 PSD3, the initial capital of a payment institution which issues e-money shall at no time be less than 400 000 EUR. Currently, under Article 4 EMD2 and consequently all the national laws of the Baltic countries the initial capital had to be at least 350 000 EUR, that changes the initial procedure, requiring an EMI to possess more funds upon application for the license and more burden on the procedure where origin of funds would be established.¹⁷⁹

Article 45 PSD3 provides a transitional provision for already authorised e-money institutions that could in practice result in considerable costs for the EMIs. According to Article PSD3, e-money institutions that have already begun their operations as e-money institutions up to 18 months after the PSD3 goes into effect may continue to provide e-money services without having to apply for authorization under Article 3 PSD3 with some new requirements, or comply with the obligations under Article 13 PSD3 that covers granting the authorization.¹⁸⁰ At the same time Article 45 para. 2 obliges these e-money institutions to provide the competent authorities with all necessary information within 24 months after the entry into force of PSD3, so that the regulator can assess whether the e-money requirements as defined in PSD3 are complied with, which therefore poses a financial and documentary burden on an EMI, that in fact started the operations under less strict conditions.¹⁸¹

¹⁷⁷ COM/2023/367 final, Proposal for a Regulation of the European Parliament and of the Council on payment services in the internal market and amending Regulation (EU) No 1093/2010 Text with EEA relevance. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52023PC0367>. Accessed March 28, 2024.

¹⁷⁸ COM/2023/366 final, Proposal for a Regulation of the European Parliament and of the Council on payment services and electronic money services in the Internal Market amending Directive 98/26/EC and repealing Directives 2015/2366/EU and 2009/110/EC Text with EEA relevance. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52023PC0366>. Accessed March 28, 2024.

¹⁷⁹ *Ibid.*, Article 45.

¹⁸⁰ *Ibid.*

¹⁸¹ *Ibid.*

PSD3 prescribes that if the requirements are complied, the e-money institution can be authorized in accordance with Article 13 PSD3, issued the license and will be entered in the register of payment institutions in the home Member State and EBA register, in accordance with Articles 17, 18 of PSD3. In case if the requirements are not complied, the issuance of e-money for this legal person may be prohibited by the national regulatory authorities that may follow with the process of revoking the license of an EMI.¹⁸² It is important to note that Article 45 PSD3 gives Member states the option of allowing previously authorized e-money institutions to automatically obtain authorization as payment institutions under PSD3, if the competent authorities have evidence that the e-money institutions meet the PSD3 requirements.¹⁸³ Which means, that if the existing EMI cannot meet the respective requirements, the initial business of e-money issuance would be prohibited and if the company continues to do so, that may result in proceedings of the interpretation of the definition itself and license problems, that was previously discussed in Chapter 5.1. Before granting automatic authorization, the responsible authorities must notify the relevant e-money institutions. Member nations should take advantage of this opportunity. This is because the competent authorities have already received and verified the necessary information from the authorized e-money institutions as part of the authorization procedure, allowing a second quasi-authorization application to be avoided and the resources of the competent authorities and the companies involved to be used more efficiently.¹⁸⁴

This however clashes with the current distinction between two different payment service providers and will require additional work from the regulatory authorities of Latvia, Lithuania and Estonia to incorporate the procedure in the law and their guidelines on how to issue a payment institution license to the EMI and how to establish the compliance of the institution with the requirements provided in PSD3 and PSR. Currently, the proposed article of the legal document does not provide any clarity regarding that matter. Even more, the amendments in the law can bring more legal problems and challenges to operating EMIs. Notwithstanding the fact that for EMIs operating in the Baltics the amendments in the law may help to solve the

¹⁸² Article 13 and 14 of COM/2023/366 final, Proposal for a Regulation of the European Parliament and of the Council on payment services and electronic money services in the Internal Market amending Directive 98/26/EC and repealing Directives 2015/2366/EU and 2009/110/EC Text with EEA relevance. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52023PC0366>. Accessed May 3, 2024.

¹⁸³ Article 45 of COM/2023/366 final, Proposal for a Regulation of the European Parliament and of the Council on payment services and electronic money services in the Internal Market amending Directive 98/26/EC and repealing Directives 2015/2366/EU and 2009/110/EC Text with EEA relevance. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52023PC0366>. Accessed May 3, 2024.

¹⁸⁴ Article 13 of COM/2023/366 final, Proposal for a Regulation of the European Parliament and of the Council on payment services and electronic money services in the Internal Market amending Directive 98/26/EC and repealing Directives 2015/2366/EU and 2009/110/EC Text with EEA relevance. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52023PC0366>. Accessed May 3, 2024.

current challenges of non-bank payment service providers access to EU payment systems, as well as diminish the existing barriers to delivering open banking services and giving clients more control over their payment data, encouraging new innovative products and services to join the market.¹⁸⁵ Overall, the PSD3 and PSR would be a challenge that has merged two different types of payment services into one.

6. Conclusion

Technological development has shaped the way financial institutions operate, including introducing electronic money. Electronic money may be roughly described as an electronic store of monetary value on a technological device that may be extensively utilized to make payments to parties, other than the e-money issuer. The technological device functions as a prepaid bearer instrument that does not require bank accounts for transactions. The technology used to hold monetary value determines whether e-money items are hardware-based or software-based.¹⁸⁶ Electronic money may be issued by an electronic money institution (EMI), which in accordance with Article 2(1) of the Directive 2009/110/EC states Article 2(1) of the is as a legal person that has been granted authorisation to issue e-money.¹⁸⁷

Obtaining an authorisation to issue e-money, or in other words - EMI license can significantly vary across Europe, reflecting the unique regulatory landscapes of each country. The Baltic countries – Latvia, Lithuania and Estonia have been the newcomers in a FinTech world, however, the process of EMI licensing and authorization in these countries is already well known around the EU, especially for its efficiency and supportive stance of authorities towards financial innovation. An EMI license permits a duly registered company to issue electronic money, manage electronic money accounts, and offer associated payment services, furthermore, the company may engage in additional business, not connected to e-money issuance.¹⁸⁸

¹⁸⁵ European Commission . “Payment Services: Revised Rules to Improve Consumer Protection and Competition in Electronic Payments,” June 28, 2023. Available at: https://ec.europa.eu/commission/presscorner/detail/en/qanda_23_3544. Accessed May 3, 2024.

¹⁸⁶ European Central Bank. “Electronic Money,” July 24, 2023. Available at: https://www.ecb.europa.eu/stats/money_credit_banking/electronic_money/html/index.en.html. Accessed May 3, 2024.

¹⁸⁷ Article 2(1) of the Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (Text with EEA relevance), *OJ L 267*, 10.10.2009, p. 7–17. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32009L0110>. Accessed May 3, 2024.

¹⁸⁸ European Central Bank. “Electronic Money,” July 24, 2023. Available at: https://www.ecb.europa.eu/stats/money_credit_banking/electronic_money/html/index.en.html. Accessed May 3, 2024.

In the Baltic countries, acquiring an EMI license means going through the process laid out in the regulatory framework, established, and supported by each country's financial authorities. Electronic money license in the Baltic states bears a certain degree of similarity and allows the EMI to function in a rapidly developing market. In accordance with the Directive 2009/110/EC and local regulations, in Latvia, Lithuania and Estonia an EMI license must be obtained by an applicant, that wishes to issue electronic money and perform unlimited operations with it across the EU. To apply for the EMI license, each jurisdiction requires the applicant to have a particular legal form (private or public limited company), clear structure of operations (business plan), capital as it is indicated in the law, ready financial forecasts and appropriate information and technology resources for data security, internal control system for all the operations and AML/CTF prevention. After that the regulatory authorities, that are responsible for EMI supervision decides on issuing the license. The authorization process is comprehensive, that also makes the following jurisdictions attractive for foreign EMIs, that as well can obtain the license in the Baltics by undergoing the standard procedure. In case an EMI cannot comply with the requirements set by the regulators to some extent, there is a possibility to apply for authorisation, which limits the operations of the EMI not only to the country of registration, but also financially.

The process of obtaining an electronic money institution license does not differ much in Lithuania, Latvia, and Estonia. After analysis of local provisions, applicable to EMIs¹⁸⁹, it can be concluded that the main difference of authorization process is not stipulated in the law but is rather seen at the last step – evaluation of the regulatory authorities and available regulatory sandboxes. Laws of Latvia, Lithuania and Estonia all contain similar provisions and document list that shall be submitted, excluding some minor differences in document lists and requirements, that mostly do not concern the operations of the EMI directly (e.g. local office in Estonia, enhanced due diligence on board members in Latvia, some financial forecast differences etc.). Therefore, it may be concluded that also on the EU level the legal framework governing the EMIs is harmonized enough, however, each country offers its own benefits when it comes to EMI operations and assistance with document preparation for the application itself. From the comparative analysis it could be derived that Lithuania indeed offers the most favourable environment for EMI licensing and operations, compared to Latvia and Estonia, because it offers a comprehensive authorization process and support of Bank of Lithuania in document preparation.

¹⁸⁹ See Chapter 3.

Regulatory frameworks governing EMIs are continually evolving to address new challenges in the digital finance landscape. Regulators are increasingly focusing on matters like consumer protection, data protection, cybersecurity, AML/CTF compliance, which as well leads to the demand of higher compliance standards from EMIs that are applying for license, influencing the decision of the authorities as well. The new revision of payment services on the EU level may even further bring new challenges to the existing authorization process by bringing EMIs closer to payment institutions. Based on the practice of operating EMIs in the Baltic states it has been established that matters of money laundering and business continuity are of the primary concern, therefore are the factors that may influence the authorization process by bringing stricter rules and requirements into place.

Nonetheless, each of the jurisdictions analysed in this thesis offers distinct advantages and challenges, making the choice of location a critical strategic decision for businesses venturing into the European e-money market, because authorization process may be influenced by various legal factors. That consequently could lead to less EMIs being ready for ordinary license and its maintenance and choose limited operations instead.

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