

**Electronic Money Association**

Crescent House

5 The Crescent

Surbiton, Surrey

KT6 4BN

United Kingdom

Telephone: +44 (0) 20 8399 2066

Email: thaer.sabri@e-ma.orgwww.e-ma.org**Bundesministerium fuer Finanzen**e.Recht@bmf.gv.at**Präsidium des Nationalrates**begutachtungsverfahren@parlament.gv.at

27 September 2016

Re: Finanzmarkt-Geldwäschegesetz – FM-GwG- The proposed national implementation of the 4th Anti-Money Laundering Directive (‘4MLD’) in Austria

The EMA is the EU trade body representing electronic money issuers and alternative payment service providers. Our members include leading payments and e-commerce businesses worldwide that provide online payments, card-based products, electronic vouchers and mobile payment instruments. Most members operate across the EU, most frequently on a cross-border basis. A list of current EMA members is provided at the end of this document.

We welcome your proposals to no longer include e-money institutions that passport their services into Austria on a purely cross-border basis within the scope of the Austrian anti-money laundering laws, and hope you will consider our views on the e-money-specific exemptions from customer due diligence in Art. 12 4MLD. We would also like to make you aware of our position in relation to your proposed requirement for a local point of contact for passporting e-money issuers with a physical presence in Austria and for their compliance with local law under Art. 45(9) 4MLD (§23(7) FM-GwG).

Our views are set out below. Please feel free to contact us should you have any question or require further information.

Yours sincerely,

Dr Thaer Sabri
Chief Executive Officer
Electronic Money Association

§8 FM-GwG (Art. 12 and 15 4MLD) on exemptions from customer due diligence/ simplified due diligence ('SDD')

We note that you are merely planning to implement the general SDD provisions in Art. 15 4MLD, without providing for the e-money-specific exemptions in Art. 12 4MLD. The e-money industry strongly encourages the implementation of Art. 12, which is based on the existing regime of exemptions in 3MLD.

The need to postpone customer due diligence for small value payment instruments to enable the take-up of products by consumers is widely known¹ and has worked well, a fact that is reflected by the retention of the e-money exemptions in 4MLD. Legitimate users of e-money have indicated an unwillingness to undergo verification of identity where low value transactions are involved,² and the cost of undertaking CDD at the outset would be prohibitive given the narrow profit margins and often occasional use of e-money products.³ This means that the industry relies on the exemptions to place its products into the hands of consumers. These exemptions benefit not only the industry and its individual businesses, but also aid financial inclusion and the displacement of cash within the economy. In this respect, the UK recently recognised the value for law enforcement of the traceability of e-money products (as compared to cash).⁴

While Art. 12 lowers the thresholds under which e-money products may benefit from SDD, it still provides significant certainty for businesses, which is lost if the allowance for SDD is made conditional on meeting the criteria set out in §8 FM-GwG and dependent on the FMA's decrees under §8(5) FM-GwG. We therefore urge you to consider the implementation of Art. 12 into Austrian law.

§23(7) FM-GwG (Art. 45(9) 4MLD) on a local point of contact for passporting e-money issuers and their compliance with local law

In our estimation the cost for e-money issuers of establishing a local point of contact in each Member State in which they physically distribute products will be prohibitive, and will discourage iterative growth of the industry across Member States. We think a local point of contact is not an appropriate means of exercising control over passporting e-money issuers for two reasons:

1) Distribution of e-money does not involve the offering of a regulated service; it neither involves issuing (an activity that takes place within the system of the issuer), nor the provisions of a payment service (this takes place when the e-money product is used to

¹ Currently 100% of single-use gift cards and vouchers benefit from full simplified due diligence, while around 63% of the remaining e-money products benefit from some level of simplified due diligence. The EMA estimates that approximately 300 million e-money products were issued or in operation in the EEA in 2015, including e-wallets, travel cards, corporate expense cards, gift cards and vouchers amongst others.

² Our experience is that the take-up of products drops in excess of 50% where customer due diligence information is requested. Average transaction size is about €35.

³ The cost of verification is in the region of EUR 2 to EUR 8; making a EUR 100 prepaid card (or lower) non-viable as a payment product when compared to credit or debit cards. Merchants are typically charged 1-2% of transaction values for debit or credit card acceptance, and so are unlikely to be willing to accept charges that would need to be in excess of 5% in order to accommodate CDD related costs.

⁴ See the HM Treasury 'Consultation on the transposition of the 4th Money Laundering Directive' of September 2016.



make a payment, and again takes place within the system of the issuer). Therefore, distributors have very little insight into the use of the e-money, as they can only see their own customers, and can only see the purchase of the value. They cannot see how the product is used, where, or how frequently, and can deduce very little about the customer. Rather, it is the issuer who has oversight of the use of the product, including the activity at distribution points and the usage of the product at end merchants.

For this reason it would be better to make use of a contact point within the issuer's business who has access to all internal systems and data. In this respect, the firm's compliance officer is usually best placed, as he or she is the most knowledgeable about the product and the relevant compliance requirements. The compliance officer could therefore provide a convenient point of engagement with the issuer without adding to cost unnecessarily.

2. Distributors do not constitute establishments, and issuers passporting their services cross-border through the use of distributors should therefore not be required to comply with local AML legislation. Indeed, compliance with local law is not envisaged by Art. 45(9) 4MLD. There should therefore be no need for a local point of contact to ensure such compliance.

We therefore strongly encourage the BMF not to implement the requirement for a local point of contact and compliance with local law. The industry is open to working with national authorities on ways in which the exchange of information between host countries and passporting issuers can be facilitated without a local point of contact, and we would welcome any questions or comments you might have in this respect.

**List of EMA members as of August 2016:**

Advanced Payment Solutions Ltd	Ixaris Systems Ltd
Airbnb Inc	Kalixa Pay Ltd
Allegro Group	MarqMillions
American Express	Mercari
Azimo Limited	One Money Mail Ltd
Bitstamp	Optal
Blackhawk Network Ltd	Park Card Services Limited
Boku Inc	Payoneer
Citadel Commerce UK Ltd	PayPal Europe Ltd
ClickandBuy International Ltd	PayPoint Plc
Clydesdale Bank	Paysafe Group
Coinbase	PPRO Financial Ltd
Corner Banca SA	PrePay Solutions
eBay Europe Sarl	R. Raphael & Sons plc
Euronet Worldwide Inc	Remitly
Facebook Payments International Ltd	Securiclick Limited
FaceKart	Skrill Limited
First Rate Exchange Services	Stripe
Flex-e-card	Syspay Ltd
Flywire	Transact Payments Limited
GoCardless Ltd	TransferWise Ltd
Google Payment Ltd	Valitor
iCheque Network Limited	Wave Crest Holdings Ltd
IDT Financial Services Limited	Wirecard AG
	Worldpay UK Limited