



**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.org](mailto:thaer.sabri@e-ma.org)  
[www.e-ma.org](http://www.e-ma.org)

**Bundesministerium fuer Finanzen**

[e.Recht@bmf.gv.at](mailto:e.Recht@bmf.gv.at)

**Präsidium des Nationalrates**

[begutachtungsverfahren@parlament.gv.at](mailto: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 known<sup>1</sup> 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,<sup>2</sup> 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.<sup>3</sup> 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).<sup>4</sup>

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

---

<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> 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:**

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