

**Electronic Money Association e.V.**

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Bundesministerium der Finanzen  
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**Re: Referentenentwurf des Bundesministeriums der Finanzen: Entwurf eines Gesetzes zur Umsetzung der Vierten EU-Geldwäscherichtlinie, zur Ausführung der EU-Geldtransferverordnung und zur Neuorganisation der Zentralstelle für Finanztransaktionsuntersuchungen – The proposed national implementation of the 4th Anti-Money Laundering Directive (‘4MLD’) in Germany**

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 have reviewed the draft legislation implementing 4MLD in Germany. We welcome the proposed implementation of the e-money-specific provisions in Article 12 4MLD (§ 25i KwG), but would like to draw your attention to some elements of the proposed text that may be difficult to implement in practice. We also strongly encourage the option of postponing verification of identity under Article 15 4MLD (§ 13 GwG). We set out our comments in more detail below and hope you will take them into account in drafting the final legislation.

Please feel free to contact us should you have any questions in response to this letter or require further information.

Yours sincerely,

Dr Thaer Sabri

Chief Executive Officer  
Electronic Money Association

## **§ 25i KwG (Allgemeine Sorgfaltspflichten in Bezug auf E-Geld) on the exemption from CDD for e-money issuers (Article 12 4MLD)**

1) We note that § 9 Absatz 6 GwG refers to § 25i KwG Absatz 5, which does not exist.

2) The distinction in § 25i KwG Absatz 2 Nummer 6 between an account held in the e-money holder's name and a third party's account does not work in practice, as e-money holders of instruments subject to the exemption in § 25i KwG will not be identified in the first place. This means it cannot be established whether any account to which redemption is requested is held in the e-money holder's name or in a third party's name. The condition in its current wording is therefore meaningless and should be deleted. The €20 redemption restriction should be applied to redemption against cash only, as the risk lies with anonymous redemption rather than with redemption to a fully identified account, as the latter will always be traceable. Like any bank account, an e-money account to which redemption may be requested will be fully identified, as anonymous loading of e-money accounts is not permitted under § 25i Absatz 2 Nummer 4 KwG.

3) The reference in § 25i Absatz 3 KwG to 'already identified e-money holders' (*bereits identifizierten E-Geld-Inhaber*) suggests e-money holders of instruments subject to the exemption in § 25i KwG will be identified, which is not the case. All e-money issuers, however, keep a record of the e-money purchased, spent and redeemed on a reloadable instrument, and this record will be available to law enforcement if necessary. The provision should be rephrased as follows:

*(...) hat das ausgebende Institut Dateien zu führen, in denen alle an einen bereits identifizierten E-Geld-Inhaber ausgegebenen und zurückgetauschten E-Geld-Beträge mit Zeitpunkt (...)*

## **§ 13 GwG (Vereinfachte Sorgfaltspflichten, Verordnungsermächtigung) on simplified due diligence (Article 15 4MLD)**

The text of § 13 GwG as it is currently proposed does not appear to envisage the option of postponing verification of identity beyond a risk-based threshold and instead seems to suggest that all elements of customer due diligence need to feature in any simplified due diligence scheme. In this respect, we would like to draw your attention to paragraph 21 of the Interpretive Note to FATF Recommendation 10 (Customer Due Diligence), in which such a postponement was explicitly contemplated:

*21. Where the risks of money laundering or terrorist financing are lower, financial institutions could be allowed to conduct simplified CDD measures, which should take into account the nature of the lower risk. The simplified measures should be commensurate with the lower risk factors (e.g. the simplified measures could relate only to customer acceptance measures or to aspects of ongoing monitoring). Examples of possible measures are:*

- *Verifying the identity of the customer and the beneficial owner after the establishment of the business relationship (e.g. if account transactions rise above a defined monetary threshold).*
- *(...)*

The option of postponing verification measures for identified e-money holders is important for e-money issuers, as verification requirements pose a significant barrier to the take-up of e-money by customers. This is due to the additional cost of undertaking verification that will likely be passed on to customers, as well as customers' unwillingness to provide personal data and undergo verification of identity for low value transactions.

While § 25i KwG already offers an exemption for e-money products, this is restrictive due to its low thresholds, combined with strict requirements on the nature and capabilities of the product. Only certain types of low risk e-money products will be able to benefit from § 25i KwG; many will need to use the simplified due diligence exemptions set out at § 13 GwG instead in order to operate as viable businesses.

We therefore strongly recommend considering the option of postponing verification of identity as part of § 13 Absatz 2 Nummer 2 GwG and suggest the following amendment:

*(2) Bei Anwendbarkeit vereinfachter Sorgfaltspflichten können Verpflichtete*

*(...)*

*2. insbesondere die Überprüfung der Identität bis zu der Erreichung risikobezogener Schwellenwerte zurückstellen oder abweichend von §§ 11 und 12 auf der Grundlage von sonstigen Dokumenten, Daten oder Informationen durchführen, die von einer glaubwürdigen und unabhängigen Quelle stammen und für die Überprüfung geeignet sind.*

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

<a href="#"><u>Advanced Payment Solutions Ltd</u></a>	<a href="#"><u>MarqMillions</u></a>
<a href="#"><u>Airbnb Inc</u></a>	<a href="#"><u>Merpay Ltd.</u></a>
<a href="#"><u>Allegro Group</u></a>	<a href="#"><u>One Money Mail Ltd</u></a>
<a href="#"><u>American Express</u></a>	<a href="#"><u>Optal</u></a>
<a href="#"><u>Azimo Limited</u></a>	<a href="#"><u>Park Card Services Limited</u></a>
<a href="#"><u>Bitstamp</u></a>	<a href="#"><u>Payfriendz Ltd</u></a>
<a href="#"><u>Blackhawk Network Ltd</u></a>	<a href="#"><u>Payoneer</u></a>
<a href="#"><u>Boku Inc</u></a>	<a href="#"><u>PayPal Europe Ltd</u></a>
<a href="#"><u>Citadel Commerce UK 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>SEQR</u></a>
<a href="#"><u>First Rate Exchange Services</u></a>	<a href="#"><u>Skrill Limited</u></a>
<a href="#"><u>Flex-e-card</u></a>	<a href="#"><u>Stripe</u></a>
<a href="#"><u>Flywire</u></a>	<a href="#"><u>Syspay Ltd</u></a>
<a href="#"><u>GoCardless Ltd</u></a>	<a href="#"><u>Transact Payments Limited</u></a>
<a href="#"><u>Google Payment Ltd</u></a>	<a href="#"><u>TransferWise Ltd</u></a>
<a href="#"><u>iCheque Network Limited</u></a>	<a href="#"><u>Valitor</u></a>
<a href="#"><u>IDT Financial Services Limited</u></a>	<a href="#"><u>Wave Crest Holdings Ltd</u></a>
<a href="#"><u>Ixaris Systems Ltd</u></a>	<a href="#"><u>Wirecard AG</u></a>
<a href="#"><u>Kalixa Pay Ltd</u></a>	<a href="#"><u>Worldpay UK Limited</u></a>