



# FEDERAL ACT ON THE ISSUANCE OF ELECTRONIC MONEY AND THE TAKING UP, PURSUIT AND SUPERVISION OF THE BUSINESS OF ELECTRONIC MONEY INSTITUTIONS (E-GELDGESETZ 2010 – EGELDG)

## E-MONEY ACT 2010 (EGELDG; E-GELDGESETZ 2010)

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## CHAPTER 1: SCOPE OF APPLICATION AND DEFINITION OF TERMS

### Electronic money and electronic money issuers

**Article 1.** (1) Electronic money describes all electronically stored, including magnetically stored, monetary value in the form of a claim on the electronic money issuer, issued on receipt of funds for the purpose of making payment transactions as defined in Article 4 no. 5 of the Payment Services Act 2018 (*ZaDiG 2018; Zahlungsdienstegesetz 2018*), published in Federal Law Gazette I No 17/2018, and which is accepted by a natural or legal person other than the electronic money issuer.

(2) Only electronic money issuers are authorised to issue electronic money. Electronic money issuers are:

1. Credit institutions and CRR-credit institutions pursuant to Article 1 and Article 1a para. 1 of the Banking Act (*BWG; Bankwesengesetz*) as published in Federal Law Gazette No 532/1993, who are authorised in accordance with the law applicable in their home Member State for the issuance of electronic money, including their branches and the branches of foreign credit institutions as defined in Article 2 no. 13 BWG, provided that these branches are located within the European Economic Area;
2. Electronic money institutions as defined in Article 3 para. 2 as well as electronic money institutions pursuant to Article 9, which are authorised in accordance with the law of their home Member State to issue electronic money (point 43 of Article 4 (1) of Regulation (EU) No 575/2013), including branches of electronic money institutions established within the European Economic Area, whose place of incorporation is located outside the European Economic Area, provided that the European Union has concluded the necessary agreements or provides that they have been granted a licence pursuant to Article 4 para. 6;
3. the Austrian Post with regard to money transaction services;
4. the European Central Bank, the *Oesterreichische Nationalbank*, as well as other central banks within the European Economic Area, provided that they are not acting in their capacity as monetary authority or in another capacity as authorities;
5. the government, the provinces and municipalities, if they are acting in their capacity as authorities;
6. Oesterreichische Kontrollbank AG.

(3) The definition of terms of the *ZaDiG 2018* shall also apply to terms used in relation to the content of this federal act, unless expressly stated otherwise in this federal act.

### Exceptions

**Article 2.** (1) This federal act shall not apply to the European Central Bank or the central banks of other Member States within the European Economic Area in the event that they are acting in their

capacity as monetary authority or as another type of authority, nor to the *Oesterreichische Nationalbank*, if it is acting in its capacity as monetary authority of in relation to the tasked conferred upon it by the federal act, the BWG, the National Bank Act of 1984 (*NBG; Nationalbankgesetz 1984*) as published in Federal Law Gazette No. 50/1984, the Foreign Exchange Act 2004 (*Devisengesetz 2004*) as published in Federal Law Gazette I No. 123/2003, the Settlement Finality Act (*Finalitätsgesetz*) as published in Federal Law Gazette I No. 123/1999, the Secondary Coinage Act 1988 (*Scheidemünzengesetz 1988*) as published in Federal Law Gazette No. 597/1988, the Sanctions Act 2024 (*SanktG 2024; Sanktionengesetz 2024*) as published in Federal Law Gazette I 36/2010, the ZaDiG or the Financial Market Authority Act (*FMABG; Finanzmarktaufsichtsbehördengesetz*) published in Federal Law Gazette I No. 97/2001.

(2) Chapter 2 shall not apply to

1. credit institutions and CRR-credit institutions pursuant to Articles 1 and 1a BWG, who are authorised in accordance with the law applicable in their home Member State for the issuance of electronic money, including their branches and the branches of foreign credit institutions as defined in Article 2 no. 13 BWG, provided that these branches are located within the European Economic Area;
2. the Austrian postal service with regard to its money transactions;
3. the European Central Bank, the *Oesterreichische Nationalbank*, as well as other central banks within the European Union, provided that they are not acting as monetary authority or in another capacity as an authority as defined in para. 1, or if the *Oesterreichische Nationalbank* is not acting in a capacity with regard to the tasks conferred upon it in the federal acts listed in para. 1;
4. the government, the provinces and municipalities, if they are acting in their capacity as authorities;
5. *Oesterreichische Kontrollbank AG*.

(3) Within this federal act, the definition electronic money shall not apply to:

1. a monetary value stored on instruments defined in Article 3 para. 3 no. 11 ZaDiG 2018, or
2. a monetary value used for payment transactions pursuant to Article 3 para. 3 no. 12 ZaDiG 2018.

(4) Article 25 para. 2 no. 4 shall be applied in such a way with regard to compliance with Article 20 para. 3 no. 6 ZaDiG 2018, including the procedures and data processing systems associated with this provision as defined in Article 20 para. 3 no. 4 ZaDiG 2018 that on-site inspections shall be carried out by the FMA. By way of derogation from Article 22 para. 3 and Article 25 para. 3 of this federal act, Article 70 paras. 1a and 1b and Article 79 para. 4 BWG shall not apply in this regard.

## CHAPTER 2: ELECTRONIC MONEY INSTITUTIONS

### SECTION 1: LICENCES

#### Requirement and scope of licence

**Article 3.** (1) The commercial issuance of electronic money pursuant to Article 1 para. 1 in Austria requires a licence as an electronic money institution from the FMA with the exception of the case of Article 2 para. 2.

(2) An electronic money institution is a legal person established and with its registered office and head office in Austria, which is authorised on the basis of this federal act to issue electronic money pursuant to Article 1 para. 1 in accordance with the provisions of this federal act.

(3) Furthermore, electronic money institutions are allowed to perform the following activities, provided that they have been authorised to do so:

1. the provision of the payment services listed in Article 1 para. 2 ZaDiG 2018, although Article 7 paras. 3, 4 and 5 ZaDiG 2018 (prohibition of conducting deposit-taking business) shall apply, where the funds taken are not connected to the issuance of electronic money;
2. the granting of credits in connection with payment services pursuant to Article 1 para. 2 nos. 4 or 5 ZaDiG 2018 under the conditions listed in Article 7 para. 6 ZaDiG 2018, subject to the conditions that
  - a. the credits shall not be allowed to be granted from the funds that are received and pursuant to Article 12 held for the issuance of electronic money, and
  - b. the provisions of the General Civil Code (*ABGB; Allgemeines Bürgerliches Gesetzbuch*), the Consumer Protection Act (*KSchG; Konsumentenschutzgesetz*) as published in Federal Law Gazette No. 140/1979 regarding consumer credit and the Consumer Loans Act (*VKRG; Verbraucherkreditgesetz*) as published in Federal Law Gazette I No. 28/2010 remain unaffected;
3. the provision of commercial services and closely related ancillary services connected to the issuance of electronic money or the provision of payment services as mentioned in no. 1;
4. the operation of payment systems as defined in Article 4 no. 7 ZaDiG 2018 irrespective of Article 5 ZaDiG 2018;
5. other business activities, which do not consist of the issuance of electronic money, provided that no legal provisions under Union law or provisions in other federal acts exist to the contrary.

(4) Electronic money institutions may not accept deposits or other repayable funds from the public pursuant to Article 1 para. 1 no. 1 BWG, nor on the basis of issuing bearer and registered bonds.

(5) Funds, which electronic money institutions receive from their customers for the purpose of issuance of electronic money, must be converted into electronic money without delay. Such funds shall not constitute deposits or other repayment funds from the public pursuant to Article 1 para. 1

no. 1 BWG and such funds may not be subject to interest or other benefit, which arise in relation to the time frame during which a holder of electronic money holds the electronic money.

(6) Any credit granted pursuant to Article 3 no. 2 shall not constitute a credit transaction as defined in Article 1 para. 1 no. 3 BWG.

### **Application for and granting of a licence**

**Article 4.** (1) For the application for a licence as an electronic money institution, the procedure pursuant to Article 9 ZaDiG 2018 shall apply, although it must be described about

1. the information about the business model (Article 9 para. 1 no. 1 ZaDiG 2018) should be specified, how the issuance of electronic money is intended to occur, and whether payment services are also intended to be provided that are specific denominated and described as such;
2. the evidence of the initial capital, about the amount of which Article 11 para. 1 shall be relevant;
3. the measures to be taken for the purposes of protecting customer funds (Article 9 para. 1 no. 4 ZaDiG 2018)
  - a. with reference to the issuance of electronic money about the measures for protecting the funds of the holders of electronic money pursuant to Article 12 and
  - b. with reference to the provision of payment services pursuant to Article 1 para. 2 ZaDiG 2018 about the measures for protecting the funds of the payment service user pursuant to Article 18 ZaDiG 2018;
4. it must be proven that the directors (Article 9 para. 1 no. 14 ZaDiG 2018) with regard to their technical suitability have the appropriate knowledge and skills for the issuance of electronic money, and in the case that payment services are also intending to be provided, that the directors also possess the appropriate knowledge and skills in this regard too.

(2) An electronic money institution, whose place of incorporation is outside the European Economic Area and is authorised in the country of incorporation to issue electronic money pursuant to Article 1 para. 1 (a foreign electronic money institution), and which makes an application for a licence to be granted to operate a branch in Austria, shall in addition to the information pursuant to para. 1 nos. 1, 3 and 4 of this federal act and Article 9 para. 1 nos. 2, 5 to 13, 16 and 17 ZaDiG 2018 also submit the following items and information:

1. the entity's three most recent annual financial statements;
2. the businesses operated by foreign entities pursuant to Article 1 para 1 as well as the locations where they are conducted;
3. the amount of the initial endowment capital that is available to the directors without restriction and encumbrance in Austria in euro;

4. the powers to take decisions of the management of the branch as well as the information about the bodies in the principle place of business, whose approval must be obtained in relation to certain internal decisions;
5. a written declaration from the supervisory authority for the principle place of business of the entity, in which the supervisory authority states that no grounds exist that speak against the opening of a branch of the entity in Austria.

(3) When granting a licence, Article 10 paras. 1 and 2 ZaDiG 2018 shall apply with the proviso that

1. the organisational requirements (Article 10 para. 1 no. 3 ZaDiG 2018) are to be aligned to the type of the issuance of electronic money and the other intended activities, to be conducted pursuant to Article 3 para. 3, in particular payment services;
2. an amount of EUR 350 000 (Article 11 para. 1) shall be made available to the directors without restriction and encumbrance in Austria with regard to the initial capital (Article 10 para. 1 no. 7 ZaDiG 2018);
3. the measures to be taken for the purposes of protecting customer funds (Article 10 para. 1 no. 8 ZaDiG 2018)
  - a. with reference to the issuance of electronic money, the measures for protecting the funds of the holders of electronic money pursuant to Article 12 and
  - b. with reference to the provision of payment services pursuant to Article 1 para. 2 ZaDiG 2018 the measures for protecting the funds of the payment service user pursuant to Article 18 ZaDiG 2018

must be satisfactory;

4. no reasons for exclusion may exist against the directors (Article 10 para. 1 no. 12 ZaDiG 2018) as the director of a payment institution or an electronic money institution in another Member State;
5. regarding the professional suitability of the directors (Article 10 para. 1 no. 11 ZaDiG 2018) at least one must possess the necessary experience for the operation of the electronic money institution and must possess adequate theoretical and practical knowledge in the business areas pursuant to Article 1 para. 1 and Article 3 para. 3 no. 1, and shall not be allowed to perform another main profession (Article 10 para. 1 no. 15 ZaDiG 2018) outside banking, payment services and electronic money;
6. the Articles of association shall not be allowed to contain any provisions (Article 10 para. 1 no. 16 ZaDiG 2018), that do not ensure the safety of the funded entrusted to the electronic money institution and the orderly execution of transactions pursuant to Article 1 para. 2 (issuance of electronic money) and as applicable Article 3 para. 3 no. 1 (payment services);
7. the consultation of the competent authority in another Member State with regard to the directors, where the competent authority for the supervision of electronic money institutions and where applicable for payment services in the Member State concerned shall be contacted.

(4) The licence shall be granted in writing, otherwise it shall be invalid; a licence may be issued subject to conditions and obligations, may cover the issuance of electronic money either solely or in

conjunction with one or several payment services pursuant to Article 1 para. 2 ZaDiG 2018 and may exclude parts of individual payment services from the scope of the licence. At the same time as granting the licence, the FMA shall also enter the payment institution in the register for electronic money institutions pursuant to Article 6 para. 2.

(5) If an electronic money institution simultaneously conducts other business activities as defined in Article 3 para. 3 no. 5, then the FMA may prescribe that a separate entity with its own legal personality must be created for carrying out the electronic money business as if applicable for carrying out the payment service business, if

1. the non-electronic money and non-payment services-based business of the electronic money institution jeopardise or could jeopardise the financial solidity of the electronic money institution, or
2. the non-electronic money or non-payment services-based businesses of the electronic money institution hinder or could hinder the FMA's ability to be able to check whether the electronic money institution complies with all requirements set out in this federal act.

(6) In the case of a licence being granted to operate a branch of a foreign electronic money institution as defined in para. 2 in Austria, the FMA shall transmit a copy of the administrative decision to the supervisory authority for the principle place of business and inform the European Commission without delay. Articles 3, 5 to 8 and 11 to 16 of this chapter shall apply to these branches. These branches are only authorised to provide payments services which are connected to the issuance of electronic money.

### **Revocation and lapsing of the licence**

**Article 5.** (1) With regard to the revoking of the licence, Article 11 ZaDiG 2018 shall apply, with

1. Article 11 para. 2 no. 3 ZaDiG 2018 is to be applied with the proviso that the licence is also to be revoked, if a continuation of the issuance of electronic money or of payment services would constitute a hazard for the stability of the payment system;
2. Article 11 para. 2 no. 4 ZaDiG 2018 is to be applied with the proviso that the licence is also to be revoked, if the electronic money institution exceeds the restrictions set out in Article 7 para. 6 ZaDiG 2018 or in Article 3 para. 3 no. 2 point a of this federal act with regard to the granting of credits or receives deposits in contravention of Article 3 para. 4 or in contravention of Article 17 issues electronic money above the par value of the funds received.

(2) With regard to the lapsing of the licence Article 12 ZaDiG shall apply, with the reference to Article 10 para. 3 ZaDiG 2018 being replaced by the reference to Article 4 para. 4.

(3) Regardless of para. 1 the licence of Austrian branches of foreign electronic money institutions (Article 4 para. 2) shall be revoked, if the licence for the principle place of business has been withdrawn. In addition, a copy of the administrative decision about the revocation of the licence shall be sent to the competent authority of the foreign electronic money institution and the European Commission shall be informed without delay.

## Commercial Register and register of electronic money institutions

**Article 6.** (1) Electronic money institutions may only be entered in the Commercial Register if the appropriate legally effective administrative decisions have been submitted in the original or as certified copies. The competent court shall also deliver decisions on such Commercial Register entries to the FMA.

(2) The FMA shall set up a public register of the authorised electronic money institutions, their agents and branches, into which all electronic money institutions in Austria must be entered, and which can be inspected on the FMA website, and which shall be regularly updated. An entry must be made without undue delay following the administrative decision granting a licence becoming effective. In addition to the company name, the scope of the licence and place of incorporation of the payment institution, the Commercial Register number shall also be entered, provided that this information has been communicated to the FMA. Where the electronic money institution provides its services through agents or branches, these must also be entered including details about their name or company name, place of incorporation and Commercial Register number, provided that this information has been communicated to the FMA. The FMA may also keep a directory of electronic money institutions from Member States in this database that are authorised to issue electronic money and where applicable provide payments services in Austria by virtue of the freedom to provide services or through a branch, insofar as these activities have been notified in Austria in accordance with Article 28 of Directive (EU) 2015/2366.

(3) The electronic money institution shall notify the FMA in writing of its Commercial Register number and any change to this number without undue delay.

(4) Upon individual request, the FMA shall provide information on the scope of the licence of electronic money institutions pursuant to Article 1 para. 2 no. 2 within a reasonable period of time.

## Changes to the requirements for a licence

**Article 7.** (1) The electronic money institution shall notify the FMA in writing without undue delay of any changes relevant to the granting of a licence - in the event of a resolution being passed, it is not necessary to wait for the object of the resolution to become effective before making the notification - including:

1. any changes in the Articles of association or the resolution to dissolve the undertaking;
2. any change to the conditions pursuant to Article 10 para. 1 nos. 9, 10, 13 and 15 ZaDiG 2018 in the case of existing directors;
3. any personnel changes among the directors and compliance with Article 10 para. 1 nos. 9 to 15 ZaDiG 2018 in conjunction with Article 4 para. 3 nos. 4 and 5 of this federal act;
4. the intended opening, as well as relocation, closing or temporary discontinuation of business operations at the principal place of business;
5. circumstances which make it clear to a prudent director that the ability to fulfil obligations is endangered;

6. the occurrence of insolvency or over indebtedness;
7. any intended expansion of the business purpose;
8. any reduction of paid-in capital pursuant to Article 11 para. 1;
9. any intended significant change with regard to the securing of customer funds, which have been taken for the execution of payment services;
10. the person(s) responsible for internal auditing as well as any changes in that (those) person(s);
11. the reduction of eligible own funds below the amounts specified in Article 11 para. 1;
12. any intended change to the outsourcing of the operational tasks pursuant to Article 15;
13. any intended change to the distribution and redemption of electronic money and any intended change in the identity of an agent for the provision of payment services including a change of commercial register number or address or the registered office of the agents pursuant to Article 15 para. 2;
14. any non-compliance with benchmarks for a period of more than one month, as prescribed pursuant to Article 11 of this federal act or regulations or administrative decisions issued on the basis of this federal act.

(2) The electronic money institution must notify the FMA in advance about any significant change in relation to measures taken in relation to the safeguarding of customer funds, that have been taken for issued electronic money, such as a change in the method for safeguarding of funds (Article 18 para. 1 no. 1 or 2 ZaDiG 2018), a change of the credit institution at which the funds are deposited or which guarantees the funds (Article 18 para. 1 ZaDiG 2018) or the insurance undertaking (Article 18 para. 1 no. 2 ZaDiG 2018).

### **Qualifying holdings in electronic money institutions**

**Article 8.** (1) Any party that intends to acquire or dispose of, either directly or indirectly, a qualifying holding as defined in point 36 of Article 4 (1) of Regulation (EU) No 575/2013 in an electronic money institution, or to increase or reduce such a qualifying holding directly or indirectly, with the consequence that his holding reaches, exceeds or in the latter case falls below, 20%, 30% or 50% of voting rights or capital, or if the electronic money institution would becoming its subsidiary or would cease to be its subsidiary, shall notify the FMA of its intention including the extent of its planned holding together with the information pursuant to Article 20b para. 3 BWG prior to such an acquisition or disposal or increase or reduction. The notification requirements also apply to persons acting in concert who together acquire or reach a qualifying holding. Notification may be carried out jointly by all or several of the acting persons together, or by each acting person separately. The FMA shall apply the procedure pursuant to Articles 20a and 20b BWG, and for this purpose shall extend the regulation to be issued pursuant to Article 20b para. 3 BWG to also address electronic money institutions.

(2) In the event that the influence exerted by the owners of qualifying holding or such proposed acquirers could have a detrimental effect on the prudent and robust management of the electronic

money institution, then the FMA has prohibit the proposed acquisition, or in the case of a holding already existing or in the event that there is a breach of the obligation to make an ex ante notification, then measures pursuant to Article 20 para. 4 or 5 BWG shall be taken, and Article 20 para. 4 nos. 1 and 2 as well as Article 20 para. 6 BWG as necessary shall apply.

(3) If a qualifying holding is acquired despite being prohibited by the FMA pursuant to para. 2, then the FMA shall, regardless of additional measures pursuant to Article 20 paras. 4 and 5 BWG, shall apply without delay for the order to suspend the voting rights pursuant to Article 20 para. 5 no. 3 BWG and Article 20 paras. 4 and 6 BWG shall apply.

(4) In the event that there is a change of legal form, a merger or a demerger, the procedure pursuant to Article 21 paras. 1 to 3 BWG as well as Articles 3 to 5 of this federal act shall apply.

## SECTION 2: FREEDOM OF ESTABLISHMENT AND FREEDOM TO PROVIDE SERVICES

### Electronic money institutions from Members States in Austria

**Article 9.** (1) The issuance of electronic money pursuant to Article 2 (2) of Directive 2009/110/EC and payment services pursuant to Article 4 (3) of Directive (EU) 2015/2366 may be provided or executed in Austria by an electronic money institution as defined in Article 1 (1) of Directive 2009/110/EC that has been authorised in another Member State (Article 2 no. 5 BWG) through a branch as provided for under Directive 2009/110/EC or they may be provided by virtue of the freedom to provide services, insofar as their authorisation entitles them to do so. Ancillary services pursuant to Article 3 para. 3 nos. 2 to 4, may only be provided in connection with the issuance of electronic money or the provision of payment services. Ancillary services as defined in Article 3 para. 3 no. 5 are not covered by provisions about the freedom to provide services and the freedom of establishment under this federal act. The procedure pursuant to Article 27 paras. 2, 4 and 5, Article 29 paras. 1 and 4, and Article 30 paras. 1 and 3 to 5 ZaDiG 2018 shall apply.

(2) Electronic money institutions with their place of incorporation in another Member State, which perform activities in Austria via a branch, shall comply with the provisions of Chapter 3 of this federal act as well as Article 36 BWG, and provided that they also provide payment services, the provisions of Chapters 3 and 4 ZaDiG 2018 as well as regulations and administrative decisions issued on the basis of these provisions.

### Austrian electronic money institutions in Member States

**Article 10.** Any electronic money institution pursuant to Article 3 para. 2, which wishes to establish a branch in the territory of another Member State, or which wishes to provide electronic money services or payment services under the freedom to provide services, shall notify the FMA of its intention in writing in advance. The procedure pursuant to Article 28, Article 29 para. 3 and Article 30 para. 2 ZaDiG 2018 shall apply.

## SECTION 3: OTHER REQUIREMENTS AND REGULATORY PROVISIONS FOR ONGOING OPERATIONS

### Own funds

**Article 11.** (1) The Common Equity Tier 1 capital pursuant to Chapter 2 of Part Two Title II of Regulation (EU) No 575/2013, shall not at any point be less than EUR 350 000.

(2) The Common Equity Tier 1 capital (Part Two Title II Chapter 2 of Regulation (EU) No 575/2013) of the electronic money institution may not fall below the higher amount of the amounts in paras. 1 and 3, or in the case listed in the first sentence of para. 4, may not fall below the higher amount of the two amounts listed in paras. 1 and 4.

(3) Electronic money institutions shall hold sufficient own funds at all times. Notwithstanding the initial capital requirements set out in Article 4 para. 3 no. 2 in conjunction with para. 1 of this provision, electronic money institutions shall at all times hold a level of own funds, which is calculated in accordance with the following methods:

1. for the provision of payment services (Article 3 para. 3 no. 1), which are not connected to the issuance of electronic money, the own funds shall be calculated in accordance with one of the three methods listed in Article 17 para. 1 in conjunction with para. 2 ZaDiG 2018 (method A, B or C). The suitable method shall be determined by means of the procedure set out in Article 17 paras. 3 and 4 ZaDiG 2018.
2. for the issuance of electronic money the own funds shall be at least 2% of the average electronic money in circulation (method D). The average electronic money in circulation shall be the average total of financial obligations emanating from electronic money on a daily basis for the preceding six calendar months; this amount shall be calculated on the first calendar day of every calendar month and shall apply for the duration of that calendar month.

The own funds pursuant to nos. 1 and 2 must be met cumulatively.

(4) If an electronic money institution provides payment services that are neither connected to the issuance of electronic money nor to the activities listed in Article 3 para. 3 nos. 2 to 5, and if the amount of electronic money in circulation is not known in advance, the FMA shall, following consultation with the *Oesterreichische Nationalbank* by way of derogation from para. 3 no. 2 permit this electronic money institution upon request, to calculate its own funds on the basis of a representative proportion, which is typically used for the issuance of electronic money, provided this representative proportion can be reasonably estimated on the basis of historical data and to the satisfaction of the FMA. If an electronic money institution is unable to draw upon a sufficiently long period of business activities, then its own funds, by way of derogation from para. 3 no. 2 shall be calculated on the basis of the expected electronic money in circulation stated in its business plan. The FMA may however request, at any time, an adjustment of this business plan to address actual developments.

(5) The FMA may, on the basis of an assessment of the risk management, the risk loss databases and the internal control mechanisms of the electronic money institution

1. prescribe the electronic money institution that the amount of own funds must correspond to an amount that is up to 20% higher than the amount which would be calculated when applying the method chosen in accordance with para. 3; or
2. permit the electronic money institution that the amount of own funds corresponds to an amount that is up to 20% lower than the amount which would be calculated when applying the method chosen in accordance with para. 3.

(6) If credit is granted in conjunction with the provision of payment services, then the own funds of the electronic money institution must be proportionate in the FMA's opinion to the total amount of credit granted. Taking into consideration the methods available pursuant to paras. 3 and 4 and taking into account the scope and volume of credit transactions conducted as a proportion of the total amount of transactions, the FMA may determine by means of a regulation what proportion of own funds pursuant to paras. 1 and 2 must be available as a proportion of the total amount of credits granted.

(7) If electronic money institutions provide other activities, then the own funds pursuant to paras. 1 and 2 must not be appropriated for such activities. Similarly, own funds, which are held in any case by electronic money institutions for complying with own funds requirements in accordance with other federal acts based on other activities conducted, may not be appropriated as own funds for activities as an electronic money institution.

### **Safeguarding of customer funds**

**Article 12.** (1) Electronic money institutions shall safeguard funds pursuant to Article 18, paras. 1, 2 and 4 ZaDiG 2018

1. which they have received for the issuance of electronic money, or
2. which they have received for the executing of payment transactions as part of the provision of payment services (Article 3 para. 3 no. 1), that are not connected to the issuance of electronic money.

Article 18 para. 3 ZaDiG 2018 regarding proof about adequate protective measures shall also apply. The FMA may also, following a consultation with the electronic money institution, prescribe a specific safeguarding method (Option A pursuant to Article 18 para. 1 no. 1 ZaDiG 2018 or Option B pursuant to Article 18 para. 1 no. 2 ZaDiG 2018) while taking into consideration the actual situation of the electronic money institution.

(2) Where funds have been received by means of a payment using a payment instrument for the purpose of the issuance of electronic money (para. 1 no. 1), these funds shall be safeguarded in accordance with this provision as soon as they are credited to a payment account (Article 4 no. 12 ZaDiG 2018) of an electronic money institution or as applicable to an electronic money institution pursuant to the requirements defined in Articles 77 and 78 ZaDiG 2018 with regard to the execution

time in another form, at latest five business days (Article 4 no. 34 ZaDiG 2018) following the issuance of the electronic money.

### **Organisational and due diligence requirements**

**Article 13.** (1) Article 20 paras. 1 to 4, and Articles 21 and 24 to 26 ZaDiG 2018 as well as Article 36 and Article 42 paras. 1, 2 and 3, para. 4 nos. 1 and 3, and paras. 5 to 7 BWG shall apply to electronic money institutions, and with regard to Article 20 paras. 1, 2 and 4 ZaDiG 2018 both risks relating to payment services transactions and operations as well as electronic money transactions and operations are to be taken into consideration; Article 42 para. 3 BWG shall be applied subject to the proviso that the requirement of at least two directors only applies when the electronic money institution actually has at least two directors owing to its size and organisation.

(2) Electronic money institutions as well as any persons employed by them shall be bound to secrecy for secrets, which they have exclusively been a party to in conjunction with the issuance of electronic money (Article 1 para. 1) or as a result of payment services (Article 1 para. 2 ZaDiG 2018) that they execute on behalf of their customers, unless

1. this obligation to professional secrecy is in conflict with a statutory disclosure obligation;
2. The customer gives their written consent to the disclosure of the secret;
3. disclosure of the secret is required to clarify legal issues resulting from the relationship between the electronic money institution and its customers.

### **Accounting and Auditing of the Annual Financial Statement**

**Article 14.** (1) Electronic money institutions, which are financial institutions as defined in point 26 of Article 4 (1) of Regulation (EU) No 575/2013, must apply Article 43 paras. 1, 2 and 3, Articles 45 to 59a, Article 64 and Article 65 para. 2 BWG. All other electronic money institutions shall apply only the provisions in Book III of the Company Code (*UGB; Unternehmensgesetzbuch*) as published in the Reich Law Gazette of 1897, p. 219 as well as the provisions that apply to their respective legal form. All electronic money institutions shall disclose their own funds, own funds requirements and compliance with own funds requirements in an annex to their annual financial statement. With regard to disclosure, Article 65 para. 1 BWG shall be applicable applied with the proviso that references to Article 63 para. 5 BWG shall be replaced by references to Article 14 para. 3 of this federal act.

(2) In the case that electronic money institutions also conduct other activities as defined in Article 3 para. 3 no. 4 or 5 to a significant extent, then special segment statements about the electronic money services as defined in Article 1 para. 1 as well as plus ancillary activities as defined in Article 3 para. 3 no. 3 including payment services as applicable pursuant to Article 3 para. 3 nos. 1 and 2 shall be disclosed in the annex to their annual financial statement and consolidated financial statement, which cover the compulsory information included in the annex. The segment statements shall give a true and fair view of the assets, financial and earnings situation of the “electronic money services

and associated ancillary services” and where applicable the “payment services and associated ancillary services” segment in the appropriate depth of detail and provide a reconciliation to the respective disclosures of the entire entity or group. The information for this segment shall be drawn up based on the capture, valuation and layout provisions in Articles 43 and 45 to 59a BWG or, if relevant, the international accounting standards pursuant to Article 245a UGB.

(3) The annual financial statement and, where necessary, the situation report or the consolidated financial statement and the consolidated situation report of electronic money institutions as well as the compliance with Article 3 paras. 3 and 4 and Article 4 para. 1 of this federal act in conjunction with Article 6 para. 1 no. 11 ZaDiG 2018, Article 4 para. 3 of this federal act in conjunction with Article 10 para. 1 no. 3 ZaDiG 2018; Articles 7, 11 and 12, Article 14 para. 1, Article 15, Article 16 para. 2, and Article 20 as well as the other provisions of this federal act; of Articles 20 to 22 and 24 ZaDiG 2018; of Articles 4 to 17, Article 19 para. 2, Articles 20 to 24, Article 29, and Article 40 para. 1 of the Financial Markets Anti-Money Laundering Act (*FM-GwG; Finanzmarkt-Geldwäschegesetz*), published in Federal Law Gazette I No. 118/2016 as well as the obligations of the electronic money institution pursuant to Regulation (EU) 2015/847 are to be audited by an external auditor. This audit covers the organisational structure as well as the administrative, accounting and control mechanisms (Article 13 para. 1 of this federal act in conjunction with Article 20 paras. 1 and 4 ZaDiG 2018), which the directors have put in place in view of the provisions set forth. The outcome of this audit opinion shall be presented in an annex to the audit report on the annual financial statement (prudential report for electronic money institutions). The result of the audit of compliance with Article 3 paras. 3 and 4, Articles 11 and 12 and Article 14 para. 1 of this federal act must contain a positive assurance, while the result of the audit pursuant to Article 4 para. 1 of this federal act in conjunction with Article 9 para. 1 no. 11 ZaDiG 2018, of Article 4 para. 3 of this federal act in conjunction with Article 10 para. 1 no. 3 ZaDiG 2018, Articles 7 and 15, Article 16 para. 2 and Article 20 of this federal act, of Articles 20 to 22 and 24 ZaDiG 2018, of Articles 4 to 17, Article 19 para. 2, Articles 20 to 24, Article 29, and Article 40 para. 1 FM-GwG as well as the obligations of the payment institution pursuant to Regulation (EU) 2015/847 shall at least have a negative assurance. With regard to the audit relating to compliance with other provisions in this federal act, the external auditor shall report significant details of which he becomes aware during his activities, even where they do not lead to a reporting obligation pursuant to Article 27 para. 1 or 2. The audited annual financial statement plus notes and management report and, if applicable, the consolidated financial statements plus notes and consolidated management report, the report of the external auditor and the annex to the audit report shall be transmitted to the FMA and the *Oesterreichische Nationalbank* in accordance with the deadlines stipulated in Article 44 para. 1 BWG. This audit report and annex shall be transmitted promptly to the directors and the supervisory bodies of the electronic money institution specified by the law or Articles of association, to ensure that the deadline for submission to the FMA and *Oesterreichische Nationalbank* may be observed. The FMA may specify the mode of transmission, form and layout of the annex to the audit report by way of a regulation. The FMA may, after consulting with the *Oesterreichische Nationalbank*, prescribe by means of a regulation that an

electronic submission must comply with specific layouts and minimum technical requirements. The FMA is empowered to prescribe by means of a regulation that electronic submissions are exclusively to be submitted to the *Oesterreichische Nationalbank*, if this is appropriate for reasons of economy, provided that data remains available in electronic form to the FMA at all times, and if this does not compromise supervisory interests.

(4) The external auditor's information, submission and inspection rights (Article 272 UGB) shall apply to all documents and data storage media, also if conducted or stored by a third party or when conducted or stored in a foreign country. If documentation that is the subject to the audit, especially accounting documents, are drawn up or stored abroad, the electronic money institution shall ensure, without prejudice to the aforementioned inspection rights of the external auditor, the immediate availability of documentation concerning the current business year as well as at least the three preceding business years are available in Austria at all times. The electronic money institution shall make the inspection plans reports by the internal audit unit available.

(5) External auditors of electronic money institutions may be certified public auditors or audit firms as well as auditing bodies of statutory audit institutions.

(6) Persons for whom reasons of exclusion exist as defined in Article 62 BWG or pursuant to Articles 271 and 271a UGB or in accordance with the provisions of other federal acts may not be appointed as external auditors. The reason for exclusion as defined in Article 62 no. 1a BWG shall apply with the proviso that the reference to Article 14 para. 3 first sentence of this federal act shall replace the reference to Article 63 paras. 4 to 6a BWG, and the reason for exclusion in Article 62 no. 17 shall apply subject to the proviso that Article 27 of this federal act shall replace the reference to Article 63 para. 3 BWG. The provisions pursuant to Article 62a BWG in conjunction with Article 275 UGB regarding the responsibility of external auditors shall also apply to electronic money institutions.

(7) The external auditors must be appointed prior to the start of the business year that is the subject of the audit and must be notified in writing to the FMA without delay; in the event that an external auditing company is appointed as the external auditor, then the natural persons named for the audit engagement in accordance with Article 88 para. 7 of the Tax Advising and Related Professions Act (*WTBG; Wirtschaftstreuhandberufsgesetz*) as published in Federal Law Gazette I No. 58/1999 must be indicated in this notification. Any changes in the persons named must be notified to the FMA without delay. The FMA may raise an objection as defined in Article 270 para. 3 UGB to the appointment of an external auditor or any natural person named pursuant to Article 88 para. 7 WTBG, if justified reasons exist with regard to the existence of a reason for exclusion or any other bias; in the case of appointments requiring a notification, the objection must be filed within one month. The court shall rule on any objection taking into account the reasons for exclusion; until the legally enforceable court decision exists, the external auditor or the natural person named in accordance with Article 88 para. 7 WTBG shall neither be allowed to undertake auditing activities nor may they be provided with any information by the electronic money institution that is to be treated as being confidential as defined in Article 13 para. 2 of this federal act.

(8) Within two weeks of appointment, the external auditor shall certify to the FMA that reasons for exclusion do not exist. At the FMA's request, the bank auditor must also provide all additional certifications and evidence necessary for the purpose of assessment. If such a request is not fulfilled, the FMA may proceed in accordance with para. 7.

(9) Branches of foreign electronic money institutions must also submit the annual financial statements of the foreign electronic money institution to the FMA and the *Oesterreichische Nationalbank* within six months after the close of the business year. Branches of foreign electronic money institutions must also publish the annual financial statements and consolidated financial statements of the foreign electronic money institution in the Official Gazette of the Wiener Zeitung (*Amtsblatt zur Wiener Zeitung*) or in a generally available publication medium. The management report and the consolidated management report of the foreign electronic money institution must be made available for public inspection at the branch. The Federal Minister of Finance is empowered, after consultation with the FMA, to conclude agreements on the basis of reciprocity with countries outside of the European Economic Area to relieve the branches of foreign electronic money institutions of the obligation to publish annual financial statements referring to their own activities.

## SECTION 4: DISTRIBUTION USING THIRD PARTIES, OUTSOURCING, AGENTS AND LIABILITY FOR PERSONS ATTRIBUTABLE

### Distribution using thirds parties, outsourcing and agents

**Article 15.** (1) The distribution and redemption of electronic money by natural or legal persons who are active in the name of the electronic money institution, shall be permissible subject to compliance with Article 21 ZaDiG 2018. Where an electronic money institution intends to distribute electronic money in another Member State by using the services of such a person, the procedure pursuant to Article 28 ZaDiG 2018 shall apply.

(2) The issuance of electronic money through agents (Article 4 no. 35 ZaDiG 2018) or persons pursuant to para. 1 shall not be permitted. The provision of payment services through agents is permissible subject to compliance with Article 22 ZaDiG 2018.

(3) The outsourcing of operational duties is permissible subject to compliance with Article 21 ZaDiG 2018.

### Liability for persons attributable

**Article 16.** (1) Electronic money institutions are fully liable without exception for the conduct of their employees, agents, branches or persons to which or whom their activities have been outsourced pursuant to Article 15 para. 1 or 3.

(2) An electronic money institution, which has assigned operational tasks to a third party, shall take appropriate precautions to guarantee the fulfilment of the requirements of this federal act. The

outsourcing of operational tasks to service providers in any case in such a way that the quality of internal control or the FMA's ability to verify whether the entity's compliance with all the conditions is materially affected. When concluding, implementing or terminating an agreement with regard to the outsourcing of material operational tasks or any electronic money services or payment services to a service provider, due professionalism and diligence shall be exercised. In particular, the clear division of the rights and obligations is to be undertaken between the electronic money institution and the service provider in the form of a written agreement.

## CHAPTER 3: ISSUANCE AND REDEEMABILITY OF ELECTRONIC MONEY

### Issuance at par value

**Article 17.** The electronic money issuer shall always issue electronic money in the amount of the par value of the funds received. Where provisions in the agreements deviate to the detriment of the electronic money holders, such provisions shall be ineffective.

### Redeemability

**Article 18.** (1) Upon request, the issuer of electronic money shall redeem the monetary value of the held electronic money at any time at par value for the holder of the electronic money, taking into consideration Article 19. Where provisions in the agreements deviate to the detriment of the electronic money holders, such provisions shall be ineffective.

(2) Any obligation to block a payment instrument or to freeze funds in accordance with other federal acts or pursuant to orders imposed by the court, public prosecutor or administrative authorities shall not be affected by para. 1.

### Redemption conditions, fees

**Article 19.** (1) The redemption conditions, including any fees incurring in relation to redemption (para. 2), shall be clearly and prominently states in the contract between the electronic money issuer and the electronic money holder. The electronic money issuer shall inform the electronic money holder about these conditions in due time, prior to the customer being bound by a contract or contractual offer. Where provisions in the agreements deviate to the detriment of the consumer (Article 4 no. 20 ZaDiG 2018), such provisions shall be ineffective.

(2) Fees may only be charged for redemption, if the electronic money holder

1. requests redemption before expiry of the contract,
2. terminates the contract, in the case of a limited contract, prior to the expiry of the notice period, or
3. requests redemption after more than one year following the expiry of the contractual period.

Furthermore, such fees shall only be permissible, if they have been contractually agreed in advance pursuant to para. 1, are proportional and commensurate to the actual costs incurred by the electronic money issuer.

(3) The electronic money holder may request the redemption of the electronic money either in part or in whole prior to the expiry of the contract.

(4) If the electronic money holder requests redemption upon expiry of the contract or up to one year following the expiry of the contractual period, then the total par value of the held electronic money shall be redeemed. In the event that an electronic money institution also conducts other business activities pursuant to Article 3 para. 3 no. 5, and it is not known in advance what amount is used for electronic money, then the whole amount requested by the electronic money holder shall be redeemed.

(5) Where provisions in the agreements deviate from those contained in paras. 2 to 4 to the detriment of the electronic money holders, such provisions shall be ineffective.

### **Prohibition of charging interest**

**Article 20.** The granting of interest or other benefits arising in conjunction with the time frame during which a holder of electronic money holds the electronic money, shall not be permitted.

## **CHAPTER 4: INSOLVENCY PROVISIONS, SUPERVISION AND INTERNATIONAL COOPERATION**

### **SECTION 1: RECEIVERSHIP AND INSOLVENCY PROVISIONS**

**Article 21.** Recovery proceedings may not be instigated against the assets of an electronic money institution. In the event of the bankruptcy of an electronic money institution, no petition to institute a reorganisation plan shall be filed. Articles 106 to 114 ZaDiG 2018 shall apply to the supervised management procedure and bankruptcy procedure of an electronic money institution. The court shall inform the competent authorities of all other Member States by way of the FMA without delay in which branches operate electronic money businesses, about its decision to order receivership as well as the specific effects of receivership if it has imposed a receivership order on the Austrian branch of a foreign electronic money institution. In order to avoid redundant decisions, the competent authorities in the other Member States must be informed of the intended decision in advance and the procedure must be coordinated wherever possible.

### **SECTION 2: SUPERVISION**

#### **Competent authorities**

**Article 22.** (1) The FMA shall monitor compliance with

1. Article 1 and Articles 3 to 16 of this federal act by electronic money institutions pursuant to Article 3 para. 2 and their branches pursuant to Article 10,
2. Article 1, Articles 3 to 8, and Articles 11 to 16 of this federal act by branches of foreign electronic money institutions pursuant to Article 4 para. 6 as well as
3. Article 20 of this federal act by all electronic money issuers

and shall also give consideration to the national economic interest in maintaining a functioning banking system and financial market stability in so doing. Furthermore, the FMA shall also be competent for imposing administrative penalties in the event of violations of Articles 17 to 20 of this federal act.

(2) The assignment of the costs of supervision in accordance with this federal act within Accounting Group 1 pursuant to Article 19 para. 1 no. 1 FMABG shall be carried out pursuant to Article 89 paras. 2 to 8 ZaDiG 2018. All electronic money institutions pursuant to Article 3 para. 2 and branches pursuant to Article 9 shall be liable to pay costs. The costs for supervision in accordance with the federal act of credit institutions shall be classified as banking supervision costs.

(3) The FMA and *Oesterreichische Nationalbank* shall cooperate closely to effectively fulfil their respective tasks in accordance with this federal act. Article 79 BWG shall apply if the tasks of *Oesterreichische Nationalbank* for banking supervision regulated therein apply to electronic money institution supervision for the purposes of this federal act and the reference to Article 73 BWG is replaced by a reference to Article 7 of this federal act and the reference to Article 44 BWG is replaced by a reference to Article 14 of this federal act. The reference to Article 74 BWG shall be replaced a reference to Article 26 ZaDiG 2018.

(4) Article 72 BWG shall be applicable in relation to cooperation with other authorities.

(5) The FMA shall publish and regularly update the following information on the internet:

1. the texts of the laws and regulations that apply to the field of electronic money institution supervision;
2. the FMA minimum standards and circulars relating to the prudential supervision of electronic money institutions;
3. the exercising of the discretions contained in Directive 2009/110/EC.

(6) The tasks, rights and obligations of the *Oesterreichische Nationalbank* with regard to the prudential supervision of payment institutions pursuant to Article 44a NBG shall remain unaffected by the provisions of this federal act.

## **Data protection**

**Article 23.** (1) The FMA and the *Oesterreichische Nationalbank* are entitled to conventional and automated collection and processing of data as defined in Regulation (EU) 2017/679 provided that this lies within their scope of responsibilities pursuant to this federal act; namely:

1. licences of electronic money institutions and relevant circumstances for granting of such licences;

2. management, administrative and accounting-related organisation as well as internal control and audit of electronic money institutions;
3. branches and the exercising of the freedom to provide services;
4. own funds;
5. qualifying holdings in electronic money institutions;
6. annual financial statements and accounts;
7. regulatory measures pursuant to Articles 25 and 26;
8. administrative penalties pursuant to Articles 28 to 29;
9. investigations pursuant to Article 22b FMABG;
10. information, requested by competent authorities under the exchange of information pursuant to Articles 32 to 35;
11. maintaining the electronic money institution register;
12. allocation of costs for the supervision of electronic money services.

(2) The transmission of data pursuant to para. 1 by the FMA shall be permitted when providing administrative assistance, as well as to competent authorities in Member States, provided that this is necessary for them to perform tasks which correspond to the tasks of the FMA and *Oesterreichische Nationalbank* in accordance with this federal act, and provided that transmitted data is subject to professional secrecy at these authorities pursuant to Article 24 of Directive (EU) 2015/2366.

(3) The transmission of data pursuant to para. 1 by the FMA shall only be permissible to the competent authorities of third countries under the same framework, for the same purposes and subject to the same restrictions as for competent authorities of Member States pursuant to para. 2, who perform comparable tasks to the tasks performed by the FMA or the *Oesterreichische Nationalbank*, provided that the information transmitted to them is subject at these authorities to corresponding professional secrecy to professional secrecy as mentioned in Article 24 of Directive (EU) 2015/2366 and consistent with Chapter V of Regulation (EU) 2016/679.

### **Professional secrecy**

**Article 24.** Experts appointed by the FMA or the *Oesterreichische Nationalbank* shall be subject to the legal obligation of secrecy pursuant to Article 14 para. 2 FMABG.

### **Investigations and inspections**

**Article 25.** (1) The FMA shall conduct all investigations and take any measures necessary for the performance of the tasks conferred upon it in this federal act pursuant in Article 22 para. 1.

(2) In exercising its competences pursuant to para. 1, the FMA shall be authorised, regardless of the powers conferred upon it by other provisions under federal acts, to,

1. inspect records, documents, and storage media of the undertakings pursuant to Article 22 para. 1 and to receive copies of the aforementioned items; Article 14 para. 4 shall apply to the

- scope of the FMA's information, presentation and inspection rights and the obligation to make available documents in Austria;
2. request information from the undertakings pursuant to Article 22 para. 1 and their bodies, as well as from all agents and units, to which payment services or electronic money services have been outsourced, to request information and to summon and question persons in accordance with laws relating to administrative procedure;
  3. allow all necessary inspections to be carried out by external auditors or other experts, with the reasons for exclusion stated in Article 14 para. 6 being applicable; the FMA may communicate information to the inspectors it has engaged, provided that this is necessary to perform the inspection engagement;
  4. mandate the *Oesterreichische Nationalbank* with the inspection of electronic money institutions and their branches and representative offices outside of Austria; in so doing, *Oesterreichische Nationalbank's* competence to conduct on-site inspections as part of the supervision of electronic money institutions shall comprehensively extend to the inspection of all business fields and all types of risk; the *Oesterreichische Nationalbank* shall ensure that it has sufficient staff and organisational resources to conduct these inspections; the FMA shall be authorised to allow its own employees to participate in the inspections conducted by the *Oesterreichische Nationalbank*;
  5. request authorities of the host Member State to conduct an inspection of branches and representative offices in Member States in the event that in comparison to an inspection pursuant to no. 4 this simplifies or accelerates the proceedings, or for the sake of expediency, simplicity, speed or cost economy; under these conditions, the *Oesterreichische Nationalbank* may also be obliged to participate in such an inspection, and FMA employees may also participate in such an inspection;
  6. obtain information from the external auditors.

(3) For an inspection pursuant to para. 2 nos. 3 to 5, the bodies engaged shall be issued a written inspection engagement and they shall verify their identity and present the inspection engagement, without being requested to do so, prior to commencing the inspection. Otherwise, Article 71 BWG shall be applicable. With regard to the cooperation between the FMA and *Oesterreichische Nationalbank* and the conducting of inspections by these parties, Article 70 paras. 1a to 1c and Article 79 BWG shall be applicable.

### **Supervisory measures and disclosure**

**Article 26.** (1) To avert any danger to the financial affairs of an electronic money institution's customers pursuant to Article 3 no. 2 in connection with its activities, the FMA may order temporary measures by means of an administrative decision. which shall expire no later than 18 months following their entry into force. The FMA, in particular, may issue administrative decisions which:

1. completely or partly prohibit withdrawals of capital and earnings as well as distributions of capital and earnings;
2. appoint an expert supervisor (government commissioner), who is an attorney or an external auditor; the supervisor shall have full rights pursuant to Article 25 para. 2, shall
  - a. prohibit this electronic money institution from conducting any transactions, which might exacerbate the aforementioned danger, or
  - b. in the event that the electronic money institution has been prohibited, either partly or completely from continuing to conduct transactions, allow individual transactions that do not exacerbate the aforementioned danger;
3. completely or partly prohibit directors of the electronic money institution from managing the company, with simultaneous notification of the body responsible for appointing the directors; the responsible body must re-appoint the corresponding number of directors within one month; in order to be legally effective, such appointments require the consent of the FMA, which is to be refused, if the newly appointed directors do not appear suitable for the purpose of averting the aforementioned danger;
4. completely or partly prohibit the continuation of business operations.

(2) The FMA may, at the request of the supervisor (government commissioner) appointed pursuant to para. 1 no. 2 or para. 3, appoint a deputy, if and for as long as is necessary for important reasons, especially in the event of the supervisor being temporarily prevented from performing their duties. The provisions applicable to the supervisor also apply to the appointment of the deputy as well as his/her rights and duties. Given the approval of the FMA, the supervisor (government commissioner) may employ persons with suitable professional qualifications where necessary in light of the scope and difficulty of the duties to be performed. The FMA's approval shall specifically identify these persons and shall be transmitted to the electronic money institution. These persons are to act upon the instructions of and on behalf of the supervisor (government commissioner) or his/her deputy.

(3) The FMA shall obtain reports on suitable government commissioners from the Austrian Bar (*Österreichischer Rechtsanwaltskammertag*) and the Chamber of Professional Accountants and Tax Advisors (*Kammer der Wirtschaftstreuhänder*). In the case that a government commissioner is to be appointed in accordance with para. 1 no. 2 or a deputy pursuant to para. 2 and this appointment is not possible on the basis of these reports, the FMA shall notify the bar association or chamber of professional accountants and tax advisors responsible based on the address of the electronic money institution's registered office, to allow them to name an attorney or auditor with suitable professional qualifications as government commissioner. In cases of imminent danger, the FMA may appoint

1. an attorney, or
2. an external auditor

as a temporary government commissioner. This appointment will be abrogated once an attorney or external auditor has been appointed in accordance with the first sentence.

- (4) Any measures ordered by the FMA pursuant to paras. 1 and 2 shall be suspended for the duration of any receivership procedure.
- (5) The FMA shall remunerate the government commissioner by means of a fee (function fee) which is commensurate to the work involved in supervision and the expenses incurred for this purpose. The government commissioner is entitled to submit invoices for each previous quarter and after the termination of his/her activities. The FMA must effect remuneration immediately after reviewing the invoice.
- (6) Administrative decisions, in which directors are prohibited, either partly or completely (para. 1 no. 3 and para. 8), from managing an electronic money institution pursuant to Article 3 no. 2, as well as any revocation of this measure, shall be communicated by the FMA to the Commercial Register Court for entry into the Commercial Register.
- (7) If any licence requirement pursuant to Article 4 para. 3 is no longer met after such a licence has been granted, or if an electronic money institution pursuant to Article 3 no. 2 breaches the provisions pursuant to Article 22 para. 1 of this federal act, or any regulation issued on the basis of this federal act or an administrative decision, the FMA shall take the measures specified in Article 70 para. 4 nos. 1 to 3 BWG with regard to this electronic money institution and, if need be, revoke its licence pursuant to Article 1.
- (8) The FMA may announce any measures it has taken in accordance with paras. 1, 3 and 7 as well as any sanctions arising from breaches of this federal act or regulations issued upon the basis of this federal act by means of an announcement on the internet, by means of an announcement in the Official Gazette of the Wiener Zeitung (*Amtsblatt zur Wiener Zeitung*) or in any newspaper with nationwide circulation or by posting a notice in a suitable location at the business premises of the electronic money institution (Article 3 no. 2). Measures in accordance with para. 7 in conjunction with Article 70 para. 4 no. 1 BWG, however, may only be published, if this is necessary based on the nature and severity of the violation for informing the general public, and is reasonable with regard to any disadvantages suffered by the affected parties. These publication measures may also be taken on a cumulative basis.
- (9) The FMA may inform the public by publication on the internet, in the Official Gazette of the Wiener Zeitung (*Amtsblatt zur Wiener Zeitung*), or in any other newspaper with nationwide circulation that a named natural or legal person (person) is not authorised to issue electronic money (Article 1 para. 2) or to provide certain payment services (Article 1 para. 2 ZaDiG 2018), provided this person has given cause for such action and informing the general public, and is reasonable with regard to any disadvantages suffered by the affected parties. These publication measures may also be taken on a cumulative basis. This person shall be clearly identifiable in the publication; for this purpose, the FMA may, if known, also state the business or residential address, commercial register number, internet address, telephone number and fax number.
- (10) The person subject to this publication may make an application to the FMA to review the lawfulness of the disclosure pursuant to paras. 8 or 9 in a procedure that shall result in an administrative decision. In this case, the FMA shall announce the initiation of such proceedings in a

similar manner. If, in the course of this review, it is found that the publication was unlawful, the FMA shall correct the publication or, at the request of the person subject to this publication, either revoke it or remove it from its website. If a complaint against an administrative decision, which has been announced pursuant to para 8, is granted suspensory effect in proceedings conducted before public-law courts, the FMA shall make this known in the same manner. The publication shall be corrected or at the request of the concerned party either revoked or removed from the website, if the administrative decision has been repealed.

(11) *(repealed)*

(12) Following a hearing by the *Oesterreichische Nationalbank*, the FMA may prescribe by means of a Regulation that notifications and communications pursuant to Article 6 para. 3, Article 7 and Article 10 of this federal act in conjunction with Article 28 para. 1 ZaDiG 2018, Article 15 of this federal act in conjunction with Article 21 para. 3 and Article 22 para. 1 ZaDiG2018 and Article 14 para. 7 that notifications and submissions shall be transmitted exclusively in electronic form using specific formats and conforming to minimum technical requirements and modalities for transmission. In so doing, the FMA shall observe the principles of economy and expediency, ensuring that the data is electronically available to the FMA and the *Oesterreichische Nationalbank* at all times and supervisory interests are not compromised. Furthermore, the FMA may, in this regulation, grant access to the electronic transmission system specified in the first sentence by external auditors for certifications, communications, reports and notifications pursuant to Article 14 para. 8 and Article 27 paras. 1, 2 and 3. The FMA shall adopt appropriate arrangements to allow individuals subject to reporting requirements or, where applicable, individuals they have charged with submitting the reports on their behalf, to verify over an appropriate period of time whether the reporting data submitted by them or by the person charged with submitting the reports is correct and complete.

### **Reporting obligations of external auditors**

**Article 27.** (1) If an external auditor auditing the annual financial statement of an electronic payment institution as defined in Article 3 no. 2 or performing any other activity prescribed by law at this institution, determines any circumstances that justify a reporting obligation pursuant to Article 273 paras. 2 and 3 UGB, they shall also submit the report pursuant to Article 273 para. 3 UGB at the same time to the FMA and the *Oesterreichische Nationalbank*.

(2) The external auditor shall, even where no reporting obligation exists pursuant to Article 273 paras. 2 and 3 without undue delay, notify the FMA and the *Oesterreichische Nationalbank* and the directors as well as the supervisory body responsible in accordance with the law or the Articles of association in writing, including an explanation, if they discover during the performance of their duties as auditor facts that

1. point towards a material breach of the provisions specified in Article 22 para. 1 or of any regulations or administrative decisions issued by FMA issued on the basis of this federal act; or
2. indicate that the fulfilment of the obligations of the electronic money institution may be endangered; or
3. represent a substantial deterioration of the risk situation; or
4. indicate that the true value for key balance sheet positions or off-balance sheet positions are not reflected; or
5. reasoned doubt exists about the correctness of documentation or the statement of completeness of the management board.

If the external auditor identifies other defects, changes in the risk situation or economic situation which are not a cause for concern, or only minor violations of provisions, and if these defects and violations can be remedied in the short term, then the external auditor is only required to report to the FMA and the *Oesterreichische Nationalbank* if the electronic money institution fails to remedy the defects and to provide the external auditor with evidence of such remedies within a reasonable period of time, at the latest, however, within three months. The reporting requirement shall also apply in the event that the directors fail to provide information properly as requested by the external auditor within a reasonable period of time. In cases where an external auditing company is appointed as the external auditor, the reporting requirement also applies to the natural persons named pursuant to Article 88 para. 7 WTBG.

(3) The external auditor shall also be obliged to report any circumstances of which he/she becomes aware of during the performance of one of the aforementioned activities in an undertaking, that is associated (Article 189a no. 8 UGB) to the electronic money institution identified in Article 3 no. 2 for which he is performing this activity.

(4) In the course of performing his/her duties, the external auditor is also obliged to inform the chairperson of the supervisory body even without an audit engagement from the supervisory body if, due to the nature and circumstances of the violations, reporting to the directors would not achieve the purpose of remedying the defects and such defects are severe.

(5) If the external auditor files a report pursuant to paras.1 to 3a in good faith, this shall not be considered a violation of a disclosure restriction governed by a contract or by law, regulations or administrative provisions and will not bring about a liability on the external auditor's part.

### **Procedural and penal provisions**

**Article 28.** Parties who disclose or exploit confidential facts contrary to Article 13 para. 2, in order to create an economic advantage for themselves or others, or in order to place others at a disadvantage, shall be punished with a term of imprisonment of up to six months or with a fine of up to 360 per diem rates. The offender shall only be prosecuted with the authorisation of the person whose interest in confidentiality was breached.

**Article 29.** (1) Anyone issuing electronic money pursuant to Article 1 para. 1 without the required authorisation commits an administrative offence and shall be punished by the FMA with a fine of up to EUR 100 000.

(2) Anyone issuing electronic money in contravention of Article 17 over the par value of the funds received, commits an administrative offence and shall be punished by the FMA with a fine of up to EUR 60 000.

(3) *Repealed*

(4) Anyone acting as a person responsible (as per Article 9 of the Administrative Penal Act (*VStG*; *Verwaltungsstrafgesetz*) for an electronic money institution pursuant to Article 3 para. 2 or a branch pursuant to Article 10, who

1. breaches a restriction pursuant to Article 3 of this federal act or an obligation pursuant to Article 20 paras. 1 to 4 or Article 24 ZaDiG 2018, or
2. breaches an obligation pursuant to Article 11 of this federal act or Article 26 ZaDiG 2018, or
3. *Repealed*
4. breaches an obligation pursuant to Article 42 paras. 1, 2, 3, para. 4 no 1 or 3, paras. 5, 6 or 7 BWG,

is deemed to have committed an administrative offence and shall be punishable by the FMA with a fine of up to EUR 100 000 in the case of no. 1, or a fine of up to EUR 60 000 in any of the cases listed in nos. 2 to 4.

(5) Anyone acting as a person responsible (pursuant to Article 9 VStG) for an electronic money institution pursuant to Article 3 para. 2 or a branch pursuant to Article 10 who breaches the safeguarding obligations contained in Article 12 of this federal act or Article 18 ZaDiG 2018, is deemed to have committed an administrative offence, which is punishable by the FMA with a fine of up to EUR 100 000.

(6) Anyone acting as the external auditor for an electronic money institution pursuant to Article 3 para. 2 or a branch pursuant to Article 10 who breaches the reporting obligations pursuant to Article 27 paras. 1, 2 or 3, is deemed to have committed an administrative offence, which is punishable by the FMA with a fine of up to EUR 100 000.

(7) Anyone acting as a person responsible (pursuant to Article 9 VStG) for an electronic money institution pursuant to Article 3 para. 2 or a branch pursuant to Article 10 who fails to submit the annual financial statements to the FMA in a timely manner, in violation of Article 14 para 3, is deemed to have committed an administrative offence, which is punishable by the FMA with a fine of up to EUR 20 000.

(8) Anyone acting as a person responsible (as per Article 9 of the Administrative Penal Act (*VStG*; *Verwaltungsstrafgesetz*) for an electronic money institution pursuant to Article 3 para. 2, who

1. breaches the obligations pursuant to Article 15 and 16 para. 2, or who issues electronic money for less than the par value of the funds received or
2. breaches the obligations pursuant to Articles 18, 19 or 20, or

3. fails to notify the FMA immediately in writing of the circumstances indicated in Article 6 para. 3 or Article 7, or
4. fails to notify the FMA immediately in writing of the circumstances indicated pursuant to Article 21 para. 3 ZaDiG 2018 or Article 15 of this federal act

is deemed to have committed an administrative offence and shall be punishable by the FMA with a fine of up to EUR 60 000 in the case of no. 1, or a fine of up to EUR 10 000 in any of the cases listed in nos. 2 to 4.

(9) Any person who, as person responsible (Article 9 VStG) for a branch pursuant to Article 12 para. 2

1. who in contravention of Article 17 issues electronic money for less than the par value of the funds received or
2. breaches the obligations in Articles 18 to 20

is deemed to have committed an administrative offence and shall be punishable by the FMA with a fine of up to EUR 60 000 in cases in accordance with no. 1, or a fine of up to EUR 10 000 in any of the cases listed in nos. 2 to 4.

(10) Anyone acting as a person responsible (Article 9 VStG) of an electronic money issuer pursuant to Article 1 para. 2 no. 1 and nos. 3 to 6,

1. who in contravention of Article 17 issues electronic money for less than the par value of the funds received or
2. breaches the obligations in Articles 18 to 20 of this federal act

is deemed to have committed an administrative offence and shall be punishable by the FMA with a fine of up to EUR 60 000 in cases in accordance with no. 1, or a fine of up to EUR 10 000 in any of the cases listed in nos. 2 to 4.

(11) *Repealed*

(12) *Omitted*

(13) *Repealed*

**Article 30.** (1) The FMA shall be the first instance responsible for the imposing of administrative penalties pursuant to Article 29.

(2) *Repealed*

(3) The FMA shall be granted all competences pursuant to Article 25 para. 2 during investigations in relation to administrative penal proceedings pursuant to Article 29 paras. 1 to 11.

(4) The FMA shall alert holders of electronic money reporting a breach by an electronic money institution against Article 12, or by an electronic money issuer against Chapter 3 to the possibility to lodge a complaint with the out-of-court arbitration body (Article 98 ZaDiG 2018), indicating its registered office and address.

Article 31. Anyone who issues electronic money pursuant to Article 1 para. 1 without the required authorisation, or grants credits in violation of the restrictions listed in Article 3 para. 3 no. 2 of this federal act in conjunction with Article 7 para. 6 ZaDiG 2018 or accepts deposits in contravention of Article 3 para. 4 or issues electronic money in contravention of Article 17 or shall not be entitled to a claim for any remunerations, costs or charges associated with these transactions. The legal

ineffectiveness of the agreements associated with these transactions shall not, however, render the entire transaction legally ineffective. Agreements to the contrary as well as suretyships and guarantees associated with those transactions are legally invalid.

## SECTION 3: INTERNATIONAL COOPERATION

### Contact points and Exchange of Information

**Article 32.** (1) The FMA is the competent authority pursuant to Article 3 (1) of Directive 2009/110/EC in conjunction with Article 22 (1) of Directive (EU) 2015/2366. The FMA may obtain information on the activities of Austrian electronic money institutions outside of Austria and the situation of foreign electronic money institutions whose activities may have an effect on the Austrian financial system at any time if this is necessary in the national economic interest in maintaining a functioning financial system or in the interest of creditor protection.

(2) The FMA may cooperate with competent authorities from other Member States, the European Central Bank and the central banks of other Member States in their capacity as monetary and supervisory authorities as well as with other authorities responsible for supervising payment and settlement systems, the protection of natural persons with regard to the processing of personal data if this is necessary to fulfil the tasks laid out in Directive 2009/110/EC or for the purpose of administrative and mutual assistance in legal matters and insofar as the information communicated to these authorities are subject to the professional secrecy provided for in Article 24 of Directive (EU) 2015/2366. The FMA may, for the purpose of cooperation and the forwarding of data in accordance with this part of the federal act, use its powers even if the conduct which forms the subject matter of the investigation does not constitute a violation of a legal provisions applicable in Austria. For the purpose of cooperation, the FMA may also use its powers pursuant to Article 25 para. 2 nos. 1 and 2 vis-à-vis legal persons authorised to issue electronic money and where applicable to provide payment services in their home Member State as an electronic money institution within the meaning of Article 2 no. 1 of Directive 2009/110/EC.

(3) In the event that the FMA has justified grounds for suspicion, that entities, which are not subject to its supervision, are breaching or have breached the provisions of Directive 2009/110/EC in the territory of another Member State, it shall notify this to the competent authority of the other Member State as precisely as possible. The FMA shall in turn take suitable measures in the event that it receives such a notification from another competent authority, and shall inform that authority of the outcome of these measures and as far as possible of any essential developments that have occurred in the meantime. The powers held by the FMA as the competent authority which has submitted this information, shall not be prejudiced by this paragraph.

## Cooperation in monitoring, on-site inspections and investigations

**Article 33.** (1) The FMA may request the cooperation of the competent authority of another Member State for monitoring purposes or for an on-site inspection or an investigation. If the FMA receives a request to conduct an on-site inspection or an investigation, it must be active within the scope of its powers, by

1. conducting the inspections or investigations itself or by conferring this task to *Oesterreichische Nationalbank*; or
2. permitting the requesting authority to carry out the inspection or investigation; or
3. permitting external auditors or experts to conduct the inspection or investigation on behalf of the authority.

(2) The FMA shall supply the other competent authorities with the information specified in this federal act that is required for the purposes of carrying out the tasks of the designated competent authorities pursuant to Article 3 (1) of Directive 2009/110/EC in conjunction with Article 22 (1) of Directive (EU) 2015/2366, in particular in the case of infringements or suspected infringements by an agent, a branch or an entity to which activities are outsourced. The FMA shall, on request, provide all relevant information and submit all the essential information on its own initiative. The FMA may reserve the right, when exchanging information with other competent authorities, when transmitting this information to advise that this information may only be published with the FMA's express consent. In this case, information may only be exchanged for the purposes for which consent was given.

(3) The Federal Minister of Finance may conclude, at the joint suggestion of the FMA and the *Oesterreichische Nationalbank*, the following agreements with competent authorities regarding the procedure regarding cooperation with the FMA and *Oesterreichische Nationalbank* in their efforts to oversee and supervise electronic money institutions, insofar as the Federal Minister of Finance is authorised to conclude agreements pursuant to Article 66 para. 2 of the Federal Constitutional Act (*BVG; Bundesverfassungsgesetz*):

1. Agreements with competent authorities of other Member States; in particular, these agreements may regulate procedures of cooperation between the FMA and the competent authorities of Member States with regard to the information exchange stipulated in Article 24 of Directive (EU) 2015/2366 in conjunction with Article 3 (1) of Directive 2009/110/EC.
2. Agreements with competent authorities of third countries, insofar as the information exchange with these competent authorities serves to fulfil supervisory tasks of this competent authority conditional on there being the equivalent degree of professional secrecy as the level of professional secrecy as defined in Article 24 of Directive (EU) 2015/2366 in conjunction with Article 3 (1) of Directive 2009/110/EC.

## Powers of host Member States

**Article 34.** The FMA may, as competent authority of the host Member State, in exercising the powers conferred upon it by this federal act request the information from the branches of electronic money institutions pursuant to Article 9, which are required to check compliance of the standards applicable for this entity. These requirements may not be stricter than the requirements that the FMA imposes on authorised institutions for the monitoring of compliance with the same standards.

## Precautionary measures

**Article 35.** (1) If the FMA as competent authority of the host Member State has clear and proven grounds to assume that an electronic money institution conducting activities in Austria under the freedom to provide services or through a branch pursuant to Article 9 is breaching the conditions contained in this federal act or in Regulation (EU) 2021/1230 on cross-border payments in the Union, which do not confer powers on the FMA as the competent authority of the host Member State, then the FMA shall communicate its findings to the competent authority of the home Member State.

(2) In the event that the FMA as competent authority of the host Member State determines that an electronic money institution pursuant to Article 9, which has a branch in Austria, breaches Austrian statutory or administrative provisions relating to the FMA's competence as the authority in the host Member State pursuant to Article 22 para. 1, the FMA shall request the electronic money institution concerned to restore legal compliance within an appropriate timeframe not exceeding three months. In the event that the electronic money institution fails to comply with this request, the FMA as the competent authority of the host Member State shall take all appropriate measures to ensure that the electronic money institution concerned restores legal compliance. The FMA shall inform the competent authority of the in the home Member State of the nature of these measures. In the event that the electronic money institution continues to breach the Austrian legal and administrative provisions as defined in Articles 28 paras. 1, 2 or 3 or Article 29 para. 8 or 10 despite the measures that have been imposed by the FMA, the FMA may, after informing the competent authority of the home Member State, impose suitable measures to prevent or address further violations; if necessary, the FMA may completely or partially prohibit the responsible directors of the branch of the electronic money institution from managing the branch, and may also prohibit the electronic money institution from conducting new business in Austria.

(3) The FMA shall duly justify any measure pursuant to para. 1 or 2 involving sanctions or restrictions relating to the activities of an electronic money institution, and shall communicate these reasons to the electronic money institution concerned.

(4) In the event that an electronic money institution pursuant to Article 3 para. 2, which provides its services in a Member State through a branch, continues to breach the national regulations of the host Member State despite having been requested by the competent authorities to restore legal compliance, the FMA shall, once permission has been granted by the competent authorities in the host Member State, take appropriate measures pursuant to Article 26 para. 7 to restore legal

compliance in the host Member State. The competent authority of the host Member State must immediately be informed about the measures taken.

(5) In the case that the licence of an electronic money institution pursuant to Article 3 para. 2 is revoked, the FMA shall inform the competent authorities of the Member States in which the electronic money institution exercises its business activities in writing without delay.

## CHAPTER 5: TRANSITIONAL AND FINAL PROVISIONS

### Transitional provision

**Article 36.** (1) Electronic money institutions, which performed activities in Austria prior to 30 April 2011 in accordance with the law of their home Member State transposing Directive 2000/46/EC in their home Member State or in accordance with the E-Money Act published in Federal Law Gazette I No. 45/2002, shall be allowed to continue these activities in Austria in accordance with the E-Money Act published in Federal Law Gazette I No. 45/2002 of the provisions of Directive 2000/46/EC by means of mutual recognition until 30 October 2011 at the latest without needing to apply for a licence pursuant to Article 3; Chapter 3 of this federal act shall however apply. The electronic money institutions which possess a licence pursuant to Article 1 of the E-Money Act, published in Federal Law Gazette I No. 45/2002, shall submit all relevant information to the FMA by 31 May 2011 for checking whether these electronic money institutions fulfil all the requirements of the E-Money Act of 2010. The FMA shall determine by 30 October 2011 at the latest by means of an administrative decision, whether they electronic money institutions fulfil the requirements and shall include them if this is the case in the register of electronic money institutions or to prescribe the necessary measures or to withdraw the licence and to prohibit the issuance of electronic money. Electronic money institutions with their place of incorporation in another Member State shall be allowed to continue their activities after 30 October 2011, provided that they are also authorised to do so in their home Member State in accordance with Directive 2009/110/EC.

(2) Until the end of 25 June 2017, Article 14 para. 3 in the version of the federal act published in Federal Law Gazette I No. 118/2016 shall be applied respectively with the proviso that reference is to be made to Regulation (EC) no. 1781/2006 rather than to Regulation (EU) 2015/847.

### References and Regulations

**Article 37.** (1) Where references to other federal acts are made in this federal act, those acts shall be applicable in their most recently amended versions unless explicitly specified otherwise.

(2) Where references to the following legal acts of the European Union are made in this federal act, those acts shall be applicable, unless instructed otherwise, in the following version:

1. Directive (EU) 2015/2366 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, OJ L 337, 23.12.2015, p. 35;

2. Directive 2013/36/EU 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, OJ L 176, 27.6.2013, p. 338.
3. Regulation (EU) 2021/1230 on cross-border payments in the Union, OJ L 274, 30.07.2021, p. 20.
4. Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 and repealing Directive 2005/60/EC Directive 2006/70/EC, OJ L 141, 05.06.2015, p. 73;
5. Regulation (EU) 2016/679 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) OJ L 119, 04.05.2016, p. 1;
6. Directive 2009/110/EC 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, OJ L 267, 10.10.2009, p. 7;
7. Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, OJ L 176, 27.6.2013, p. 1.
8. Regulation (EC) No. 1781/2006 on information on the payer accompanying transfers of funds, OJ L 345, 8.12.2006, p. 1;
9. Regulation (EU) No 2015/847 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006, OJ L 141, 05.06.2015, p. 1.

(3) Any regulation based on this federal act as amended may be issued from the day following publication of the federal act to be implemented; however, they may not take effect before the statutory provisions to be implemented have themselves taken effect.

### **Gender-neutral use of language**

**Article 38.** Where expressions in this Federal Act relating to persons are given only in the masculine form, they shall refer equally to men and women. The respective gender-specific form shall be used when applied to specific persons.

### **Repeals**

**Article 39.** The E-Money Act as published in Federal Law Gazette I No. 45/2002 in the version in the federal act in Federal Law Gazette I No. 141/2006, shall be repealed upon expiry of 29 April 2011, but remains applicable for electronic money institutions, which commenced activities prior to 30 April 2011 pursuant to the E-Money Act, in accordance with Article 36 until 30 October 2011.

### **Enforcement**

**Article 40.** The following shall be responsible for the enforcement of this federal act:

1. with regard to Article 6 para. 1, Article 16 para. 1, Articles 21, 28 and 31 the Federal Minister for Justice,

2. with regard to Articles 5 and 17 to 19 the Federal Minister of Finance in coordination with the Federal Minister for Justice, and
3. with regard to all other provisions, the Federal Minister of Finance.

### **Entry into force**

**Article 41.** (1) This federal act shall enter into force on 30 April 2011. Article 36, however, shall enter into force on the following day after publication.

(2) Article 2 para. 4 in the version of Federal Law Gazette I No. 145/2011 shall enter into force on 31 December 2011.

(3) Article 29 paras. 1 to 11 in the version contained in the 2nd Stability Act of 2012 (2. *Stabilitätsgesetz 2012*) published Federal Law Gazette I No. 35/2012 shall enter into force on 1 May 2012.

(4) Article 30 para. 2 in the version of Federal Law Gazette I No. 70/2013 shall enter into force on 1 January 2014.

(5) Article 1 para. 1 no. 1, Article 1 para. 2 no. 2, Article 2 para. 2 no. 1, Article 8 para. 1, Article 9 para. 1, Article 11 paras. 1 and 2, Article 14 para. 1, Article 22 para. 2, Article 37 para. 2 nos. 2 and 7 in the version of the federal act in Federal Law Gazette I No. 184/2013 shall enter into force on 1 January 2014.

(6) Article 14 paras. 1 and 3 and Article 27 para. 3 in the version of Federal Law Gazette I No. 68/2015 shall enter into force on 20 July 2015. In the case of documentation relating to accounts for financial years beginning before 1 January 2016, Article 14 para. 1 in the version of the federal act in Federal Law Gazette I No. 68/2015 shall apply with the proviso that the provisions of the BWG shall apply pursuant to the instructions of Article 107 para. 87 BWG. Article 14 para. 3 in the version of the federal act amended in Federal Law Gazette I No. 68/2015 shall first apply to the auditing of annual financial statements for the 2015 business year, in the case of annual financial statements for the 2014 business year, Article 14 para. 3 in the version prior to the version of Federal Law Gazette I No. 68/2015 shall apply.

(7) Article 2 para. 2 no. 2, and para. 4, Article 9 para. 2, Article 13 para. 1, Article 14 para. 3, Article 22 para. 1, Article 32 para. 2, Article 35 para. 1, Article 36, and Article 37 para. 2 in the version of the federal act published in Federal Legal Gazette I no. 118/2016 shall enter into force on 1 January 2017. Article 13 para. 1 final sentence, and Article 26 para. 11, Article 29 para. 3, para. 4 no. 3 and para. 11 shall expire at the end of 31 December 2016.

(8) Article 29 para. 13 and Article 30 para. 2 shall expire at the end of 2 January 2018.

(9) Article 1 paras. 1 and 3, Article 2 para. 3 nos. 1 and 2, Article 3 para. 3 nos. 1, 2 and 4, the introductory part of Article 4 para. 1, Article 4 para. 1 nos. 1, 3 and 4, Article 4 para. 1 no. 3 lit. b, Article 4 para. 2, the introductory part of Article 4 para. 3, Article 4 para. 3 nos. 1 to 6, Article 4 para. 3 no. 3 lit. b, Article 4 para. 4, the introductory part of Article 5 para. 1, Article 5 para. 1 nos. 1 and 2, Article 5 para. 2, Article 6 para. 2, Article 7 para. 1 nos. 2 and 3, Article 7 para. 2, Article 9 paras. 1 and

2, Article 10, Article 11 para. 3 no. 1, the concluding part of Article 12 para. 1, Article 12 para. 2, Article 13 para. 1, the introductory part of Article 13 para. 2, Article 14 para. 3, Article 15 paras. 1 to 3, Article 19 para. 1, Article 21, Article 22 paras. 2 and 3, Article 23 paras. 2 and 3, Article 26 paras. 9 and 12, Article 29 para. 4 nos. 1 and 2, Article 29 para. 5, Article 29 para. 8 no. 4, Article 30 para. 4, Article 31, Article 32 paras. 1 and 2, Article 33 para. 2, Article 33 para. 3 nos. 1 and 2 as well as Article 37 para. 2 no. 1 in the version of the Federal Act amended in Federal Law Gazette I No. 17/2018 shall enter into force on 1 June 2018.

(10) Article 2 para. 1 in the version amended in Article 4 of the FATF Inspection Amendment Act 2024 (*FATF-Prüfungsanpassungsgesetz 2024*), published in Federal Law Gazette I no. 5/2025 shall enter into force on the following day after publication.