

# Conformity Assessment of Directive 2009/110/EC AUSTRIA

*Final Report*  
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## NATIONAL IMPLEMENTING MEASURES

List of the national implementing measures notified to the European Commission	General observations
<p><b>E-Geldgesetz 2010 sowie Änderung des Bankwesengesetzes, des Zahlungsdienstegesetzes, des Versicherungsaufsichtsgesetzes, des Finanzmarktaufsichtsbehördengesetzes, der Gewerbeordnung 1994, des Konsumentenschutzgesetzes, des Kraftfahrzeug-Haftpflichtversicherungsgesetzes und des Bundesfinanzierungsgesetzes, BGBl. I Nr. 107/2010</b></p> <p>Electronic Money Act 2010 and amending act to the Banking Act, the Payment Service Act, the Insurance Supervisory Act, the Financial Market Supervisory Authority Act, the Trade Act 1994, the Consumer Protection Act, the Car Insurance Act and the Federal Financing Act, BGBl. I Nr. 107/2010</p>	<p>The act introducing the Electronic Money Act (E-Geldgesetz) and amending the Banking Act (BWG), the Payment Services Act (ZaDiG), the Insurance Supervisory Act, the Financial Market Authority Act (FMABG), the Trade Act 1994, the Consumer Protection Act (KSchG), the Car Insurance Act and the Federal Financing Act is the main implementing act of Directive 2009/110/EC.</p> <p>It was adopted on 23 December 2010 and entered into force on 30 April 2011.</p> <p>For the assessment of Directive 2009/110/EC only the E-Geldgesetz, the ZaDiG, the BWG, the FMABG and the KSchG referred to in BGBl. Nr. 107/2010 were relevant and only the amended acts of the consolidated versions of these acts were used. Therefore, no reference is made to Act BGBl. Nr. 107/2010 as such.</p>
<p><b>Bundesgesetz über die Ausgabe von E-Geld und die Aufnahme, Ausübung und Beaufsichtigung der Tätigkeit von E-Geld-Instituten (E-Geldgesetz 2010), BGBl. I Nr. 107/2010</b></p> <p>Electronic money Act, BGBl. I Nr. 107/2010 (hereinafter referred throughout the report as: E-Geldgesetz)</p>	<p>The E-Geldgesetz 2010 is the main implementing act of Directive 2009/110/EC. It was adopted on 23 December 2010 and entered into force on 30 April 2011.</p> <p>The E-Geldgesetz provides for a uniform regime of provisions for the issuance of electronic money and the taking up, the pursuit and prudential supervision of e- money institutions within the meaning of Directive 2009/110/EC.</p> <p>Since the E-Geldgesetz is based on the requirements for payment institutions according to Directive 2007/64/EC transposed by the ZaDiG and as the BWG regards electronic money institutions as finance institutions, it thus contains many cross references to both of these acts taking into consideration the particularities and special risks of electronic money institutions when issuing electronic money.</p> <p>A consolidated version of the E-Geldgesetz containing all the relevant amendments that has been used for the conformity assessment can be found on the following website:</p> <p><a href="http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&amp;Gesetzesnummer=20007043">http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&amp;Gesetzesnummer=20007043</a></p>

List of additional national implementing measures referred to in the conformity assessment	General observations
<p><b>Bundesgesetz über die Erbringung von Zahlungsdiensten (Zahlungsdienstegezet – ZaDiG), BGBl. I Nr. 66/2009</b></p> <p>Payment Services Act, BGBl. I Nr. 66/2009 (hereinafter referred throughout the report as: ZaDiG)</p>	<p>The ZaDiG is the main act transposing Directive 2007/64/EC into Austrian law and partly transposes Directive 2009/110/EC. This concerns in particular Article 7(2) of Directive 2009/110/EC referring to the safeguarding of funds transposed by Section 17(4) ZaDiG. The ZaDiG was adopted on 15 July 2009 and entered into force on 1 November 2009.</p> <p>The ZaDiG lays down provisions on payment services and introduces a detailed legal regime for the provision of payment services and a legal basis for payment institutions according to Article 1 of Directive 2007/64/EC. The structure of the ZaDiG is widely based on the one of Directive 2007/64/EC.</p> <p>The E-Geldgesetz contains many cross-references to the ZaDiG, since electronic money institutions are also payment service providers according to Section 1(3), point 3 ZaDiG. Therefore, the assessment could only be performed by showing and assessing these cross-references and all other relevant provisions of the ZaDiG where necessary.</p> <p>A consolidated version of the ZaDiG containing all the relevant amendments that has been used for the conformity assessment can be found on the following website: <a href="http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&amp;Gesetzesnummer=20006355">http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&amp;Gesetzesnummer=20006355</a></p>
<p><b>Bundesgesetz über das Bankwesen (Bankwesengesetz - BWG), BGBl. 532/1993</b></p> <p>Banking Act, BGBl. 532/1993 (hereinafter referred throughout the report as: BWG)</p>	<p>The BWG serves as the legal basis for the entire banking sector in Austria and can be considered as the “commercial code” of banks. It was adopted on 30 July 1993 and entered into force on 1 January 1994.</p> <p>The BWG contains a comprehensive list of the various kinds of banking businesses that can be pursued by banks, finance institutions, payment institutions and electronic money institutions and lays down the requirements and conditions for an authorisation for these businesses granted by the FMA.</p> <p>The E-Geldgesetz and the ZaDiG contain many cross-references to the BWG, since electronic money institutions are also finance institutions according to Section 1(3) BWG. This concerns in particular Article 5 referring to own funds of electronic money institutions transposed by Sections 20(4) and (5) and 23 BWG. Therefore, the assessment could only be performed by showing and assessing these cross-references and all other relevant provisions of the BWG where necessary.</p> <p>A consolidated version of the BWG containing all the relevant amendments that has been used for the conformity assessment can be found on the following website: <a href="http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&amp;Gesetzesnummer=10004827">http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&amp;Gesetzesnummer=10004827</a></p>
<p><b>Bundesgesetz, mit dem Bestimmungen zum Schutz der Verbraucher getroffen werden (Konsumentenschutzgesetz - KSchG), BGBl. Nr. 140/1979</b></p>	<p>The KSchG lays down the rules for legal transactions involving on the one hand a person who makes the transaction in the course of carrying on his business and on the other hand, a person to whom this does not apply and therefore is regarded as a consumer.</p> <p>The KSchG was adopted on 8 March 1979 and was last amended on 21 November 2011. The only provision used for the</p>

<p>Consumer Protection Act, BGBl. Nr. 140/1979 (hereinafter referred throughout the report as: KSchG)</p>	<p>assessment is Section 28a(1) KSchG transposing Article 13(2) of the Directive referring to out-of-court complaint and redress procedures for the settlement of disputes.</p> <p>The updated version of the KSchG can be found under the following hyperlink: <a href="http://www.ris.bka.gv.at/Dokumente/Erv/ERV_1979_140/ERV_1979_140.pdf">http://www.ris.bka.gv.at/Dokumente/Erv/ERV_1979_140/ERV_1979_140.pdf</a></p>
<p><b>Bundesgesetz über die Errichtung und Organisation der Finanzmarktaufsichtsbehörde (Finanzmarktaufsichtsbehördengesetz - FMABG), BGBl. I Nr. 97/2001</b> Financial Market Authority Act, BGBl. I Nr. 97/2001 (hereinafter referred throughout the report as: FMABG)</p>	<p>The FMABG provides for the establishment, the tasks and the competences of the Financial Market Authority (FMA). It was adopted on 7 August 2001 and entered into force on 1 April 2002.</p> <p>The FMA is a public-law institution with its own legal personality set up to implement banking supervision, insurance supervision, pension companies' supervision and securities supervision. It is responsible for the entire federal territory and is not bound by any instructions when exercising its tasks and competences.</p> <p>The FMA can make use of various supervisory instruments to ensure compliance with the statutory provisions such as on-site inspections to be carried out to specifically review compliance with statutory provisions.</p> <p>The updated version of the FMABG can be found under the following hyperlink: <a href="https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&amp;Gesetzesnummer=20001456">https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&amp;Gesetzesnummer=20001456</a></p>

## SUMMARY

### 1. Executive summary

The main act transposing Directive 2009/110/EC is the E-Geldgesetz 2010 creating a modern legal basis for the issuance of all types of prepaid electronic payments in Austria.

Both electronic money and electronic money issuers are defined in a new way by the E-Geldgesetz.

The E-Geldgesetz lays down the scope of activities of electronic money institutions. These shall be:

- the issuance of electronic money and payment services linked to the issuance of electronic money,
- and the optional provisions of other payment services and other services which are no financial services.

Moreover, the E-Geldgesetz introduces new provisions into the Austrian law for the issuance of electronic money with regards to requirements on the issuance of electronic money, on consumer information, on redemption and fees. In addition, the E-Geldgesetz lays down the contractual conditions for the issuance of electronic money for electronic money issuers.

The new prudential supervisory rules for electronic money institutions according to the E-Geldgesetz largely follow the requirements for payment institutions set out in the ZaDiG transposing Directive 2007/64/EC and are defined in a similar way to those applying to payments service institutions. They shall ensure that all electronic money providers are registered throughout the EU and thus counteract distortions of competition in the future.

Since electronic money institutions are also payment institutions within the meaning of the ZaDiG and finance institutions within the meaning of the BWG, the E-Geldgesetz contains many cross references to these two acts. The ZaDiG as well as the BWG also implement certain parts of Directive 2009/110/EC. This is in particular the case with regards to the implementation of Article 5 referring to own funds and Article 7 referring to safeguarding requirements of electronic money institutions. The references to the ZaDiG and the BWG are shown where it is necessary for a comprehensive reading of the report.

The provision of payment services shall still be subject to the provisions of the ZaDiG. The credit as well as deposit business remains within the scope of activities of credit institutions according to the BWG. However, funds of clients received by electronic money institutions for the issuance of electronic money may not be used for other commercial or other payment services, and shall be safeguarded securely in accordance with the provisions of the ZaDiG, unless they are forwarded immediately. Electronic money issued by electronic money institutions shall by definition not be a deposit. An investment in other businesses, as it is the case with credit institutions, shall therefore be prohibited.

In general, the E-Geldgesetz widely follows the structure and the terminology of Directive 2009/110/EC as a result of which it could be concluded that the transposition was done in a conform way. In some provisions, an almost literal approach can be found.

### 2. The implementation of Directive 2009/110/EC

#### 2.1. Scope

No problems regarding the scope of application were encountered throughout the assessment.

#### 2.2. Terminology

The system and terminology of the Directive was largely followed. A convergent and consistent terminology across the law was applied. In some provisions, an almost literal approach can be found.

### **2.3. Explanatory note on the assessment**

Conformity applies to cases whereby the national provisions follow all requirements of the corresponding provision of Directive 2009/110/EC. Some requirements of the Directive provision may not be explicitly transposed. National provisions can however be considered as conform as far as the silence does not affect the proper implementation of all requirements and that the missing ones can be inferred.

Partial conformity applies to cases whereby the national provisions do not follow all the requirements of the Directive provision, or are silent about requirements, which are considered minor but necessary. In cases of partial conformity, the interpretation of the national provision does not hamper the proper implementation of the Directive provision as a whole, and, missing requirements cannot be inferred.

Non conformity applies to cases whereby the Directive provision is not transposed or the national provisions do not follow either, all requirements of the Directive provision, or, the main ones. In cases of non conformity, the interpretation of the national provisions hamper the proper implementation of the Directive provision as a whole, and missing requirements cannot be inferred either. Also considered are additional requirements and exemptions, which hamper the proper implementation of the Directive provision.

The cases where there are no headings relate to options laid down by the Directive provision that Member States has not chosen to apply, or, to obligations resting upon the European Commission.

### **2.4. Legal analysis**

#### *2.4.1. Title I – Scope and definitions*

Title I has been transposed in a conform manner with no issues of partial conformity or non-conformity present.

It should be noted that there is a language discrepancy within the E-Geldgesetz. Section 1(1), point 4 of the E-Geldgesetz provides that the European Central Bank, the Austrian National Bank as well as other central banks of the “EEA” when not acting in their capacity as monetary authority or other public authorities are recognised as electronic money issuers. However, Section 2(2) point 3 of the E-Geldgesetz provides that provisions applicable to e-money institutions shall not apply to the European Central Bank, the Austrian National Bank, as well as other central banks of the “European Union” when not acting in their capacity as monetary authority or other public authorities. This discrepancy between the Directive and the E-Geldgesetz is of merely terminological nature and is regarded in conformity with the Directive.

#### *2.4.1.1. Article 1 – Subject*

Section 1(2) of the E-Geldgesetz lays down the scope of the E-Geldgesetz by defining the various types of electronic money issuers being authorised to issue electronic money and to which the E-Geldgesetz shall apply. Only the electronic money issuers within the meaning of Section 1 of the E-Geldgesetz shall be authorised to issue electronic money. Besides electronic money institutions these are credit institutions including their branches holding an authorisation to issue electronic money, the European Central Bank, the Austrian National Bank, other Central Banks of the EEA the Austrian Post within the frame of payment transactions, the federation, the regions and local authorities when acting as public authorities.

These types of electronic money issuers correspond to those referred to in Article 1(1)(a) to (e) of the Directive.

Branches of electronic money institutions having their head office located outside the Community are considered as electronic money institutions according to the E-Geldgesetz, if they hold an authorisation according to the E-Geldgesetz or if they have been conferred such a status according to an EU agreement.

As laid down in the E-Geldgesetz the difference between electronic money institutions and payment institutions is that payment institutions are limited to payment services, but electronic money institutions may – in addition to the execution of payment services - also issue electronic money.

Therefore, conformity has been concluded for the transposition of Article 1 of the Directive.

#### 2.4.1.2. Article 2 – Definitions

Section 3(2) of the E-Geldgesetz defines the term “electronic money institution” within the meaning of Article 2, point 1 of the Directive as legal persons holding the necessary authorisation to issue electronic money.

The definitions of Article 2, point 2 of the Directive referring to electronic money and point 4 referring to the average outstanding electronic money were almost literally transposed by the provisions of the E-Geldgesetz.

Regarding the definition of electronic money issuers as set out in Article 2, point 3 of the Directive, it should be noted that the categories of electronic money issuers according to the Austrian legislation are the same as those referred to in Article 1(1) of the Directive transposed by Section 1(2) of the E-Geldgesetz as well as the institutions benefiting from the waiver under Article 1(3) of the Directive. Since Austria has not applied the option set out in Article 9 of the Directive, there is no reference to that waiver referred to in Article 2, point 3 of the Directive.

Based on these observations, conformity was concluded with regards to the transposition of the definitions laid down in Article 2 of the Directive.

#### 2.4.2. Title II – Requirements for the taking up, pursuit and prudential supervision of the business of electronic money institutions

Title II is transposed in a conform manner with no issues of partial conformity or non-conformity present. No discrepancies with regard to wording were observed.

##### 2.4.2.1. Article 3 – General prudential rules

The competent authorities for the supervision of electronic money institutions according to the E-Geldgesetz are the FMA ([www.fma.gv.at](http://www.fma.gv.at)) and the Austrian National Bank ([www.oenb.at](http://www.oenb.at)).

With regards to general prudential rules as set out in Article 3 it was observed that Article 3(2), (3) and (4) of the Directive was transposed in a literal or almost literal way by Sections 7(2), 8(1) and 15(1) of the E-Geldgesetz.

Regarding the sanctions for not notifying the FMA of an acquisition of a qualified holding as set out in Article 3(3), third to fifth subparagraph of the Directive, it should be noted that Section 20(5) BWG refers to the suspension of votes and sanctions against directors and managers as the measures to be taken by the FMA.

The references made in Article 3 to Directive 2006/48/EC are transposed by the provisions of the BWG. In this respect, the relevant provisions of the BWG should apply *mutatis mutandis* to electronic money institutions without prejudice to the provisions of the E-Geldgesetz.

With regards to Article 3(3), sixth subparagraph it was assessed that Austria has not applied the option.

Finally, like Article 3(5) of the Directive, Section 15(2) of the E-Geldgesetz prohibits the issuance of electronic money by agents.

Based on these observations, conformity has been concluded for the transposition of Article 3 of the Directive.

##### 2.4.2.2. Article 4 – Initial capital

Article 4 of the Directive referring to the requirements of initial capital is transposed by Section 11 of the E-Geldgesetz providing for own funds for electronic money institutions not less

than EUR 350 000 at any time, which also includes the initial capital at the time of authorisation.

With regards to the references made in Article 4 to provisions of Directives 2007/64/EC and 2006/48/EC it was assessed that they were transposed in a conform way by the provisions of either the ZaDiG or the BWG.

Moreover, Section 26(11) of the E-Geldgesetz provides for the notification of the money laundry office by the FMA in case of money laundering or terror financing as set out in recital 11 of the Directive.

Therefore, conformity has been concluded for the transposition of Article 4 of the Directive.

#### 2.4.2.3. Article 5 – Own funds

The calculation methods for own funds of electronic money institutions as laid down in Article 5 of the Directive are transposed in paragraphs 2 to 5 of Section 11 of the E-Geldgesetz. These provisions largely follow the structure and the wording of Article 5 of the Directive and also fulfil the requirements with regards to the administration of own funds set out in recital 11 of the Directive.

As laid down under Section 11(3), point 2 of the E-Geldgesetz transposing Article 5(3) of the Directive the own funds of an electronic money institution for the activity of issuing electronic money shall amount to at least 2 % of the average outstanding electronic money.

Article 5(4) of the Directive referring to calculation methods for electronic money institutions engaging in different activities than issuing electronic money and Article 5(6) of the Directive referring to the multiple use of own funds are transposed in an almost literal way by Section 11(4) and (5) of the E-Geldgesetz following tightly the wording and structure of the Directive.

With regards to Article 5(5) of the Directive, it was assessed that Austria has applied the option. In order to ensure that similar risks are treated for all payment service providers equally and that the particular business situation of an electronic money institution is taken into account, the FMA will be given an appropriate regulatory discretion for the calculation of own funds according to Section 11(5) of the E-Geldgesetz.

Section 23(13), point 3 BWG transposes Article 5(6) of the Directive and prohibits the multiple use of own funds of electronic money institutions and, if an electronic money institution belongs to the same group of a credit institution, a finance institution or a payment institution or an electronic money institution.

With regards to Article 5(7) of the Directive, it was assessed that Austria has not applied the option.

Therefore, conformity has been concluded for the transposition of Article 5 of the Directive.

#### 2.4.2.4. Article 6 – Activities

With regards to Article 6(1) to (3) of the Directive referring to the activities of electronic money institutions it should be noted that these provisions were transposed in a literal manner by Sections 3(3) to (5) of the E-Geldgesetz.

With regards to Article 6(4) of the Directive, it should be noted that according to Section 3(3), point 1 of the E-Geldgesetz electronic money institutions may in principle as part of their authorisation also provide payment services. However, they shall fulfil the relevant general prudential rules set out in the ZaDiG transposing Article 16(2) and (4) of Directive 2007/64/EC. As long as they receive funds when providing payment services, these funds shall be deposited on a separate account and shall not constitute a deposit or electronic money.

Based on these observations, conformity has been concluded for the transposition of Article 6 of the Directive.



#### 2.4.2.5. Article 7 – Safeguarding requirements

With regards to safeguarding requirements for amounts which electronic money institutions have received for the issuance of electronic money as set out in Article 7(1) and (2) of the Directive a conform transposition by Section 12(1) of the E-Geldgesetz and Section 17(4) ZaDiG was assessed. The same applies to the options set out in Article 7(2), third subparagraph and 7(4).

Article 7(3) and (4) of the Directive are transposed in conformity by Section 12(1) of the E-Geldgesetz providing for the safeguarding of amounts that are not linked to the issuance of electronic money by electronic money institutions according to Article 9 of Directive 2007/64/EC transposed by Section 17(1), (2) and (4) ZaDiG.

Therefore, conformity has been concluded for the transposition of Article 7 of the Directive.

#### 2.4.2.6. Article 8 – Relations with third countries

Article 8 of the Directive referring to relations with third countries is transposed by Section 1(2), point 2 in conjunction with Section 9(1) of the E-Geldgesetz.

Branches of electronic money institutions, which have their head office outside the EEA, are considered electronic money institutions within the meaning of the E-Geldgesetz, if either an EU agreement confers such a status to them or they have been granted an authorisation according to the E-Geldgesetz. This guarantees that electronic money institutions having their head office outside the Community do not enjoy a more favourable treatment than electronic money institutions having its head office within the Community. Moreover, no provision that is more favourable for foreign electronic money institutions could be localised in the Austrian legislation.

Moreover, an authorisation of foreign electronic money institutions according to the E-Geldgesetz only authorises them to payment services linked to the issuance of electronic money. However, they cannot provide any other payment services not linked to the issuance of electronic money.

According to Section 9(1) of the E-Geldgesetz, activities and the payment services of foreign electronic money institutions linked to the issuance of electronic money is limited to business activities in Austria and does not automatically entitle them to exercise the right of establishment and freedom to provide services within the meaning of Article 49 and Article 56 of the Treaty on the Functioning of the European Union.

Based on these observations, conformity has been concluded for the transposition of Article 8 of the Directive.

#### 2.4.2.7. Article 9 – Optional exemptions

Austria has not applied the option(s) set out in Article 9 of the Directive.

#### 2.4.3. Title III – Issuance and redeemability of electronic money

Title III is transposed in a conform manner with no issues of partial conformity or non-conformity present. No discrepancies with regard to wording were observed.

##### 2.4.3.1. Article 10 – Prohibition from issuing electronic money

Article 10 referring to the prohibition from issuing electronic money is transposed by Section 1(2), point 2 of the E-Geldgesetz and provides that only electronic money issuers within the meaning of the E-Geldgesetz are authorised to issue electronic money. Consequently, natural or legal persons who are no electronic money issuers according to the E-Geldgesetz shall be prohibited from issuing electronic money according to Austrian law.

Therefore, conformity has been concluded for the transposition of Article 10 of the Directive.

#### 2.4.3.2. Article 11 - Issuance and redeemability

Article 11 of the Directive referring to the issuance and redeemability of electronic money is transposed by Sections 17, 18 and 19 of the E-Geldgesetz.

Section 17, first sentence of the E-Geldgesetz provides that electronic money issuers shall issue electronic money at par value on the receipt of funds as provided in Article 11(1) of the Directive.

Section 18(1) of the E-Geldgesetz ensures that, upon request by the electronic money holder, electronic money issuers redeem, at any moment and at par value, the monetary value of the electronic money held as set out in Article 11(2) of the Directive.

Article 11(3), (4), (5) and (6) of the Directive referring to the contractual conditions between electronic money issuers and electronic money holders regarding redeemability of electronic money and fees were transposed by Sections 19(1), (2), (3) and (4) of the E-Geldgesetz in a conform manner.

Article 11(7) of the Directive is transposed by Section 19(5) of the E-Geldgesetz providing in a more general way than the Directive the nullity of any contractual agreements with different provisions from those referred to in Section 19(2) to (4) of the E-Geldgesetz in case such provisions are to the detriment of the electronic money holder.

Based on these observations conformity was concluded for the transposition of Article 11 of the Directive.

#### 2.4.3.3. Article 12 – Prohibition of interest

Article 12 of the Directive referring to the prohibition of interest is transposed by Section 20 of the E-Geldgesetz which bans the granting of interest or any other benefits which are related "to the length of time during which the electronic money holder holds electronic money". This also is in conformity with recital 13 of the Directive prohibiting the granting of credit from the funds received or held for the purpose of issuing electronic money.

Therefore conformity was concluded for the transposition of Article 12 of the Directive.

#### 2.4.3.4. Article 13 – Out-of-court complaint and redress procedures for the settlement of disputes

Article 13 of the Directive referring to out-of-court complaint and redress procedures for the settlement of disputes is transposed by Sections 28a(1) KSchG and Sections 28(1) and 66(3) ZaDiG.

Section 28a(1) KSchG guarantees consumers and consumer protection organisations sufficient legal possibilities to sue electronic money issuers for injunction in case of violations of their legal obligations laid down in the E-Geldgesetz.

Section 28(1) KSchG in conjunction with Section 66(3) ZaDiG provide for the FIN-NET out-of-court settlement body ([www.bankenschlichtung.at](http://www.bankenschlichtung.at)) as the effective out-of-court complaint in Austria with regards to payment services according to Chapter 5 of Title IV of Directive 2007/64/EC. The FIN-NET out of court settlement body shall also be applicable to electronic money issuers in respect of their duties laid down in the E-Geldgesetz.

Based on these observations conformity was concluded for the transposition of Article 13 of the Directive.

#### 2.4.4. Title IV – Final provisions and implementing measures

Title III is transposed in a conform manner with no issues of partial conformity or non-conformity present. No discrepancies with regard to wording were observed.

#### 2.4.4.1. Article 16 – Full harmonisation

As stated in this report, the transposition of the Directive by the Austrian legislator was done in a conform manner. All the options referred to in Article 16(1) of the Directive excluding those set out in Article 3(3), sixth subparagraph, Article 5(4) and Article 9 of the Directive were applied.

With regards to Article 16(2) of the Directive, it was assessed that the FMA is the competent authority for the supervision of compliance by electronic money institutions with the provisions of the E-Geldgesetz, the ZaDiG and the BWG. The supervision by the FMA shall ensure that electronic money issuers do not derogate, to the detriment of an electronic money holder, from the provisions of the E-Geldgesetz.

Therefore, conformity was concluded for the harmonisation requirements set out in Article 16 of the Directive.

#### 2.4.4.2. Article 18 – Transitional provisions

Like the Directive's provision Section 36, first sentence of the E-Geldgesetz allowed electronic money institutions that have taken up, before 30 April 2011, activities in accordance with national law transposing Directive 2000/46/EC, which also includes Article 8 thereof, in the Member State in which their head office is located or in accordance with the E-Geldgesetz to continue those activities in Austria. These activities were allowed until 30 October 2011 at the longest without being required to seek authorisation.

Section 36, second sentence of the E-Geldgesetz provides for the submission of all relevant information to the FMA so that it can assess, whether electronic money institutions comply with the requirements laid down in the E-Geldgesetz. Like the Directive, Section 36, third sentence of the E-Geldgesetz provides for a deadline for the submission of the relevant information to the FMA until 30 October 2011.

The FMA shall then assess whether the electronic money institutions comply with the requirements set out in the E-Geldgesetz and, if yes, record them in the electronic money institute register, and, if not, take appropriate measures or withdraw the authorisation and stop the issuance of electronic money.

Based on these observations conformity was concluded for the transposition of Article 18 of the Directive.

### 3. Conclusions on conformity

#### 3.1. Cases of partial conformity

No cases of partial conformity were detected in the assessment.

#### 3.2. Cases of non-conformity

No cases of non-conformity were detected in the assessment.

#### 3.3. Option ('May' clause)

3.3.1. *Austria has chosen to transpose the following options into its national legislation*

**Article 1(3) of the Directive** - Waiver for institutions under Article 2 of Directive 2006/46/EC.

**Article 5(5) of the Directive** - Possibility for competent authorities to require electronic money institutions to hold 20% more or 20% less own funds: Austria has applied the option. Section 11(5) of the E-Geldgesetz transposes Article 5(5) of the Directive in a literal manner. The references made in the Austrian provision corresponds to those which transpose the provisions referred to in Article 5(5). Therefore, conformity was concluded.

**Article 7(1) of the Directive** – Calculation of safeguarding requirements when funds can be used for future payment transactions and for non-payment services: Section 12(1), points 1 and 2 of the E-Geldgesetz transposes Article 7(1). However, it should be mentioned that the Commission’s working document “List of Member States’ options of transposition” of 15 April 2011 states that Austria has not applied the option set out in Article 7(1)/9(2) PSD. The wording of Article 7(1) of the Directive has been taken over in an almost literal way by the Austrian provision laying down that all electronic money institutions have to safeguard funds received in exchange for electronic money. The reference to Article 9(1) of the PSD is transposed by Section 17(1), (2) and (4) ZaDiG. Therefore, conformity was concluded.

**Article 7(2), third subparagraph of the Directive** – Determination of assets which do not constitute secure, low-risk assets for the purposes of subparagraph 1: Austria has applied the option. According to Section 17(4), third and last sentence ZaDiG in exceptional circumstances the FMA may determine which of the assets as specified in the first and second sentence of Section 17(4) ZaDiG do not constitute secure, low-risk assets. Therefore, conformity was concluded.

**Article 7(3) of the Directive** – Possibility to cover with an insurance the funds to be safeguarded; and application of safeguarding requirements only to funds that individually exceed EUR 600: Section 12(1), point 1 of the E-Geldgesetz transposes the option set out in Article 7(3). However, it should be mentioned that the Commission’s working document “List of Member States’ options of transposition” of 15 April 2011 states that Austria has not applied the option set out in Article 7(3)/9(4) PSD. Section 12(1), point 1 of the E-Geldgesetz provides for the safeguarding by electronic money institutions of amounts that are not linked to the issuance of electronic money according to Section 17(1), (2) and (4) ZaDiG which transposes Article 9 PSD. Therefore, conformity has been concluded for the transposition of Article 7(3).

**Article 7(4) of the Directive** – Determination of the safeguarding method allowed by Member States in accordance with Article 9(1) and 9(2) of Directive 2007/64/EC: Austria has applied the option. However, it should be mentioned that the Commission’s working document “List of Member States’ options of transposition” of 15 April 2011 states that Austria has not applied the option set out in Article 7(4)/9(1) PSD. Section 12(1), last sentence of the E-Geldgesetz transposes Article 7(4) and provides for the possibility of the FMA to determine which method shall be used by the electronic money institution to safeguard funds. Therefore, conformity was concluded for the transposition set out in Article 7(4).

**Article 18(2) of the Directive** – Automatic registration for electronic money institutions benefitting of the transitional provisions: Austria has applied the option. Section 36, last sentence transposes Article 18(2) and provides that electronic money institutions having their headquarter in another Member State may continue their activities after 30 October 2011, if they are holding an authorisation according to the national law of the Member State concerned in accordance with Directive 2009/110/EC. The holding of an authorisation of any Member State implies that the electronic money institution concerned complies with the requirements laid down in Articles 3, 4 and 5 of the Directive. Therefore, conformity was concluded.

### 3.3.2. *Austria has chosen not to transpose the following options into its national legislation*

**Article 3(3), sixth subparagraph of the Directive** - Waiver of acquisition obligations under Article 3(3) for hybrid electronic money institutions: Austria has not applied the option.

**Article 5(7) of the Directive:** – Non-application of capital requirements when an electronic money institution is included in the consolidated supervision of the parent credit institution: Austria has not applied the option.

**Article 9(1), first subparagraph of the Directive** – Waiver of authorisation/supervision requirements for small payment institutions: Austria has not applied the option.

**Article 9(1), third subparagraph of the Directive** – Additional requirement of a maximum storage per customer for benefitting of the waiver referred to in subparagraph 1: Article 9(1), third subparagraph is an option that needs not to be transposed taking into account the fact that Austria has not transposed the option set out in Article 9(1), first subparagraph

**Article 9(4) of the Directive** – Limitation on the activities carried out by entities waived under Article 9: Article 9(4) is an option that needs not to be transposed taking into account the fact that Austria has not transposed the option set out in Article 9(1), first subparagraph

#### 4. List of acronyms

Abs.: Paragraph

Art.: Article (Artikel)

Commission : European Commission

BWG: Bankwesengesetz (Banking Act)

E-Geldgesetz: Electronic Money Act

FMA: Finanzmarktaufsichtsbehörde (Financial Market Authority)

FMABG: Finanzmarktaufsichtsbehördengesetz (Financial Market Authority Act)

KSchG: Konsumentenschutzgesetz (Consumers Protection Act)

NIM/NIMs: National Implementing Measure/s

PSD: Payment Services Directive (Directive 2007/64/EC)

§/§§: Paragraph/Paragraphs

Pt.(Z/Ziff.)/Pts.(Z/Ziffern): Point(Ziffer)/Points(Ziffern)

Subpara.: Subparagraph

ZaDiG: Zahlungsdienstegesetz (Payment Service Act)

Directive 2009/110/EC			National Implementing Measures			Conformity Assessment
Article No.	EN	DE	Act, Article No.	EN	DE	Observations
Art. 1(1), intr. wording	<p><b>TITLE I SCOPE AND DEFINITIONS</b></p> <p><i>Article 1</i></p> <p><b>Subject matter and scope</b></p> <p>1. This Directive lays down the rules for the pursuit of the activity of issuing electronic money to which end the Member States shall recognise the following categories of electronic money issuer:</p>	<p><b>TITEL I GELTUNGSBEREICH UND BEGRIFFSBESTIMMUNGEN</b></p> <p><i>Artikel 1</i></p> <p><b>Gegenstand und Geltungsbereich</b></p> <p>(1) Diese Richtlinie legt Vorschriften für die Ausübung der Tätigkeit der Ausgabe von E-Geld fest, wobei die Mitgliedstaaten die folgenden Kategorien von E-Geld-Emittenten anerkennen:</p>	Section 1(1) and (2) of the E-Geldgesetz	<p><b>Section 1(1) and (2) of the E-Geldgesetz</b></p> <p>1. Electronic money means any electronically – including magnetically – stored monetary value of a towards an electronic money issuer that has been issued against the payment of an amount of money in order to execute payments according to Section 3, point 5 ZaDiG and that is also accepted by natural or legal persons different from the electronic money issuer.</p> <p>(2) Only electronic money issuers shall be allowed the issuance of electronic money. Electronic money issuers are the following:</p>	<p><b>§ 1(1) und (2) E-Geldgesetz</b></p> <p>(1) E-Geld bezeichnet jeden elektronisch – darunter auch magnetisch – gespeicherten monetären Wert in Form einer Forderung gegenüber dem E-Geld-Emittenten, der gegen Zahlung eines Geldbetrags ausgestellt wird, um damit Zahlungsvorgänge im Sinne von § 3 Z 5 ZaDiG, durchzuführen, und der auch von anderen natürlichen oder juristischen Personen als dem E-Geld-Emittenten angenommen wird.</p> <p>(2) Nur E-Geld-Emittenten sind zur Ausgabe von E-Geld berechtigt. E-Geld-Emittenten sind:</p>	<p><b>CONFORM</b></p> <p>Section 1(1) and (2) of the E-Geldgesetz transpose Article 1(1) of the Directive.</p> <p>Section 1(2) of the E-Geldgesetz lays down the scope of the E-Geldgesetz by defining the various types of electronic money issuers authorised to issue electronic money and to which the E-Geldgesetz shall apply. Only the electronic money issuers within the meaning of Section 1(1) of the E-Geldgesetz shall be authorised to issue electronic money.</p> <p>As demonstrated below these types of electronic money issuers are as the ones referred to in the Directive.</p> <p>Section 1(1) of the E-Geldgesetz defines the term “electronic money” within the meaning of the Directive as an electronically, including magnetically, stored monetary value as represented by a claim on the issuer which is issued on receipt of funds for the purpose of making payment transactions as defined in Section 3, point 5 ZaDiG transposing point 5 of Article 4 of Directive 2007/64/EC, and which is accepted by a natural or legal person other than the electronic money issuer.</p>

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						Therefore, conformity has been concluded for the transposition of Article 1(1), introductory wording of the Directive.
<b>Art. 1(1)(a)</b>	(a) credit institutions as defined in point 1 of Article 4 of Directive 2006/48/EC including, in accordance with national law, a branch thereof within the meaning of point 3 of Article 4 of that Directive, where such a branch is located within the Community and its head office is located outside the Community, in accordance with Article 38 of that Directive;	a) Kreditinstitute gemäß Artikel 4 Nummer 1 der Richtlinie 2006/48/EG, einschließlich — im Einklang mit einzelstaatlichem Recht — deren innerhalb der Gemeinschaft gemäß Artikel 38 jener Richtlinie ansässiger Zweigniederlassungen im Sinne von Artikel 4 Nummer 3 der jener Richtlinie, deren Sitz sich außerhalb der Gemeinschaft befindet;	<b>Section 1(2), pt. 1 of the E-Geldgesetz</b>  <b>Section 1(1), pts. 1 and 3 and S. 1(3) BWG</b>  <b>Section 2, pt. 13 BWG</b>	<b>Section 1(2), point 1 of the E-Geldgesetz</b>  (1) Credit institutions within the meaning of Section 1 BWG [...] which according to the national law of its Member State of origin are authorised to issue electronic money, including a branch thereof as well as branches of foreign credit institutions within the meaning of Section 2, point 13 BWG where such a branch is located within the European Economic Area;  <b>Section 1(1), points 1 and 3 and Section 1(3) BWG</b>  1. A credit institution is an institution that is authorised to exercise banking business according to this act or according to special provisions of other federal acts. Banking business shall be the following: (1) the receipt of funds from the public for the	<b>§ 1(2) Ziff. 1 E-Geldgesetz</b>  1. Kreditinstitute im Sinne des § 1 BWG, [...], die nach dem Recht ihres Herkunftsmitgliedstaates zur Ausgabe von E-Geld berechtigt sind, einschließlich deren Zweigstellen sowie Zweigstellen ausländischer Kreditinstitute im Sinne des § 2 Z 13 BWG, sofern sich diese Zweigstellen innerhalb des Europäischen Wirtschaftsraumes befinden;  <b>§ 1(1) Ziff. 1 und 3 und §1(3) BWG</b>  (1) Ein Kreditinstitut ist, wer auf Grund [...] dieses Bundesgesetzes oder besonderer bundesgesetzlicher Regelungen berechtigt ist, Bankgeschäfte zu betreiben. Bankgeschäfte sind die folgenden Tätigkeiten:	<b>CONFORM</b>  Section 1(2), point 1 of the E-Geldgesetz in conjunction with Section 1(1) and (3) BWG transposes Article 1(1)(a) of the Directive.  Section 1(2), point 1 of the E-Geldgesetz provides for credit institutions within the meaning of Section 1(1) and (3) BWG to be electronic money issuers within the meaning of the E-Geldgesetz. This is also in accordance with Article 4, point 1 of Directive 2006/48/EC allowing credit institutions that hold an authorisation to exercise the issuance of electronic money.  Within the meaning of the Directive, Section 1(2), point 1 of the E-Geldgesetz in conjunction with Section 2, point 13 BWG also refers to those credit institutions referred to in Article 4, point 3 of the Directive in conjunction with Article 38 of Directive 2006/48/EC having their headquarters outside the Community.  Branches of foreign credit institutions having their head office located outside the Community shall be authorised to issue electronic money as long as they are situated within the EEA and comply with the provisions of the E-Geldgesetz and the decisions and regulations issued on its basis.  Based on these observations, conformity has been concluded for the transposition of

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				<p>purpose of their management and deposit; (...) (3) the granting of credits [...] 3. Credit institutions holding an authorisation [...] are entitled to issue electronic money according to Section 1(1) of the E-Geldgesetz.</p> <p><b>Section 2, pt. 13 BWG</b> (13) Foreign credit institution: Anybody who is authorised to provide services referred to in Section 1(1) BWG outside the Member States according to the law of the state in which the credit institution has its headquarters.</p>	<p>1. die Entgegennahme fremder Gelder zur Verwaltung oder als Einlage; 3. [...] die Gewährung von Gelddarlehen; (3) Kreditinstitute, die eine Konzession [...] haben, sind zur Ausgabe von E-Geld gemäß § 1(1) E-Geldgesetz berechtigt.</p> <p><b>§ 2 Ziff. 13 BWG</b> 13. Ausländisches Kreditinstitut: wer außerhalb der Mitgliedstaaten nach den Vorschriften des Sitzstaates berechtigt ist, Geschäfte nach § 1 Abs. 1 BWG zu betreiben.</p>	Article 1(1)(a) of the Directive.
<b>Art. 1(1)(b)</b>	(b) electronic money institutions as defined in point 1 of Article 2 of this Directive including, in accordance with Article 8 of this Directive and national law, a branch thereof, where such a branch is located within the Community and its head office is located	b) E-Geld-Institute gemäß Artikel 2 Nummer 1 dieser Richtlinie, einschließlich deren im Einklang mit Artikel 8 dieser Richtlinie und einzelstaatlichem Recht innerhalb der Gemeinschaft ansässiger Zweigniederlassungen, deren Sitz sich außerhalb der Gemeinschaft	<b>Section 1(2), point 2 of the E-Geldgesetz</b>	<p><b>Section 1(2), point 2 of the E-Geldgesetz</b> (2) electronic money institutions as defined in Section 3(2) of the E-Geldgesetz as well as electronic money institutions according to Section 9 of the E-Geldgesetz that are authorised to issue</p>	<p><b>§ 1(2) Ziff. 2 E-Geldgesetz</b> 2. E-Geld-Institute im Sinne des § 3 Abs. 2 sowie E-Geld-Institute gemäß § 9, die nach dem Recht ihres Herkunftsmitgliedstaates [...] zur Ausgabe von E-Geld berechtigt sind, einschließlich innerhalb</p>	<p><b>CONFORM</b> Section 1(2), point 2 of the E-Geldgesetz transposes Article 1(1)(b) of the Directive. Branches of electronic money institutions having their head office located outside the Community shall be electronic money institutions according to the E-Geldgesetz, if they hold an authorisation according to the E-Geldgesetz or if they have been conferred such a status according to an EU agreement.</p>



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	outside the Community;	befindet;	<p><b>the E-Geldgesetz</b></p> <p>electronic money according to the law of the Member State of origin including a branch thereof, where such a branch is located within the European Economic Area and its head office is located outside the Community, if the European Union has concluded corresponding agreements or if these credit institutions have been issued an authorisation according to Section 4(6) of the E-Geldgesetz;</p> <p><b>Section 9(1), first sentence of the E-Geldgesetz</b></p> <p>1. The issuance of electric money according to Article 2, point 2 of Direction 2009/110/EC as well as payment services according to Article 4, point 3 of Directive 2007/64/EC can be exercised in Austria by an electronic money institution within the meaning of Article 1(1)(b) of Directive 2009/110/EC,</p>	<p>des Europäischen Wirtschaftsraumes ansässiger Zweigstellen von E-Geld-Instituten, deren Sitz sich außerhalb des Europäischen Wirtschaftsraumes befindet, sofern die Europäische Union entsprechende Abkommen abgeschlossen hat oder sofern diesen eine Konzession gemäß § 4 Abs. 6 erteilt worden ist;</p> <p><b>§ 9(1) erster Satz E-Geldgesetz</b></p> <p>(1) Die Ausgabe von E-Geld gemäß Art. 2 Nummer 2 der Richtlinie 2009/110/EG sowie Zahlungsdienste gemäß Art. 4 Nummer 3 der Richtlinie 2007/64/EG können von einem E-Geld-Institut im Sinne von Art. 1 Abs. 1 Buchstabe b der Richtlinie 2009/110/EG, das in einem anderen Mitgliedstaat (§ 2 Z 5 BWG) zugelassen ist, [...] in Österreich über eine Zweigstelle erbracht oder ausgeübt oder im Wege der Dienstleistungsfreiheit erbracht werden, soweit</p>	<p>In accordance with the Directive, Section 1(2), point 2 of the E-Geldgesetz refers to electronic money institutions as defined in Section 3(2) of the E-Geldgesetz transposing Article 2, point 1 of the Directive and to those in accordance with Article 8 transposed by Section 9 of the E-Geldgesetz as will be demonstrated further below.</p> <p>However, this does not entitle them to exercise the freedom of provision of services or the freedom of establishment as provided in Articles 49 and 56 of the Treaty on the Functioning of the European Union.</p> <p>Since correctly transposes the provisions of the Directive, conformity was concluded for the transposition of Article 1(1)(b) of the Directive.</p>

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				if it has an authorisation of another Member State by way of a branch or by way of freedom to provide services as long as the authorisation allows that.	seine Zulassung es dazu berechtigt.	
<b>Art. 1(1)(c)</b>	(c) post office giro institutions which are entitled under national law to issue electronic money;	c) Postscheckämter, die nach einzelstaatlichem Recht berechtigt sind, E-Geld auszugeben;	<b>Section 1(2), pt. 3 of the E-Geldgesetz</b>	<b>Section 1(2), point 3 of the E-Geldgesetz</b> (3) Post offices within the frame of money transactions;	<b>§ 1(2) Ziff. 3 E-Geldgesetz</b> 3. die Post, im Rahmen des Geldverkehrs;	<b>CONFORM</b> Section 1(2), point 3 of the E-Geldgesetz transposes Article 1(1)(c) of the Directive and provides the Austrian Post within the frame of money transactions as a category of a credit institution.  On the basis of the above, conformity with Article 1(1)(c) of the Directive can be concluded.
<b>Art. 1(1)(d)</b>	(d) the European Central Bank and national central banks when not acting in their capacity as monetary authority or other public authorities;	d) die Europäische Zentralbank und die nationalen Zentralbanken, wenn sie nicht in ihrer Eigenschaft als Währungsbehörden oder andere Behörden handeln;	<b>Section 1(2), pt. 4 of the E-Geldgesetz</b>	<b>Section 1(2), point 4 of the E-Geldgesetz</b> (4) the European Central Bank, the Austrian national bank as well as other central banks of the EEA when not acting in their capacity as monetary authority or other public authorities [...];	<b>§ 1(2) Ziff. 4 E-Geldgesetz</b> 4. die Europäische Zentralbank, die Oesterreichische Nationalbank sowie andere Zentralbanken des Europäischen Wirtschaftsraumes, sofern sie nicht in ihrer Eigenschaft als Währungsbehörden oder sonst als Behörden handeln [...];	<b>CONFORM</b> Section 1(2), point 4 of the E-Geldgesetz transposes Article 1(1)(d) of the Directive. Section 1(2), point 4 of the E-Geldgesetz provides for the European Central Bank, the Austrian national bank as well as other central banks of the EEC when not acting in their capacity as monetary authority or other public authorities to be electronic money issuers.
<b>Art. 1(1)(e)</b>	(e) Member States or their regional or local authorities when acting in	e) die Mitgliedstaaten oder ihre regionalen beziehungsweise lokalen	<b>Section 1(2), pt. 5 of</b>	<b>Section 1(2), point 5 of the E-Geldgesetz</b>	<b>§ 1(2) Ziff. 5 E-Geldgesetz</b>	<b>CONFORM</b> Section 1(2), point 5 of the E-Geldgesetz

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	their capacity as public authorities.	Gebietskörperschaften, wenn sie in ihrer Eigenschaft als Behörden handeln.	<b>the E-Geldgesetz</b>	(5) The federation, the regions and local authorities acting in their capacity as public authorities;	5. der Bund, die Länder und Gemeinden, wenn sie als Behörden handeln;	transposes Article 1(1)(e) of the Directive by providing for the federation, the Austrian regions and the local authorities (communes) as electronic money issuers as electronic money issuers.  On the basis of the above, conformity with Article 1(1)(e) of the Directive can be concluded.
<b>Art. 1(2)</b>	2. Title II of this Directive lays down the rules for the taking up, the pursuit and the prudential supervision of the business of electronic money institutions.	(2) Titel II dieser Richtlinie legt auch Vorschriften für die Aufnahme, Ausübung und Beaufsichtigung der Tätigkeit von E-Geld-Instituten fest.	<b>Section 3(1) of the E-Geldgesetz</b>	<b>Section 3(1) of the E-Geldgesetz</b> <b>Requirements and Scope of Authorisation</b> 1. The commercial issuance of electronic money according to Section 1(1) of the E-Geldgesetz within the national territory shall be exclusively allowed to electronic money institutions with an authorisation from the FMA [...].	<b>§ 3(1) E-Geldgesetz</b> <b>Erfordernis und Umfang der Konzession</b>  (1) Die gewerbliche Ausgabe von E-Geld gemäß § 1 Abs. 1 im Inland bedarf [...] der Konzession als E-Geld-Institut durch die FMA.	<b>CONFORM</b> Section 3(1) of the E-Geldgesetz transposes Article 1(2) of the Directive.  It lays down that the commercial issuance of electronic money shall only be allowed to electronic money institutions and with an authorisation from the FMA according to the E-Geldgesetz.  The requirements for the taking up, the pursuit and the supervision of the business of electronic money institutions is laid down in the first part of the second chapter (Section 3 to 8) of the E-Geldgesetz transposing Title II of the Directive.  On the basis of the above, conformity with Article 1(2) of the Directive can be concluded.
<b>Art. 1(3)</b>	3. Member States may waive the application of all or part of the provisions of Title II of this Directive to the institutions referred to in Article 2 of Directive	(3) Die Mitgliedstaaten können vollständig oder teilweise davon absehen, die Bestimmungen von Titel II dieser Richtlinie auf die in Artikel 2 der Richtlinie 2006/48/EG	<b>Section 2(2), pts. 1 to 5 of the E-Geldgesetz</b>	<b>Section 2(2) points 1 to 5 of the E-Geldgesetz</b> 2. The second main part shall not be applicable to: (1) Credit institutions within the meaning of Section 1 BWG [...];	<b>Section 2(2) Ziff. 1 bis 5 E-Geldgesetz</b>  (2) Das 2. Hauptstück ist nicht anzuwenden auf: 1. Kreditinstitute im Sinne des § 1 BWG [...]; 2. Die Post [...];	<b>CONFORM</b> Article 1(3) of the Directive sets out an option. Owing to this option Austria has chosen to apply this option.  Principally, only electronic money issuers referred to in Section 1(2) of the E-

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2006/48/EC, with the exception of those referred to in the first and second indents of that Article.	genannten Institute anzuwenden, mit Ausnahme der dort im ersten und zweiten Gedankenstrich genannten Institute.	(2) Post offices [...]; (3) [...] The Austrian National Bank, as well as other central banks of the European Union; (4) The Federation, the regions, the local authorities; (5) The Austrian Control Bank AG (“ <i>Oesterreichische Kontrollbank AG</i> ”).	3. [...] die Österreichische Nationalbank, sowie andere Zentralbanken der Europäischen Union 4. Den Bund, die Länder, die Gemeinden [...]; 5. die Oesterreichische Kontrollbank AG.	<p>Geldgesetz shall be authorised to issue electronic money.</p> <p>However, the authorisation requirements of the second main part of the E-Geldgesetz transposing Title II of the Directive referring to the requirements to the taking up, pursuit and prudential supervision of electronic money institutions shall not apply to the electronic money institutions referred to in Section 2(2), points 1 to 5 of the E-Geldgesetz with the exception of the <i>Oesterreichische Kontrollbank AG (OeKB)</i> mentioned in Article 2 of Directive 2006/48/EC.</p> <p>However, if the federation, the regions or local authorities or central banks of Member States act as private persons, they will have to apply for an authorisation according to the second main part of the E-Geldgesetz transposing Title II. As an example the Austrian legislator mentions the issuance of electronic money cards by a central bank or by public authorities. On the basis of the above, conformity with Article 1(3) of the Directive can be concluded.</p> <p>However, Section 2(2) points 3 of the E-Geldgesetz mentions the Austrian National Bank, as well as other central banks of the “European Union” to which the second main part of the E-Geldgesetz shall not be applicable. In accordance to the Directive it rather should read as “European Economic Area” in that location. Further clarifications might therefore, be necessary from the Austrian authorities to better assess Article</p>

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						1(3) of the Directive.
<b>Art. 1(4)</b>	4. This Directive does not apply to monetary value stored on instruments exempted as specified in Article 3(k) of Directive 2007/64/EC.	(4) Diese Richtlinie gilt nicht für den monetären Wert, der auf Instrumenten gespeichert ist, die unter die Ausnahmeregelung nach Artikel 3 Buchstabe k der Richtlinie 2007/64/EG fallen.	<b>Section 2(3), pt. 1 of the E-Geldgesetz</b>	<b>Section 2(3), point 1 of the E-Geldgesetz</b> 3. Electronic money within the meaning of this act shall not be: (1) A monetary value based on instruments that can be used to acquire goods or services only in the premises used by the issuer or under a commercial agreement with the issuer either within a limited network of service providers or for a limited range of goods or services [...];	<b>§ 2(3) Ziff. 1 E-Geldgesetz</b> (3) Kein E-Geld im Sinne dieses Bundesgesetz ist: 1. Ein monetärer Wert, der auf Instrumenten gespeichert ist, die für den Erwerb von Waren oder Dienstleistungen nur in den Geschäftsräumen des Ausstellers oder im Rahmen einer Geschäftsvereinbarung mit dem Aussteller entweder nur für den Erwerb innerhalb eines begrenzten Netzes von Dienstleistern oder nur für den Erwerb einer begrenzten Auswahl von Waren oder Dienstleistungen verwendet werden können [...];	<b>CONFORM</b> Section 2(3), point 1 of the E-Geldgesetz transposes Article 1(4) of the Directive. The wording of Article 3(k) of Directive 2007/64/EC to which Article 1(4) refers to is literally transposed by the Austrian provision. Therefore, conformity was concluded for the transposition of Article 1(4) of the Directive.
<b>Art. 1(5)</b>	5. This Directive does not apply to monetary value that is used to make payment transactions exempted as specified in Article 3(l) of Directive 2007/64/EC.	(5) Diese Richtlinie gilt nicht für den monetären Wert, der für Zahlungsvorgänge verwendet wird, die unter die Ausnahmeregelung nach Artikel 3 Buchstabe l der Richtlinie 2007/64/EG fallen.	<b>Section 2(3), pt. 2 of the E-Geldgesetz</b>	<b>Section 2(3), point 2 of the E-Geldgesetz</b> 3. The following shall not be electronic money within the meaning of this act: (2) A monetary value used for payment transactions executed by means of any	<b>§ 2(3) Ziff. 2 E-Geldgesetz</b> (3) Kein E-Geld im Sinne dieses Bundesgesetzes ist: 2. ein monetärer Wert, der für Zahlungsvorgänge verwendet wird, die über ein Telekommunikations-, ein Digital- oder IT-Gerät	<b>CONFORM</b> Section 2(3), point 2 of the E-Geldgesetz transposes Article 1(4) of the Directive. The wording of Article 3(l) of Directive 2007/64/EC to which Article 1(5) refers is literally transposed by the Austrian provision. On the basis of the above, conformity with Article 1(5) of the Directive can be

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				telecommunication, digital or IT device, where the goods or services purchased are delivered to and are to be used through a telecommunication, digital or IT device, provided that the telecommunication, digital or IT operator does not act only as an intermediary between the payment service user and the supplier of the goods and services;	ausgeführt werden, wenn die Waren oder Dienstleistungen an ein Telekommunikations-, ein Digital- oder ein IT-Gerät geliefert werden und mittels eines solchen genutzt werden sollen, vorausgesetzt, dass der Betreiber des Telekommunikations-, Digital- oder IT-Systems oder -Netzes nicht ausschließlich als zwischengeschaltete Stelle zwischen dem Zahlungsdienstnutzer und dem Lieferanten der Waren und Dienstleistungen fungiert [...].	concluded.
<b>Art. 2, intr. wording</b>	<i>Article 2</i> <b>Definitions</b> For the purposes of this Directive, the following definitions shall apply:	<i>Artikel 2</i> <b>Begriffsbestimmungen</b> Für die Zwecke dieser Richtlinie bezeichnet der Ausdruck	N/A	N/A	N/A	<b>CONFORM</b> No corresponding provision to that of Article 2, introductory wording of the Directive was located in the E-Geldgesetz. However, this is due to the different structure of the Austrian provisions which transpose Article 2 of the Directive in a conform manner as demonstrated below.
<b>Art. 2 pt (1)</b>	1. "electronic money institution" means a legal person that has been granted authorisation under Title II to issue	1. „E-Geld-Institut“ eine juristische Person, die nach Titel II eine Zulassung für die Ausgabe von E-Geld erhalten hat;	<b>Section 3(2) of the E-Geldge</b>	<b>Section 3(2) of the E-Geldgesetz</b> 2. An electronic money institution is a legal person	<b>§ 3(2) E-Geldgesetz</b> (2) Ein E-Geld-Institut ist eine juristische Person mit Sitz und Hauptverwaltung im Inland,, die auf Grund	<b>CONFORM</b> Section 3(2) of the E-Geldgesetz transposes Article 2(1) of the Directive. Section 3(2) of the E-Geldgesetz defines an

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	electronic money;		<b>setz</b>	with its seat and headquarter in Austria that has been granted authorisation according to this act to issue electronic money according to Section 1(3) [...].	dieses Bundesgesetzes zur Ausgabe von E-Geld gemäß § 1(3) [...] berechtigt ist.	<p>electronic money institution as a legal person that is authorised to issue electronic money according to the E-Geldgesetz and has its seat and its headquarters within the federal territory.</p> <p>By referring to electronic money institutions as legal persons holding the necessary authorisation to issue electronic money Section 3(2) of the E-Geldgesetz fulfils the requirements of Article 2, point 1 of the Directive.</p> <p>In conjunction with Section 1(2), point 1 of the E-Geldgesetz defining credit institutions as electronic money issuers, Section 3(2) of the E-Geldgesetz fulfils the requirements set out in recital 25 of the Directive.</p> <p>Therefore, conformity was concluded with regards to the transposition of Article 2(1) of the Directive.</p>
<b>Art. 2 pt (2)</b>	2. "electronic money" means electronically, including magnetically, stored monetary value as represented by a claim on the issuer which is issued on receipt of funds for the purpose of making payment transactions as defined in point 5 of Article 4 of Directive 2007/64/EC, and which is accepted by a natural or legal person other than the electronic money issuer;	2. „E-Geld“ jeden elektronisch — darunter auch magnetisch — gespeicherten monetären Wert in Form einer Forderung gegenüber dem Emittenten, der gegen Zahlung eines Geldbetrags ausgestellt wird, um damit Zahlungsvorgänge im Sinne des Artikels 4 Nummer 5 der Richtlinie 2007/64/EG durchzuführen, und der auch von anderen	<b>Section 1(1) of the E-Geldgesetz</b>	<b>Section 1(1) of the E-Geldgesetz</b> 1. Electronic money means any electronically – including magnetically – stored monetary value of a towards an electronic money issuer that has been issued against the payment of an amount of money in order to execute payments according to Section 3, point 5 ZaDiG and that is also accepted by natural or legal persons different	<b>§ 1(1) E-Geldgesetz</b> (1) E-Geld bezeichnet jeden elektronisch – darunter auch magnetisch – gespeicherten monetären Wert in Form einer Forderung gegenüber dem E-Geld-Emittenten, der gegen Zahlung eines Geldbetrags ausgestellt wird, um damit Zahlungsvorgänge im Sinne von § 3 Z 5 ZaDiG durchzuführen, und der auch von anderen	<b>CONFORM</b> Section 1(1) of the E-Geldgesetz transposes Article 2, point 2 of the Directive by closely following the wording of the Directive. It should be noted that Section 3, point 5 ZaDiG transposes Article 4, point 5 of Directive 2007/64/EC. This also fulfils the requirements set out in recitals 7 and 8. Therefore, conformity was concluded for the transposition of Article 2, point 2 of the Directive.

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		natürlichen oder juristischen Personen als dem E-Geld-Emittenten angenommen wird;		from the electronic money issuer.	natürlichen oder juristischen Personen als dem E-Geld-Emittenten angenommen wird.	
<b>Art. 2 pt (3)</b>	3. "electronic money issuer" means entities referred to in Article 1(1), institutions benefiting from the waiver under Article 1(3) and legal persons benefiting from a waiver under Article 9;	3. „E-Geld-Emittent“ in Artikel 1 Absatz 1 genannte Einrichtungen, Institute, denen eine Freistellung nach Artikel 1 Absatz 3 gewährt wird, sowie juristische Personen, denen eine Freistellung nach Artikel 9 gewährt wird;	<b>Section 1(2), pts. 1 to 5 of the E-Geldgesetz</b>  <b>Section 2(2) pts. 1 to 5 of the E-Geldgesetz</b>	<b>Section 1(2), points 1 to 5 of the E-Geldgesetz</b> 1. Electronic money issuers are:  (1) Credit institutions within the meaning of Section 1 BWG as well as according to Section 9 BWG which according to the national law of its Member State of origin are authorised to issue electronic money, including a branch thereof as well as branches of foreign credit institutions within the meaning of Section 2, point 13 BWG where such a branch is located within the European Economic Area;  (2) electronic money institutions as defined in Section 3(2) of the E-Geldgesetz as well as electronic money institutions according to Section 9 that are	<b>§ 1(2) Ziff. 1 bis 5 E-Geldgesetz</b> E-Geld-Emittenten sind: 1. Kreditinstitute im Sinne des § 1 Bankwesengesetz – BWG, BGBl. Nr. 532/1993 sowie Kreditinstitute gemäß § 9 BWG, die nach dem Recht ihres Herkunftsmitgliedstaates zur Ausgabe von E-Geld berechtigt sind, einschließlich deren Zweigstellen sowie Zweigstellen ausländischer Kreditinstitute im Sinne des § 2 Z 13 BWG, sofern sich diese Zweigstellen innerhalb des Europäischen Wirtschaftsraumes befinden; 2. E-Geld-Institute im Sinne des § 3 Abs. 2 sowie E-Geld-Institute gemäß § 9, die nach dem Recht ihres Herkunftsmitgliedstaates [...] zur Ausgabe von E-	<b>CONFORM</b>  Sections 1(2), points 1 to 5 and 2(2), points 1 to 6 of the E-Geldgesetz transpose Article 2(3) of the Directive.  The categories of electronic money issuers according to the Austrian legislation are those referred to in Article 1(1) of the Directive transposed by Section 1(2) of the E-Geldgesetz.  The institutions benefiting from the waiver under Article 1(3) are those referred to under Section 2(2), points 1 to 6 of the E-Geldgesetz.  It should be noted that Austria has not applied the option set out in Article 9 of the Directive. Therefore, there is no reference to that waiver.  As a result of that, conformity was concluded with regards to the transposition of Article 2, point 4 of the Directive.



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			<p>authorised to issue electronic money according to the law of the Member State of origin including a branch thereof, where such a branch is located within the European Economic Area and its head office is located outside the Community, if the European Union has concluded corresponding agreements or if these credit institutions have been issued an authorisation according to Section 4(6) of the E-Geldgesetz;</p> <p>(3) Post offices within the frame of money transactions;</p> <p>(4) the European Central Bank, the Austrian national bank when not acting in their capacity as monetary authority or other public authorities;</p> <p>(5) The federation, the regions and local authorities acting in their capacity as public</p>	<p>Geld berechtigt sind, einschließlich innerhalb des Europäischen Wirtschaftsraumes ansässiger Zweigstellen von E-Geld-Instituten, deren Sitz sich außerhalb des Europäischen Wirtschaftsraumes befindet, sofern die Europäische Union entsprechende Abkommen abgeschlossen hat oder sofern diesen eine Konzession gemäß § 4 Abs. 6 erteilt worden ist;</p> <p>3. die Post, im Rahmen des Geldverkehrs;</p> <p>4. die Europäische Zentralbank, die Oesterreichische Nationalbank, sowie andere Zentralbanken des Europäischen Wirtschaftsraumes, sofern sie nicht in ihrer Eigenschaft als Währungsbehörden oder sonst als Behörden handeln;</p> <p>5. der Bund, die Länder und Gemeinden, wenn sie als Behörden handeln;</p> <p>6. die Oesterreichische Kontrollbank AG.</p>	

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				<p>authorities;</p> <p>(6) The Austrian Control Bank.</p> <p><b>Section 2(2) points 1 to 5 of the E-Geldgesetz</b></p> <p>2. The second chapter shall not apply to:</p> <p>(1) Credit institutions [...]</p> <p>(2) Post offices with regards to money transactions;</p> <p>(3) The European Central Bank, the Austrian National Bank and central banks of the European Union;</p> <p>(4) The federation, the regions and the local authorities acting in their capacity as public authorities;</p> <p>(5) The Austrian Control Bank ("<i>Oesterreichische Kontrollbank AG</i>")</p>	<p><b>§ 2(2) Ziff. 1 bis 5 E-Geldgesetz</b></p> <p>(2) Das 2. Hauptstück ist nicht anzuwenden auf</p> <p>1. Kreditinstitute;</p> <p>2. die Post hinsichtlich ihres Geldverkehrs, [...];</p> <p>3. die Europäische Zentralbank, die Oesterreichische Nationalbank, sowie andere Zentralbanken der Europäischen Union, [...];</p> <p>4. den Bund, die Länder und Gemeinden, wenn sie als Behörden handeln;</p> <p>5. die Oesterreichische Kontrollbank AG.</p>	
<b>Art. 2, pt (4)</b>	4. "average outstanding electronic money" means the average total amount of financial liabilities related to electronic money in issue at the end of each calendar day over the preceding six calendar months, calculated on the	4. „durchschnittlicher E-Geld-Umlauf“ den durchschnittlichen Gesamtbetrag der am Ende jedes Kalendertags über die vergangenen sechs Kalendermonate bestehenden, aus E-Geld erwachsenden finanziellen	<b>Section 11(3), pt. 2, 2nd sentence of the E-Geldge</b>	<p><b>Section 11(3), point 2, second sentence of the E-Geldgesetz</b></p> <p>The average outstanding electronic money is the average total amount of financial liabilities related to electronic money in</p>	<p><b>§ 11(3) Ziff. 2 zweiter Satz</b></p> <p>Der durchschnittliche E-Geld-Umlauf ist der durchschnittliche Gesamtbetrag der am Ende jedes Kalendertages über die vergangenen</p>	<b>CONFORM</b> Section 11(3), point 2, second sentence of the E-Geldgesetz literally transposes the definition of "average outstanding electronic money" set out in Article 2, point 4 of the Directive.

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	first calendar day of each calendar month and applied for that calendar month.	Verbindlichkeiten, der am ersten Kalendertag jedes Kalendermonats berechnet wird und für diesen Kalendermonat gilt.	setz	issue at the end of each calendar day over the preceding six calendar months; this amount shall be calculated on the first calendar day of each calendar month and shall apply for that calendar month.	sechs Kalendermonate bestehenden, aus E-Geld erwachsenden finanziellen Verbindlichkeiten; dieser Betrag ist jeweils am ersten Kalendertag jedes Kalendermonates zu berechnen und gilt für diesen Kalendermonat.	
Art. 3(1)	<p><b>TITLE II REQUIREMENTS FOR THE TAKING UP, PURSUIT AND PRUDENTIAL SUPERVISION OF THE BUSINESS OF ELECTRONIC MONEY INSTITUTIONS</b></p> <p><i>Article 3</i></p> <p><b>General prudential rules</b></p> <p>1. Without prejudice to this Directive, Articles 5 and 10 to 15, Article 17(7) and Articles 18 to 25 of Directive 2007/64/EC shall apply to electronic money institutions <i>mutatis mutandis</i>.</p>	<p><b>TITEL II VORAUSSETZUNGEN FÜR DIE AUFNAHME, AUSÜBUNG UND BEAUFSICHTIGUNG DER TÄTIGKEIT VON E-GELD-INSTITUTEN</b></p> <p><i>Artikel 3</i></p> <p><b>Allgemeine Aufsichtsvorschriften</b></p> <p>(1) Unbeschadet dieser Richtlinie gelten Artikel 5 und 10 bis 15, Artikel 17 Absatz 7 und Artikel 18 bis 25 der Richtlinie 2007/64/EG für E-Geld-Institute entsprechend.</p>	<p><b>Section 22(1) of the E-Geldgesetz</b></p> <p><b>Sections 1 and 2 FMABG</b></p>	<p><b>Section 22(1) of the E-Geldgesetz</b></p> <p>1. The supervision of the FMA shall ensure:</p> <p>(1) that electronic money institutions [...] comply with Sections 1,3 to 16 of this federal act as well as with Sections 40 to 41 BWG [...]</p> <p><b>Section 1 FMABG</b></p> <p>1. For the enforcement of the supervision of banks an institution according to public law with legal personality shall be established under the name “Financial Market Authority” (FMA). When exercising its competences the FMA shall not be bound by any orders.</p>	<p><b>§ 22(1) E-Geldgesetz</b></p> <p>(1) Die FMA hat die Einhaltung:</p> <p>1. der §§ 1, 3 bis 16 dieses Bundesgesetzes sowie der §§ 40 bis 41 BWG [...] durch E-Geld-Institute [...], zu überwachen</p> <p><b>§ 1 FMABG</b></p> <p>(1) Zur Durchführung der Bankenaufsicht, [...] wird unter der Bezeichnung “Finanzmarktaufsichtsbehörde” (FMA) eine Anstalt des öffentlichen Rechts mit eigener Rechtspersönlichkeit eingerichtet. Diese ist in Ausübung ihres Amtes an keine Weisungen gebunden.</p>	<p><b>CONFORM</b></p> <p>Section 22(1) of the E-Geldgesetz in conjunction with Sections 1 and 2 FMABG transposes Article 3(1) of the Directive.</p> <p>As provided in Sections 1 and 2 FMABG, the FMA is the competent authority for the supervision of compliance of electronic money institutions with the provisions of the E-Geldgesetz.</p> <p>By providing the FMA as the competent authority for the supervision of compliance of electronic money institutions with the provisions of the E-Geldgesetz Section 22(1) of the E-Geldgesetz and Sections 1 and 2 FMABG also fulfill the requirements set out in recital 9 of the Directive.</p> <p>Since electronic money institutions are also finance institutions according to the BWG, the provisions of the BWG shall apply to them.</p> <p>Therefore, with regards to the transposition of Article 3 it should be noted that the references made to Directive 2006/48/EC and 2007/64/EC are transposed by the provisions</p>

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				<p><b>Section 2 FMABG</b></p> <p>The supervision of banks includes the exercise of competences and tasks that are assigned to the FMA according to the E-Geldgesetz, BGBl. I Nr. 107/2010.</p>	<p><b>§ 2 FMABG</b></p> <p>Zur Bankenaufsicht zählt die Wahrnehmung der behördlichen Aufgaben und Befugnisse, die im [...] E-Geldgesetz, BGBl. I Nr. 107/2010, geregelt und der FMA zugewiesen sind.</p>	<p>of the BWG.</p> <p>Sections 1, 3 to 16 of the E-Geldgesetz transpose Articles 5 and 10 to 15, whereas Sections 40 and 41 BWG transpose Articles 17(7) and 18 to 25 of Directive 2007/64/EC.</p> <p>In this respect, the relevant provisions of the BWG should apply <i>mutatis mutandis</i> to electronic money institutions without prejudice to the provisions of the E-Geldgesetz. A reference to ‘payment institution’ in the BWG therefore needs to be read as a reference to electronic money institution; a reference to ‘payment service’ needs to be read as a reference to the activity of payment services and issuing electronic money; a reference to ‘payment service user’ needs to be read as a reference to payment service user and electronic money holder; a reference to ‘this federal act’ needs to be read as a reference to both the E-Geldgesetz and the BWG.</p> <p>Therefore, conformity has been concluded for the transposition of Article 3(1) of the Directive.</p>
<b>Art. 3(2)</b>	2. Electronic money institutions shall inform the competent authorities in advance of any material change in measures taken for safeguarding of funds that have been received in exchange for electronic money issued.	(2) E-Geld-Institute unterrichten die zuständigen Behörden im Voraus über alle wesentlichen Änderungen der zur Sicherung der Gelder getroffenen Maßnahmen, die für ausgegebenes E-Geld entgegengenommen	<b>Section 7(2) of the E-Geldgesetz</b>	<p><b>Section 7(2) of the E-Geldgesetz</b></p> <p>2. An electronic money institution shall inform the FMA in advance of any material changes in measures taken for safeguarding of funds that have been received in exchange for electronic</p>	<p><b>§ 7(2) E-Geldgesetz</b></p> <p>(2) Das E-Geld-Institut hat der FMA im Voraus jede wesentliche Änderung der zur Sicherung der Kundengelder getroffenen Maßnahmen, die für ausgegebenes E-Geld entgegengenommen worden sind, wie</p>	<b>CONFORM</b>

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		wurden.		money issued, in particular the changing of the method of safeguarding, the changing of the credit institution, where the amounts are lodged or which guarantees the amounts or of the insurance	insbesondere die Änderung der Methode der Sicherung, die Änderung des Kreditinstitutes, bei dem die Beträge hinterlegt werden oder das die Beträge garantiert oder der Versicherung anzuzeigen.	examples of such material changes.  By providing that electronic money institutions shall inform the FMA in advance of any material changes in measures taken for safeguarding of funds Section 7(2) of the E-Geldgesetz also fulfils the requirements set out in recital 14 of the Directive.  Therefore, conformity has been concluded for the transposition of Article 3(2) of the Directive.
<b>Art. 3(3) 1<sup>st</sup> subparagraph a.</b>	3. Any natural or legal person who has taken a decision to acquire or dispose of, directly or indirectly, a qualifying holding within the meaning of point 11 of Article 4 of Directive 2006/48/EC in an electronic money institution, or to further increase or reduce, directly or indirectly, such qualifying holding as a result of which the proportion of the capital or of the voting rights held would reach, exceed or fall below 20 %, 30 % or 50 %, or so that the electronic money institution would become or cease to be its subsidiary, shall inform the competent authorities	(3) Jede natürliche oder juristische Person, die beabsichtigt, direkt oder indirekt eine qualifizierte Beteiligung im Sinne von Artikel 4 Nummer 11 der Richtlinie 2006/48/EG an einem E-Geld-Institut zu erwerben oder aufzugeben bzw. eine solche qualifizierte Beteiligung direkt oder indirekt zu erhöhen oder zu verringern, mit der Konsequenz, dass der Anteil am gehaltenen Kapital oder an den Stimmrechten 20 %, 30 % oder 50 % erreicht, überschreitet oder unterschreitet oder das E-Geld-Institut zu ihrem Tochterunternehmen wird oder nicht mehr ihr Tochterunternehmen ist,	<b>Section 8(1), 1st sentence of the E-Geldgesetz</b>	<b>Section 8(1), first sentence of E-Geldgesetz</b>  1. Anybody who has taken a decision to acquire or dispose of, directly or indirectly, a qualifying holding within the meaning of Section 2, point 3 BWG in an electronic money institution, or to further increase or reduce, directly or indirectly, such qualifying holding as a result of which the proportion of the capital or of the voting rights held would reach, exceed or fall below 20 %, 30 % or 50 %, or so that the electronic money institution would become or cease to be its subsidiary, shall inform	<b>§ 8(1) erster Satz E-Geldgesetz</b>  (1) Jeder, der beabsichtigt, eine qualifizierte Beteiligung im Sinne von § 2 Z 3 BWG an einem E-Geld-Institut direkt oder indirekt zu erwerben oder aufzugeben oder eine solche qualifizierte Beteiligung direkt oder indirekt zu erhöhen oder zu verringern, mit der Folge, dass sein Anteil an den Stimmrechten oder am Kapital 20 vH, 30 vH oder 50 vH erreichen, überschreiten oder unterschreiten würde oder dass das E-Geld-Institut zu seinem Tochterunternehmen würde oder nicht mehr sein Tochterunternehmen	<b>CONFORM</b>  Section 8(1), first sentence of the E-Geldgesetz transposes Article 3(3), first subparagraph of the Directive by closely following the wording of the Directive provision.  However, it should be noted that Section 8(1), first sentence of the E-Geldgesetz does not explicitly refer to any natural or legal person “who has taken a decision to acquire or dispose of a qualifying holding”, but only to “anybody” who has taken a decision to acquire or dispose of a qualifying holding. However, the term “anybody” includes both, natural and legal persons.  The Austrian provision has a broader scope than the Directive here and also refers to persons already disposing of qualifying holdings.  Moreover, Section 2, point 3 BWG transposes the reference made to Article 4, point of Directive 2006/48/EC.

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	of their intention in advance of such acquisition, disposal, increase or reduction.	hat diese Absicht den zuständigen Behörden vor dem Erwerb, der Aufgabe, der Erhöhung oder der Verringerung anzuzeigen.		the FMA of his/her intention in advance of such acquisition, disposal, increase or reduction.	wäre, hat diese Absicht der FMA vor dem Erwerb, der Aufgabe, der Erhöhung oder der Verringerung [...] anzuzeigen.	Therefore, conformity has been concluded for the transposition of Article 3(3), first subparagraph of the Directive.
<b>Art. 3(3) 2<sup>nd</sup> subparagraph a.</b>	The proposed acquirer shall supply to the competent authority information indicating the size of the intended holding and relevant information referred to in Article 19a(4) of Directive 2006/48/EC.	Der interessierte Erwerber liefert der zuständigen Behörde Angaben über den Umfang der geplanten Beteiligung sowie alle relevanten Angaben gemäß Artikel 19a Absatz 4 der Richtlinie 2006/48/EG.	<b>Section 8(1), 1st sentence of the E-Geldgesetz</b>	<b>Section 8(1), first sentence of the E-Geldgesetz</b> 1. Anybody who has taken a decision to acquire or dispose of, directly or indirectly, a qualifying holding [...] in an electronic money institution, [...] shall inform the FMA of his/her intention in advance of such acquisition, disposal, increase or reduction indicating the size of the intended holding and relevant information referred to in Section 20b(3) BWG.	<b>§ 8(1) E-Geldgesetz</b> (1) Jeder, der beabsichtigt, eine qualifizierte Beteiligung [...] an einem E-Geld-Institut direkt oder indirekt zu erwerben oder aufzugeben oder eine solche qualifizierte Beteiligung direkt oder indirekt zu erhöhen oder zu verringern, [...] diese Absicht der FMA vor dem Erwerb, der Aufgabe, der Erhöhung oder der Verringerung unter Angabe des Umfanges der geplanten Beteiligung zusammen mit den Informationen gemäß § 20b Abs. 3 BWG anzuzeigen.	<b>CONFORM</b> Section 8(1), first sentence of the E-Geldgesetz transposes Article 3(3), second subparagraph of the Directive.  Since electronic money institutions are also finance institutions within the meaning of the BWG, the provisions of the BWG with regard to prudential supervisory provisions transposing Article 3 of the Directive shall also apply to electronic money institutions.  Section 20b(3) BWG transposes the reference made to Article 19a(4) of Directive 2006/48/EC.  Therefore, conformity has been concluded for the transposition of Article 3(3), second subparagraph of the Directive.
<b>Art. 3(3) 3<sup>rd</sup> subparagraph a.</b>	Where the influence exercised by the persons referred to in the second subparagraph is likely to operate to the detriment of the prudent and sound management of the	Falls sich der von den in Unterabsatz 2 genannten Personen ausgeübte Einfluss zulasten einer umsichtigen und soliden Geschäftsführung des Instituts auswirken könnte,	<b>Section 8(2) of the E-Geldgesetz</b>	<b>Section 8(2) of the E-Geldgesetz</b> 2. Where the influence exercised by persons disposing of qualifying holdings or of such	<b>§ 8(2) E-Geldgesetz</b> (2) Falls sich der von den qualifiziert beteiligten Eigentümern oder solchen interessierten Erwerbern ausgeübte Einfluss	<b>CONFORM</b> Section 8(2) of the E-Geldgesetz transposes Article 3(3), third subparagraph of the Directive.  Section 8(2) of the E-Geldgesetz states that the FMA shall prohibit the acquisition of the

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	institution, the competent authorities shall express their opposition or take other appropriate measures to bring that situation to an end. Such measures may include injunctions, sanctions against directors or managers, or the suspension of the exercise of the voting rights attached to the shares held by the shareholders or members in question.	erheben die zuständigen Behörden Einspruch oder ergreifen andere angemessene Maßnahmen, um diesen Zustand zu beseitigen. Solche Maßnahmen können Unterlassungsklagen, Sanktionen gegen Direktoren oder Geschäftsleiter oder die Aussetzung der Stimmrechtsausübung in Verbindung mit den von den betreffenden Anteilseignern oder Mitgliedern gehaltenen Beteiligungen einschließen.	<p><b>Section 20(5) BWG</b></p> <p>interested acquirers is likely to operate to the detriment of the prudent and sound management of the institution, the FMA shall prohibit the acquisition of the holding or take [...] measures including those referred to in Section 20(4) or (5) BWG [...].</p> <p><b>Section 20(5) BWG</b></p> <p>5. In case of danger, that the influence exercised by qualified holders does not fulfil the requirements for a solid and diligent management of the credit institution, the FMA shall take the necessary measures [...]. Such measures are in particular:</p> <p>(2) Sanctions against directors or managers;</p> <p>(3) The application to suspend the voting rights [...].</p>	<p>zulasten einer umsichtigen und soliden Geschäftsführung des E-Geld-Institutes auswirken könnte, so hat die FMA den geplanten Beteiligungserwerb zu untersagen oder [...] Maßnahmen gemäß § 20 Abs. 4 oder 5 BWG zu ergreifen [...].</p> <p><b>§ 20(5) BWG</b></p> <p>(5) Besteht die Gefahr, dass der durch qualifiziert beteiligte Eigentümer ausgeübte Einfluss den im Interesse einer soliden und umsichtigen Führung des Kreditinstitutes zu stellenden Ansprüchen nicht genügt, so hat die FMA die [...] erforderlichen Maßnahmen zu ergreifen. Solche Maßnahmen sind insbesondere:</p> <p>2. Sanktionen gegen die Geschäftsleiter;</p> <p>3. der Antrag [...] auf Anordnung des Ruhens der Stimmrechte [...]</p>	<p>holding or take the necessary measures where the influence exercised by persons disposing of qualifying holdings or of such interested acquirers is likely to operate to the detriment of a prudent and sound management of an institution. The Austrian provision has a broader scope than the Directive here and also refers to persons already disposing of qualifying holdings.</p> <p>These measures to be taken by the FMA include sanctions against directors or managers and the application to suspend the voting rights.</p> <p>Therefore, conformity has been concluded for the transposition of Article 3(3), third subparagraph of the Directive.</p>
<b>Art. 3(3) 4<sup>th</sup></b>	Similar measures shall apply to natural or legal	Ähnliche Maßnahmen finden auf natürliche oder	<b>Section 8(2)</b>	<b>Section 8(2) of the E-Geldgesetz</b>	<p><b>§ 8(2) E-Geldgesetz</b></p> <p>(2) Falls sich der von den</p>
					<p><b>CONFORM</b></p> <p>Section 8(2) of the E-Geldgesetz transposes</p>

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<b>subpar a.</b>	persons who fail to comply with the obligation to provide prior information, as laid down in this paragraph.	juristische Personen Anwendung, die der in diesem Absatz genannten Verpflichtung zur Unterrichtung im Voraus nicht nachkommen.	<b>of the E-Geldgesetz</b> <b>Section 20(5) BWG</b>	<p>2. Where the influence exercised by persons disposing of qualifying holdings or of such interested acquirers is likely to operate to the detriment of the prudent and sound management of the institution, the FMA shall prohibit the acquisition of the holding or take [...] measures including those referred to in Section 20(4) or (5) BWG [...].</p> <p><b>Section 20(5) BWG</b></p> <p>5. In case of danger, that the influence exercised by qualified holders does not fulfil the requirements for a solid and diligent management of the credit institution, the FMA shall take the necessary measures [...]. Such measures are in particular: (2) Sanctions against directors or managers; (3) The application to suspend the voting rights [...].</p>	<p>qualifiziert beteiligten Eigentümern oder solchen interessierten Erwerbern ausgeübte Einfluss zulasten einer umsichtigen und soliden Geschäftsführung des E-Geld-Institutes auswirken könnte, so hat die FMA den geplanten Beteiligungserwerb zu untersagen oder [...] Maßnahmen gemäß § 20 Abs. 4 oder 5 BWG zu ergreifen [...].</p> <p><b>§ 20(5) BWG</b></p> <p>(5) Besteht die Gefahr, dass der durch qualifiziert beteiligte Eigentümer ausgeübte Einfluss den im Interesse einer soliden und umsichtigen Führung des Kreditinstitutes zu stellenden Ansprüchen nicht genügt, so hat die FMA die [...] erforderlichen Maßnahmen zu ergreifen. Solche Maßnahmen sind insbesondere: 2. Sanktionen gegen die Geschäftsleiter; 3. der Antrag [...] auf Anordnung des Ruhens der Stimmrechte [...]</p>	<p>Article 3(3), fourth subparagraph of the Directive.</p> <p>Section 8(2) of the E-Geldgesetz states that the FMA shall prohibit the acquisition of the holding or take the necessary measures where the influence exercised by persons disposing of qualifying holdings or of such interested acquirers is likely to operate to the detriment of a prudent and sound management of an institution.</p> <p>The measures to be taken by the FMA include sanctions against directors or managers and the application to suspend the voting rights.</p> <p>Section 20(4) and (5) BWG as well as Section 20(4), points 1 and 2 and Section 20(6) BWG refer to the measures referred to in the second sentence of Article 3(3), third subparagraph of the Directive.</p> <p>The Austrian legislation makes no difference whether the addressee of such obligations is a natural or a legal person. Therefore, natural as well as legal persons who fail to comply with the obligation to provide prior information shall be sanctioned.</p> <p>Moreover, the Austrian provision has a broader scope than the Directive here and also refers to persons already disposing of qualifying holdings.</p> <p>Therefore, conformity has been concluded for the transposition of Article 3(3), fourth subparagraph of the Directive.</p>



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<p><b>Art. 3(3) 5<sup>th</sup> subparagraph a.</b></p> <p>If a holding is acquired despite the opposition of the competent authorities, those authorities shall, regardless of any other sanction to be adopted, provide for the exercise of the voting rights of the acquirer to be suspended, the nullity of votes cast or the possibility of annulling those votes.</p>	<p>Wird eine Beteiligung trotz Einspruchs der zuständigen Behörden erworben, sorgen die zuständigen Behörden unbeschadet anderer zu verhängender Sanktionen für die Aussetzung der Ausübung der Stimmrechte des Erwerbers, für die Ungültigkeit der abgegebenen Stimmen oder die Möglichkeit der Annullierung dieser Stimmen.</p>	<p><b>Section 8(3) of the E-Geldgesetz</b></p> <p><b>Section 20(5) BWG</b></p>	<p><b>Section 8(3) of the E-Geldgesetz</b></p> <p>3. If a holding is acquired despite the opposition of the FMA under subsection 2, it shall, regardless of any other sanction to be adopted, provide for the exercise of the voting rights of the acquirer to be suspended according to Section 20(4) and (5) BWG, [...].</p> <p><b>Section 20(5) BWG</b></p> <p>5. In case of danger, that the influence exercised by qualified holders does not fulfil the requirements for a solid and diligent management of the credit institution, the FMA shall take the necessary measures [...]. Such measures are in particular: (3) The application to suspend the voting rights [...].</p>	<p><b>§ 8(3) E-Geldgesetz</b></p> <p>(3) Wird eine qualifizierte Beteiligung trotz Untersagung durch die FMA gemäß Abs. 2 erworben, so hat die FMA unbeschadet weiterer Maßnahmen gemäß § 20 Abs. 4 und 5 BWG unverzüglich die Anordnung des Ruhens der Stimmrechte gemäß zu beantragen[...].</p> <p><b>§ 20(5) BWG</b></p> <p>(5) Besteht die Gefahr, dass der durch qualifiziert beteiligte Eigentümer ausgeübte Einfluss den im Interesse einer soliden und umsichtigen Führung des Kreditinstitutes zu stellenden Ansprüchen nicht genügt, so hat die FMA die [...] erforderlichen Maßnahmen zu ergreifen. Solche Maßnahmen sind insbesondere: 3. der Antrag [...] auf Anordnung des Ruhens der Stimmrechte [...]</p>	<p><b>CONFORM</b></p> <p>Section 8(3) of the E-Geldgesetz in conjunction with Section 20(5) BWG transposes Article 3(4), fifth subparagraph of the Directive by following closely the wording and structure of the Directive provision.</p> <p>Section 8(3) of the E-Geldgesetz provides for the exercise of the voting rights of the acquirer to be suspended according to Section 20(5) BWG, if a holding is acquired despite the opposition of the FMA.</p> <p>It should be noted that Section 20(5) BWG refers to the suspension of votes and does not refer to the nullity of votes cast or the possibility of annulling those votes as also referred to in Article 3(3), fifth subparagraph of the Directive.</p> <p>However, this still transposes the Directive's provision in a conform manner.</p> <p>Therefore, conformity has been concluded for the transposition of Article 3(3), fifth subparagraph of the Directive.</p>

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<b>Art. 3(3) 6<sup>th</sup> subpar a.</b>	The Member States may waive or allow their competent authorities to waive the application of all or part of the obligations pursuant to this paragraph in respect of electronic money institutions that carry out one or more of the activities listed in Article 6(1)(e).	Die Mitgliedstaaten können E-Geld-Institute, die eine oder mehrere der in Artikel 6 Absatz 1 Buchstabe e angeführten Tätigkeiten ausüben, von den Verpflichtungen aus diesem Absatz ganz oder teilweise freistellen oder ihre zuständigen Behörden ermächtigen, sie freizustellen.	N/A	N/A	N/A	Article 3(3), sixth subparagraph of the Directive sets out an option. Austria has not to have applied that option.
<b>Art. 3(4)</b>	4. Member States shall allow electronic money institutions to distribute and redeem electronic money through natural or legal persons which act on their behalf. Where the electronic money institution wishes to distribute electronic money in another Member State by engaging such a natural or legal person, it shall follow the procedure set out in Article 25 of Directive 2007/64/EC.	(4) Die Mitgliedstaaten erlauben E-Geld-Instituten den Vertrieb und den Rücktausch von E-Geld über natürliche oder juristische Personen, die in ihrem Namen tätig sind. Möchte ein E-Geld-Institut in einem anderen Mitgliedstaat unter Nutzung einer solchen natürlichen oder juristischen Person E-Geld vertreiben, so befolgt es das in Artikel 25 der Richtlinie 2007/64/EG dargelegte Verfahren.	<b>Section 15(1) of the E-Geldgesetz</b> <b>Section 13(1) ZaDiG</b> <b>Section 21(1) and (3) ZaDiG</b> <b>Section 6(1), pt. 7 ZaDiG</b>	<b>Section 15(1) of the E-Geldgesetz</b> 1. Electronic money institutions shall be allowed to distribute and redeem electronic money through natural or legal persons which act on their behalf as laid down in Section 21 ZaDiG. Where the electronic money institution wishes to distribute electronic money in another Member State by engaging such a natural or legal person, it shall follow the procedure set out in Section 13 ZaDiG.  <b>Section 13(1) ZaDiG</b>	<b>§ 15(1) E-Geldgesetz</b> (1) Der Vertrieb und Rücktausch von E-Geld durch natürliche oder juristische Personen, die im Namen des E-Geld-Institutes tätig sind, ist unter Einhaltung von § 21 ZaDiG zulässig. Sofern ein E-Geld-Institut unter Nutzung der Dienste einer solchen Person E-Geld in einem anderen Mitgliedstaat zu vertreiben beabsichtigt, ist das Verfahren gemäß § 13 ZaDiG anzuwenden.  <b>§ 13(1) ZaDiG</b> (1) Jedes Zahlungsinstitut, das im Hoheitsgebiet eines	<b>CONFORM</b> Section 15(1) of the E-Geldgesetz transposes Article 3(4) of the Directive. The reference to Article 25 of Directive 2007/48/EC is transposed by Sections 13 and 21 ZaDiG.  Since electronic money institutions are also credit institutions within the meaning of the ZaDiG, the provisions of the ZaDiG with regards to general prudential rules transposing Article 3 of the Directive shall also apply to electronic money institutions.  Electronic money institutions shall be allowed to exercise their activities by using third persons attributable to them. In that case the provisions of Section 13 in conjunction with Section 21(1) and (3) ZaDiG on the provision of payment services by third persons transposing Article 25 of Directive 2007/64/EC shall apply.  Although these persons act on behalf of an electronic money institution, they are not

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			<p>1. Any payment institution intending to establish a branch in another Member State, shall notify the FMA thereof in advance and submit the following information: [...]</p> <p><b>Section 21(1) and (3) ZaDiG</b></p> <p>1. Outsourcing of important operational functions may not be undertaken in such way as to impair materially the quality of the payment institution's internal control and the ability of the FMA to monitor the payment institution's compliance with all obligations laid down in this Act. An operational function shall be regarded as important if a defect or failure in its performance would materially impair the continuing compliance of the requirements set out in the authorisation or its other obligations under this Act, or its financial performance, or the soundness or the continuity of its payment</p>	<p>anderen Mitgliedstaates eine Zweigstelle errichten möchte, hat dies zuvor der FMA schriftlich anzuzeigen und dabei die folgenden Angaben zu übermitteln: [...]</p> <p><b>§ 21(1) und (3) ZaDiG</b></p> <p>(1) Die Auslagerung wichtiger betrieblicher Aufgaben darf weder die Qualität der internen Kontrolle des Zahlungsinstituts noch die Beaufsichtigung des Zahlungsinstituts durch die FMA im Hinblick auf die Erfüllung der Anforderungen dieses Bundesgesetzes wesentlich beeinträchtigen. Eine betriebliche Aufgabe gilt als wichtig in diesem Zusammenhang, wenn deren unzureichende oder unterlassene Wahrnehmung die kontinuierliche Einhaltung der Konzessionsanforderungen oder der anderen Verpflichtungen des Zahlungsinstituts gemäß</p>	<p>regarded as “agents”, since the specific procedure according to Section 21 ZaDiG which transposes Article 25 of Directive 2007/64/EC applies but not the procedure for “agents”.</p> <p>This also transposes the provision of recital 10 according to which electronic money institutions should not be permitted to issue electronic money through agents, but none the less be permitted to provide the payment services listed in the Annex to Directive 2007/64/EC through agents, where the conditions in Article 17 of that Directive are met.</p> <p>The application for being authorised as an electronic money institution has to include, <i>“where applicable, a description of the intended use of agents and branches and a description of outsourcing arrangements (...)”</i>, as stated in Article 5(g) of Directive 2004/67/EC. That provision is transposed by Section 6(1), point 7 ZaDiG.</p> <p>Based on these observations, conformity has been concluded for the transposition of Article 3(4) of the Directive.</p>

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			<p>services. When payment institutions outsource important operational functions, this shall be done with due diligence and professionalism. In particular, a clear division of rights and obligations between the payment institution and the service provider shall be laid down in a written agreement.</p> <p>3. Where a payment institution intends to outsource operational functions of payment services, it shall inform the FMA accordingly.</p> <p><b>Section 6(1), point 7 ZaDiG</b></p> <p>1. the application for an authorisation shall include the following information: (7) a description of the applicant's structural organisation, including, where applicable, a description of the intended use of agents and branches and a description of outsourcing arrangements, and of its participation in a</p>	<p>diesem Bundesgesetz, seine finanzielle Leistungsfähigkeit oder die Solidität oder Kontinuität seiner Zahlungsdienste wesentlich beeinträchtigen würde. Bei Abschluss, Durchführung oder Kündigung einer Vereinbarung über die Auslagerung von wichtigen betrieblichen Aufgaben ist mit der gebotenen Professionalität und Sorgfalt zu verfahren. Insbesondere ist eine klare Aufteilung der Rechte und Pflichten zwischen dem Zahlungsinstitut und dem Dienstleister in Form einer schriftlichen Vereinbarung vorzunehmen.</p> <p>(3) Das Zahlungsinstitut hat der FMA die beabsichtigte Auslagerung von betrieblichen Aufgaben von Zahlungsdiensten zuvor schriftlich anzuzeigen.</p> <p><b>§ 6(1) Ziff. 7 ZaDiG</b></p> <p>(1) Der Antragsteller hat dem Antrag auf Erteilung einer Konzession folgende</p>	

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				national or international payment system;	Angaben und Unterlagen anzuschließen: 7. eine Darstellung des organisatorischen Aufbaus des Antragstellers, gegebenenfalls einschließlich einer Beschreibung der geplanten Inanspruchnahme von Agenten und Zweigniederlassungen sowie einer Darstellung der Auslagerungsvereinbarungen, und eine Beschreibung der Art und Weise seiner Teilnahme an einem einzelstaatlichen oder internationalen Zahlungssystem;	
<b>Art. 3(5)</b>	5. Notwithstanding paragraph 4, electronic money institutions shall not issue electronic money through agents. Electronic money institutions shall be allowed to provide payment services referred to in Article 6(1)(a) through agents only if the conditions in Article 17 of Directive 2007/64/EC are met.	(5) Unbeschadet von Absatz 4 emittieren E-Geld-Institute elektronisches Geld nicht über Agenten. E-Geld-Institute sind nur befugt, Zahlungsdienste gemäß Artikel 6 Absatz 1 Buchstabe a über Agenten zu leisten, wenn die Voraussetzungen nach Artikel 17 der Richtlinie 2007/64/EG erfüllt sind.	<b>Section 15(2) of the E-Geldgesetz</b> <b>Section 3, point 20 ZaDiG</b> <b>Section 22(1) and (3)</b>	<b>Section 15(2) of the E-Geldgesetz</b> 2. The issuance of electronic money by agents or persons according to subpara. 1 [...] E-Geldgesetz shall not be permitted. The provision of payment services by agents shall be permitted according to Section 22 ZaDiG. <b>Section 3, point 20</b>	<b>§ 15(2) E-Geldgesetz</b> (2) Eine Ausgabe von E-Geld über Agenten [...] oder Personen gemäß Abs. 1 ist unzulässig. Die Erbringung von Zahlungsdiensten durch Agenten ist unter Einhaltung von § 22 ZaDiG zulässig. <b>§ 3 Ziffer 20 ZaDiG</b> Agent: eine natürliche oder juristische Person, die im Namen eines	<b>CONFORM</b> Section 15(2) of the E-Geldgesetz in conjunction with Section 22 ZaDiG transposes Article 3(5) of the Directive. Section 15(2) of the E-Geldgesetz prohibits the issuance of electronic money by agents as defined in Section 3, point 20 ZaDiG. If an electronic money institution intends to provide payment services according to Directive 2007/64/EC not linked to issuance of electronic money by agents or branch they can do so, if such agents and branches are registered in the payment institution register

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			<b>ZaDiG</b>	<p><b>ZaDiG</b></p> <p>Agent: Any natural or legal person executing payment services in the name of a payment institution.</p> <p><b>Section 22(1) and (3) ZaDiG</b></p> <p>1. When a payment institution intends to provide payment services through an agent it shall communicate this information to the FMA by stating the type of payment service provided by the agent and submit the following:</p> <p>(1) Name and address of the agent,</p> <p>(2) Description of the internal control mechanisms applicable to the agent;</p> <p>(3) Name of the manager responsible for the agent;</p> <p>3. Unless the FMA has doubts on the correctness of the information and the suitability of the control mechanisms according to subparagraph 1, point 2, it shall enter the name and the address of the agent in the register for payment</p>	<p>Zahlungsinstituts Zahlungsdienste ausführt;</p> <p><b>§ 22(1) und (3) ZaDiG</b></p> <p>(1) Beabsichtigt ein Zahlungsinstitut, Zahlungsdienste über einen Agenten zu erbringen, so hat es dies zuvor der FMA unter Angabe des Zahlungsdienstes, der vom Agenten erbracht werden soll, und unter Beibringung nachfolgender Informationen schriftlich anzuzeigen:</p> <p>1. Name und Anschrift des Agenten,</p> <p>2. eine Beschreibung der internen Kontrollmechanismen, die die Agenten anwenden, und</p> <p>3. die Namen der Geschäftsleiter und der für die Geschäftsleitung eines Agenten verantwortlichen Personen,</p> <p>(3) Hat die FMA keine Zweifel über die Richtigkeit der Angaben und der Eignung der Kontrollmechanismen gemäß Abs. 1 Z 2, so hat</p>	<p>as laid down in Article 17 of Directive 2007/64/EC transposed by Section 22(1) and (3) ZaDiG.</p> <p>By prohibiting the issuance of electronic money by agents as defined in Section 3, point 20 ZaDiG, Section 15(2) of the E-Geldgesetz and Section 22 ZaDiG also fulfill the requirements set out in recital 10 of the Directive.</p> <p>Therefore, conformity has been concluded for the transposition of Article 3(5) of the Directive.</p>

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				institutions and inform the payment institution thereof. As soon as the registration is completed, the agent may take up his activities. [...].	sie Namen und Anschrift des Agenten in das Zahlungsinstitutsregister einzutragen und dem Zahlungsinstitut diese Tatsache schriftlich mitzuteilen. Sobald die Eintragung erfolgt ist, kann der Agent seine Tätigkeit für das Zahlungsinstitut aufnehmen. [...].	
<b>Art. 4</b>	<p><i>Article 4</i> <b>Initial capital</b></p> <p>Member States shall require electronic money institutions to hold, at the time of authorisation, initial capital, comprised of the items set out in Article 57(a) and (b) of Directive 2006/48/EC, of not less than EUR 350000.</p>	<p><i>Artikel 4</i> <b>Anfangskapital</b></p> <p>Die Mitgliedstaaten schreiben vor, dass E-Geld-Institute zum Zeitpunkt der Zulassung über ein Anfangskapital von mindestens 350 000 EUR verfügen müssen, das sich aus den in Artikel 57 Buchstaben a und b der Richtlinie 2006/48/EG dargelegten Bestandteilen zusammensetzt.</p>	<p><b>Section 11(1) of the E-Geldgesetz</b></p> <p><b>Section 26(11) of the E-Geldgesetz</b></p>	<p><b>Section 11(1) of the E-Geldgesetz</b></p> <p>1. The own funds comprised of the items set out in Section 23(1), point 1 and 2 BWG under consideration of Section 23(13) BWG shall be at no time less than EUR 350 000.</p> <p><b>Section 26(11) of the E-Geldgesetz</b></p> <p>11. In case of suspicion for the FMA that a money transaction serves money laundry or the financing of terrorism, it shall notify the money laundry office thereof [...].</p>	<p><b>§ 11(1) of the E-Geldgesetz</b></p> <p>(1) Die Eigenmittel, die die Bestandteile im Sinne von § 23(1) Ziff. 1 und 2 BWG unter Berücksichtigung von § 23(13) BWG umfassen, dürfen zu keinem Zeitpunkt weniger als 350 000 Euro betragen.</p> <p><b>§ 26(11) of the E-Geldgesetz</b></p> <p>(11) Ergibt sich für die FMA bei der Wahrnehmung ihrer Aufgaben der Verdacht, dass eine Transaktion der Geldwäscherei oder der Terrorismusfinanzierung dient, so hat sie die</p>	<p><b>CONFORM</b></p> <p>Section 11(1) of the E-Geldgesetz transposes Article 4 of the Directive. The reference to Article 57(a) and (b) of Directive 2006/48/EC is transposed by Section 23(1) and (13) BWG.</p> <p>Section 11(1) of the E-Geldgesetz provides for own funds not less than EUR 350 000 at any time, which also includes the initial capital at the time of authorisation.</p> <p>The calculation methods for the own funds are laid down in paragraphs 2 to 5 of Section 11 of the E-Geldgesetz transposing Article 5(2) to (6) of the Directive.</p> <p>As shown further below these provisions also fulfil the requirements with regards to the administration of own funds set out in recital 11 of the Directive.</p> <p>Moreover, Section 26(11) of the E-Geldgesetz provides for the notification of the money laundry office in case of money</p>

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					Geldwäschemeldestelle [...] hievon unverzüglich in Kenntnis zu setzen.	laundering or terror financing as provided in recital 11 of the Directive.  Therefore, conformity has been concluded for the transposition of Article 4 of the Directive.
<b>Art. 5(1)</b>	<b>Article 5 Own funds</b>  1. The electronic money institution's own funds, as set out in Articles 57 to 61, 63, 64 and 66 of Directive 2006/48/EC shall not fall below the amount required under paragraphs 2 to 5 of this Article or under Article 4 of this Directive, whichever the higher.	<b>Artikel 5 Eigenmittel</b>  (1) Die Eigenmittel des E-Geld-Instituts gemäß den Artikeln 57 bis 61 sowie 63, 64 und 66 der Richtlinie 2006/48/EG dürfen nicht unter den jeweils höheren der in den Absätzen 2 bis 5 dieses Artikels bzw. Artikel 4 dieser Richtlinie genannten Beträge absinken.	<b>Section 11(2) of the E-Geldgesetz</b>	<b>Section 11(2) of the E-Geldgesetz</b>  2. The electronic money institution's own funds, as set out in Section 23(1), points 1 and 2 BWG shall not fall below the amount required under paragraphs 1 and 3 of this Section or, in the first case of paragraph 4, not below the amount referred to in paragraphs 1 and 4 of this Section, whichever the higher.	<b>§ 11(2) E-Geldgesetz</b>  (2) Die Eigenmittel des E-Geld-Instituts gemäß § 23(1) Ziff. 1 und 2 BWG unter Berücksichtigung von § 23(13) BWG dürfen nicht unter den jeweils höheren der in den Abs. 1 und 3 oder, für den in Abs. 4 ersten Satz genannten Fall nicht unter den jeweils höheren der in den Abs. 1 und 4, genannten Beträge absinken.	<b>CONFORM</b>  Section 11(2) of the E-Geldgesetz transposes Article 5(1) of the Directive by closely following the wording of the Directive provision.  It should be noted that Section 23(1), points 1 and 2 BWG transpose Articles 57 to 61, 63, 64 and 66 of Directive 2006/48/EC and the provisions of paragraphs 2 to 5 of Article 5 are transposed by Section 11(1) and (4) of the E-Geldgesetz as demonstrated in the following paragraph.  As also shown below the method for calculating ongoing capital as set out in the Directive was transposed in a conform manner. These provisions also fulfil the requirements set out in recital 11 of the Directive.
<b>Art. 5(2) 1<sup>st</sup> subpara. a.</b>	2. In regard to the activities referred to in Article 6(1)(a) that are not linked to the issuance of electronic money, the own funds requirements of an electronic money institution shall be calculated in accordance with one of the three methods (A, B or C) set	(2) Für die in Artikel 6 Absatz 1 Buchstabe a genannten Tätigkeiten, die nicht mit der Ausgabe von E-Geld in Verbindung stehen, werden die Eigenmittelanforderungen eines E-Geld-Instituts nach einer der drei in Artikel 8 Absätze 1 und 2 der Richtlinie 2007/64/EG	<b>Section 11(3), pt. 1 of the E-Geldgesetz</b>	<b>Section 11(3), point 1 of the E-Geldgesetz</b>  3. Electronic money institutions shall at any time hold sufficient own funds. Without regard to the provisions on initial capital [...] the own funds requirements of an electronic money	<b>§ 11(3) Ziff. 1 E-Geldgesetz</b>  (3) E-Geld-Institute haben jederzeit ausreichende Eigenmittel zu halten. Abgesehen von den Bestimmungen über das Anfangskapital [...] haben E-Geld-Institute jederzeit zumindest Eigenmittel in	<b>CONFORM</b>  Section 11(3), point 1 of the E-Geldgesetz transposes Article 5(2), first subparagraph of the Directive.  The method to calculate the own funds to be applied to payment services not linked to the issuance of electronic money is laid down in Section 11(3), point 1 of the E-Geldgesetz referring to Section 16(1) and (2) ZaDiG transposing Article 8(1) and (2) of Directive



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	out in Article 8(1) and (2) of Directive 2007/64/EC. The appropriate method shall be determined by the competent authorities in accordance with national legislation.	genannten Methoden (A, B oder C) berechnet. Die geeignete Methode wird von den zuständigen Behörden im Einklang mit den nationalen Rechtsvorschriften festgelegt.		institution shall be calculated in accordance with the following methods: (1) For the provision of payment services not linked to the issuance of electronic money, the own funds shall be calculated according to one of the three methods (A, B or C) set out in Section 16(1) and (2) ZaDiG. The appropriate method shall be determined by the procedure laid down in Section 16(3) and (4) ZaDiG.	einer Höhe zu halten, die nach folgenden Methoden berechnet wird: 1. Für die Erbringung von Zahlungsdiensten [...], die nicht mit der Ausgabe von E-Geld in Verbindung stehen, sind die Eigenmittel nach einer der drei in § 16(1) in Verbindung mit Abs. 2 ZaDiG genannten Methoden (Methode A, B oder C) zu berechnen. Die Festlegung der geeigneten Methode hat nach dem in § 16(3) und (4) ZaDiG festgelegten Verfahren zu erfolgen.	2007/64/EC.  This also is in accordance with the last sentence of Article 5(2) first subparagraph and recital 11 of the Directive.  As shown under the observation of the next paragraph, for the calculation of own funds of electronic money institutions in regard to the activity of issuance of electronic money, there shall be only one method available (method D) as laid down in Section 11(3), point 2 of the E-Geldgesetz.  Therefore, conformity has been concluded for the transposition of Article 5(2), first subparagraph of the Directive.
<b>Art. 5(2) 2<sup>nd</sup> subpar a.</b>	In regard to the activity of issuing electronic money, the own funds requirements of an electronic money institution shall be calculated in accordance with Method D as set out in paragraph 3.	Für die Ausgabe von E-Geld werden die Eigenmittelanforderungen eines E-Geld-Instituts nach der in Absatz 3 dargelegten Methode D berechnet.	<b>Section 11(1), pt. 2 of the E-Geldgesetz</b>	<b>Section 11(1), point 2, first sentence of the E-Geldgesetz</b>  (2) The own funds of an electronic money institution for the activity of issuing electronic money shall amount to at least 2 % of the average outstanding electronic money (Method D).	<b>§ 11(1) Ziff. 2, S 1 E-Geldgesetz</b>  2. Für die Ausgabe von E-Geld haben sich die Eigenmittel auf mindestens 2 vH des durchschnittlichen E-Geld-Umlaufes zu belaufen (Methode D).	<b>CONFORM</b>  Section 11(1), point 2, first sentence of the E-Geldgesetz transposes Article 5(2), second subparagraph of the Directive.  Section 11(1), point 2, first sentence of the E-Geldgesetz provides for the own funds of an electronic money institution for the activity of issuing electronic money to amount to at least 2 % of the average outstanding electronic money.  Section 11(1), point 2, first sentence of the E-Geldgesetz literally transposes Article 5(3) of the Directive to which Article 5(2), second subparagraph refers.  Therefore, conformity has been concluded for

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						the transposition of Article 5(2), second subparagraph of the Directive.
<b>Art. 5(2) 3<sup>rd</sup> subpara. a.</b>	Electronic money institutions shall at all times hold own funds that are at least equal to the sum of the requirements referred to in the first and second subparagraphs.	E-Geld-Institute verfügen stets über einen Bestand an Eigenmitteln, der mindestens genauso hoch ist wie die Summe der in Unterabsatz 1 und 2 genannten Erfordernisse.	<b>Section 11(3), pt. 1 of the E-Geldgesetz</b>	<b>Section 11(3), point 1 of the E-Geldgesetz</b> 3. Electronic money institutions shall at any time hold sufficient own funds. Without regards to the provisions on initial capital [...] the own funds requirements of an electronic money institution shall be calculated in accordance with the following methods:  (1) For the provision of payment services not related to the issuance of electronic money, own funds shall be calculated according to one of the three methods (A, B or C) set out in Section 16(1) and (2) ZaDiG. The appropriate method shall be determined by the procedure laid down in Section 16(3) and (4) ZaDiG.	<b>§ 11(3) Ziff. 1 E-Geldgesetz</b> (3) E-Geld-Institute haben jederzeit ausreichende Eigenmittel zu halten. Abgesehen von den Bestimmungen über das Anfangskapital [...] haben E-Geld-Institute jederzeit zumindest Eigenmittel in einer Höhe zu halten, die nach folgenden Methoden berechnet wird:  1. Für die Erbringung von Zahlungsdiensten [...], die nicht mit der Ausgabe von E-Geld in Verbindung stehen, sind die Eigenmittel nach einer der drei in § 16 Abs. 1 in Verbindung mit Abs. 2 ZaDiG genannten Methoden (Methode A, B oder C) zu berechnen. Die Festlegung der geeigneten Methode hat nach dem in § 16 Abs. 3 und 4 ZaDiG festgelegten Verfahren zu erfolgen.	<b>CONFORM</b>  Section 11(3), point 1 of the E-Geldgesetz transposes Article 5(2), third subparagraph of the Directive.  Section 11(3), point 1 of the E-Geldgesetz already transposes Article 5(2), first and second subparagraph of the Directive to which Article 5(2), third subparagraph refers in a conform manner. Therefore the third subparagraph of Article 5(2) of the Directive is transposed in a conform manner as well.  Therefore, conformity has been concluded for the transposition of Article 5(2), third subparagraph of the Directive.
<b>Art. 5(3)</b>	3. Method D: The own funds of an electronic	(3) Methode D: Die Eigenmittel eines E-Geld-	<b>Section 11(1), point 2 of the E-Geldgesetz</b>	<b>Section 11(1), point 2 of the E-Geldgesetz</b>	<b>§ 11(1) Ziff. 2 E-Geldgesetz</b>	<b>CONFORM</b>  Section 11(1), point 2 of the E-Geldgesetz

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	money institution for the activity of issuing electronic money shall amount to at least 2 % of the average outstanding electronic money.	Instituts für die Ausgabe von E-Geld müssen sich mindestens auf 2 % des durchschnittlichen E-Geld-Umlaufs belaufen.	<b>11(1), pt. 2 of the E-Geldgesetz</b>	(2) The own funds of an electronic money institution for the activity of issuing electronic money shall amount to at least 2 % of the average outstanding electronic money (Method D).	2. Für die Ausgabe von E-Geld haben sich die Eigenmittel auf mindestens 2 vH des durchschnittlichen E-Geld-Umlaufes zu belaufen (Methode D).	transposes Article 5(3) of the Directive.  Section 11(1), point 2 of the E-Geldgesetz provides for the own funds of an electronic money institution for the activity of issuing electronic money to amount to at least 2 % of the average outstanding electronic money. This almost literally transposes Article 5(3) of the Directive.  By providing for own funds of an electronic money institution to at least 2 % of the average outstanding electronic money, Section 11(1), point 2 of the E-Geldgesetz also fulfils the requirements set out in recital 11 of the Directive.  Therefore, conformity has been concluded for the transposition of Article 5(3) of the Directive.
<b>Art. 5(4)</b>	4. Where an electronic money institution carries out any of the activities referred to in Article 6(1)(a) that are not linked to the issuance of electronic money or any of the activities referred to in Article 6(1)(b) to (e) and the amount of outstanding electronic money is unknown in advance, the competent authorities shall allow that electronic money institution to calculate its own funds requirements on the basis	(4) Übt ein E-Geld-Institut eine der in Artikel 6 Absatz 1 Buchstabe a genannten Tätigkeiten aus, die nicht mit der Ausgabe von E-Geld oder mit einer der in Artikel 6 Absatz 1 Buchstaben b bis e genannten Tätigkeiten in Verbindung steht, und ist die Höhe des E-Geld-Umlaufs im Voraus nicht bekannt, gestattet die zuständige Behörde diesem E-Geld-Institut, seine Eigenmittelanforderungen	<b>Section 11(4) of the E-Geldgesetz</b>	<b>Section 11(4) of the E-Geldgesetz</b>  4. Where an electronic money institution carries out any of the activities that are neither linked to the issuance of electronic money nor to any of the activities referred to Section 3(3), points 2 to 5 of the E-Geldgesetz and the amount of outstanding electronic money is unknown in advance, the FMA shall after consultation with the Austrian National Bank	<b>§ 11(4) Geldgesetz</b>  (4) Erbringt ein E-Geld-Institut Zahlungsdienste, die weder mit der Ausgabe von E-Geld noch mit den in § 3(3) Ziff. 2 bis 5 E-Geldgesetz genannten Tätigkeiten in Verbindung stehen, und ist die Höhe des E-Geldumlaufs im Voraus nicht bekannt, so hat die FMA nach Konsultation der Oesterreichischen Nationalbank diesem E-Geld-Institut [...] auf Antrag zu gestatten, seine	<b>CONFORM</b>  Section 11(4) of the E-Geldgesetz almost literally transposes Article 5(4) of the Directive.  The reference made in the Austrian provision to Section 3(3), points 2 to 5 of the E-Geldgesetz transposes Article 6(1)(b) to (e) of the Directive.  Therefore, conformity has been concluded for the transposition of Article 5(4) of the Directive.

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	of a representative portion assumed to be used for the issuance of electronic money, provided such a representative portion can be reasonably estimated on the basis of historical data and to the satisfaction of the competent authorities. Where an electronic money institution has not completed a sufficient period of business, its own funds requirements shall be calculated on the basis of projected outstanding electronic money evidenced by its business plan subject to any adjustment to that plan having been required by the competent authorities.	unter Zugrundelegung eines repräsentativen Anteils zu berechnen, der typischerweise für die Ausgabe von E-Geld verwendet wird, sofern sich dieser repräsentative Anteil auf der Grundlage historischer Daten nach Überzeugung der zuständigen Behörden mit hinreichender Sicherheit schätzen lässt. Kann ein E-Geld-Institut nicht auf eine ausreichend lange Geschäftstätigkeit zurückblicken, so werden seine Eigenmittelanforderungen auf der Grundlage des aus seinem Geschäftsplan hervorgehenden erwarteten E-Geld-Umlaufs berechnet, sofern von den zuständigen Behörden keine Anpassung dieses Plans verlangt wird.		allow that electronic money institution to calculate its own funds requirements on the basis of a representative portion assumed to be used for the issuance of electronic money, provided such a representative portion can be reasonably estimated on the basis of historical data and to the satisfaction of the FMA. Where an electronic money institution has not completed a sufficient period of business, its own funds requirements shall be calculated [...] on the basis of projected outstanding electronic money evidenced by its business plan. However, the FMA may ask for an adjustment to that plan to the factual developments at any time.	Eigenmittel unter Zugrundelegung eines repräsentativen Anteils zu berechnen, der typischerweise für die Ausgabe von E-Geld verwendet wird, sofern sich dieser repräsentative Anteil auf der Grundlage historischer Daten nach Überzeugung der FMA mit hinreichender Sicherheit schätzen lässt. Kann ein E-Geld-Institut nicht auf eine ausreichend lange Geschäftstätigkeit zurückblicken, so sind seine Eigenmittel [...] auf der Grundlage des aus seinem Geschäftsplan hervorgehenden erwarteten E-Geld-Umlaufes zu berechnen. Die FMA kann jedoch jederzeit eine Anpassung dieses Geschäftsplanes an die tatsächlichen Entwicklungen verlangen.	
<b>Art. 5(5)</b>	5. On the basis of an evaluation of the risk-management processes, of the risk loss databases and internal control mechanisms of the electronic money institution, the competent	(5) Auf der Grundlage einer Bewertung des Risikomanagements, der Verlustdatenbanken und der internen Kontrollmechanismen des E-Geld-Instituts können die zuständigen Behörden	<b>Section 11(5) of the E-Geldgesetz</b>	<b>Section 11(5) of the E-Geldgesetz</b> 5. On the basis of an evaluation of the risk-management processes, of the risk loss databases and internal control	<b>§ 11(5) E-Geldgesetz</b> (5) Die FMA kann auf der Grundlage einer Bewertung des Risikomanagements, der Verlustdatenbanken und der internen	<b>CONFORM</b> Article 5(5) of the Directive sets out an option. Owing to this option Austria has chosen to apply this option.  Section 11(5) of the E-Geldgesetz transposes Article 5 in a literal manner with a slightly

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	authorities may require the electronic money institution to hold an amount of own funds which is up to 20 % higher than the amount which would result from the application of the relevant method in accordance with paragraph 2, or permit the electronic money institution to hold an amount of own funds which is up to 20 % lower than the amount which would result from the application of the relevant method in accordance with paragraph 2.	vorschreiben, dass die Eigenkapitalunterlegung des E-Geld-Instituts einem Betrag entsprechen muss, der bis zu 20 % höher ist als der Betrag, der sich aus der Anwendung der einschlägigen Methode gemäß Absatz 2 ergeben würde, oder dem E-Geld-Institut gestatten, dass seine Eigenkapitalunterlegung einem Betrag entspricht, der bis zu 20 % niedriger ist als der Betrag, der sich aus der Anwendung der einschlägigen Methode gemäß Absatz 2 ergeben würde.		mechanisms of the electronic money institution, the FMA may (1) require the electronic money institution to hold an amount of own funds which is up to 20 % higher than the amount which would result from the application of the relevant method in accordance with paragraph 3, or (2) permit the electronic money institution to hold an amount of own funds which is up to 20 % lower than the amount which would result from the application of the relevant method in accordance with paragraph 3.	Kontrollmechanismen des E-Geld-Instituts 1. dem E-Geld-Institut vorschreiben, dass seine Eigenmittel einem Betrag entsprechen müssen, der um bis zu 20 vH höher ist als der Betrag, der sich aus der einschlägigen Methode gemäß Abs. 3 ergeben würde; oder  2. dem E-Geld-Institut gestatten, dass seine Eigenmittel einem Betrag entsprechen, der bis zu 20 vH niedriger ist als der Betrag, der sich aus der einschlägigen Methode gemäß Abs. 3 ergeben würde.	different structure.  In order to ensure that similar risks are treated for all payment service providers equally and that the particular business situation of an electronic money institution is taken into account, the FMA will be given an appropriate regulatory discretion for the calculation of own funds according to Section 11(5) of the E-Geldgesetz.  The references made in the Austrian provision correspond to those which transpose paragraph 2 of Article 5 referred to in Article 5(5) of the Directive.  Therefore, conformity has been concluded for the transposition of Article 5(5) of the Directive.
<b>Art. 5(6) intr. wording</b>	6. Member States shall take the necessary measures to prevent the multiple use of elements eligible for own funds:	(6) Die Mitgliedstaaten treffen die erforderlichen Maßnahmen, um in Fällen,	N/A	N/A	N/A	<b>CONFORM</b>  It should be noted that the Austrian implementing provision (Section 23, point 13 BWG) follows a different structure than the Directive.  However, the observations on Article 5(6) show that the Directive has been properly transposed.
<b>Art. 5(6)(a)</b>	(a) where the electronic money institution belongs to the same group as another electronic money	a) in denen ein E-Geld-Institut zu derselben Gruppe gehört wie ein anderes E-Geld-Institut,	<b>Section 23(13), pt. 3</b>	<b>Section 23(13), point 3 BWG</b>  13. The following funds shall be deducted from	<b>§ 23(13) Ziff. 3 BWG</b>  (13) Von den Eigenmitteln sind abzuziehen: 3. mittelbar und	<b>CONFORM</b>  Since electronic money institutions are also credit institutions within the meaning of the BWG, the provisions of the BWG with

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	institution, a credit institution, a payment institution, an investment firm, an asset management company or an insurance or reinsurance undertaking;	ein Kreditinstitut, ein Zahlungsinstitut, eine Wertpapierfirma, eine Vermögensverwaltungsgesellschaft oder ein Versicherungs- oder Rückversicherungsunternehmen,	<b>BWG</b>	own funds: (3) shares hold directly or indirectly, [...] that the credit institution owns of other credit institutions, finance institutions or payment institutions or electronic money institutions, [...];	unmittelbar gehaltene Anteilsrechte, [...], die das Kreditinstitut in anderen Kreditinstituten oder in Finanzinstituten oder Zahlungsinstituten [...] oder E-Geld-Instituten besitzt, [...];	regards to own funds of credit institutions transposing Article 5 of the Directive shall also apply to electronic money institutions.  Section 23(13), point 3 BWG transposes Article 5(6)(a) of the Directive and prohibits the multiple use of own funds and, if an electronic money institution belongs to the same group of a credit institution, a finance institution or a payment institution or an electronic money institution.  However, it should be noted that the Austrian provision does not list insurance or reinsurance undertaking. This, however, does not hamper a conform transposition of the Directive's provision.  Therefore, conformity has been concluded for the transposition of Article 5(6)(a) of the Directive.
<b>Art. 5(6)(b)</b>	(b) where an electronic money institution carries out activities other than the issuance of electronic money.	b) in denen ein E-Geld-Institut anderen Tätigkeiten nachgeht als der Ausgabe von E-Geld, zu verhindern, dass anrechenbare Eigenmittelbestandteile mehrfach angerechnet werden.	<b>Section 23(13), point 3 BWG</b>	<b>Section 23(13), point 3 BWG</b>  13. The following funds shall be deducted from the own funds: (3) shares hold directly or indirectly, secondary claims, participatory capital, supplementary capital or any other capital [...] that owns the credit institution of other credit institutions, finance institutions or a payment institutions [...] or electronic money	<b>§ 23(13) Ziff. 3 BWG</b>  (13) Von den Eigenmitteln sind abzuziehen: 3. mittelbar und unmittelbar gehaltene Anteilsrechte, nachrangige Forderungen, Partizipationskapital, Ergänzungskapital oder sonstige Kapitalformen, [...], die das Kreditinstitut in anderen Kreditinstituten oder in Finanzinstituten oder Zahlungsinstituten [...] oder E-Geld-Instituten besitzt, an deren Kapital es	<b>CONFORM</b>  Section 23(13), point 3 BWG transposes Article 5(6)(b) and prohibits the multiple use of own funds and, if an electronic money institution belongs to the same group of a credit institution, a finance institution or a payment institution or an electronic money institution.  This rule shall apply to all electronic money institutions including those having the issuance of electronic money according to Section 1(2) of the E-Geldgesetz not as their main commercial activity.  Therefore, conformity has been concluded for

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				institutions;	mittelbar oder unmittelbar	the transposition of Article 5(6)(a).
<b>Art. 5(7)</b>	7. Where the conditions laid down in Article 69 of Directive 2006/48/EC are met, Member States or their competent authorities may choose not to apply paragraphs 2 and 3 of this Article to electronic money institutions which are included in the consolidated supervision of the parent credit institutions pursuant to Directive 2006/48/EC.	(7) Sofern die Anforderungen des Artikels 69 der Richtlinie 2006/48/EG eingehalten werden, können die Mitgliedstaaten oder ihre zuständigen Behörden davon absehen, die Absätze 2 und 3 dieses Artikels auf E-Geld-Institute anzuwenden, die in die Beaufsichtigung auf konsolidierter Basis des Mutterkreditinstituts nach der Richtlinie 2006/48/EG einbezogen sind.	N/A	N/A	N/A	Article 5(7) of the Directive sets out an option. Owing to this option, Austria has not to have applied it.
<b>Art. 6(1) 1<sup>st</sup> subparagraph a.</b>	<i>Article 6 Activities</i> 1. In addition to issuing electronic money, electronic money institutions shall be entitled to engage in any of the following activities:	<i>Artikel 6 Tätigkeiten</i> (1) Neben der Ausgabe von E-Geld sind den E-Geld-Instituten folgende Tätigkeiten gestattet:	<b>Section 3(3), intr. wording of the E-Geldgesetz</b>	<b>Section 3(3), introductory wording of the E-Geldgesetz</b> 3. Moreover, electronic money institutions shall be entitled to engage in any of the following activities [...]:	<b>§ 3(3) einl. Worte E-Geldgesetz</b> (3) Weiters dürfen E-Geld-Institute folgende Tätigkeiten ausüben, [...]:	<b>CONFORM</b> Section 3(3), introductory wording of the E-Geldgesetz transposes Article 6(1), first subparagraph of the Directive in a conform manner.
<b>Art. 6(1) 1<sup>st</sup> subparagraph a. (a)</b>	(a) the provision of payment services listed in the Annex to Directive 2007/64/EC;	a) Erbringung der im Anhang der Richtlinie 2007/64/EG genannten Zahlungsdienste;	<b>Section 3(3), pt. 1 of the E-Geldgesetz</b>	<b>Section 3(3), point 1 of the E-Geldgesetz</b> (1) the provision of payment services listed in Section 1(2) ZaDiG, [...];	<b>§ 3(3) Ziff. 1 E-Geldgesetz</b> 1. Die Erbringung der in § 1 Abs. 2 ZaDiG genannten Zahlungsdienste, [...];	<b>CONFORM</b> Section 3(3), point 1 of the E-Geldgesetz literally transposes Article 6(1), first subparagraph, point (a) of the Directive. It should be noted that payment services listed in Section 1(2) ZaDiG corresponds to

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						those listed in the Annex to Directive 2007/64/EC.
<b>Art. 6(1) 1<sup>st</sup> subpar a. (b)</b>	(b) the granting of credit related to payment services referred to in points 4, 5 or 7 of the Annex to Directive 2007/64/EC, where the conditions laid down in Article 16(3) and (5) of that Directive are met;	b) Gewährung von Krediten im Zusammenhang mit Zahlungsdiensten gemäß Nummern 4, 5 oder 7 des Anhangs der Richtlinie 2007/64/EG, wenn die in Artikel 16 Absätze 3 und 5 jener Richtlinie genannten Bedingungen erfüllt sind;	<b>Section 3(3), pt. 2 of the E-Geldgesetz</b>	<b>Section 3(3), point 2 of the E-Geldgesetz</b> (2) the granting of credit related to payment services referred to in Section 1(2) points 3, 4 or 6 ZaDiG, where the conditions laid down in Section 5(5) ZaDiG are met;	<b>§ 3(3) Ziff. 2 E-Geldgesetz</b> 2. die Gewährung von Krediten im Zusammenhang mit Zahlungsdiensten gemäß § 1 Abs. 2 Z 3, 4 oder 6 ZaDiG unter den in § 5 Abs. 5 ZaDiG genannten Bedingungen, [...];	<b>CONFORM</b> Section 3(3), point 2 of the E-Geldgesetz transposes Article 6(1), first subparagraph, point (b) of the Directive.  It should be noted that Section 1(2), points 3, 4 or 6 ZaDiG transpose points 4, 5 or 7 of the Annex to Directive 2007/64/EC and the conditions according to Section 5(5) ZaDiG correspond to those laid down in Article 16(3) and (5) of that Directive.  Therefore, conformity to Article 6(1), first subparagraph (b) of the Directive was concluded.
<b>Art. 6(1) 1<sup>st</sup> subpar a. (c)</b>	(c) the provision of operational services and closely related ancillary services in respect of the issuing of electronic money or to the provision of payment services referred to in point (a);	c) Erbringung von betrieblichen Dienstleistungen und damit eng verbundenen Nebendienstleistungen, die mit der Ausgabe von E-Geld oder der in Buchstabe a erwähnten Erbringung von Zahlungsdiensten in Zusammenhang stehen;	<b>Section 3(3), pt. 3 of the E-Geldgesetz</b>	<b>Section 3(3), point 3 of the E-Geldgesetz</b> (3) the provision of operational services and closely related ancillary services in respect of the issuing of electronic money or to the provision of payment services referred to in point (1);	<b>§ 3(3) Ziff. 3 E-Geldgesetz</b> 3. die Erbringung von betrieblichen Dienstleistungen und damit eng verbundenen Nebendienstleistungen, die mit der Ausgabe von E-Geld oder der in Z 1 erwähnten Erbringung von Zahlungsdiensten in Zusammenhang stehen;	<b>CONFORM</b> Section 3(3), point 3 of the E-Geldgesetz literally transposes Article 6(1), first subparagraph, point (c) of the Directive.
<b>Art. 6(1) 1<sup>st</sup> subpar a. (d)</b>	(d) the operation of payment systems as defined in point 6 of Article 4 of Directive	d) Betrieb von Zahlungssystemen im Sinne des Artikels 4 Nummer 6 der Richtlinie	<b>Section 3(3), pt. 4 of the E-</b>	<b>Section 3(3), point 4 of the E-Geldgesetz</b> (4) the operation of payment systems as	<b>§ 3(3) Ziff. 4 E-Geldgesetz</b> 4. den Betrieb von Zahlungssystemen im	<b>CONFORM</b> Section 3(3), point 4 of the E-Geldgesetz literally transposes Article 6(1), first



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	2007/64/EC and without prejudice to Article 28 of that Directive;	2007/64/EG und unbeschadet des Artikels 28 jener Richtlinie;	<b>Geldgesetz</b>	defined in Section 3, point 6 ZaDiG without prejudice to Section 4 ZaDiG;	Sinne von § 3 Z 6 ZaDiG unbeschadet von § 4 ZaDiG;	subparagraph, point (d) of the Directive. It should be noted that Section 3, point 6 ZaDiG transposes point 6 of Article 4 of Directive 2007/64/EC and Section 4 ZaDiG Article 28 of that Directive.
<b>Art. 6(1) 1<sup>st</sup> subpar a. (e)</b>	(e) business activities other than issuance of electronic money, having regard to the applicable Community and national law.	e) andere Geschäftstätigkeiten als die Ausgabe von E-Geld im Rahmen der geltenden gemeinschaftlichen und nationalen Rechtsvorschriften.	<b>Section 3(3), pt. 5 of the E-Geldgesetz</b>	<b>Section 3(3), point 5 of the E-Geldgesetz</b> (5) business activities other than issuance of electronic money, as long as they are exercised in accordance to the applicable Community law and other federal acts.	<b>§ 3(3) Ziff. 5 E-Geldgesetz</b> 5. sonstige Geschäftstätigkeiten, die nicht in der Ausgabe von E-Geld bestehen, sofern dem nicht Rechtsvorschriften des Unionsrechtes oder Bestimmungen in anderen Bundesgesetzen entgegenstehen.	<b>CONFORM</b> Section 3(3), point 5 of the E-Geldgesetz almost literally transposes Article 6(1), first subparagraph, point (e) of the Directive.
<b>Art. 6(1) 2<sup>nd</sup> subpar a.</b>	Credit referred to in point (b) of the first subparagraph shall not be granted from the funds received in exchange of electronic money and held in accordance with Article 7(1).	In Unterabsatz 1 Buchstabe b genannte Kredite dürfen nicht aus den für die Ausgabe von E-Geld entgegengenommenen und gemäß Artikel 7 Absatz 1 gehaltenen Geldbeträgen gewährt werden.	<b>Section 3(3), pt. 2(a) of the E-Geldgesetz</b>	<b>Section 3(3), point 2(a) of the E-Geldgesetz</b> 3. Electronic money institutions shall be entitled to engage in any of the following activities [...]: (2) the granting of credit related to payment services referred to in Section 1(2) points 3, 4 or 6 ZaDiG, where the conditions laid down in Section 5(5) ZaDiG are met; (a) Credit referred to in	<b>§ 3(3) Ziff. 2(a) E-Geldgesetz</b> (3) Weiters dürfen E-Geld-Institute folgende Tätigkeiten ausüben, soweit ihre Zulassung sie dazu berechtigt: 2. die Gewährung von Krediten im Zusammenhang mit Zahlungsdiensten gemäß § 1 Abs. 2 Z 3, 4 oder 6 ZaDiG unter den in § 5 Abs. 5 ZaDiG genannten Bedingungen, wobei a) die Kredite nicht aus	<b>CONFORM</b> Section 3(3), point 2(a) of the E-Geldgesetz transposes Article 6(1), second subparagraph of the Directive. Section 3(3), point 2(a) of the E-Geldgesetz provides for the prohibition of credits to be granted from funds received in exchange of electronic money and held in accordance with Section 12 of the E-Geldgesetz transposing Article 7(1) of the Directive. By providing for the prohibition of credits to be granted from funds received in exchange of electronic money and held in accordance with Article 7(1), Section 3(3), point 2(a) of the E-Geldgesetz also fulfils the requirements

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				point (2) of the first subparagraph shall not be granted from the funds received in exchange of electronic money and held in accordance with Section 12 of the E-Geldgesetz [...].	den für die Ausgabe von E-Geld entgegengenommenen und gemäß § 12 E-Geldgesetz gehaltenen Geldbeträgen gewährt werden dürfen [...]	set out in recital 13 of the Directive. Therefore, conformity was concluded for the transposition of Article 6(1), second subparagraph of the Directive.
<b>Art. 6(2)</b>	2. Electronic money institutions shall not take deposits or other repayable funds from the public within the meaning of Article 5 of Directive 2006/48/EC.	(2) E-Geld-Instituten ist die Entgegennahme von Einlagen oder anderen rückzahlbaren Geldern des Publikums gemäß Artikel 5 der Richtlinie 2006/48/EG untersagt.	<b>Section 3(4) of the E-Geldgesetz</b>	<b>Section 3(4) of the E-Geldgesetz</b> 4. Electronic money institutions shall not take deposits or other repayable funds from the public within the meaning of Section 1(1), point 1 BWG, [...].	<b>§ 3(4) E-Geldgesetz</b> (4) E-Geld-Institute dürfen keine Einlagen oder andere rückzahlbare Gelder des Publikums gemäß § 1 Abs. 1 Z 1 BWG, [...], entgegennehmen.	<b>CONFORM</b> Section 3(4) of the E-Geldgesetz almost literally transposes Article 6(2) of the Directive by prohibiting electronic money institutions from taking deposits or other repayable funds from the public according to Section 1(1) BWG transposing Article 5 of Directive 2006/48/EC..  By prohibiting electronic money institutions from taking deposits or other repayable funds from the public according to Article 5 of Directive 2006/48/EC, Section 3(4) of the E-Geldgesetz also fulfils the requirements set out in recital 13 of the Directive.
<b>Art. 6(3)</b>	3. Any funds received by electronic money institutions from the electronic money holder shall be exchanged for electronic money without delay. Such funds shall not constitute either a deposit or other repayable funds received from the public within the meaning of	(3) Die Gelder, die E-Geld-Institute von den E-Geld-Inhabern entgegennehmen, werden unverzüglich in E-Geld umgetauscht. Solche Gelder gelten nicht als Einlagen oder andere rückzahlbare Gelder des Publikums im Sinne des Artikels 5 der Richtlinie	<b>Section 3(5) of the E-Geldgesetz</b>	<b>Section 3(5) of the E-Geldgesetz</b> 5. Any funds received by electronic money institutions from their customers shall be exchanged for electronic money without delay. Such funds shall not constitute either a deposit or other repayable funds of	<b>§ 3(5) E-Geldgesetz</b> (5) Gelder, die E-Geld-Institute von ihren Kunden [...] entgegennehmen, sind unverzüglich in E-Geld umzutauschen. Solche Gelder gelten nicht als Einlagen oder andere rückzahlbare Gelder des Publikums gemäß § 1 Abs. 1 Z 1 BWG [...].	<b>CONFORM</b> Section 3(5) of the E-Geldgesetz literally transposes Article 6(3) of the Directive by laying down that any funds received by electronic money institutions from their customers shall be exchanged for electronic money without delay and that such funds shall not constitute either a deposit or other repayable funds of the public within the meaning of Section 1(1), point 1 BWG transposing Article 5 of Directive

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	Article 5 of Directive 2006/48/EC.	2006/48/EG.		the public within the meaning of Section 1(1), point 1 BWG [...].		2006/48/EC. Therefore, conformity was concluded for the transposition of Article 6(3) of the Directive.
<b>Art. 6(4)</b>	4. Article 16(2) and (4) of Directive 2007/64/EC shall apply to funds received for the activities referred to in paragraph 1(a) of this Article that are not linked to the activity of issuing electronic money.	(4) Artikel 16 Absätze 2 und 4 der Richtlinie 2007/64/EG finden auf Geldbeträge Anwendung, die für die in Absatz 1 Buchstabe a dieses Artikels genannten Tätigkeiten entgegengenommen wurden und die nicht mit der Ausgabe von E-Geld in Verbindung stehen.	<b>Section 3(3), pt. 1 of the E-Geldgesetz</b>	<b>Section 3(3), point 1 of the E-Geldgesetz</b> 3. Electronic money institutions shall be entitled to engage in any of the following activities [...]: (1) the provision of payment services listed in Section 1(2) ZaDiG, as long as the amounts received are not linked to the activity of issuing electronic money ;	<b>§ 3(3) Ziff. 1 E-Geldgesetz</b> (3) Weiters dürfen E-Geld-Institute folgende Tätigkeiten ausüben, [...]: 1. Die Erbringung der in § 1 Abs. 2 ZaDiG genannten Zahlungsdienste, sofern die entgegengenommenen Geldbeträge nicht mit der Ausgabe von E-Geld in Verbindung stehen;	<b>CONFORM</b> Section 3(3), point 1 of the E-Geldgesetz transposes Article 6(4) of the Directive. Electronic money institutions may in principle as part of their authorisation also provide payment services. However, since electronic money institutions are also payment institutions according to Section 1(2) ZaDiG they shall fulfil the relevant general prudential rules set out in the ZaDiG. As long as they receive money when providing payment services, that money shall be deposited on a separate account and shall not constitute a deposit or electronic money.  However, basically it is possible and permissible that funds are received for the issuance of electronic money and a digitalised business is conducted subsequently. An example would be the issuance of prepaid cards for mobile phones and then making a payment of a parking ticket via mobile phone. In that case, the issuance of electronic money is linked to a payment service. There the received amount of money is electronic money, and is also subject to the provisions of the third main part of the E-Geldgesetz.  Based on these observations, Section 3(3), point 1 of the E-Geldgesetz transposes Article 6(4) of the Directive in a conform manner.

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<b>Art. 7(1)</b>	<p><i>Article 7</i> <b>Safeguarding requirements</b></p> <p>1. Member States shall require an electronic money institution to safeguard funds that have been received in exchange for electronic money that has been issued, in accordance with Article 9(1) and (2) of Directive 2007/64/EC. Funds received in the form of payment by payment instrument need not be safeguarded until they are credited to the electronic money institution's payment account or are otherwise made available to the electronic money institution in accordance with the execution time requirements laid down in the Directive 2007/64/EC, where applicable. In any event, such funds shall be safeguarded by no later than five business days, as defined in point 27 of Article 4 of that Directive, after the issuance of electronic money.</p>	<p><i>Artikel 7</i> <b>Sicherungsanforderungen</b></p> <p>(1) Die Mitgliedstaaten schreiben E-Geld-Instituten vor, die Geldbeträge, die sie für die Ausgabe von E-Geld entgegengenommen haben, gemäß Artikel 9 Absätze 1 und 2 der Richtlinie 2007/64/EG zu sichern. Geldbeträge, die durch Zahlung mittels eines Zahlungsinstrumentes entgegengenommen werden, brauchen nicht gesichert zu werden, bis sie einem Zahlungskonto eines E-Geld-Instituts gutgeschrieben oder gegebenenfalls einem E-Geld-Institut gemäß den in der Richtlinie 2007/64/EG festgelegten Anforderungen betreffend die Ausführungszeit in anderer Form zur Verfügung gestellt wurden. In jedem Falle sind diese Geldbeträge spätestens fünf Geschäftstage (im Sinne der Begriffsbestimmung in Artikel 4 Nummer 27 jener Richtlinie) nach der</p>	<b>Section 12(1), pt. 1 of the E-Geldgesetz</b>	<p><b>Section 12(1), point 1 of the E-Geldgesetz</b></p> <p>1. Electronic money institutions shall safeguard funds (1) that have been received in exchange for electronic money that has been issued, [...] in accordance with Section 17(1), (2) and (4) of the E-Geldgesetz.</p> <p><b>Section 12(2) of the E-Geldgesetz</b></p> <p>2. Funds received in the form of payment by payment instrument shall be safeguarded as soon as they are credited to the electronic money institution's payment account or are otherwise made available to the electronic money institution in accordance with the execution time requirements laid down in Sections 42 and 43 ZaDiG, where applicable, but in any event, such funds shall be safeguarded by no later than five business days, as defined in point 24 of Section 3 ZaDiG, after the issuance</p>	<p><b>§ 12(1) Ziff. 1 E-Geldgesetz</b></p> <p>(1) E-Geld-Institute haben die Geldbeträge, 1. die sie für die Ausgabe von E-Geld entgegengenommen haben, [...] gemäß § 17 Abs. 1, 2 und 4 ZaDiG zu sichern.</p> <p><b>§12(2) E-Geldgesetz</b></p> <p>(2) Sofern Geldbeträge zum Zweck der Ausgabe von E-Geld [...] durch Zahlung mittels eines Zahlungsinstrumentes entgegengenommen werden, sind diese Geldbeträge, sobald sie einem Zahlungskonto eines E-Geld-Instituts gutgeschrieben oder gegebenenfalls einem E-Geld-Institut gemäß den in den §§ 42 und 43 ZaDiG festgelegten Anforderungen betreffend die Ausführungszeit in anderer Form zur Verfügung gestellt wurden, spätestens aber fünf Geschäftstage (§ 3 Z 24 ZaDiG) nach der Ausgabe des E-Geldes,</p>	<p><b>CONFORM</b></p> <p>Section 12(1), point 1 of the E-Geldgesetz transposes Article 7(1) of the Directive.</p> <p>However, it should be mentioned that the Commission's working document "List of Member States' options of transposition" of 15 April 2011 states that Austria has not applied the option set out in Article 7(1)/9(2) of the PSD.</p> <p>The Austrian provision closely follows the wording of Article 7(1) of the Directive and provides that all electronic money institutions have to safeguard funds received in exchange for electronic money according to Section 17(1), (2) and (4) ZaDiG transposing Article 9(1) of Directive 2007/64/EC.</p> <p>Moreover, the five days deadline is compulsory according to Section 12(2) of the E-Geldgesetz.</p> <p>Like the Directive provision, Section 12(2) of the E-Geldgesetz refers to the execution time provided for payment transactions as defined within Directive 2007/64/EC transposed by Sections 42 and 43 ZaDiG.</p> <p>For funds "otherwise made available", it is up to the contractual freedom between merchant and its payment service provider when the funds are "made available". It should be noted that whatever the contractual arrangements are for cards, funds have to be safeguarded within 5 business days after issuance of electronic money.</p> <p>With regards to it should be noted that Article</p>

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		Ausgabe des E-Geldes zu sichern.		of electronic money, [...].	[...] zu sichern.	9(1) and (2) of the PSD was transposed by Section 17(1) and (2) ZaDiG. The second part of Article 9(2) of the PSD sets out an option that Austria has not chosen to apply.  Therefore, conformity has been concluded for the transposition of Article 7(1) of the Directive.
<b>Art. 7(2) 1<sup>st</sup> subpara.</b>	2. For the purposes of paragraph 1, secure, low-risk assets are asset items falling into one of the categories set out in Table 1 of point 14 of Annex I to Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions for which the specific risk capital charge is no higher than 1,6 %, but excluding other qualifying items as defined in point 15 of that Annex.	(2) Für die Zwecke von Absatz 1 sind sichere Aktiva mit niedrigem Risiko Aktiva, die unter eine der Kategorien gemäß Anhang I Nummer 14 Tabelle 1 der Richtlinie 2006/49/EG des Europäischen Parlaments und des Rates vom 14. Juni 2006 über die angemessene Eigenkapitalausstattung von Wertpapierfirmen und Kreditinstituten fallen, für die die Eigenkapitalanforderung für das spezifische Risiko nicht höher als 1,6 % ist, wobei jedoch andere qualifizierte Positionen gemäß Nummer 15 jenes Anhangs ausgeschlossen sind.	<b>Section 17(4), 1<sup>st</sup> sentence ZaDiG</b>	<b>Section 17(4), first sentence ZaDiG</b>  4. Secure, low-risk assets [...] are asset items falling into one of the categories set out in Table 1 of point 14 of Annex I to Directive 2006/49/EC for which the specific risk capital charge is no higher than 1,6 %, but excluding other qualifying items as defined in point 15 of that Annex.	<b>§ 17(4) erster Satz ZaDiG</b>  (4) Sichere Aktiva mit niedrigem Risiko [...] sind Aktiva, die unter eine der Kategorien gemäß Anhang I Nummer 14 Tabelle 1 der Richtlinie 2006/49/EG fallen, für die die Eigenkapitalanforderung für das spezifische Risiko nicht höher als 1,6 vH ist, wobei jedoch andere qualifizierte Positionen gemäß Anhang I Nummer 15 der Richtlinie 2006/49/EG ausgeschlossen sind.	<b>CONFORM</b>  Section 17(4), first sentence ZaDiG transposes Article 7(2), first subparagraph of the Directive.  Since electronic money institutions are payment service providers within the meaning of Section 1(3), point 3 ZaDiG the provisions of Section 17 ZaDiG with regards to safeguarding requirements transposing Article 7 of the Directive are also applicable to electronic money institutions.  Section 17(4), first sentence ZaDiG closely follows the wording of Article 7(2), first subparagraph of the Directive defining secure, low-risk assets as asset items falling into one of the categories set out in Table 1 of point 14 of Annex I to Directive 2006/49/EC for which the specific risk capital charge is no higher than 1,6 %, but excluding other qualifying items as defined in point 15 of that Annex.  Therefore, conformity has been concluded for the transposition of Article 7(2), first subparagraph of the Directive.

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<b>Art. 7(2) 2<sup>nd</sup> subpar a.</b>	For the purposes of paragraph 1, secure, low-risk assets are also units in an undertaking for collective investment in transferable securities (UCITS) which invests solely in assets as specified in the first subparagraph.	Für die Zwecke von Absatz 1 sind sichere Aktiva mit niedrigem Risiko auch Anteile an einem Organismus für gemeinsame Anlagen in Wertpapieren (OGAW), der ausschließlich in in Unterabsatz 1 genannte Aktiva investiert.	<b>Section 17(4), 2<sup>nd</sup> sentence ZaDiG</b>	<b>Section 17(4), second sentence ZaDiG</b> Secure, low-risk assets are also units in an undertaking for collective investment in transferable securities (UCITS) which invests solely in assets as specified in the first sentence.	<b>§ 17(4) zweiter Satz ZaDiG</b> Weiters sind sichere Aktiva mit niedrigem Risiko auch Anteile an einem Organismus für gemeinsame Anlagen in Wertpapieren (OGAW), der ausschließlich in die im vorstehenden Satz bezeichneten Aktiva investiert.	<b>CONFORM</b> Section 17(4), second sentence ZaDiG literally transposes Article 7(2) second subparagraph of the Directive.
<b>Art. 7(2) 3<sup>rd</sup> subpar a.</b>	In exceptional circumstances and with adequate justification, the competent authorities may, based on an evaluation of security, maturity, value or other risk element of the assets as specified in the first and second subparagraphs, determine which of those assets do not constitute secure, low-risk assets for the purposes of paragraph 1.	Unter außergewöhnlichen Umständen und bei angemessener Begründung können die zuständigen Behörden auf der Grundlage einer Bewertung der Sicherheit, des Fälligkeitstermins, des Wertes oder anderer Risikofaktoren der im ersten und zweiten Unterabsatz genannten Aktiva bestimmen, welche dieser Aktiva keine sicheren Aktiva mit niedrigem Risiko für die Zwecke von Absatz 1 darstellen.	<b>Section 17(4), 3<sup>rd</sup> and last sentence ZaDiG</b>	<b>Section 17(4), third and last sentence ZaDiG</b> In exceptional circumstances the FMA may by regulation determine which of the assets as specified in the first and second sentence, do not constitute secure, low-risk assets for the purposes of point 1(b)(bb) of paragraph 1. The FMA's regulation shall be based on an evaluation of security, maturity, value or other risk element of the assets as specified in the first and second sentences.	<b>§ 17(4) dritter und letzter Satz ZaDiG</b> Die FMA kann unter außergewöhnlichen Umständen mittels Verordnung bestimmen, welche der im ersten und zweiten Satz bezeichneten Aktiva keine sicheren liquiden Aktiva mit niedrigem Risiko für die Zwecke des Abs. 1 Z 1 lit. b sublit. bb darstellen. Sie hat dabei die Sicherheit, den Fälligkeitstermin, den Wert oder andere Risikofaktoren der im ersten und zweiten Satz bezeichneten Aktiva zu bewerten und auf diese Faktoren in ihrer Verordnung Bedacht zu	<b>CONFORM</b> Article 7(2) third subparagraph of the Directive sets out an option that has been applied by the Austrian legislator.  In exceptional circumstances the FMA may determine which of the assets as specified in the first and second sentence of Section 17(4) ZaDiG do not constitute secure, low-risk assets.  Like the Directive provision, Section 17(4), third and last sentence ZaDiG does not define "exceptional circumstances". Therefore, it is up to the FMA to determine when such situations arise.  However this is still in conformity with the Directive. Therefore, conformity was concluded for the transposition of the option set out in Article 7(2), third subparagraph of the Directive.

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<b>Art. 7(3)</b>	3. Article 9 of Directive 2007/64/EC shall apply to electronic money institutions for the activities referred to in Article 6(1)(a) of this Directive that are not linked to the activity of issuing electronic money.	(3) Artikel 9 der Richtlinie 2007/64/EG findet auf E-Geld- Institute für die in Artikel 6 Absatz 1 Buchstabe a der vorliegenden Richtlinie genannten Tätigkeiten Anwendung, die nicht mit der Ausgabe von E-Geld in Verbindung stehen.	<b>Section 12(1), pt. 2 of the E-Geldgesetz</b>	<b>Section 12(1), point 2 of the E-Geldgesetz</b> 1. Electronic money institutions shall safeguard amounts, (2) that they provide in the frame of payment services [...] that are not linked to the issuance of electronic money [...] according to Section 17(1), (2) and (4) ZaDiG	<b>§ 12(1) Ziff. 2 E-Geldgesetz</b> (1) E-Geld-Institute haben die Geldbeträge, 2. die sie im Rahmen der Erbringung von Zahlungsdiensten [...], die nicht mit der Ausgabe von E-Geld in Verbindung stehen [...], gemäß § 17 Abs. 1, 2 und 4 ZaDiG zu sichern.	<b>CONFORM</b> Article 7(3) of the Directive sets out an option. Owing to this option, Austria chose to apply the option. Section 12(1), point 1 of the E-Geldgesetz transposes Article 7(3) of the Directive. It provides for the safeguarding by electronic money institutions of amounts that are not linked to the issuance of electronic money according to Section 17(1), (2) and (4) ZaDiG transposing Article 9 of Directive 2007/64/EC. Therefore, conformity has been concluded for the transposition of Article 7(3) of the Directive.
<b>Art. 7(4)</b>	4. For the purposes of paragraphs 1 and 3, Member States or their competent authorities may determine, in accordance with national legislation, which method shall be used by the electronic money institutions to safeguard funds.	(4) Für die Zwecke der Absätze 1 und 3 können die Mitgliedstaaten oder ihre zuständigen Stellen im Einklang mit den nationalen Rechtsvorschriften bestimmen, nach welcher Methode die E-Geld-Institute Geldbeträge zu sichern haben.	<b>Section 12(1), last sentence of the E-Geldgesetz</b>	<b>Section 12(1), last sentence of the E-Geldgesetz</b> The FMA may after hearing the electronic money institution under consideration of the specific situation determine which method shall be used by the electronic money institution to safeguard funds.	<b>§ 12(1) letzter Satz E-Geldgesetz</b> Die FMA kann auch nach Anhörung des E-Geld-Instituts eine bestimmte Sicherungsmethode [...] unter Bedachtnahme auf die tatsächliche Situation des E-Geld-Institutes vorschreiben.	<b>CONFORM</b> Article 7(4) of the Directive sets out an option. Owing to this option, Austria chose to apply the option. Section 12(1), last sentence of the E-Geldgesetz transposes Article 7(4) of the Directive. Section 12(1), last sentence of the E-Geldgesetz provides for the possibility of the FMA to determine which method shall be used by the electronic money institution to safeguard funds. Therefore, conformity was concluded for the transposition set out in Article 7(4) of the

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						Directive.
<b>Art. 8(1)</b>	<p><i>Article 8</i> <b>Relations with third countries</b></p> <p>1. Member States shall not apply to a branch of an electronic money institution having its head office outside the Community, when taking up or pursuing its business, provisions which result in more favourable treatment than that accorded to an electronic money institution having its head office within the Community.</p>	<p><i>Artikel 8</i> <b>Beziehungen zu Drittländern</b></p> <p>(1) Die Mitgliedstaaten wenden für die Aufnahme und die Ausübung der Tätigkeit von Zweigniederlassungen von E-Geld-Instituten mit Sitz außerhalb der Gemeinschaft keine Bestimmungen an, welche diese Zweigniederlassungen günstiger stellen würden als E-Geld-Institute mit Sitz in der Gemeinschaft.</p>	<p><b>Section 1(2), pt. 2 of the E-Geldgesetz</b></p> <p><b>Section 9(1), 1<sup>st</sup> sentence of the E-Geldgesetz</b></p> <p><b>Section 14(9) of the E-Geldgesetz</b></p>	<p><b>Section 1(2), point 2 of the E-Geldgesetz</b></p> <p>2. Electronic money issuers are the following: (2) electronic money institutions [...] according to Section 9 that are authorised to issue electronic money according to the law of the Member State of origin including a branch thereof, where such a branch is located within the European Economic Area and its head office is located outside the Community, if the European Union has concluded corresponding agreements or if these credit institutions have been issued an authorisation according to Section 4(6) of the E-Geldgesetz;</p> <p><b>Section 9(1), first sentence of the E-Geldgesetz</b></p> <p>1. The issuance of electric money according to</p>	<p><b>§ 1(2) Ziff. 2 E-Geldgesetz</b></p> <p>(2) E-Geldemittenten sind: 2. E-Geld-Institute [...] gemäß § 9, die nach dem Recht ihres Herkunftmitgliedstaates [...] zur Ausgabe von E-Geld berechtigt sind, einschließlich innerhalb des Europäischen Wirtschaftsraumes ansässiger Zweigstellen von E-Geld-Instituten, deren Sitz sich außerhalb des Europäischen Wirtschaftsraumes befindet, sofern die Europäische Union entsprechende Abkommen abgeschlossen hat oder sofern diesen eine Konzession gemäß § 4 Abs. 6 erteilt worden ist;</p> <p><b>§ 9(1) erster Satz E-Geldgesetz</b></p> <p>(1) Die Ausgabe von E-Geld gemäß Art. 2 Nummer 2 der Richtlinie 2009/110/EG sowie Zahlungsdienste gemäß</p>	<p><b>CONFORM</b></p> <p>Section 1(2), point 2 in conjunction with Section 9(1) of the E-Geldgesetz transposes Article 8(1) in conjunction with Article 1(1)(b) of the Directive.</p> <p>Branches of electronic money institutions having their head office outside the EEA are considered electronic money institutions within the meaning of the E-Geldgesetz, if either an EU agreement confers such a status to them or they have been granted authorisation according to the E-Geldgesetz. This guarantees that electronic money institutions having their head offices outside the Community do not enjoy a more favorable treatment than electronic money institutions having their head offices within the Community.</p> <p>Moreover, no provision that is more favourable for foreign electronic money institutions could be located in the Austrian legislation.</p> <p>In addition, an authorisation for foreign electronic money institutions according to the E-Geldgesetz only authorises them to payment services linked to the issuance of electronic money. However, they cannot provide any other payment services not linked to the issuance of electronic money without the necessary authorisation.</p> <p>Furthermore, according to Section 9(1) of the</p>



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				<p>Article 2, point 2 of Directive 2009/110/EC as well as payment services according to Article 4, point 3 of Directive 2007/64/EC can be exercised in Austria by an electronic money institution within the meaning of Article 1(1)(b) of Directive 2009/110/EC, if it has an authorisation of another Member State by way of a branch or by way of freedom to provide services as long as the authorisation allows that.</p> <p><b>Section 14(9), first sentence of the E-Geldgesetz</b></p> <p>9. Branches of foreign electronic money institutions shall also submit the annual financial statements of the foreign electronic money institution within six months after the end of the business year to the FMA and the Austrian National Bank.</p>	<p>Art. 4 Nummer 3 der Richtlinie 2007/64/EG können von einem E-Geld-Institut im Sinne von Art. 1 Abs. 1 Buchstabe b der Richtlinie 2009/110/EG, das in einem anderen Mitgliedstaat zugelassen ist, [...] in Österreich über eine Zweigstelle erbracht oder ausgeübt oder im Wege der Dienstleistungsfreiheit erbracht werden, soweit seine Zulassung es dazu berechtigt.</p> <p><b>§ 14(9), erster Satz E-Geldgesetz</b></p> <p>(9) Zweigstellen ausländischer E-Geld-Institute haben überdies die Jahresabschlüsse des ausländischen E-Geld-Institutes innerhalb von sechs Monaten nach Abschluss des Geschäftsjahres der FMA und der Oesterreichischen Nationalbank zu übermitteln.</p>	<p>E-Geldgesetz the issuance of electric money as well as payment services can be exercised in Austria by a foreign electronic money institution by way of a branch or by way of freedom to provide services only, if the authorisation allows that or it has an authorisation of another Member State. However, this does not automatically entitle them to exercise the right of establishment and freedom to provide services within the meaning of Article 49 and Article 56 of the Treaty on the Functioning of the European Union.</p> <p>Finally, Section 14(9), first sentence of the E-Geldgesetz provides for additional obligations of branches of foreign electronic money institutions in Austria by requiring them to submit the electronic money institution's annual financial statement to the FMA and the Austrian National Bank.</p> <p>Since electronic money institutions having their head offices outside the Community do not enjoy a more favorable treatment than electronic money institutions having their head offices within the Community the requirements set out in recital 15 of the Directive are fulfilled by the Austrian legislation.</p> <p>This is in conformity with Article 8(1) of the Directive.</p>
<b>Art. 8(2)</b>	2. The competent authorities shall notify the	(2) Die zuständigen Behörden teilen der	<b>Section 4(6),</b>	<b>Section 4(6), first sentence of the E-</b>	<b>§ 4(6) E-Geldgesetz</b> (6) Im Falle der	<b>CONFORM</b> Section 4(6), first sentence of the E-

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	Commission of all authorisations for branches of electronic money institutions having their head office outside the Community.	Kommission alle Zulassungen von Zweigniederlassungen mit, die sie E-Geld-Instituten mit Sitz außerhalb der Gemeinschaft erteilt haben.	<b>1st sentence of the E-Geldgesetz</b>	<b>Geldgesetz</b> 6. In the case of granting an authorisation to operate a branch of a foreign electronic money institution [...] in Austria, the FMA shall submit a copy of the decision to the supervisory authority of the head office and shall inform the European Commission thereof without delay.	Konzessionserteilung zum Betrieb einer Zweigstelle eines ausländischen E-Geld-Institutes [...] in Österreich hat die FMA eine Ausfertigung des Bescheides der Aufsichtsbehörde der Hauptniederlassung zu übermitteln und die Europäische Kommission unverzüglich zu informieren.	Geldgesetz transposes Article 8(2) of the Directive.  Section 4(6), first sentence of the E-Geldgesetz provides for the compulsory notification by the FMA if it has granted an authorisation to operate a branch of a foreign electronic money institution in Austria.  This fulfils the requirement set out in Article 8(2) of the Directive.  Therefore, conformity was concluded for the transposition of Article 8(2) of the Directive.
<b>Art. 8(3)</b>	3. Without prejudice to paragraph 1, the Community may, through agreements concluded with one or more third countries, agree to apply provisions that ensure that branches of an electronic money institution having its head office outside the Community are treated identically throughout the Community.	(3) Unbeschadet des Absatzes 1 kann die Gemeinschaft in Abkommen, die mit einem oder mehreren Drittländern geschlossen werden, die Anwendung von Bestimmungen vereinbaren, mit denen sichergestellt wird, dass Zweigniederlassungen eines E-Geld-Instituts mit Sitz außerhalb der Gemeinschaft die gleiche Behandlung in der gesamten Gemeinschaft genießen.	<b>Section 14(9), 1<sup>st</sup> and 4<sup>th</sup> sentence of the E-Geldgesetz</b>	<b>Section 14(9), first and fourth sentence of the E-Geldgesetz</b>  (9) Branches of foreign electronic money institutions shall transfer the annual financial statements of the foreign electronic money institution to the FMA and the Austrian National Bank. [...] The Federal Minister of Finance is authorised after hearing the FMA to conclude agreements with countries outside the European Economic Area on the basis of reciprocity, which exempt the branches of foreign electronic money institutions from the	<b>§ 14(9), erster und letzter Satz E-Geldgesetz</b>  (9) Zweigstellen ausländischer E-Geld-Institute haben überdies die Jahresabschlüsse des ausländischen E-Geld-Institutes [...] der FMA und der Oesterreichischen Nationalbank zu übermitteln. [...] Der Bundesminister für Finanzen ist ermächtigt, nach Anhörung der FMA mit Ländern außerhalb des Europäischen Wirtschaftsraumes auf Grundlage der Gegenseitigkeit Abkommen zu schließen, die Zweigstellen ausländischer E-Geld-	<b>CONFORM</b>  Section 14(9), fourth sentence of the E-Geldgesetz provides for a case by case authorisation process for branches of electronic money institutions having their head office outside the Community and authorises the Minister of Finance to conclude agreements with third countries which exempt the branches of foreign electronic money institutions from the obligation to publish an annual report.  This shall ensure equal treatment of an electronic money institution having its head office within the Community with one having its head office outside the Community. Therefore, conformity was concluded for the transposition of Article 8(3) of the Directive.

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				obligation to publish an annual report on financial matters specifically related on their own activities.	Institute von der Verpflichtung entbinden, einen auf ihre eigene Tätigkeit bezogenen Jahresabschluss offen zu legen.	
<b>Art. 9(1) 1<sup>st</sup> subparagraph a. intr. wording</b>	<p><i>Article 9</i> <b>Optional Exemptions</b></p> <p>1. Member States may waive or allow their competent authorities to waive the application of all or part of the procedures and conditions set out in Articles 3, 4, 5 and 7 of this Directive, with the exception of Articles 20, 22, 23 and 24 of Directive 2007/64/EC, and allow legal persons to be entered in the register for electronic money institutions if both of the following requirements are complied with:</p>	<p><i>Artikel 9</i> <b>Ausnahmemöglichkeiten</b></p> <p>(1) Mit Ausnahme der Artikel 20, 22, 23 und 24 der Richtlinie 2007/64/EG können die Mitgliedstaaten ganz oder teilweise von der Anwendung der Verfahren und Bedingungen der Artikel 3, 4, 5 und 7 der vorliegenden Richtlinie absehen oder ihren zuständigen Behörden dies gestatten und die Eintragung juristischer Personen in das Register der E-Geld-Institute zulassen, wenn folgende Voraussetzungen eingehalten werden:</p>	N/A	N/A	N/A	Article 9(1), first subparagraph of the Directive sets out an option. Owing to this option, Austria has not to have applied it.
<b>Art. 9(1) 1<sup>st</sup> subparagraph . (a)</b>	(a) the total business activities generate an average outstanding electronic money that does not exceed a limit set by the Member State but that, in any event, amounts to	a) Durch die gesamte Geschäftstätigkeit entsteht ein durchschnittlicher E-Geld-Umlauf, dessen Volumen einen von dem Mitgliedstaat festgelegten Betrag und auf jeden Fall	N/A	N/A	N/A	Article 9(1), first subparagraph (a) of the Directive sets out an option. Austria has chosen not to apply this option.

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	no more than EUR 5000000; and	5 000 000 EUR nicht übersteigt, und				
<b>Art. 9(1) 1<sup>st</sup> subpar a. (b)</b>	(b) none of the natural persons responsible for the management or operation of the business has been convicted of offences relating to money laundering or terrorist financing or other financial crimes.	b) keine der für die Leitung oder den Betrieb des Unternehmens verantwortlichen natürlichen Personen wurde wegen eines Verstoßes gegen Vorschriften zur Bekämpfung der Geldwäsche oder Terrorismusfinanzierung oder wegen anderer Finanzstraftaten verurteilt.	N/A	N/A	N/A	Article 9(1), first subparagraph (b) of the Directive sets out an option. Austria has chosen not to apply this option.
<b>Art. 9(1) 2<sup>nd</sup> subpar a,</b>	Where an electronic money institution carries out any of the activities referred to in Article 6(1)(a) that are not linked to the issuance of electronic money or any of the activities referred to in Article 6(1)(b) to (e) and the amount of outstanding electronic money is unknown in advance, the competent authorities shall allow that electronic money institution to apply point (a) of the first subparagraph on the basis of a representative portion	Übt ein E-Geld-Institut eine der in Artikel 6 Absatz 1 Buchstabe a genannten Tätigkeiten aus, die nicht mit der Ausgabe von E-Geld oder mit einer der in Artikel 6 Absatz 1 Buchstaben b bis e genannten Tätigkeiten in Verbindung steht, und ist die Höhe des E-Geld-Umlaufs im Voraus nicht bekannt, gestattet die zuständige Behörde diesem E-Geld-Institut, Unterabsatz 1 Buchstabe a unter Zugrundelegung eines repräsentativen	N/A	N/A	N/A	Article 9(1), second subparagraph of the Directive sets out an option. Austria has chosen not to apply this option.

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	<p>assumed to be used for the issuance of electronic money, provided that such a representative portion can be reasonably estimated on the basis of historical data and to the satisfaction of the competent authorities. Where an electronic money institution has not completed a sufficiently long period of business, that requirement shall be assessed on the basis of projected outstanding electronic money evidenced by its business plan subject to any adjustment to that plan having been required by the competent authorities.</p>	<p>Anteils anzuwenden, der typischerweise für die Ausgabe von E-Geld verwendet wird, sofern sich dieser repräsentative Anteil auf der Grundlage historischer Daten nach Überzeugung der zuständigen Behörden mit hinreichender Sicherheit schätzen lässt. Kann ein E-Geld-Institut noch nicht auf eine ausreichend lange Geschäftstätigkeit zurückblicken, so wird auf der Grundlage des aus seinem Geschäftsplan hervorgehenden erwarteten E-Geld-Umlaufs bewertet, ob diese Anforderung erfüllt ist, sofern von den zuständigen Behörden keine Anpassung dieses Plans verlangt wird.</p>				
<p><b>Art. 9(1) 3<sup>rd</sup> subpar a.</b></p>	<p>Member States may also provide for the granting of the optional exemptions under this Article to be subject to an additional requirement of a maximum storage amount on the payment instrument or payment account of the consumer where the</p>	<p>Die Mitgliedstaaten können die Gewährung von Ausnahmeregelungen nach diesem Artikel auch davon abhängig machen, dass zusätzlich dazu ein maximaler Speicherbetrag für das Zahlungsinstrument oder das Zahlungskonto des Verbrauchers, auf dem E-</p>	N/A	N/A	N/A	<p>Article 9(1), third subparagraph of the Directive sets out an option. Austria has chosen not to apply this option.</p>

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	electronic money is stored.	Geld gespeichert ist, festgelegt wird.				
<b>Art. 9(1) 4<sup>th</sup> subpara.</b>	A legal person registered in accordance with this paragraph may provide payment services not related to electronic money issued in accordance with this Article only if conditions set out in Article 26 of Directive 2007/64/EC are met.	Eine juristische Person, die nach diesem Absatz registriert ist, kann nur dann Zahlungsdienste, die nicht mit dem nach diesem Artikel emittierten E-Geld in Verbindung stehen, anbieten, wenn die Voraussetzungen des Artikels 26 der Richtlinie 2007/64/EG erfüllt sind.	N/A	N/A	N/A	Article 9(1), fourth subparagraph of the Directive sets out an option. Austria has chosen not to apply this option.
<b>Art. 9(2)</b>	2. A legal person registered in accordance with paragraph 1 shall be required to have its head office in the Member State in which it actually pursues its business.	(2) Eine juristische Person, die nach Absatz 1 registriert ist, muss ihren Sitz in dem Mitgliedstaat haben, in dem sie ihre Tätigkeit tatsächlich ausübt.	N/A	N/A	N/A	Article 9(2) of the Directive sets out an option. Austria has chosen not to apply this option.
<b>Art. 9(3)</b>	3. A legal person registered in accordance with paragraph 1 shall be treated as an electronic money institution. However, Article 10(9) and Article 25 of Directive 2007/64/EC shall not apply to it.	(3) Eine juristische Person, die gemäß Absatz 1 registriert ist, wird wie ein E-Geld-Institut behandelt. Artikel 10 Absatz 9 und Artikel 25 der Richtlinie 2007/64/EG gelten für sie jedoch nicht.	N/A	N/A	N/A	Article 9(3) of the Directive sets out an option. Austria has chosen not to apply this option.
<b>Art. 9(4)</b>	4. Member States may provide for a legal person registered in accordance	(4) Die Mitgliedstaaten können vorsehen, dass eine juristische Person, die	N/A	N/A	N/A	Article 9(4) of the Directive sets out an option. Austria has chosen not to apply this option.

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	with paragraph 1 to engage only in some of the activities listed in Article 6(1).	gemäß Absatz 1 registriert ist, nur bestimmte in Artikel 6 Absatz 1 genannte Tätigkeiten ausüben darf.				
<b>Art. 9(5) intr. wording</b>	5. A legal person referred to in paragraph 1 shall:	(5) Eine juristische Person im Sinne von Absatz 1	N/A	N/A	N/A	Article 9(5) of the Directive sets out an option. Austria has chosen not to apply this option.
<b>Art. 9(5)(a)</b>	(a) notify the competent authorities of any change in its situation which is relevant to the conditions specified in paragraph 1; and	a) meldet den zuständigen Behörden jede Änderung ihrer Verhältnisse, die für die in Absatz 1 genannten Voraussetzungen von Bedeutung ist, und	N/A	N/A	N/A	Article 9(5)(a) of the Directive sets out an option. Austria has chosen not to apply this option.
<b>Art. 9(5)(b)</b>	(b) at least annually, on date specified by the competent authorities, report on the average outstanding electronic money.	b) berichtet mindestens jährlich an einem von den zuständigen Behörden festgelegten Datum über den durchschnittlichen E-Geld-Umlauf.	N/A	N/A	N/A	Article 9(5)(b) of the Directive sets out an option. Austria has chosen not to apply this option.
<b>Art. 9(6)</b>	6. Member States shall take the necessary steps to ensure that where the conditions set out in paragraphs 1, 2 and 4 are no longer met, the legal person concerned shall seek authorisation within 30 calendar days in accordance with Article 3.	(6) Die Mitgliedstaaten ergreifen die notwendigen Maßnahmen, um sicherzustellen, dass die betroffene juristische Person binnen 30 Kalendertagen eine Zulassung gemäß Artikel 3 beantragt, wenn die Voraussetzungen der	N/A	N/A	N/A	Article 9(6) of the Directive sets out an option. Austria has chosen not to apply this option.

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	Any such person that has not sought authorisation within that period shall be prohibited, in accordance with Article 10, from issuing electronic money.	Absätze 1, 2 und 4 nicht mehr erfüllt sind. Eine juristische Person, die innerhalb dieses Zeitraums keine Zulassung beantragt hat, wird nach Artikel 10 die weitere Ausgabe von E-Geld untersagt.				
<b>Art. 9(7)</b>	7. Member States shall ensure that their competent authorities are sufficiently empowered to verify continued compliance with the requirements laid down in this Article.	(7) Die Mitgliedstaaten stellen sicher, dass die zuständigen Behörden mit ausreichenden Befugnissen ausgestattet werden, um die ständige Erfüllung der in diesem Artikel festgelegten Anforderungen zu überprüfen.	N/A	N/A	N/A	Article 9(7) of the Directive sets out an option. Austria has chosen not to apply this option.
<b>Art. 9(8)</b>	8. This Article shall not apply in respect of the provisions of Directive 2005/60/EC or national anti-money-laundering provisions.	(8) Dieser Artikel gilt nicht für die Bestimmungen der Richtlinie 2005/60/EG oder einzelstaatliche Bestimmungen zur Bekämpfung der Geldwäsche.	N/A	N/A	N/A	Article 9(8) of the Directive sets out an option. Austria has chosen not to apply this option.
<b>Art. 9(9)</b>	9. Where a Member State avails itself of the waiver provided for in paragraph 1, it shall notify the Commission accordingly by 30 April 2011. The Member State shall notify	(9) Macht ein Mitgliedstaat von der Ausnahmeregelung gemäß Absatz 1 Gebrauch, so teilt er dies der Kommission bis zum 30. April 2011 mit. Der	N/A	N/A	N/A	Article 9(9) of the Directive sets out an option. Austria has chosen not to apply this option.



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	the Commission forthwith of any subsequent change. In addition, the Member State shall inform the Commission of the number of legal persons concerned and, on an annual basis, of the total amount of outstanding electronic money issued at 31 December of each calendar year, as referred to in paragraph 1.	Mitgliedstaat setzt die Kommission unverzüglich von allen späteren Änderungen in Kenntnis. Außerdem teilt der Mitgliedstaat der Kommission die Zahl der betroffenen juristischen Personen sowie jährlich den Gesamtbetrag des am 31. Dezember jedes Kalenderjahres ermittelten E-Geld-Umlaufs im Sinne von Absatz 1 mit.				
<b>Art. 10</b>	<p style="text-align: center;"><b>TITLE III ISSUANCE AND REDEEMABILITY OF ELECTRONIC MONEY</b></p> <p style="text-align: center;"><i>Article 10</i> <b>Prohibition from issuing electronic money</b></p> <p>Without prejudice to Article 18, Member States shall prohibit natural or legal persons who are not electronic money issuers from issuing electronic money.</p>	<p style="text-align: center;"><b>TITEL III AUSGABE UND RÜCKTAUSCHBARKE IT VON E-GELD</b> <i>Artikel 10</i> <b>Verbot der Ausgabe von E-Geld</b></p> <p>Unbeschadet von Artikel 18 untersagen die Mitgliedstaaten natürlichen oder juristischen Personen, die keine E-Geld-Emittenten sind, die Ausgabe von E-Geld.</p>	<b>Section 1(2), pts. 1 to 5 of the E-Geldgesetz</b>	<b>Section 1(2), points 1 to 5 of the E-Geldgesetz</b>  2. Only electronic money issuers shall be authorised to issue electronic money. 1. Electronic money issuers are the following: (1) Credit institutions within the meaning of Section 1 BWG [...]; (2) electronic money institutions as defined in Section 3(2) of the E-Geldgesetz [...]; (3) Post offices within the frame of money transactions (4) the European Central Bank, the Austrian national bank, as well as other central banks of the	<b>§ 1(2), Ziff. 1 bis 5 E-Geldgesetz</b>  (2) Nur E-Geld-Emittenten sind zur Ausgabe von E-Geld berechtigt. E-Geld-Emittenten sind: 1. Kreditinstitute im Sinne des § 1 Bankwesengesetz – [...]; 2. E-Geld-Institute im Sinne des § 3 Abs. 2 [...]; 3. die Post, im Rahmen des Geldverkehrs; 4. die Europäische Zentralbank, die Oesterreichische Nationalbank, sowie andere Zentralbanken des Europäischen Wirtschaftsraumes, sofern sie nicht in ihrer	<b>CONFORM</b>  Section 1(2), points 1 to 5 of the E-Geldgesetz transposes Article 10 of the Directive.  Pursuant to Section 1(2), points 1 to 5 of the E-Geldgesetz, only electronic money issuers within the meaning of the E-Geldgesetz are authorised to issue electronic money.  Consequently, natural or legal persons who are not electronic money issuers shall be prohibited from issuing electronic money according to Austrian law.  This is in conformity with Article 10 of the Directive.

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				European Economic Area, when not acting in their capacity as monetary authority or other public authorities; (5) The federation, the regions and local authorities acting in their capacity as public authorities; (6) The Austrian control Bank.	Eigenschaft als Währungsbehörden oder sonst als Behörden handeln; 5. Der Bund, die Länder und Gemeinden, wenn sie als Behörden handeln; 6. Die Oesterreichische Kontrollbank.	
<b>Art. 11(1)</b>	<b>Article 11 Issuance and redeemability</b>  1. Member States shall ensure that electronic money issuers issue electronic money at par value on the receipt of funds.	<b>Artikel 11 Ausgabe und Rücktauschbarkeit</b>  (1) Die Mitgliedstaaten stellen sicher, dass E-Geld-Emittenten E-Geld zum Nennwert des entgegengenommenen Geldbetrags ausgeben.	<b>Section 17 of the E-Geldgesetz</b>	<b>Section 17 of the E-Geldgesetz</b>  An electronic money issuer shall issue electronic money at par value on the receipt of funds. If agreements provide for something different, such provisions shall be ineffective.	<b>§ 17 E-Geldgesetz</b>  Der E-Geld-Emittent hat E-Geld stets in der Höhe des Nennwertes des entgegengenommenen Geldbetrages auszugeben. Soweit in Vereinbarungen davon zulasten von E-Geld-Inhabern abgewichen wird, sind diese Bestimmungen unwirksam.	<b>CONFORM</b>  Section 17 of the E-Geldgesetz transposes Article 11(1) of the Directive.  Section 17, first sentence of the E-Geldgesetz ensures that electronic money issuers issue electronic money at par value on the receipt of funds.  Moreover, the second sentence of Section 17 of the E-Geldgesetz provides for the nullity of differing provisions in a contract. This guarantees that redemption shall be possible at any time and at par value without any possibility to agree a minimum threshold for redemption.  This also fulfils the requirements set out in recital 18 of the Directive.  Therefore, conformity has been concluded for the transposition of Article 11(1) of the Directive.

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<b>Art. 11(2)</b>	2. Member States shall ensure that, upon request by the electronic money holder, electronic money issuers redeem, at any moment and at par value, the monetary value of the electronic money held.	(2) Die Mitgliedstaaten stellen sicher, dass E-Geld-Emittenten den monetären Wert des gehaltenen E-Geldes auf Verlangen des E-Geld-Inhabers jederzeit zum Nennwert erstatten.	<b>Section 18(1), first sentence of the E-Geldgesetz</b>	<b>Section 18(1), first sentence of the E-Geldgesetz</b> 1. Electronic money issuers shall upon request by the electronic money holder, redeem, at any moment and at par value, the monetary value of the electronic money held.	<b>§ 18(1), erster Satz E-Geldgesetz</b> (1) Der E-Geld-Emittent hat dem E-Geld-Inhaber auf Verlangen jederzeit den monetären Wert des gehaltenen E-Geldes zum Nennwert, [...], zu erstatten. .	<b>CONFORM</b> Section 18(1) of the E-Geldgesetz transposes Article 11(2) of the Directive.  Section 18(1) of the E-Geldgesetz provides that, upon request by the electronic money holder, electronic money issuers shall redeem, at any moment and at par value, the monetary value of the electronic money held.  The Austrian legislation does not provide for any "period of notice" with regards to the redemption. Therefore, since a period of notice cannot be imposed by national Austrian legislation, Section 18(1) E-Geldgesetz leaves it up to the contractual freedom to determine the conditions of redemption which is in line with the Directive.  Thus, conformity to Article 11(2) of the Directive was concluded.
<b>Art. 11(3)</b>	3. The contract between the electronic money issuer and the electronic money holder shall clearly and prominently state the conditions of redemption, including any fees relating thereto, and the electronic money holder shall be informed of those conditions before being bound by any contract or offer.	(3) Im Vertrag zwischen dem E-Geld-Emittenten und dem E-Geld-Inhaber sind die Rücktauschbedingungen, einschließlich etwaiger diesbezüglicher Entgelte, eindeutig und deutlich erkennbar anzugeben; der E-Geld-Inhaber ist über diese Bedingungen zu informieren, bevor er durch einen Vertrag oder ein Angebot gebunden	<b>Section 19(1) of the E-Geldgesetz</b>	<b>Section 19(1) of the E-Geldgesetz</b> 1. The contract between the electronic money issuer and the electronic money holder shall clearly and prominently state the conditions of redemption, including any fees relating thereto. The electronic money issuer shall inform the electronic money holder of those conditions before being bound by any	<b>§ 19(1) E-Geldgesetz</b> (1) Die Rücktauschbedingungen, einschließlich allfälliger diesbezüglicher Entgelte, sind im Vertrag zwischen E-Geld-Emittenten und E-Geld-Inhaber eindeutig und klar erkennbar anzugeben. Der E-Geld-Emittent hat dem E-Geld-Inhaber diese Bedingungen rechtzeitig, bevor der Kunde durch	<b>CONFORM</b> Section 19(1) of the E-Geldgesetz transposes Article 11(3) of the Directive.  Section 19(1) of the E-Geldgesetz provides that the contract between the electronic money issuer and the electronic money holder shall clearly and prominently state the conditions of redemption, including any fees relating thereto and that the electronic money holder shall be informed of those conditions before being bound by any contract or offer.  Therefore, conformity has been concluded for the transposition of Article 11(3) of the

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		wird.		contract or offer. If agreements provide for something different to the detriment of the electronic money holder, such provisions shall be ineffective.	einen Vertrag oder ein Vertragsangebot gebunden ist, mitzuteilen. Soweit in Vereinbarungen davon zulasten von Verbrauchern abgewichen wird, sind diese Bestimmungen unwirksam.	Directive.
<b>Art. 11(4) 1<sup>st</sup> subpar a. intr. wording</b>	4. Redemption may be subject to a fee only if stated in the contract in accordance with paragraph 3 and only in any of the following cases:	(4) Beim Rücktausch fällt nur dann ein Entgelt an, wenn dies im Vertrag gemäß Absatz 3 geregelt wurde, und nur in folgenden Fällen:	<b>Section 19(2), intr. wording and last sentence of the E-Geldgesetz</b>	<b>Section 19(2), introductory wording and last sentence of the E-Geldgesetz</b> 2. Redemption may be subject to a fee only, if [...] if stated in the contract in accordance with paragraph 1.	<b>§ 19(2), einl. Worte und letzter Satz E-Geldgesetz</b> (2) Entgelte für den Rücktausch dürfen nur verrechnet werden [...], wenn sie vorher wirksam gemäß Abs. 1 vertraglich vereinbart worden	<b>CONFORM</b> With regard to Article 11(4) to (7) of the Directive, it should be noted that the Austrian legislator chose to take over the wording of the Directive in Section 19(2) to (5) of the E-Geldgesetz in an almost literal manner with a slightly different structure.  Section 19(2), introductory wording of the E-Geldgesetz transposes Article 11(4), first subparagraph, introductory wording of the Directive.  Section 19(2), last sentence of the E-Geldgesetz states that a fee for redemption shall only be permitted if stated in the contract in accordance with paragraph 1.  This is in conformity with Article 11(4), first subparagraph, introductory wording of the Directive.
<b>Art.11 (4) 1<sup>st</sup> subpar a. (a)</b>	(a) where redemption is requested before the termination of the contract;	a) wenn vor Vertragsablauf ein Rücktausch verlangt wird;	<b>Section 19(2), pt. 1 of the E-Geldgesetz</b>	<b>Section 19(2), point 1 of the E-Geldgesetz</b> (1) requests redemption before the termination of the contract	<b>§ 19(2) Ziff. 1 E-Geldgesetz</b> 1. vor Vertragsablauf vom E-Geld-Emittenten einen Rücktausch verlangt,	<b>CONFORM</b> Section 19(2), point 1 of the E-Geldgesetz literally transposes Article 11(4), first subparagraph, point (a) of the Directive.

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<b>Art. 11(4) 1<sup>st</sup> subpar a. (b)</b>	(b) where the contract provides for a termination date and the electronic money holder terminates the contract before that date; or	b) wenn vertraglich ein Ablaufdatum vereinbart wurde und der E-Geld-Inhaber den Vertrag vorher beendet hat oder	<b>Section 19(2), pt. 2 of the E-Geldgesetz</b>	<b>Section 19(2), point 2 of the E-Geldgesetz</b> (2) where the contract provides for a termination date he/she terminates the contract before that date; or	<b>§ 19(2) Ziff. 2 E-Geldgesetz</b> 2. im Fall eines befristeten Vertrages den Vertrag vor Ablauf der Frist beendet oder	<b>CONFORM</b> Section 19(2), point 2 of the E-Geldgesetz transposes Article 11(4), first subparagraph, point (b) of the Directive in a conform manner.
<b>Art. 11(4) 1<sup>st</sup> subpar a. (c)</b>	(c) where redemption is requested more than one year after the date of termination of the contract.	c) wenn der Rücktausch mehr als ein Jahr nach Vertragsablauf verlangt wird.	<b>Section 19(2), pt. 3 of the E-Geldgesetz</b>	<b>Section 19(2), point 3 of the E-Geldgesetz</b> (3) requests redemption after more than one year after the date of termination of the contract.	<b>§ 19(2) Ziff. 3 E-Geldgesetz</b> 3. den Rücktausch nach mehr als einem Jahr nach Vertragsablauf verlangt.	<b>CONFORM</b> Section 19(2), point 3 of E-Geldgesetz almost literally transposes Article 11(4), first subparagraph, point (c) of the Directive.
<b>Art. 11(4) 2<sup>nd</sup> subpar a.</b>	Any such fee shall be proportionate and commensurate with the actual costs incurred by the electronic money issuer.	Ein solches Entgelt muss in einem angemessenen Verhältnis zu den tatsächlich entstandenen Kosten des E-Geld-Emittenten stehen.	<b>Section 19(2), last sentence of the E-Geldgesetz</b>	<b>Section 19(2), last sentence of the E-Geldgesetz</b> Any such fee shall be [...] proportionate and commensurate with the actual costs incurred by the electronic money issuer.	<b>§ 19(2), letzter Satz E-Geldgesetz</b> Solche Entgelte sind überdies nur zulässig, wenn sie [...] in einem angemessenen Verhältnis zu den tatsächlich entstandenen Kosten des E-Geld-Emittenten stehen.	<b>CONFORM</b> Section 19(2), last sentence of the E-Geldgesetz almost literally transposes Article 11(4), second subparagraph of the Directive.
<b>Art. 11(5)</b>	5. Where redemption is requested before the termination of the contract, the electronic money holder may request redemption of the	(5) Wird der Rücktausch vor Vertragsablauf verlangt, kann der E-Geld-Inhaber entweder einen Teil oder den gesamten Betrag des E-Geldes	<b>Section 19(3) of the E-Geldgesetz</b>	<b>Section 19(3) of the E-Geldgesetz</b> 3. Before the termination of the contract, the electronic money holder may request redemption of	<b>§ 19(3) E-Geldgesetz</b> (3) Vor Vertragsablauf kann der E-Geld-Inhaber entweder einen Teil oder den gesamten Betrag des	<b>CONFORM</b> Section 19(2), last sentence of the E-Geldgesetz almost literally transposes Article 11(4), second subparagraph of the Directive.

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	electronic money in whole or in part.	verlangen.		the electronic money in whole or in part.	E-Geldes verlangen.	
<b>Art. 11(6) intr. wording</b>	6. Where redemption is requested by the electronic money holder on or up to one year after the date of the termination of the contract:	(6) Wird der Rücktausch vom E-Geld-Inhaber zum Vertragsablauf oder bis zu einem Jahr nach Vertragsablauf gefordert, wird	<b>Section 19(4), 1<sup>st</sup> sentence of the E-Geldgesetz</b>	<b>Section 19(4), first sentence of the E-Geldgesetz</b> 4. Where redemption is requested by the electronic money holder on or up to one year after the date of the termination of the contract:	<b>§ 19(4) erster Satz E-Geldgesetz</b> (4) Fordert der E-Geld-Inhaber bei Vertragsablauf oder bis zu einem Jahr nach Vertragsablauf den Rücktausch,	<b>CONFORM</b> Section 19(4), first sentence of the E-Geldgesetz almost literally transposes Article 11(6), introductory wording of the Directive.
<b>Art. 11(6)(a)</b>	a) the total monetary value of the electronic money held shall be redeemed; or	a) der gesamte Nennwert des gehaltenen E-Geldes erstattet oder	<b>Section 19(4), 1<sup>st</sup> sentence of the E-Geldgesetz</b>	<b>Section 19(4), first sentence of the E-Geldgesetz</b> the total monetary value of the electronic money held shall be redeemed.	<b>§ 19(4) erster Satz E-Geldgesetz</b> so ist der gesamte Nennwert des gehaltenen E-Geldes zu erstatten.	<b>CONFORM</b> Section 19(4), first sentence of the E-Geldgesetz almost literally transposes Article 11(6)(a) of the Directive.
<b>Art. 11(6)(b)</b>	(b) where the electronic money institution carries out one or more of the activities listed in Article 6(1)(e) and it is unknown in advance what proportion of funds is to be used as electronic money, all funds requested by the electronic money holder shall be redeemed.	b) der Gesamtbetrag, den der E-Geld-Inhaber fordert, erstattet, falls ein E-Geld-Institut eine oder mehrere der in Artikel 6 Absatz 1 Buchstabe e genannten Tätigkeiten ausübt und im Voraus nicht bekannt ist, welcher Anteil der Geldbeträge als E-Geld verwendet werden soll.	<b>Section 19(4), 2<sup>nd</sup> sentence of the E-Geldgesetz</b>	<b>Section 19(4), second sentence of the E-Geldgesetz</b> Where an electronic money institution carries out other activities than those listed in Section 3(3)(5) and it is unknown in advance what proportion of funds is to be used as electronic money, all funds requested	<b>§ 19(4) zweiter Satz E-Geldgesetz</b> Falls ein E-Geld-Institut auch andere Geschäftstätigkeiten gemäß § 3 Abs. 3 Z 5 ausübt, und im Voraus nicht bekannt ist, welcher Betrag für E-Geld verwendet wird, so ist der Gesamtbetrag, der vom E-Geld-Inhaber gefordert	<b>CONFORM</b> Section 19(4), second sentence of the E-Geldgesetz almost literally transposes Article 11(6)(b) of the Directive.

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				by the electronic money holder shall be redeemed.	wird, zu erstatten.	
<b>Art. 11(7)</b>	7. Notwithstanding paragraphs 4, 5 and 6, redemption rights of a person, other than a consumer, who accepts electronic money shall be subject to the contractual agreement between the electronic money issuer and that person.	(7) Unbeschadet der Absätze 4, 5 und 6 unterliegen die Rücktauschrechte von anderen Personen als Verbrauchern, die E-Geld akzeptieren, der vertraglichen Vereinbarung zwischen E-Geld-Emittenten und diesen Personen.	<b>Section 19(5) of the E-Geldgesetz</b>	<b>Section 19(5) of the E-Geldgesetz</b> 5. If agreements lay down different provisions from those referred to in paragraphs 2 to 4 to the detriment of the electronic money holder, these provisions shall be ineffective.	<b>§ 19(5) E-Geldgesetz</b> (5) Soweit in Vereinbarungen von den Abs. 2 bis 4 zulasten von E-Geld-Inhabern abgewichen wird, sind diese Bestimmungen unwirksam.	<b>CONFORM</b> Section 19(5) of the E-Geldgesetz transposes Article 11(7) of the Directive.  It should be noted that Section 19(5) of the E-Geldgesetz provides in a more general way than the Directive the nullity of any contractual agreements laying down different provisions from those referred to in paragraphs 2 to 4 of Section 19 of the E-Geldgesetz and such provisions are to the detriment of the electronic money holder.  Since the Austrian legislation provides for the ineffectiveness of any provision in a contractual agreement which is to the detriment of the consumer (the electronic money holder), it is stricter than the Directive.  This is in conformity with Article 11(7) of the Directive.
<b>Art. 12</b>	<i>Article 12</i> <b>Prohibition of interest</b> Member States shall prohibit the granting of interest or any other benefit related to the length of time during which an electronic money holder holds the electronic money.	<i>Artikel 12</i> <b>Verbot der Verzinsung</b> Die Mitgliedstaaten verbieten die Gewährung von Zinsen oder anderen Vorteilen, die im Zusammenhang mit dem Zeitraum stehen, in dem ein E-Geld-Inhaber das E-Geld hält.	<b>Section 20 of the E-Geldgesetz</b>	<b>Section 20 of the E-Geldgesetz</b> The granting of interest or any other benefit related to the length of time during which an electronic money holder holds the electronic money, shall be prohibited.	<b>§ 20 E-Geldgesetz</b> Die Gewährung von Zinsen oder anderen Vorteilen, die im Zusammenhang mit dem Zeitraum stehen, in dem ein E-Geld-Inhaber das E-Geld hält, ist unzulässig.	<b>CONFORM</b> Section 20 of the E-Geldgesetz transposes Article 12 of the Directive.  Section 20 of the E-Geldgesetz prohibits the granting of interest or any other benefit which are related "to the length of time during which the electronic money holder holds electronic money".  This also is in line with recital 13 of the Directive which prohibits the granting of

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					credit from the funds received or held for the purpose of issuing electronic money. Therefore conformity was concluded for the transposition of Article 12 of the Directive.	
<b>Art. 13</b>	<p><i>Article 13</i> <b>Out-of-court complaint and redress procedures for the settlement of disputes</b></p> <p>Without prejudice to this Directive, Chapter 5 of Title IV of Directive 2007/64/EC shall apply mutatis mutandis to electronic money issuers in respect of their duties arising from this Title.</p>	<p><i>Artikel 13</i> <b>Außergerichtliche Beschwerdeverfahren und Streitbeilegungsverfahren</b></p> <p>Unbeschadet dieser Richtlinie gilt Titel IV Kapitel 5 der Richtlinie 2007/64/EG für E-Geld-Emittenten hinsichtlich der ihnen aus diesem Titel erwachsenden Verpflichtungen entsprechend.</p>	<p><b>Section 28a(1) KSchG</b></p> <p><b>Section 28(1), pt. 7(b) ZaDiG</b></p> <p><b>Section 66(3) ZaDiG</b></p>	<p><b>Section 28a(1) KSchG</b></p> <p>1. Anybody violating a statutory order or prohibition with consumers [...] linked to the issuance of electronic money, thereby affecting the general interests of consumers, can be sued for injunction [...].</p> <p><b>§ 28(1), point 7(b) ZaDiG</b></p> <p>1. The payment service provider shall notify to the payment service user the following information and contract conditions: (7) On the appeal: (b) a reference to the payment service user indicating the possibility to report offences to the FMA and to the possibility of asserting his rights before the courts, indicating the jurisdiction and before the out of court settlement FIN-NET settlement body, stating their office and address.</p>	<p><b>§ 28a(1) KSchG</b></p> <p>(1) Wer im geschäftlichen Verkehr mit Verbrauchern im Zusammenhang mit [...] der Ausgabe von E-Geld gegen ein gesetzliches Gebot oder Verbot verstößt und dadurch die allgemeinen Interessen der Verbraucher beeinträchtigt, kann [...] auf Unterlassung geklagt werden.</p> <p><b>§ 28(1) Ziff. 7(b) ZaDiG</b></p> <p>(1) Der Zahlungsdienstleister hat dem Zahlungsdienstnutzer folgende Informationen und Vertragsbedingungen mitzuteilen: 7. Über den Rechtsbehelf: b) einen Hinweis auf die dem Zahlungsdienstnutzer zustehende Möglichkeit der Anzeige bei der FMA und auf die Möglichkeit der Geltendmachung seiner Rechte vor den ordentlichen Gerichten unter Angabe des</p>	<p><b>CONFORM</b></p> <p>Sections 28a(1) KSchG and Sections 28(1) and 66(3) ZaDiG transpose Article 13 of the Directive.</p> <p>Sections 28a(1) KSchG guarantees consumers and consumer protection organisations sufficient legal possibilities to sue electronic money issuers in case of violations of legal obligations for injunction.</p> <p>Sections 28(1) and 66(3) ZaDiG provide for the FIN-NET out of court settlement body (<a href="http://www.bankenschlichtung.at">www.bankenschlichtung.at</a>) as the effective out-of-court complaint in Austria with regards to payment services according to Chapter 5 of Title IV of Directive 2007/64/EC.</p> <p>The FIN-NET out of court settlement body shall also be applicable to electronic money issuers in respect of their duties laid down in the E-Geldgesetz</p> <p>This is in line with the Article 13 of the Directive and also recital 19 of the Directive, which is therefore transposed in a conform manner in this regard by point 7(b) of Section 28(1) and § 66(3) ZaDiG as well as Section 28a(1) KSchG.</p>



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				<p><b>§ 66(3) ZaDiG</b></p> <p>3. The FMA shall inform the payment service user denouncing an offense of a payment institution, of the possibility of a complaint with the FIN-NET out of court settlement body, stating their office and address.</p>	<p>Gerichtsstandes und vor der außergerichtlichen FIN-NET Schlichtungsstelle unter Angabe von deren Sitz und Adresse.</p> <p><b>§ 66(3) ZaDiG</b></p> <p>(3) Die FMA hat Zahlungsdienstnutzer, die einen Verstoß eines Zahlungsinstitutes zur Anzeige bringen, auf die Möglichkeit einer Beschwerde bei der außergerichtlichen FIN-NET Schlichtungsstelle unter Angabe von deren Sitz und Adresse zu verweisen.</p>	
<b>Art. 16(1)</b>	<p><b>TITLE IV FINAL PROVISIONS AND IMPLEMENTING MEASURES</b></p> <p><i>Article 16</i></p> <p><b>Full harmonization</b></p> <p>1. Without prejudice to Article 1(3), the sixth subparagraph of Article 3(3), Article 5(7), Article 7(4), Article 9 and Article 18(2) and in so far as this Directive provides for harmonisation, Member</p>	<p><b>TITEL IV SCHLUSSBESTIMMUNGEN UND DURCHFÜHRUNGSM ASSNAHMEN</b></p> <p><i>Artikel 16</i></p> <p><b>Vollständige Harmonisierung</b></p> <p>(1) Unbeschadet der in Artikel 1 Absatz 3, Artikel 3 Absatz 3 Unterabsatz 6, Artikel 5 Absatz 7, Artikel 7 Absatz 4, Artikel 9 und Artikel 18 Absatz 2 dürfen die Mitgliedstaaten, sofern diese Richtlinie eine</p>	N/A	N/A	N/A	<p><b>CONFORM</b></p> <p>As stated in this report, the transposition of the Directive was done in conform manner with the application of the options referred to in Article 16(1) of the Directive with the exceptions of Article 3(3), sixth subparagraph, Article 5(4) and Article 9 of the Directive.</p> <p>Therefore, conformity can be concluded for Article 16(1) of the Directive as well.</p>

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	States shall not maintain or introduce provisions other than those laid down in this Directive.	Harmonisierung vorsieht, keine anderen Bestimmungen beibehalten oder einführen als in dieser Richtlinie vorgesehen.				
<b>Art. 16(2)</b>	2. Member States shall ensure that an electronic money issuer does not derogate, to the detriment of an electronic money holder, from the provisions of national law implementing or corresponding to provisions of this Directive except where explicitly provided for therein.	(2) Die Mitgliedstaaten stellen sicher, dass E-Geld-Emittenten nicht zum Nachteil der E-Geld-Inhaber von den einzelstaatlichen Vorschriften, die diese Richtlinie umsetzen oder den Bestimmungen dieser Richtlinie entsprechen, abweichen, es sei denn, dies ist ausdrücklich darin erlaubt.	<p><b>Section 22(1), pt. 1 of the E-Geldgesetz</b></p> <p><b>Sections 1 and 2 FMABG</b></p>	<p><b>Section 22(1), point 1 of the E-Geldgesetz</b></p> <p>1. The FMA shall supervise the (1) that electronic money institutions comply with Sections 1,3 to 16 of this federal act as well as with Sections 40 to 41 BWG [...]:</p> <p><b>Section 1 FMABG</b></p> <p>1. For the enforcement of the supervision of banks an institution according to public law with legal personality shall be established under the name “Financial Market Authority” (FMA). When exercising its competences the FMA shall be not bound by any orders.</p> <p><b>Section 2 FMABG</b></p> <p>The supervision of banks</p>	<p><b>§ 22(1) E-Geldgesetz</b></p> <p>(1) Die FMA hat die Einhaltung 1. der §§ 1, 3 bis 16 dieses Bundesgesetzes sowie der §§ 40 bis 41 BWG und der [...]E-Geld-Institute [...], zu überwachen</p> <p><b>§ 1 FMABG</b></p> <p>(1) Zur Durchführung der Bankenaufsicht, [...] wird unter der Bezeichnung “Finanzmarktaufsichtsbehörde” (FMA) eine Anstalt des öffentlichen Rechts mit eigener Rechtspersönlichkeit eingerichtet. Diese ist in Ausübung ihres Amtes an keine Weisungen gebunden.</p> <p><b>§ 2 FMABG</b></p> <p>Zur Bankenaufsicht zählt die Wahrnehmung der</p>	<p><b>CONFORM</b></p> <p>Section 22(1), point 1 of the E-Geldgesetz transposes Article 16(2) of the Directive.</p> <p>As provided in Section 22(1), point 1 of the E-Geldgesetz in conjunction with Sections 1 and 2 FMABG, the FMA is the competent authority for the supervision of compliance of electronic money institutions with the provisions of the E-Geldgesetz.</p> <p>This supervision by the FMA shall ensure that electronic money issuers do not derogate, to the detriment of an electronic money holder, from the provisions set out in the E-Geldgesetz implementing Directive 2009/110/EC.</p> <p>Therefore, conformity can be concluded for Article 16(2) of the Directive.</p>

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				includes the exercise of competences and tasks that are assigned to the FMA according to the E-Geldgesetz, BGBl. I Nr. 107/2010.	behördlichen Aufgaben und Befugnisse, die im [...] E-Geldgesetz, BGBl. I Nr. 107/2010, geregelt und der FMA zugewiesen sind.	
<b>Art. 18(1) 1<sup>st</sup> subpara.</b>	<p><i>Article 18</i> <b>Transitional provisions</b></p> <p>1. Member States shall allow electronic money institutions that have taken up, before 30 April 2011, activities in accordance with national law transposing Directive 2000/46/EC in the Member State in which their head office is located, to continue those activities in that Member State or in another Member State in accordance with the mutual recognition arrangements provided for in Directive 2000/46/EC without being required to seek authorisation in accordance with Article 3 of this Directive or to comply with the other provisions laid down or referred to in Title II of this Directive.</p>	<p><i>Artikel 18</i> <b>Übergangsbestimmungen</b></p> <p>(1) Die Mitgliedstaaten gestatten E-Geld-Instituten, die vor dem 30. April 2011 Tätigkeiten im Einklang mit dem nationalen Recht zur Umsetzung der Richtlinie 2000/46/EG im Mitgliedstaat ihres Sitzes aufgenommen haben, diese Tätigkeiten in dem betreffenden Mitgliedstaat oder in einem anderen Mitgliedstaat im Einklang mit den Bestimmungen der Richtlinie 2000/46/EG über die gegenseitige Anerkennung fortzusetzen, ohne eine Zulassung nach Artikel 3 der vorliegenden Richtlinie beantragen zu müssen und ohne zur Einhaltung der anderen in Titel II der vorliegenden Richtlinie vorgesehenen</p>	<b>Section 36, 1<sup>st</sup> sentence of the E-Geldgesetz</b>	<b>Section 36, first sentence of the E-Geldgesetz</b>  Electronic money institutions that have taken up, before 30 April 2011, activities in accordance with national law transposing Directive 2000/46/EC in the Member State in which their head office is located or in accordance with the E-Geldgesetz, shall be allowed to continue those activities in Austria in accordance with the E-Geldgesetz or the mutual recognition arrangements provided for in Directive 2000/46/EC until 30 October 2011 at the longest without being required to seek authorisation in accordance with Section 3 of this Act. However, the third main part of this federal act shall apply.	<b>§ 36 erster Satz E-Geldgesetz</b>  E-Geld-Institute, die vor dem 30. April 2011 Tätigkeiten im Einklang mit dem Recht ihres Herkunftsmitgliedstaates zur Umsetzung der Richtlinie 2000/46/EG in ihrem Herkunftsmitgliedstaat oder im Einklang mit dem E-Geldgesetz in Österreich aufgenommen haben, dürfen diese Tätigkeiten in Österreich im Einklang mit dem E-Geldgesetz oder mit den Bestimmungen der Richtlinie 2000/46/EG über die gegenseitige Anerkennung bis längstens 30. Oktober 2011 fortsetzen, ohne dass sie eine Konzession gemäß § 3 beantragen müssen; das 3. Hauptstück dieses Bundesgesetzes ist jedoch anzuwenden.	<b>CONFORM</b>  Section 36, first sentence of the E-Geldgesetz transposes Article 18(1), first subparagraph of the Directive.  Like the Directive's provision, Section 36, first sentence of the E-Geldgesetz allows electronic money institutions that have taken up, before 30 April 2011, activities in accordance with national law transposing Directive 2000/46/EC in the Member State in which their head office is located or in accordance with the E-Geldgesetz to continue those activities in Austria. These activities were allowed until 30 October 2011 at the longest without being required to seek authorisation.  This is in line with the Directive and recital 23 which refers to a "specified period" for electronic money institutions to continue their activities according to Article 8 of Directive 2000/46/EC.  However, according to Section 36, first sentence of the E-Geldgesetz the third main part of the E-Geldgesetz which refers to the issuance and redemption of electronic money had to be applied to electronic money institutions referred to in Section 36. This is in line with the last part of Article 18(1), first

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		oder genannten Bestimmungen verpflichtet zu sein.			subparagraph of the Directive stating that Title II of the Directive shall not apply to those electronic money institutions.  Therefore, conformity to Article 18(1), first subparagraph of the Directive was concluded.	
<b>Art. 18(1) 2<sup>nd</sup> subpar a.</b>	Member States shall require such electronic money institutions to submit all relevant information to the competent authorities in order to allow the latter to assess, by 30 October 2011, whether the electronic money institutions comply with the requirements laid down in this Directive and, if not, which measures need to be taken in order to ensure compliance or whether a withdrawal of authorisation is appropriate.	Die Mitgliedstaaten verpflichten diese E-Geld-Institute, den zuständigen Behörden alle sachdienlichen Angaben zu übermitteln, damit diese bis zum 30. Oktober 2011 entscheiden können, ob die E-Geld-Institute die Anforderungen dieser Richtlinie erfüllen, und andernfalls, welche Maßnahmen zu ergreifen sind, um dies sicherzustellen, oder ob die Zulassung entzogen werden muss.	<b>Section 36, 2<sup>nd</sup> and 3<sup>rd</sup> sentence of the E-Geldgesetz</b>	<b>Section 36, second and third sentence of the E-Geldgesetz</b>  Electronic money institutions holding an authorisation according to Section 1 of the E-Geldgesetz shall submit all relevant information to the FMA in order to allow the latter to assess, by 31 May 2011, whether the electronic money institutions comply with the requirements laid down in the E-Geldgesetz. The FMA shall, by 30 October 2011 at the latest, assess whether the electronic money institutions comply with the requirements and, if yes, record them in the electronic money institute register, and, if not, take appropriate measures or withdraw the authorisation and stop the issuance of electronic money.	<b>§ 36 zweiter und dritter Satz E-Geldgesetz</b>  Die E-Geld-Institute, die eine Konzession gemäß § 1 E-Geldgesetz innehaben, haben der FMA bis längstens 31. Mai 2011 alle sachdienlichen Angaben zur Überprüfung zu übermitteln, ob diese E-Geld-Institute sämtliche Anforderungen des E-Geldgesetzes 2010 erfüllen. Die FMA hat bis längstens 30. Oktober 2011 mittels Bescheid festzustellen, ob diese E-Geld-Institute die Anforderungen erfüllen und sie diesfalls in das E-Geld-Institutsregister aufzunehmen oder entsprechende Maßnahmen vorzuschreiben oder die Konzession zu entziehen und die Ausgabe von E-Geld zu untersagen.	<b>CONFORM</b>  Section 36, second and third sentence of the E-Geldgesetz transposes Article 18(1), second and third subparagraph of the Directive.  Section 36, second sentence of the E-Geldgesetz provides for the submission of all relevant information to the FMA so that it can assess, whether electronic money institutions comply with the requirements laid down in the E-Geldgesetz.  Like the Directive, Section 36, third sentence of the E-Geldgesetz provides for a deadline for the submission of the relevant information to the FMA until 30 October 2011.  The FMA shall then assess whether the electronic money institutions comply with the requirements set out in the E-Geldgesetz and, if yes, record them in the electronic money institute register, and, if not, take appropriate measures or withdraw the authorisation and stop the issuance of electronic money.  This is in line with the Directive, as a reason of which conformity has been concluded for the transposition of Article 18(1), second subparagraph of the Directive.

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<b>Art. 18(1) 3<sup>rd</sup> subpar a.</b>	Compliant electronic money institutions shall be granted authorisation, shall be entered in the register, and shall be required to comply with the requirements in Title II. Where electronic money institutions do not comply with the requirements laid down in this Directive by 30 October 2011, they shall be prohibited from issuing electronic money.	E-Geld-Institute, welche die Anforderungen erfüllen, erhalten eine Zulassung, werden in das Register aufgenommen und sind verpflichtet, die Anforderungen von Titel II zu erfüllen. Werden die Anforderungen der vorliegenden Richtlinie von den E-Geld-Instituten bis zum 30. Oktober 2011 nicht erfüllt, wird ihnen die Ausgabe von E-Geld untersagt.	<b>Section 36, 3<sup>rd</sup> sentence of the E-Geldgesetz</b>	<b>Section 36, third sentence of the E-Geldgesetz</b> The FMA shall, by 30 October 2011 at the latest, assess whether the electronic money institutions comply with the requirements and, if yes, record them in the electronic money institute register, and, if not, take appropriate measures or withdraw the authorisation and stop the issuance of electronic money.	<b>§ 36 dritter Satz E-Geldgesetz</b> Die FMA hat bis längstens 30. Oktober 2011 mittels Bescheid festzustellen, ob diese E-Geld-Institute die Anforderungen erfüllen und sie diesfalls in das E-Geld-Institutsregister aufzunehmen oder entsprechende Maßnahmen vorzuschreiben oder die Konzession zu entziehen und die Ausgabe von E-Geld zu untersagen.	<b>CONFORM</b> Section 36, third sentence of the E-Geldgesetz transposes Article 18(1), third subparagraph of the Directive. Section 36, third sentence of the E-Geldgesetz provides for the submission of relevant information to the FMA so that it can assess, whether electronic money institutions comply with the requirements laid down in the E-Geldgesetz. Like the Directive, Section 36, third sentence of the E-Geldgesetz provides for a deadline for the submission of the relevant information to the FMA until 30 October 2011. The FMA shall then assess whether the electronic money institutions comply with the requirements set out in the E-Geldgesetz and, if yes, record them in the electronic money institute register, and, if not, take appropriate measures or withdraw the authorisation and stop the issuance of electronic money. This is in line with the Directive, as a reason of which conformity has been concluded for the transposition of Article 18(1), second subparagraph of the Directive.
<b>Art. 18(2)</b>	2. Member States may provide for an electronic money institution to be automatically granted authorisation and entered in the register provided for in Article 3 if the competent authorities	(2) Die Mitgliedstaaten können vorsehen, dass ein E-Geld-Institut automatisch eine Zulassung erhält und in das Register nach Artikel 3 aufgenommen wird, wenn den zuständigen	<b>Section 36, last sentence of the E-Geldgesetz</b>	<b>Section 36, last sentence of the E-Geldgesetz</b> Electronic money institutions having their headquarter in another Member State may continue their activities	<b>§ 36, letzter Satz E-Geldgesetz</b> E-Geld-Institute mit Sitz in einem anderen Mitgliedstaat dürfen ihre Tätigkeiten nach dem 30. Oktober 2011 fortsetzen,	<b>CONFORM</b> Article 18(2) of the Directive sets out an option. Owing to this option, Austria chose to apply the option. Section 36, last sentence of the E-Geldgesetz transposes Article 18(2) of the Directive.

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	already have evidence that the electronic money institution concerned complies with the requirements laid down in Articles 3, 4 and 5. The competent authorities shall inform the electronic money institutions concerned before the authorisation is granted.	Behörden bereits der Nachweis vorliegt, dass das betroffene E-Geld-Institut die Anforderungen der Artikel 3, 4 und 5 erfüllt. Die zuständigen Behörden setzen die betroffenen E-Geld-Institute in Kenntnis, bevor die Zulassung erteilt wird.	<b>setz</b>	after 30 October 2011, if they are holding an authorisation of the national law of the Member State concerned in accordance with Directive 2009/110/EC.	sofern sie dazu auch in ihrem Herkunftsmitgliedstaat im Einklang mit der Richtlinie 2009/110/EG berechtigt sind.	<p>Section 36, last sentence of the E-Geldgesetz provides that electronic money institutions having their headquarter in another Member State may continue their activities after 30 October 2011, if they are holding an authorisation according to the national law of the Member State concerned in accordance with Directive 2009/110/EC.</p> <p>The holding of an authorisation of any Member State implies that the electronic money institution concerned complies with the requirements laid down in Articles 3, 4 and 5 of the Directive.</p> <p>This is conform to the Directive's provision. Therefore, conformity was concluded for the transposition of Article 18(2) of the Directive.</p>
<b>Art. 18(3)</b>	3. Member States shall allow electronic money institutions that have taken up, before 30 April 2011, activities in accordance with national law transposing Article 8 of Directive 2000/46/EC, to continue those activities within the Member State concerned in accordance with Directive 2000/46/EC until 30 April 2012, without being required to seek authorisation under Article 3 of this Directive or to comply with the other provisions laid down or referred to in Title II of	(3) Die Mitgliedstaaten gestatten E-Geld-Instituten, die vor dem 30. April 2011 Tätigkeiten im Einklang mit dem nationalen Recht zur Umsetzung des Artikels 8 der Richtlinie 2000/46/EG aufgenommen haben, diese Tätigkeiten in dem betreffenden Mitgliedstaat im Einklang mit der Richtlinie 2000/46/EG bis zum 30. April 2012 fortzusetzen, ohne eine Zulassung nach Artikel 3 der vorliegenden Richtlinie beantragen zu müssen und ohne zur	<b>Section 36, 1st sentence of the E-Geldgesetz</b>	<b>Section 36, first sentence of the E-Geldgesetz</b> Electronic money institutions that have taken up, before 30 April 2011, activities in accordance with national law transposing Directive 2000/46/EC in the Member State in which their head office is located or in accordance with the E-Geldgesetz, shall be allowed to continue those activities in Austria in accordance with the E-Geldgesetz or the mutual recognition arrangements	<b>§ 36 erster Satz E-Geldgesetz</b> E-Geld-Institute, die vor dem 30. April 2011 Tätigkeiten im Einklang mit dem Recht ihres Herkunftsmitgliedstaates zur Umsetzung der Richtlinie 2000/46/EG in ihrem Herkunftsmitgliedstaat oder im Einklang mit dem E-Geldgesetz in Österreich aufgenommen haben, dürfen diese Tätigkeiten in Österreich im Einklang mit dem E-Geldgesetz oder mit den	<b>CONFORM</b> Section 36, first sentence of the E-Geldgesetz transposes Article 18(3) of the Directive. Like the Directive provision, Section 36, first sentence of the E-Geldgesetz allows electronic money institutions that have taken up, before 30 April 2011, activities in accordance with national law transposing Directive 2000/46/EC, which also includes Article 8 thereof, in the Member State in which their head office is located or in accordance with the E-Geldgesetz to continue those activities in Austria. These activities were allowed until 30 October 2011 at the longest without being required to seek authorisation. However, the third main part of the E-

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	<p>this Directive. Electronic money institutions which, during that period, have been neither authorised nor waived within the meaning of Article 9 of this Directive, shall be prohibited from issuing electronic money.</p>	<p>Einhaltung der anderen in Titel II der vorliegenden Richtlinie vorgesehenen oder genannten Bestimmungen verpflichtet zu sein. E-Geld-Instituten, denen in diesem Zeitraum weder eine Zulassung noch eine Ausnahmeregelung im Sinne des Artikels 9 der vorliegenden Richtlinie gewährt wurde, wird die Ausgabe von E-Geld untersagt.</p>	<p>provided for in Directive 2000/46/EC until 30 October 2011 at the longest without being required to seek authorisation in accordance with Section 3 of this Act. However, the third main part of this federal act shall apply.</p>	<p>Bestimmungen der Richtlinie 2000/46/EG über die gegenseitige Anerkennung bis längstens 30. Oktober 2011 fortsetzen, ohne dass sie eine Konzession gemäß § 3 beantragen müssen; das 3. Hauptstück dieses Bundesgesetzes ist jedoch anzuwenden.</p> <p>Geldgesetz which refers to the issuance and redemption of electronic money shall be applied to these electronic money institutions.</p> <p>This is in line with the last sentence of Article 18(3) of the Directive which states that electronic money institutions without authorisation shall be prohibited from issuing electronic money, since the electronic money institutions according to Section 36, first sentence of the E-Geldgesetz already have an authorisation.</p> <p>Based on these observations conformity was concluded on the transposition of Article 18(3) of the Directive.</p>