

EFTA COURT

Request for an Advisory Opinion from the EFTA Court by the Beschwerdekommission der Finanzmarktaufsicht dated 12 October 2017 in the case Edmund Falkenhahn AG v the Liechtenstein Financial Market Authority

(Case E-9/17)

A request has been made to the EFTA Court by a letter dated 12 October 2017 from the Beschwerdekommission der Finanzmarktaufsicht (Appeals Board of the Financial Market Authority), which was received at the Court Registry on 12 October 2017, for an Advisory Opinion in the case Edmund Falkenhahn AG v the Liechtenstein Financial Market Authority on the following questions:

I/1 Is it compatible with Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions (Electronic Money Directive) if electronic money has a value different from par value on the receipt of funds in the period between issuance (Article 11(1)) and redemption (Article 11(2)), provided that redemption (Article 11(2)) is at least at par value?

I/2 If Question I/1 is answered in the affirmative: Can the different value referred to in Question I/1 be linked to a variable value (such as the price of gold)?

I/3 If Question I/2 is answered in the affirmative: In the case of a link to a variable value (such as the price of gold), is it compatible with Article 12 of the Electronic Money Directive for redemption (Article 11(2)) to be realised at an amount above par value?

II/1 Does Article 7(2) first and second subparagraph of the Electronic Money Directive define exhaustively what are to be regarded as secure, low-risk assets within the meaning of the first sentence of Article 7(1) of the Electronic Money Directive read in conjunction with Article 9(1)(a) of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market (Payment Services Directive)?

II/2 If Question II/1 is answered in the negative: Does Article 9(1)(a) of the Payment Services Directive preclude the competent authority from defining what constitutes secure, (liquid) low-risk assets only as part of the decision on the granting of an authorisation in accordance with Article 10 of the Electronic Money Directive?

II/3 If Question II/2 is answered in the negative: Is the reference to Article 9(1) and (2) of the Payment Services Directive contained in the first sentence of Article 7(1) of the Electronic Money Directive to be interpreted as meaning ‘secure, low-risk assets’ within the meaning of the first subparagraph of Article 7(2) of the Electronic Money Directive or as meaning ‘secure, liquid low-risk assets’?

II/4 Depending on the answer to Question II/3: Is gold a secure, (liquid) low-risk asset?