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Judgment in Case E-9/17 *Edmund Falkenhahn AG v The Financial Market Authority*

ELECTRONIC MONEY MAY NOT BE LINKED TO GOLD

In a judgment delivered today, the Court answered questions referred by the Liechtenstein Appeals Board of the Financial Market Authority (*Beschwerdekommision der Finanzmarktaufsicht*) (“the Appeals Board”) on the interpretation of Directive 2009/110/EC on the taking-up, pursuit and prudential supervision of the business of electronic money institutions (“the Directive”).

In March 2017, Edmund Falkenhahn AG (“Falkenhahn”) applied to the Liechtenstein Financial Market Authority (*Finanzmarktaufsicht*) for the granting of an authorisation as an electronic money institution. The application prescribed that, against payment of legal currency, Falkenhahn would issue units of account called ‘World’ or ‘Money’, which would be available for payment purposes. The value of those units should relate to the market value of gold. Moreover, the funds of customers would be safeguarded through investment in gold.

By an order of 23 August 2017, the Liechtenstein Financial Market Authority rejected the application. It held that, according to Liechtenstein law implementing the Directive, electronic money may not be linked to the price of gold. Moreover, the funds provided in exchange for electronic money may not be safeguarded through investment in gold.

Falkenhahn then lodged a complaint with the Appeals Board, which requested an advisory opinion from the Court on the extent to which electronic money may be linked to a different value than the par value on the receipt of funds, for example the price of gold. It also sought guidance on the requirements that apply to the safeguarding of the funds that have been received in exchange of electronic money.

The Court noted that, under Article 11 of the Directive, electronic money shall be issued at par value on the receipt of funds. Moreover, upon an electronic money holder’s request, electronic money shall be redeemed at any moment and at par value pursuant to that provision. In order to fulfil its function as an electronic surrogate for coins and banknotes, which may be redeemed at any moment and at par value, the electronic money stored must at all times hold a value equivalent to the monetary value paid in exchange. This excludes from the scope of the Directive a business model where the electronic money would be linked to the price of gold at the electronic money holder’s risk. Accordingly, electronic money cannot be linked to a value other than the monetary value.

The Court further noted that, under Article 7(1) of the Directive, funds that have been received in exchange for electronic money shall be safeguarded. Article 7(2) sets out a definition of what constitutes secure, low-risk assets for that purpose. The Court found that that definition is exhaustive.

The full text of the judgment may be found on the internet at: www.eftacourt.int.

This press release is an unofficial document and is not binding upon the Court.