

## Translation of Liechtenstein Law

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**Payment Services Act (ZDG)**

of 6 June 2019

I hereby grant My consent to the following resolution adopted by Parliament:<sup>1</sup>

**I. General provisions****A. Object, scope, and definitions**

## Article 1

*Object and purpose*

1) This Act lays down the conditions under which payment service providers may provide payment services in Liechtenstein and other EEA Member States. It also governs:

- a) the rights and obligations of payment service providers and payment service users in relation to payment services provided to payment service users located in Liechtenstein or by payment service providers located in Liechtenstein;
- b) access to payment systems and accounts.

2) The purpose of this Act is:

- a) to ensure adequate consumer protection, transparency, payment security, and fair competition in relation to payment services;
- b) to promote market continuity in this field and to create a clear regulatory framework within which new service providers can offer their services.

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<sup>1</sup> Report and Motion of the Government No. 11/2019 and Opinion of the Government No. 46/2019

3) It also serves to implement or carry out the following EEA legislation:

- a) Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p.35);<sup>2</sup>
- b) Regulation (EC) No 924/2009 of the European Parliament and of the Council of 16 September 2009 on cross-border payments in the Community and repealing Regulation (EC) No 2560/2001 (EEA Compendium of Laws: Annex XII - 3.01);
- c) Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009 (EEA Compendium of Laws: Annex XII - 3a.01).

4) The version in force of the EEA legislation referred to in paragraph 3 follows from the promulgation of the decisions of the EEA Joint Committee in the Liechtenstein Law Gazette in accordance with Article 3(k) of the Promulgation Act.

## Article 2

### *Scope*

1) This Act applies to the provision of payment services by payment service providers as a business activity.

2) The following activities shall be considered payment services:

- a) disbursement business (Article 4(1)(5));
- b) deposit business (Article 4(1)(12));
- c) money remittance business (Article 4(1)(17));
- d) account information services (Article 4(1)(25));
- e) payment initiation services (Article 4(1)(39));
- f) payment business (Article 4(1)(45)), in particular:
  1. direct debit business (Article 4(1)(28));
  2. credit transfer business (Article 4(1)(35));

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<sup>2</sup> Article 1(3)(a) shall enter into force at the same time as the decision of the EEA Joint Committee incorporating Directive (EU) 2015/2366 (LGBI. 2019 No. 213).

- 3. payment card business (Article 4(1)(50));
  - g) payment business involving the extension of credit (Article 4(1)(46));
  - h) payment instrument business (Article 4(1)(49)).
- 3) The following shall be considered payment service providers:
- a) banks under Article 3 of the Banking Act including their EEA branches;
  - b) EEA credit institutions under Article 4(1)(1) of Regulation (EU) No 575/2013 including their EEA branches;
  - c) the State, the municipalities, and municipal associations when not acting in their capacity as public authorities;
  - d) the European Central Bank and other central banks in the European Economic Area when not acting in their capacity as public authorities;
  - e) electronic money institutions under Article 3(1)(a) of the Electronic Money Act including their EEA branches, provided that the payment services provided by these institutions and branches are related to the issuance of electronic money;
  - f) EEA electronic money institutions under Article 2(1) of Directive 2009/110/EC including their EEA branches, provided that the payment services provided by these institutions and branches are related to the issuance of electronic money;
  - g) central, regional or local authorities under public law in EEA Member States when not acting in their capacity as public authorities;
  - h) postal institutions entitled under the Postal Act or the laws of their home Member State to provide payment services;
  - i) registered account information service providers (Article 4(1)(26));
  - k) payment institutions (Article 4(1)(47)).
- 4) Solely the following provisions apply to account information services providers *mutatis mutandis*:
- a) the provisions of Chapter I;
  - b) the provisions of Chapter II, with the exception of Articles 7 to 10, 17 to 21, 23 to 25, and 35(5)(a);
  - c) Articles 49, 55, 56, 61, 75, 77, and 101 to 103 of Chapter III;
  - d) the provisions of Chapter IV, with the exception of Article 104.

- 5) Articles 48 to 113 shall apply to:
- a) payment transactions in the currency of an EEA Member State where both the payer's payment service provider and the payee's payment service provider are, or the sole payment service provider in the payment transaction is, located within the EEA;
  - b) payment transactions in a currency that is not the currency of an EEA Member State where both the payer's payment service provider and the payee's payment service provider are, or the sole payment service provider in the payment transaction is, located within the EEA, in respect to those parts of the payments transaction which are carried out in the EEA. Article 55(1)(b)(3), Article 56(1)(a)(3), Article 64(a), and Articles 89 to 93 shall not apply to such payment transactions;
  - c) payment transactions in all currencies where only one of the payment service providers is located within the EEA, in respect to those parts of the payments transaction which are carried out in the EEA. Article 55(1)(b)(3), Article 56(1)(a)(3) and (d)(9), Article 64(a), Article 69(3) and (5), and Articles 84, 85, 89, 91(1), 96, and 98 shall not apply to such payment transactions.
- 6) This Act is subject to the provisions of the Due Diligence Act and Regulation (EC) No 2015/847 on information accompanying transfers of funds.

### Article 3

#### *Exemptions from the scope*

- 1) This Act shall not apply to:
- a) cash withdrawal services offered by means of ATM by providers, acting on behalf of one or more card issuers, to the extent that they:
    - 1. are not a party to the framework contract with the customer withdrawing money from a payment account;
    - 2. do not conduct other payment services as referred to in Article 2(2);
  - b) cash-to-cash currency exchange operations where the funds are not held on a payment account;
  - c) professional physical transport of banknotes and coins, including their collection, processing and delivery;

- d) payment transactions consisting of the non-professional cash collection and delivery within the framework of a non-profit or charitable activity;
- e) services where cash is provided by the payee to the payer as part of a payment transaction following an explicit request by the payment service user just before the execution of the payment transaction through a payment for the purchase of goods or services;
- f) services provided by technical service providers, which support the provision of payment services, without them entering at any time into possession of the funds to be transferred; this includes in particular:
  - 1. processing and storage of data;
  - 2. provision of trust services;
  - 3. provision of privacy protection services;
  - 4. data and entity authentication;
  - 5. information technology (IT) and communication network provision;
  - 6. provision and maintenance of terminals and devices used for payment services, with the exclusion of payment initiation services and account information services;
- g) services based on specific payment instruments that can be used only in a limited way, provided that they meet one of the following conditions:
  - 1. instruments allowing the holder to acquire goods or services only in the premises of the issuer or within a limited network of service providers under direct commercial agreement with a professional issuer;
  - 2. instruments which can be used only to acquire a very limited range of goods or services;
  - 3. instruments valid only in Liechtenstein or an EEA Member State provided at the request of an undertaking or a public sector entity and regulated by a national or regional public authority for specific social or tax purposes to acquire specific goods or services from suppliers having a commercial agreement with the issuer;
- h) payment transactions based on any of the following documents drawn on the payment service provider with a view to placing funds at the disposal of the payee:
  - 1. paper cheques governed by the Cheque Act or the Geneva Convention of 19 March 1931 providing a uniform law for

- cheques or similar paper cheques governed by the laws of an EEA Member State which is not party to the Geneva Convention of 19 March 1931 providing a uniform law for cheques;
2. paper-based drafts in accordance with the Bills of Exchange and Promissory Notes Act or the Geneva Convention of 7 June 1930 providing a uniform law for bills of exchange and promissory notes or similar paper-based drafts governed by the laws of an EEA Member State which is not party to the Geneva Convention of 7 June 1930 providing a uniform law for bills of exchange and promissory notes;
  3. paper-based vouchers, traveller's cheques, and postal money orders as defined by the Universal Postal Union;
- i) payment transactions by a provider of electronic communications networks or services provided in addition to electronic communications services for a subscriber to the network or service in accordance with Article 3(1)(5) of the Communications Act:
    1. for purchase of digital content and voice-based services, regardless of the device used for the purchase or consumption of the digital content and charged to the related bill; or
    2. performed from or via an electronic device and charged to the related bill within the framework of a charitable activity or for the purchase of tickets,  
provided that the value of any deposit referred to in points 1 and 2 does not exceed 50 francs or the equivalent in euros and:
      - aa) the cumulative value of payment transactions for an individual subscriber does not exceed 300 francs per month or the equivalent in euros; or
      - bb) where a subscriber pre-funds its account with the provider of the electronic communications network or service, the cumulative value of payment transactions does not exceed 300 francs per month or the equivalent in euros;
  - k) payment transactions carried out between payment service providers, their agents or branches for their own account;
  - l) payment transactions carried out within a payment or securities settlement system between settlement agents, central counterparties, clearing houses and/or central banks and other participants of the system, and payment service providers, without prejudice to Article 5;
  - m) payment transactions made exclusively in cash directly from the payer to the payee, without any intermediary intervention;

- n) payment transactions related to securities asset servicing, including dividends, income or other distributions, or redemption or sale, carried out by persons referred to in point (l) or by investment firms, banks, collective investment undertakings, or asset management companies providing investment services and any other entities licensed to have the custody of financial instruments;
- o) payment transactions and related services between a parent undertaking and its subsidiary or between subsidiaries of the same parent undertaking, without any intermediary intervention by a payment service provider other than an undertaking belonging to the same group;
- p) payment transactions from the payer to the payee through a commercial agent authorised via an agreement to negotiate or conclude the sale or purchase of goods or services on behalf of only the payer or only the payee.

2) Anyone providing cash withdrawal services in accordance with Article 1(a) must inform and, if necessary, break down for the customers all charges related to a cash withdrawal as referred to in Article 53, points 2 to 5 of Article 55(1)(b) and Article 55(2), Article 56(1), and Articles 59 and 60 before carrying out the withdrawal as well as on receipt of the cash at the end of the transaction.

3) Service providers intending to carry out activities under points 1 and/or 2 of paragraph 1(g) must notify the FMA of this intention if the total value of payment transactions of the preceding 12 months has exceeded 1 million francs or the equivalent in euros. The notification must be accompanied by a description specifying under which exclusion referred to in points 1 and/or 2 of paragraph 1(g) the activity is considered to be carried out. On the basis of this notification, the FMA shall decide whether the activity qualifies as a "limited network". The decision must be accompanied by reasons and communicated to the service provider.

4) Service providers intending to carry out an activity under paragraph 1(i) must notify the FMA. They must provide the FMA with an annual audit opinion, testifying that the activity complies with the limits set out in paragraph 1(i)(2).

5) The FMA must record the notifications under paragraphs 3 and 4 in the Payment Services Register referred to in Article 16.

6) The FMA must report to the European Banking Authority (EBA) on the notifications under paragraphs 3 and 4. The FMA must state under which exclusion the activity is carried out.



7) The provisions of Chapter II of this Act shall not apply to payment service providers referred to in paragraph 2(3)(a) to (h).

#### Article 4

##### *Definitions and designations*

1) For the purposes of this Act, the following definitions shall apply:

1. "agent" means a natural or legal person who acts on behalf of a payment institution in providing payment services;
2. "acquiring of payment transactions" means a payment service provided by a payment service provider contracting with a payee to accept and process payment transactions, which results in a transfer of funds to the payee;
3. "host Member State" means the EEA Member State other than the home Member State in which a payment service provider has an agent or a branch or provides payment services;
4. "issuing of payment instruments" means a payment service by a payment service provider contracting to provide a payer with a payment instrument to initiate and process the payer's payment transactions;
5. "disbursement business" means services enabling cash disbursements from a payment account as well as all the operations required for operating a payment account;
6. "authentication" means a procedure which allows the payment service provider to verify the identity of a payment service user or the validity of the use of a specific payment instrument, including the use of the user's personalised security credentials;
7. "co-badging" means the inclusion of two or more payment brands or payment applications of the same payment brand on the same payment instrument;
8. "durable medium" means any instrument which:
  - a) enables the payment service user to store information addressed personally to that payment service user in a way accessible for future reference for a period of time adequate to the purposes of the information; and
  - b) which allows the unchanged reproduction of the information stored;
9. "digital content" means goods or services which are produced and supplied in digital form, the use or consumption of which is

- restricted to a technical device and which do not include in any way the use or consumption of physical goods or services;
10. "electronic money" means electronically or magnetically stored monetary value as represented by a claim on the electronic money issuer which is issued on receipt of funds for the purpose of making payment transactions as defined in this Act, and which is accepted by a person other than the electronic money issuer as defined in Article 3(1)(c) of the Electronic Money Act;
  11. "own funds" means funds as defined in point 118 of Article 4(1) of Regulation (EU) No 575/2013 where at least 75% of the Tier 1 capital is in the form of Common Equity Tier 1 capital as referred to in Article 50 of that Regulation and Tier 2 is equal to or less than one third of Tier 1 capital;
  12. "deposit business" means services enabling cash to be placed on a payment account as well as all the operations required for operating a payment account;
  13. "electronic communications service" means a service normally provided for remuneration which consists wholly or mainly in the conveyance of signals on electronic communications networks, including telecommunications services and transmission services in networks used for broadcasting. It does not include information society services, as defined in Article 3(1)(a) of the E-Commerce Act, which do not consist wholly or mainly in the conveyance of signals on electronic communications networks;
  14. "electronic communications network" means transmission systems and, where applicable, switching or routing equipment and other resources which permit the conveyance of signals by wire, by radio, by optical or by electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including Internet) and mobile communications networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for broadcasting services, including cable television networks, irrespective of the type of information conveyed;
  15. "means of distance communication" means a method which, without the simultaneous physical presence of the payment service provider and the payment service user, may be used for the conclusion of a payment services contract;
  16. "remote payment transaction" means a payment transaction initiated via internet or through a device that can be used for distance communication;
  17. "money remittance" means a payment service where funds are received from a payer, without any payment accounts being created

- in the name of the payer or the payee, for the sole purpose of transferring a corresponding amount to a payee or to another payment service provider acting on behalf of the payee, and/or where such funds are received on behalf of and made available to the payee;
18. "funds" means banknotes and coins, scriptural money, or electronic money as defined in Article 3(1)(b) of the Electronic Money Act;
  19. "business day" means a day on which the relevant payment service provider of the payer or the payment service provider of the payee involved in the execution of a payment transaction is open for business as required for the execution of a payment transaction;
  20. "group" means:
    - a) a group of undertakings which are linked to each other by a relationship referred to in Article 22(1), (2) or (7) of Directive 2013/34/EU; or
    - b) undertakings as defined in Articles 4 to 7 of Commission Delegated Regulation (EU) No 241/2014, which are linked to each other by a relationship referred to in Article 10(1) or in Article 113(6) or (7) of Regulation (EU) No 575/2013;
  21. "home Member State" means the EEA Member State in which the registered office or head office of the payment service provider is situated;
  22. "microenterprise" means an enterprise, which at the time of conclusion of the payment service contract, is an enterprise as defined in Article 1 and Article 2(1) and (3) of the Annex to Commission Recommendation 2003/361/EC;
  23. "consumer" means a natural person who, in payment service contracts covered by this Act, is acting for purposes other than his or her trade, business or profession;
  24. "account servicing payment service provider" means a payment service provider providing and maintaining a payment account for a payer;
  25. "account information service" means an online service to provide consolidated information on one or more payment accounts held by the payment service user with either another payment service provider or with more than one payment service provider;
  26. "account information service provider" means a payment service provider providing account information services as a business activity;
  27. "unique identifier" means a combination of letters, numbers or symbols specified to the payment service user by the payment service provider and to be provided by the payment service user to identify

- unambiguously another payment service user and/or the payment account of that other payment service user for a payment transaction;
28. "direct debit" means a payment service for debiting a payer's payment account, where a payment transaction is initiated by the payee on the basis of the consent given by the payer to the payee, to the payee's payment service provider or to the payer's own payment service provider;
  29. "personalised security credentials" means personalised features provided by the payment service provider to a payment service user for the purposes of authentication;
  30. "framework contract" means a payment service contract which governs the future execution of individual and successive payment transactions and which may contain the obligation and conditions for setting up a payment account;
  31. "reference interest rate" means the interest rate which is used as the basis for calculating any interest to be applied and which comes from a publicly available source which can be verified by both parties to a payment service contract;
  32. "reference exchange rate" means the exchange rate which is used as the basis to calculate any currency exchange and which is made available by the payment service provider or comes from a publicly available source;
  33. "sensitive payment data" means data, including personalised security credentials which can be used to carry out fraud. For the activities of payment initiation service providers and account information service providers, the name of the account owner and the account number do not constitute sensitive payment data;
  34. "strong customer authentication" means an authentication based on the use of two or more elements categorised as:
    - a) knowledge (something only the user knows);
    - b) possession (something only the user possesses); and
    - c) inherence (something the user is);that are independent, in that the breach of one does not compromise the reliability of the others, and is designed in such a way as to protect the confidentiality of the authentication data;
  35. "credit transfer" means a payment service for crediting a payee's payment account with a payment transaction or a series of payment transactions from a payer's payment account by the payment service provider which holds the payer's payment account, based on an instruction given by the payer, including standing orders;

36. "value date" means a reference time used by a payment service provider for the calculation of interest on the funds debited from or credited to a payment account;
37. "payer" means a natural or legal person who:
  - a) holds a payment account and allows a payment order from that payment account; or
  - b) where there is no payment account, a natural or legal person who gives a payment order;
38. "payment order" means an instruction by a payer or payee to its payment service provider requesting the execution of a payment transaction;
39. "payment initiation service" means a service to initiate a payment order at the request of the payment service user with respect to a payment account held at another payment service provider;
40. "payment initiation service provider" means a payment service provider providing payment initiation services as a business activity;
41. "payment service" means any business activity set out in Article 2(2);
42. "payment service provider" means a natural or legal person or entity referred to in Article 2(3);
43. "payment service user" means a natural or legal person making use of a payment service in the capacity of payer and/or payee;
44. "payee" means a natural or legal person who is the intended recipient of funds which have been the subject of a payment transaction;
45. "payment business" means the execution of payment transactions, including transfers of funds on a payment account with the payment account user's payment service provider or with another payment service provider;
46. "payment business involving the extension of credit" means the execution of payment transactions as referred to in point 45 where the funds are covered by a credit line for a payment service user;
47. "payment institution" means a legal person that is entitled in accordance with Article 7 or in its home Member State in accordance with Article 11 of Directive (EU) 2015/2366 to provide and execute payment services as a business activity throughout the EEA;
48. "payment instrument" means a personalised device and/or set of procedures agreed between the payment service user and the payment service provider and used in order to initiate a payment order;
49. "payment instrument business" means the issuing of payment instruments and/or acquiring of payment transactions;

50. "payment card business" means the execution of payment transactions through a payment card or a similar device;
51. "payment account" means an account held in the name of one or more payment service users which is used for the execution of payment transactions;
52. "payment brand" means any material or digital name, term, sign, symbol or combination of them, capable of denoting under which payment system card-based payment transactions are carried out;
53. "payment system" means a funds transfer system with formal and standardised arrangements and common rules for the processing, clearing and/or settlement of payment transactions;
54. "payment transaction" means an act, initiated by the payer or on the payer's behalf or by the payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and the payee;
55. "competent authority" means a national authority responsible for the licensing, registration, and supervision of payment institutions and payment information service providers in accordance with Article 22(1) of Directive (EU) 2015/2366; for Liechtenstein, this shall be the FMA.

2) The definitions set out in the applicable EEA legislation, especially Directive (EU) 2015/2366, Regulation (EC) No 924/2009 and Regulation (EU) No 260/2012 shall apply *mutatis mutandis* on a supplementary basis.

3) The designations used in this Act to denote persons and functions include persons of male and female gender.

## B. Access to payment systems and accounts

### Article 5

#### *Access to payment systems*

1) The rules of operators of payment schemes on access of licensed or registered payment service providers to their payment systems must meet the following conditions:

- a) They must be objective, non-discriminatory, and proportionate.
- b) They may not inhibit access more than is necessary to safeguard against specific risks such as settlement risk, operational risk and

business risk and to protect the financial and operational stability of the payment system.

2) Payment systems shall not impose on payment service providers, on payment service users or on other payment systems any of the following requirements:

- a) restrictive rule on effective participation in other payment systems;
- b) rule which discriminates between licensed payment service providers or between registered payment service providers in relation to the rights, obligations and entitlements of participants in the payment system;
- c) restriction on the basis of institutional status.

3) For the purposes of paragraph 2(a), where a participant in a designated system allows a licensed or registered payment service provider that is not a participant in the system to pass transfer orders through the system that participant shall, when requested, give the same opportunity in an objective, proportionate and non-discriminatory manner to other licensed or registered payment service providers in line with paragraph 1. The participant shall provide the payment service provider with reasons for any negative decision.

4) Paragraphs 1 and 2 shall not apply to:

- a) payment systems within the meaning of the Settlement Finality Act;
- b) payment systems composed exclusively of payment service providers belonging to a group.

5) Anyone breaching paragraph 1 or 2 is obliged vis-à-vis the affected party to eliminate the breach, to cease and desist if there is a risk of a repeated breach, and in the case of being at fault to pay damages.

## Article 6

### *Access to accounts maintained with a bank*

1) Banks must grant payment institutions access to payment account services to the extent that payment institutions can provide payment services in an unhindered and effective manner.

2) The rules on access of payment institutions to payment account services must be objective, non-discriminatory, and proportionate.

3) The bank shall provide the FMA and the payment institution with duly motivated reasons for any rejection.

## II. Prudential part

### A. Licensing and registration

#### 1. Licensing of payment institutions

##### Article 7

##### *Requirement and scope of licence*

1) Subject to Article 11, anyone wishing to provide payment services in Liechtenstein as a business activity requires a licence as a payment institution from the FMA.

2) The licence shall be valid in all EEA Member States. It allows the payment institution, under the freedom to provide services or freedom of establishment (Article 27), to provide payment services throughout the EEA, provided that the payment services provided are covered by the licence.

3) Apart from the provision of payment services, payment institutions shall be entitled to engage in the following activities:

- a) the provision of operational and closely related ancillary services such as ensuring the execution of payment transactions, foreign exchange services, safekeeping activities, and the storage and processing of data;
- b) the operation of payment systems in accordance with Article 5;
- c) other business activities in accordance with the applicable provisions of EEA or national law.

4) Where payment institutions engage in the provision of payment services, they may hold only payment accounts which are used exclusively for payment transactions.

5) Any funds received by payment institutions from payment service users with a view to the provision of payment services shall not constitute a deposit within the meaning of Article 3(3)(a) of the Banking Act or as electronic money within the meaning of Article 3(1)(b) of the Electronic Money Act.

6) Payment institutions are prohibited from taking deposits or other repayable funds within the meaning of Article 3(3)(a) of the Banking Act.



7) Payment institutions may grant credit relating to payment business involving the extension of credit (Article 2(2)(g)) and payment instrument business (Article 2(2)(h)) only if:

- a) the credit is ancillary and granted exclusively in connection with the execution of a payment transaction;
- b) the credit must be fully repaid within a period not exceeding 12 months;
- c) such credit shall not be granted from the funds received or held for the purpose of executing a payment transaction;
- d) the own funds of the payment institution shall at all times and to the satisfaction of the FMA be appropriate in view of the overall amount of credit granted.

#### Article 8

##### *Licence application*

The application for a licence must contain the following information and documents:

- a) a programme of operations setting out in particular the type and scope of payment services envisaged;
- b) a business plan including a forecast budget calculation for the first three financial years which demonstrates that the applicant is able to employ the appropriate and proportionate systems, resources and procedures to operate soundly;
- c) evidence that the payment institution holds initial capital as provided for in Article 10;
- d) description of the measures taken for safeguarding payment service users' funds in accordance with Article 20;
- e) a description of the applicant's governance arrangements and internal control mechanisms, including administrative, risk management and accounting procedures, which demonstrates that the governance arrangements, control mechanisms and procedures are proportionate, appropriate, sound and adequate;

- f) a description of the procedures in place to monitor, handle and follow up a security incident and security related customer complaints, including an incidents reporting mechanism which takes account of the notification obligations of the payment institution laid down in Article 102;
- g) a description of the process in place to file, monitor, track and restrict access to sensitive payment data;
- h) a description of business continuity arrangements including a clear identification of the critical operations, effective contingency plans and a procedure to regularly test and review the adequacy and efficiency of such plans;
- i) a description of the principles and definitions applied for the collection of statistical data on performance, transactions and fraud;
- k) a security policy document, including a detailed risk assessment in relation to its payment services and a description of security control and mitigation measures taken to adequately protect payment service users against the risks identified, including fraud and illegal use of sensitive and personal data;
- l) for applicants which as payment institutions are subject to the obligations in relation to money laundering and terrorist financing under Directive (EU) 2015/849 and Regulation (EU) 2015/847, a description of the internal control mechanisms which the applicant has established in order to comply with those obligations;
- m) a description of the applicant's structural organisation, including, where applicable, a description of the intended use of agents and branches and of the off-site or on-site checks that the applicant undertakes to perform on them at least annually, as well as a description of outsourcing arrangements, and of its participation in a national or international payment system;
- n) the identity of persons holding in the payment institution, directly or indirectly, qualifying holdings within the meaning of point 36 of Article 4(1) of Regulation (EU) No 575/2013, the size of their holdings and evidence of their suitability taking into account the need to ensure the sound and prudent management of a payment institution;
- o) the identity of directors and persons responsible for the management of the applicant and, where relevant, persons responsible for the management of the payment services activities of the applicant, as well as evidence that they are of good repute and possess appropriate knowledge and experience to perform payment services;
- p) the identity of the audit office (Article 22(1));

- q) the legal form and articles of association of the applicant;
- r) the address of the registered office or head office of the applicant;
- s) for the purposes of points (d) to (f) and (m), a description of the audit arrangements and the organisational arrangements the applicant has set up with a view to taking all reasonable steps to protect the interests of the payment service users and to ensure continuity and reliability in the performance of payment services;
- t) in regard to the security control and mitigation measures referred to in point (k), an indication of how they ensure a high level of technical security and data protection, including for the software and IT systems used by the applicant or the undertakings to which it outsources the whole or part of its operations. Those measures shall also include the security measures laid down in Article 101;
- u) for the provision of payment initiation services (Article 4(1)(39)), evidence of adequate professional liability insurance or comparable guarantee to fulfil the liability obligations set out in Articles 81 and 96 to 98.

#### Article 9

##### *Licensing conditions and granting of licence*

- 1) The licence shall be granted if:
- a) the applicant is a legal person;
  - b) the registered office and the head office of the applicant are situated in Liechtenstein;
  - c) initial capital as set out in Article 10 is freely available;
  - d) sound and prudent management of the applicant is ensured;
  - e) the payment institution has robust governance arrangements, which include *inter alia*:
    1. a clear organisational structure with well-defined, transparent and consistent lines of responsibility;
    2. effective procedures to identify, manage, monitor and report the risks to which it is or might be exposed; and
    3. adequate internal control mechanisms, including sound administrative and accounting procedures;
  - f) the shareholders or members that have qualifying holdings in the applicant satisfy the requirements to ensure the sound and prudent

management of a payment institution, and there are no facts giving rise to doubts regarding the personal reliability of these persons;

- g) any close links between the payment institution and other natural or legal persons as defined in Article 4(1)(38) of Regulation (EU) No 575/2013 do not prevent effective supervision;
- h) the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the applicant has close links, or difficulties involved in the enforcement of those laws, regulations or administrative provisions, do not prevent effective supervision;
- i) the information and evidence accompanying the application complies with the provisions of Article 8, and the FMA's overall assessment, having scrutinised the application, is favourable.

2) Arrangements, procedures and mechanisms under paragraph 1(e) must be comprehensive and proportionate to the nature, scale, and complexity of the payment services provided by the payment institution.

3) Where a payment institution provides any of the payment services as referred to in Article 2(2) and, at the same time, is engaged in other business activities, the FMA may, when the licence is granted or later where necessary, require the establishment of a separate entity for the payment services business, with its own legal personality, where the non-payment services activities of the payment institution impair or are likely to impair:

- a) the financial soundness of the payment institution; or
- b) the ability to monitor the payment institution's compliance with all obligations laid down by this Act.

4) Within three months of receipt of an application or, should the application be incomplete, of all the information required for the licence, the FMA must either:

- a) grant the licence – where necessary subject to terms and conditions – and enter the applicant in the Payment Services Register (Article 16) without delay; or
- b) communicate in writing and with reasons that the application has been refused, without prejudice to a procedure pursuant to Article 35(8) or Article 109(1)(b).

5) Payment institutions must, without delay, inform the FMA of any changes affecting the accuracy of the information and evidence provided in accordance with Article 8.

## Article 10

*Initial capital*

1) Payment institutions must have adequate initial capital at their disposal at the time the licence is granted, which must be freely available without restriction or encumbrance.

2) The initial capital must be at least:

- a) in the case of payment institutions providing payment services under Article 2(2)(c): 20 000 francs or the equivalent in euros;
- b) in the case of payment institutions providing payment services under Article 2(2)(e): 50 000 francs or the equivalent in euros;
- c) in the case of payment institutions providing payment services under Article 2(2)(a), (b), and (f) to (h): 125 000 francs or the equivalent in euros.

3) The initial capital shall be composed of capital and reserves as referred to in Article 26(1)(a) to (e) of Regulation (EU) No 575/2013.

**2. Registration of account information service providers**

## Article 11

*Requirement*

1) Any payment service provider wishing to provide solely account information services in Liechtenstein as a business activity as referred to in Article 4(1)(25) requires only registration by the FMA.

2) The registration shall be valid in all EEA Member States. It allows the account information service provider, under the freedom to provide services or freedom of establishment (Article 27), to provide account information services throughout the EEA.

## Article 12

*Registration application and conditions, granting of registration*

1) The registration application must contain the following information and documents:

- a) a programme of operations setting out in particular the type and scope of the account information service envisaged;

- b) a business plan including a forecast budget calculation for the first three financial years which demonstrates that the applicant is able to employ the appropriate and proportionate systems, resources and procedures to operate soundly;
- c) a description of the applicant's governance arrangements and internal control mechanisms, including administrative, risk management and accounting procedures, which demonstrates that those governance arrangements, control mechanisms and procedures are proportionate, appropriate, sound and adequate;
- d) a description of the procedure in place to monitor, handle and follow up a security incident and security related customer complaints, including an incidents reporting mechanism which takes account of the notification obligations of the account information service provider laid down in Article 102;
- e) a description of the process in place to file, monitor, track and restrict access to sensitive payment data;
- f) a description of business continuity arrangements including a clear identification of the critical operations, effective contingency plans and a procedure to regularly test and review the adequacy and efficiency of such plans;
- g) a security policy document, including a detailed risk assessment in relation to its account information service and a description of security control and mitigation measures taken to adequately protect payment service users against the risks identified, including fraud and illegal use of sensitive and personal data;
- h) a description of the applicant's structural organisation, including, where applicable, a description of the intended use of agents and branches and of the off-site or on-site checks that the applicant undertakes to perform on them at least annually, as well as a description of outsourcing arrangements, and of its participation in a national or international payment system;
- i) the identity of directors and persons responsible for the management of the applicant and, where relevant, persons responsible for the management of the account information service, as well as evidence that they are of good repute and possess appropriate knowledge and skills to perform account information services;
- k) the legal form and articles of association of the applicant;
- l) the address of the registered office or head office of the applicant;
- m) evidence of professional liability insurance or comparable guarantee against their liability vis-à-vis the account servicing payment service provider or the payment service user resulting from non-authorised or

fraudulent access to or non-authorised or fraudulent use of payment account information;

- n) for the purposes of points (c), (d), and (h), a description of the audit arrangements and the organisational arrangements the applicant has set up with a view to taking all reasonable steps to protect the interests of the payment service users and to ensure continuity and reliability in the performance of the account information service;
- o) in regard to the security control and mitigation measures referred to in point (g), an indication of how they ensure a high level of technical security and data protection, including for the software and IT systems used by the applicant or the undertakings to which it outsources the whole or part of its operations. Those measures shall also include the security measures laid down in Article 101.

2) On the basis of the complete application and the information and documents submitted, the FMA shall review whether the legal requirements for the provision of account information services are fulfilled.

3) Within three months of receipt of an application or, should the application be incomplete, of all the information required for the licence, the FMA must either:

- a) grant the licence – where necessary subject to terms and conditions – and enter the applicant in the Payment Services Register (Article 16) without delay; or
- b) communicate in writing and with reasons that the application has been refused, without prejudice to a procedure pursuant to Article 35(8) or Article 109(1)(b).

4) Apart from the provision of account information services, account information service providers may also provide operational and closely related ancillary services. Ancillary services include in particular services for ensuring data protection and the storage and processing of data.

## **B. Lapse and withdrawal**

### Article 13

#### *Lapse of licence*

1) A licence granted under Article 9 shall lapse if:

- a) business activities have not been taken up within one year;

- b) business activities have no longer been undertaken for at least six months;
- c) the licence is renounced in writing;
- d) no licensed payment services are provided in Liechtenstein, even in part;
- e) bankruptcy proceedings have been opened with legal effect; or
- f) the company name has been removed from the Commercial Register.

2) Lapse of a licence must be communicated to the payment institution with a decree justified in writing, and upon entering into effect it shall be published in the official journal at the expense of the payment institution and noted in the Payment Services Register as referred to in Article 16.

#### Article 14

##### *Withdrawal of the licence*

- 1) The FMA shall withdraw a licence granted under Article 9 if:
- a) the conditions for granting it are no longer met;
  - b) the payment institution obtained the licence dishonestly by providing false information or in any other manner or the FMA was unaware of material circumstances;
  - c) a payment institution systematically and in a serious way violates its legal obligations;
  - d) a payment institution fails to meet the FMA's demands to restore a lawful state of affairs;
  - e) a payment institution would constitute a threat to the stability of or the trust in the payment system by continuing its business.

2) Withdrawal of a licence must be communicated to the affected party and justified in writing, and upon entering into effect it shall be published in the official journal at the expense of the licence holder and noted in the Payment Services Register as referred to in Article 16.

#### Article 15

##### *Termination and liquidation*

- 1) Lapse and withdrawal of a licence pursuant to Article 13 or 14 shall entail termination and removal of the company name of a payment



institution from the Commercial Register. The costs shall be borne by the payment institution.

2) The FMA shall take the measures necessary for liquidation and settlement of the current transactions of the payment institution, and it shall issue the requisite instructions to the liquidator.

3) The FMA shall monitor the liquidator.

4) In urgent cases the FMA may take the necessary measures without prior warning and without imposing a deadline.

### **C. Payment Services Register**

#### Article 16

##### *Payment Services Register*

1) The FMA shall maintain a publicly available register in which the following shall be entered:

- a) the payment institutions licensed in Liechtenstein, with the date on which the licence was granted and the scope of the licence;
- b) the account information service providers registered in Liechtenstein, with the date of registration and the scope of registration;
- c) the agents acting on behalf of Liechtenstein payment institutions or account information service providers in Liechtenstein or another EEA Member State;
- d) branches of Liechtenstein payment institutions or registered account information service providers if they provide services in another EEA Member State;
- e) each lapse and each withdrawal of the licence of a payment institution or the registration of an account information service provider.

2) Payment institutions and registered account information service providers shall be kept separately from each other in the register.

3) The FMA must verify entries under paragraph 1 and update them immediately if necessary.

4) The FMA must make the Payment Services Register available free of charge on its website. In addition, the FMA must grant anyone access to the Payment Services Register at its physical office location, so long as technically feasible.

5) The FMA shall notify the EBA and the EFTA Surveillance Authority of the information included in the Payment Services Register under paragraph 1, including any changes. In the case of lapses or withdrawals of a licence or registration, the reasons for that lapse or withdrawal must also be provided.

#### **D. Performance of business activities**

##### Article 17

##### *Control of the shareholding*

1) Every proposed direct or indirect acquisition and every proposed direct or indirect disposal of a qualifying holding as defined in Article 4(1)(36) of Regulation (EU) No 575/2013 in a payment institution must be notified in writing to the FMA without delay by the person or persons proposed for the acquisition and the disposal. Every proposed direct or indirect increase or every proposed direct or indirect reduction of a qualifying holding in a payment institution must also be notified if, as a consequence of the increase or reduction, the thresholds of 20%, 30%, or 50% of the capital or voting rights of the payment institution were to be reached, exceeded or fallen below, or so that the payment institution would become the subsidiary of an acquirer, or the payment institution would cease to be a subsidiary of the person disposing of the qualifying holding.

2) The proposed acquirer of a qualifying holding must supply to the FMA information indicating the size of the intended holding and relevant information referred to in Article 23(4) of Directive 2013/36/EU.

3) If a natural or legal person fails to provide the information required under paragraph 1 or fails to do so in a timely manner, the FMA shall take appropriate measures.

4) Where an intended qualifying holding is likely to operate to the detriment of the prudent and sound management of a payment institution, the FMA shall express its opposition to the acquisition or take other appropriate measures to avert that danger.

5) Any exercise of voting rights of holdings acquired despite the opposition of the FMA shall be null and void.

6) Article 26a of the Banking Act shall apply *mutatis mutandis*.

## Article 18

*Own funds*

- 1) Payment institutions must at all times have sufficient own funds.
- 2) The own funds may not fall below the amount of the statutory initial capital set out in Article 10 or the amount of own funds as calculated in accordance with Article 19, whichever is the higher.
- 3) Payment institutions offering solely a combination of account information services within the meaning of Article 4(1)(25) and payment initiation services within the meaning of Article 4(1)(39) are required to hold current own funds only in the amount of their statutory initial capital. No calculation in accordance with Article 19 ZDG is required.
- 4) Where a payment institution belongs to the same group as another payment institution, bank, investment firm, asset management company, or insurance undertaking, the necessary measures must be taken to prevent the multiple use of elements eligible for own funds. This also applies where a payment institution carries out activities as referred to in Article 7(3) other than payment services.
- 5) If the conditions laid down in Article 7 of Regulation (EU) No 575/2013 are met, the FMA may choose not to apply this Article to payment institutions which are included in the consolidated supervision of the parent bank pursuant to Article 18 of Regulation (EU) No 575/2013.

## Article 19

*Calculation of own funds*

- 1) The minimum amount of own funds shall be calculated using one of the following methods:
  - a) Method A: The payment institution's own funds shall amount to at least 10% of its fixed overheads of the preceding year. The FMA may adjust that requirement in the event of a material change in a payment institution's business since the preceding year. Where a payment institution has not completed a full year's business at the date of the calculation, the requirement shall be that its own funds amount to at least 10% of the corresponding fixed overheads as projected in its programme of operations, unless an adjustment to that plan is required by the FMA;

- b) Method B: The payment institution's own funds shall amount to at least the sum of the following elements multiplied by the scaling factor  $k$  defined in paragraph 2, where payment volume (PV) represents one twelfth of the total amount of payment transactions executed by the payment institution in the preceding year:
1. 4% of the slice of PV up to 5 million francs or the equivalent in euros  
plus
  2. 2.5% of the slice of PV above 5 million francs up to 10 million francs or the equivalent in euros  
plus
  3. 1% of the slice of PV above 10 million up to 100 million francs or the equivalent in euros  
plus
  4. 0.5% of the slice of PV above 100 million up to 250 million francs or the equivalent in euros  
plus
  5. 0.25% of the slice of PV above 250 million francs or the equivalent in euros.
- c) Method C: The payment institution's own funds shall amount to at least the relevant indicator defined in point 1, multiplied by the multiplication factor defined in point 2 and by the scaling factor  $k$  defined in paragraph 2.
1. The relevant indicator is the sum of the following:
    - aa) interest income;
    - bb) interest expenses;
    - cc) commissions and fees received; and
    - dd) other operating income.

Each element shall be included in the sum with its positive or negative sign. Income from extraordinary or irregular items shall not be used in the calculation of the relevant indicator. Expenditure on the outsourcing of services rendered by third parties may reduce the relevant indicator if the expenditure is incurred from an undertaking subject to supervision under this Directive. The relevant indicator is calculated on the basis of the 12-monthly observation at the end of the previous financial year. The relevant indicator shall be calculated over the previous financial year. Nevertheless own funds calculated according to Method C shall not fall below 80% of the average of the previous three financial

years for the relevant indicator. When audited figures are not available, business estimates may be used.

2. The multiplication factor shall be:
  - aa) 10% of the slice of the relevant indicator up to 2.5 million francs or the equivalent in euros;
  - bb) 8% of the slice of the relevant indicator from 2.5 million up to 5 million francs or the equivalent in euros;
  - cc) 6% of the slice of the relevant indicator from 5 million up to 25 million francs or the equivalent in euros;
  - dd) 3% of the slice of the relevant indicator from 25 million up to 50 million francs or the equivalent in euros;
  - ee) 1.5 % of the slice of the relevant indicator above 50 million francs or the equivalent in euros.

2) The scaling factor k to be used in Methods B and C shall be:

- a) 0.5 where the payment institution provides only the payment service as referred to in Article 2(2)(c);
- b) 1 where the payment institution provides any of the payment services as referred to in Article 2(2)(a), (b), and (f) to (h).

3) The FMA may, based on an evaluation of the risk-management processes, risk loss data base and internal control mechanisms of the payment institution:

- a) require the payment 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 method chosen in accordance with paragraph 1; or
- b) permit the payment 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 method chosen in accordance with paragraph 1.

4) At the same time as the licence application pursuant to Article 9, a payment institution may submit a reasoned proposal for the choice of the calculation method under paragraph 1. The FMA is not bound by the proposal. After consulting the payment institution, the FMA shall determine the method to be used under the license, taking into account the complexity and risk propensity of the payment institution's business model, in particular whether:

- a) the business model involves the operation of a payment account;
- b) payment transactions are covered by a credit line for a payment service user as referred to in Article 2(2)(g).

5) The payment institution may, once a year and with effect for the following financial year, submit a written application for determining a different calculation method under paragraph 1. Such an application must be justified and submitted to the FMA by 31 August of the current calendar year at the latest. The FMA must decide on a complete application within three months.

## Article 20

### *Safeguarding requirements*

1) Payment institutions which provide payment services as referred to in Article 2(2)(a) to (c) and (f) to (h) must safeguard all funds which have been received from the payment service users or through another payment service provider for the execution of payment transactions, according to either of the following two methods:

a) Method A:

1. funds shall not be commingled at any time with the funds of any person other than payment service users on whose behalf the funds are held;
2. where funds are still in the control of the payment institution and not yet delivered to the payee or transferred to another payment service provider by the end of the business day following the day when the funds have been received, they shall be deposited in a separate account at a bank or invested in secure, liquid low-risk assets as defined by the FMA. They shall be insulated in the interest of the payment service users against the claims of other creditors of the payment institution, in particular in the event of insolvency;
3. funds must be kept identifiable in such a way that they can be attributed to individual payment service users at any time with regard to their respective shares;

b) Method B: funds shall be covered by an insurance policy or some other comparable guarantee from an insurance company or a bank, which does not belong to the same group as the payment institution itself, for an amount equivalent to that which would have been segregated in the absence of the insurance policy or other comparable guarantee, payable in the event that the payment institution is unable to meet its financial obligations.

2) Where a payment institution is obliged to safeguard funds under paragraph 1 and a portion of those funds is to be used for future payment transactions with the remaining amount to be used for non-

payment services, that portion of the funds to be used for future payment transactions shall also be subject to the requirements of paragraph 1. Where that portion is variable or not known in advance, the FMA may on application allow payment institutions to apply this paragraph on the basis of a representative portion assumed to be used for payment services, provided such a representative portion can be reasonably estimated on the basis of historical data.

3) During its ongoing business operations, the payment institution shall, upon request, show and prove to the FMA that it has taken adequate measures to meet the requirements stated in paragraphs 1 and 2. Where proof is not provided or the measures are not adequate, the FMA shall call on the payment institution to submit the necessary proof or to take the arrangements that are appropriate and necessary to overcome the existing shortcomings. The FMA shall set a reasonable deadline. Where the proof is not provided or the arrangements are not taken by the deadline set, the FMA may take measures under Article 35(4) and (6).

4) The payment service user may, in the event of an execution against the payment service user's payment service provider, file an objection under public law (Article 20 of the Execution Act) if the execution relates to the amounts safeguarded under paragraph 1. Under the same conditions, the payment service user has the right to segregation in the event of bankruptcy over the assets of the payment service provider (Article 41 of the Bankruptcy Act).

#### Article 21

##### *Accounting*

1) The accounting provisions of the Banking Act and of the Law on Persons and Companies applicable to banks and investment firms shall apply to payment institutions *mutatis mutandis*.

2) Payment institutions shall provide separate accounting information for the provision of payment services under Article 2(2) and other activities under Article 7(3), which shall be subject to a detailed audit report. This report shall be prepared by an audit firm.

## Article 22

*External audit requirement*

1) Each year, payment institutions must submit to an audit of their business activities by an independent audit office recognised by the FMA.

2) At all times, payment institutions must grant the audit office access to the books, receipts, business correspondence, and minutes of the board of directors and the general management, they must keep all documents available that are usually required to determine and assess the assets and liabilities, and they must provide all information necessary for fulfilling the audit requirement.

## Article 23

*Record-keeping*

1) Payment institutions must keep all relevant records for ten years, subject to due diligence legislation.

2) This Article is subject to special obligations under law.

## Article 24

*Outsourcing of functions*

1) Where a payment institution intends to outsource operational functions relating to the provision of payment services, it must inform the FMA accordingly.

2) Outsourcing of important operational functions is permissible if:

- a) neither the quality of the payment institution's internal control nor the ability of the FMA to supervise the payment institution is materially impaired;
- b) the outsourcing does not result in the delegation by the general management of its responsibility;
- c) the relationship and obligations of the payment institution towards its payment service users under this Act are not altered;
- d) the licensing conditions under this Act are not undermined; and
- e) none of the other conditions subject to which the payment institution's licence was granted are removed or modified.



3) An operational function shall be regarded as important in this context in particular if a defect or failure in its performance would materially impair the continuing compliance of a payment institution with the licensing conditions, its other obligations under this Act, its financial performance, or the soundness or the continuity of its payment services.

4) Where payment institutions outsource operational functions, those payment institutions shall take reasonable steps to ensure that the requirements of this Act are complied with.

5) The FMA shall prohibit the outsourcing of important operational functions if the requirements under paragraphs 2 to 4 are not met.

6) This Article is subject to special legal provisions governing the outsourcing of functions.

#### Article 25

##### *Use of agents*

1) Where a payment institution intends to provide payment services in Liechtenstein through an agent, it shall communicate the following information to the FMA:

- a) the name and address of the agent;
- b) a description of the internal control mechanisms that will be used by the agent in order to comply with the obligations under the Due Diligence Act; this description must be updated without delay in the event of material changes to the particulars communicated at the initial notification;
- c) the identity of directors and persons responsible for the management of the agent to be used in the provision of payment services and, for agents other than payment service providers, evidence that they are fit and proper persons;
- d) the payment services of the payment institution for which the agent is mandated; and
- e) where applicable, the unique identification code or number of the agent.

2) Within two months of receipt of the information referred to in paragraph 1, the FMA shall communicate to the payment institution whether the agent has been entered in the Payment Services Register provided for in Article 16. Upon entry in the register, the agent may commence providing payment services.

3) Before entering the agent in the Payment Services Register, the FMA shall, if it considers that the information provided to it is incorrect, take further action to verify the information received.

4) If the FMA is not satisfied that the information provided pursuant to paragraph 1 is correct, it shall refuse to enter the agent in the Payment Services Register. The FMA shall inform the payment institution and the agent concerned without delay.

5) The payment institutions shall communicate to the FMA without delay any change regarding the use of agents, including additional agents.

#### Article 26

##### *Liability*

1) Payment institutions shall be fully liable for the conduct of their employees, agents, branches, or entities to which activities have been outsourced.

2) The payment institution must ensure that agents or branches acting on its behalf inform the payment service users prior to concluding a contract in which capacity they are acting and which payment institution they represent.

### **E. Relationship with the European Economic Area**

#### Article 27

##### *Activities of Liechtenstein payment institutions in other EEA Member States*

1) Where a Liechtenstein payment institution intends to provide payment services in another EEA Member State under the freedom to provide services and/or freedom of establishment, it must inform the FMA of this in writing beforehand. The notification shall contain the following information:

- a) the name, the address and, where applicable, the licence number of the payment institution;
- b) the EEA Member State in whose territory the payment services are to be provided;

- c) the types of payment services the payment institution intends to provide in the host Member State;
- d) the information referred to in Article 25(1) if the payment institution intends to provide services through the use of agents;
- e) for each branch to be established in the host Member State:
  - 1. the information referred to in Article 8(b) and (e);
  - 2. a description of the organisational structure of the branch;
  - 3. identity of those responsible for the management of the branch; and
- f) the address at which documents from the payment institution can be requested in the host Member State and where documents can be served.
  - 2) Where the payment institution intends to outsource operational functions of payment services to other entities in the host Member State, it shall inform the FMA accordingly.
  - 3) Within one month of receipt of the complete information referred to in paragraphs 1 and 2, the FMA shall send that information to the competent authority of the host Member State.
  - 4) Where the FMA does not agree with the assessment of the competent authorities of the host Member State under Article 28(2) of Directive (EU) 2015/2366, it shall provide the latter with the reasons for its decision.
  - 5) If the assessment of the FMA is not favourable in particular in light of the information received from the competent authorities of the host Member State, the FMA shall refuse to enter the agent or branch in the Payment Services Register (Article 16) or shall remove the entry if already made.
  - 6) Within three months of receipt of the complete information referred to in paragraphs 1 and 2, the FMA shall communicate its decision to the competent authority of the host Member State and to the payment institution.
  - 7) Only upon entry in the Payment Services Register (Article 16) may the agent or branch commence its activities in the relevant host Member State.
  - 8) The payment institution shall notify to the FMA the date from which it commences its activities through the agent or branch in the relevant host Member State. The FMA shall inform the competent authority of the host Member State accordingly.

9) The payment institution shall communicate to the FMA without delay any relevant changes regarding the information communicated in accordance with paragraphs 1 and 2. The FMA shall without delay forward this information to the competent authority of the host Member State. Paragraphs 3 to 8 shall apply *mutatis mutandis*.

## Article 28

### *Activities of EEA payment institutions in Liechtenstein*

1) The provision of payment services by way of the establishment of a branch or the use of agents or the exercise of freedom to provide services in Liechtenstein by a payment institution whose registered office is situated in another EEA Member State requires that the competent authority of the home Member State has notified the FMA pursuant to Article 28(2) of Directive (EU) 2015/2366.

2) The FMA must assess a notification under paragraph 1 within one month. It shall provide the competent authority of the home Member State with its assessment and the relevant information on the activities or payment services that the payment institution concerned intends to provide under the freedom of establishment or freedom to provide services.

3) If, in the course of the assessment pursuant to paragraph 2, the FMA comes to the conclusion that the establishment of a branch or the use of an agent might be problematic in regard to money laundering or financing of terrorism under Directive (EU) 2015/849 or for other reasons, it shall inform the competent authority of the home Member State accordingly.

4) As soon as the FMA has been informed by the competent authority of the home Member State in accordance with Article 28(3)(3) of Directive (EU) 2015/2366, the FMA shall inform the payment institution of the conditions to be observed when performing the activities in Liechtenstein on grounds of public interest.

5) The FMA may require a payment institution whose registered office is situated in another EEA Member State, which operates in Liechtenstein through agents exercising the freedom of establishment, to designate a central contact point in Liechtenstein upon receipt of the notification pursuant to Article 28(3)(3) of Directive (EU) 2015/2366.

## F. Relationship with third countries

### Article 29

#### *Activities of undertakings with registered offices outside the EEA*

Undertakings whose registered office is situated outside the EEA intending to provide payment services in Liechtenstein require a license from the FMA or – if the services they intend to provide in Liechtenstein are exclusively account information services – registration pursuant to Article 11.

## G. Supervision

### 1. General provisions

### Article 30

#### *Organisation and implementation*

The following bodies are mandated to implement this Act:

- a) the FMA;
- b) die audit offices;
- c) the Office of Justice (Article 32(2));
- d) the Court of Justice (Articles 107 and 109);
- e) the extrajudicial conciliation board (Article 108).

### Article 31

#### *Official secrecy*

1) The authorities, courts, and bodies mandated to implement this Act, and any other persons consulted by these authorities, courts, and bodies, shall be subject to official secrecy without any time limits with respect to the confidential information that they gain knowledge of in the course of their official activities.

2) Confidential information as referred to in paragraph 1 may be transmitted to others in accordance with this Act and other special legal provisions.

3) If liquidation or bankruptcy proceedings have been initiated by a court decision against a payment institution, then confidential information that does not relate to third parties may be used in civil proceedings, as long as it is necessary for the proceedings in question.

4) Without prejudice to the criminal law cases, the FMA, other competent administrative authorities, courts, and bodies, and other natural and legal persons may use confidential information that they receive under this Act only for purposes of fulfilling their responsibilities and tasks under this Act or for purposes for which the information was given, and/or in the case of administrative and judicial proceedings that specifically relate to the fulfilment of these tasks. If the FMA, another administrative authority, a court, a body, or a person providing the information gives their consent, however, then the authority, court, or body receiving the information may use it for other purposes relating to financial market supervision.

5) The FMA is permitted to transmit confidential information received from a non-competent authority of another EEA Member State to other competent authorities of EEA Member States and to the EBA.

6) The FMA is authorised to provide the audit offices with the information necessary for the performance of their responsibilities.

#### Article 32

##### *Cooperation of domestic authorities and bodies*

1) In the context of the supervision of payment institutions, the competent domestic authorities, courts, and bodies shall work together to the extent necessary for the performance of their responsibilities.

2) The competent domestic authorities, courts, and bodies may transmit to each other personal data, including personal data relating to criminal convictions and offences, to the extent necessary for the performance of their responsibilities.

3) The Office of Justice shall notify the FMA of all changes to entries in the Commercial Register concerning a payment institution. The Office of Justice shall grant the FMA electronic access to the data concerning payment institutions. The Government may provide further details by ordinance.

## Article 33

*Data processing*

The competent domestic authorities, courts, and bodies may process or have processed personal data, including personal data relating to criminal convictions and offences, of persons subject to this Act, or may exchange such data with each other, to the extent necessary for the performance of their responsibilities under this Act.

**2. FMA**

## Article 34

*Competence*

As the competent supervisory authority within the meaning of Article 22(1) of Directive (EU) 2015/2366, the FMA exercises supervision in accordance with Articles 35 to 46 over:

- a) Liechtenstein payment institutions;
- b) branches operating for a Liechtenstein payment institution in another EEA Member State;
- c) agents operating for a Liechtenstein payment institution in Liechtenstein or in another EEA Member State;
- d) entities to which a payment service provider has outsourced operational functions;
- e) branches and agents operating in Liechtenstein for a payment institution whose registered office is situated in another EEA Member State.

## Article 35

*Responsibilities and powers*

1) The FMA shall monitor compliance with the provisions of this Act and the associated ordinances. It shall take the measures necessary for performance of its responsibilities directly, in cooperation with other supervisory bodies, or by filing charges with the Office of the Public Prosecutor.

2) The FMA shall in particular be responsible for:

- a) granting and withdrawing licenses and registrations;
- b) ordering measures to ensure compliance with Articles 10, 18, and 19;
- c) maintaining the Payment Services Register provided for in Article 16;
- d) exercising supervision over domestic and foreign payment institutions, branches, and agents in accordance with the provisions of this Chapter;
- e) punishing contraventions in accordance with Article 110.

3) Based on an internal risk analysis, the FMA shall conduct regular reviews to ensure compliance with this Act by payment institutions.

4) The FMA shall have all necessary powers to fulfil its responsibilities and may in particular:

- a) demand from all persons and entities subject to this Act and to the FMA's supervision and from their audit offices all information and documents, including copies, necessary for execution of this Act;
- b) carry out on-site inspections at payment institutions, their agents and branches, as well as at entities to which payment services or operational functions are outsourced;
- c) order or carry out extraordinary audits or investigations;
- d) issue decisions and decrees;
- e) publish final decisions and decrees;
- f) issue recommendations, communications, and guidelines;
- g) amend or withdraw a licence;
- h) request the Office of the Public Prosecutor to apply for measures for securing the forfeiture of assets in accordance with the provisions of the Code of Criminal Procedure;
- i) demand the dismissal of the directors or persons responsible for the management of the payment institution or impose temporary prohibitions to practice a profession;
- k) demand the submission and execution of a plan to restore a lawful state of affairs within a time limit set by the FMA;
- l) demand the use of net profits to strengthen own funds;
- m) prohibit in whole or in part the withdrawal of capital and profits as well as the distribution of capital and profits;
- n) demand additional notification and reporting obligations;
- o) demand the transmission of supplementary information;



- p) where the interests of creditors appear to be acutely endangered by defects, prohibit a payment institution from conducting any business that is likely to increase such endangerment;
- q) where the interests of creditors appear to be acutely endangered by defects, prohibit the continuation of business operations in whole or in part.

5) The FMA shall take measures in accordance with paragraph 4 – irrespective of the requirements set out in Articles 10, 18, and 19 – in particular where:

- a) payment institutions do not hold sufficient own funds for the provision of payment services;
- b) the non-payment services activities of payment institutions impair or are likely to impair their financial soundness.

6) The FMA may assign an expert as its observer of a payment institution if the claims of creditors appear endangered by serious abuses. The audit office appointed by law may be entrusted with this responsibility. The observer shall monitor the activities of the managing governing bodies, in particular the implementation of the measures ordered, and shall report to the FMA on an ongoing basis. The observer shall enjoy the unrestricted right to inspect the business activities and the books and files of the payment institution. The costs shall be borne by the payment institution.

7) If the FMA learns of violations of this Act or other deficits, it shall take the measures necessary to bring about a lawful state of affairs and to eliminate the deficits.

8) If there are grounds to assume that an activity subject to this Act is being conducted without a licence or registration, the FMA may demand information and documents, including copies, from the persons concerned as if these persons were subject to this Act. In urgent cases, the FMA may order immediate cessation and dissolution without prior warning and without imposing a deadline.

9) The costs incurred due to misconduct shall be borne by those responsible in accordance with Article 26 of the Financial Market Authority Act.

10) If the FMA receives complaints from persons and/or organisations regarding alleged violations of provisions of this Act for which the FMA is not competent, it shall alert these persons and organisations, where appropriate and without prejudice to the right to take legal action, to the possibility of invoking the extrajudicial conciliation board in accordance with Article 108.

## Article 36

*Supervision taxes and fees*

The supervision taxes and fees are governed by the Financial Market Authority Act (FMAG).

*International cooperation*

## Article 37

*a) Principle*

1) Where necessary for the performance of its responsibilities, the FMA shall cooperate with:

- a) the competent authorities of other EEA Member States;
- b) the EBA;
- c) the ECB and the central banks of other EEA Member States in their capacity as monetary and supervisory authorities; and
- d) other authorities competent in other EEA Member States for overseeing payment and settlement systems, the protection of natural persons with regard to the processing of personal data, or for combating money laundering and terrorist financing.

2) Where the FMA considers that, in a particular matter, cross-border cooperation with competent authorities of other EEA Member States referred to in Article 26 and 28 to 31 of Directive (EU) 2015/2366 does not comply with the relevant conditions set out in those provisions, it may refer the matter to the EBA as well as the EFTA Surveillance Authority and request their assistance in accordance with Article 19 of Regulation (EU) No 1093/2010.

3) Subject to Articles 31(5), 38, and 39, cooperation with the competent authorities of the other EEA Member States shall be governed by Article 26b(2) and (4) FMAG *mutatis mutandis*.

4) Cooperation with the competent authorities of a third country is governed by Article 26b(3) and (4) FMAG.

## Article 38

*b) Supervision of branches and agents of a Liechtenstein payment institution in another EEA Member State*

1) Within the scope of its supervision of Liechtenstein payment institutions that perform their activities through an agent or a branch in another EEA Member State, the FMA shall cooperate with the competent authorities of the host Member State in order to be able to take the necessary steps and carry out the controls in the territory of a host Member State.

2) The FMA shall communicate to the competent authorities of the host Member State, on its own initiative or upon request, all essential and relevant information and personal data, including information on the requirements pursuant to Article 9(1)(b) and (c), in particular if:

- a) there is a suspicion that an agent or branch of a payment institution may have violated mandatory provisions of Directive (EU) 2015/2366 or the provisions of the home or host Member States which have been enacted in implementation of that Directive; and
- b) the infringement referred to in subparagraph (a) was committed while exercising the freedom to provide services or freedom of establishment.

3) If the FMA intends to conduct on-site inspections in the territory of a host Member State, it shall inform the competent authorities of the host Member State in accordance with paragraph 1.

4) If appropriate in an individual case, the FMA may also request the competent authorities of a host member state to carry out an on-site inspection.

5) If the FMA becomes aware that an agent or branch of a payment institution may have committed an infringement referred to in paragraph 2, it must take all appropriate measures without delay to end the irregular situation. The FMA must notify these measures to the competent authorities of the host Member State and to the competent authorities of each other EEA Member State concerned.

## Article 39

*c) Supervision in Liechtenstein of branches and agents of a payment institution whose registered office is situated in the EEA*

1) Without prejudice to the responsibility of the competent authorities of the home Member State, where the FMA ascertains that a payment institution providing services in Liechtenstein through agents or branches does not comply with Titles II, III, and IV of Directive (EU) 2015/2366 or with the provisions of Chapters II and III of this Act, it shall inform the competent authorities of the home Member State without delay.

2) If the FMA receives a request from the competent authorities of the home Member State pursuant to Article 29(1)(3) of Directive (EU) 2015/2366 regarding an on-site inspection, it shall act within the scope of its powers.

3) In an emergency situation, the FMA may take immediate measures, in particular where necessary to address a serious threat to the collective interests of payment service users.

4) Immediate measures pursuant to paragraph 3 must meet the following conditions:

- a) They are permissible only as long as the competent authorities of the home Member State have not yet taken measures in accordance with Article 29 of Directive (EU) 2015/2366.
- b) They must be appropriate and proportionate to their purpose to protect against a serious threat to the collective interests of the payment service users.
- c) They shall not result in a preference for payment service users of a Liechtenstein payment institution over payment service users of payment institutions in other EEA Member States.

5) Immediate measures pursuant to paragraph 3 shall be terminated when the threat identified by the FMA is addressed, where applicable including with the assistance of the home Member State's competent authorities.

6) Where compatible with the emergency situation, the FMA shall inform the following entities in advance, and in any case without delay, of the immediate measures taken under paragraph 3 and of their justification:

- a) the competent authorities of the home Member State;

- b) the competent authorities of any other EEA Member State concerned;
- c) the EFTA Surveillance Authority;
- d) the EBA;
- e) the European Commission.

### 3. Audit offices

#### Article 40

##### *Recognition*

- 1) Audit offices and audit associations that audit payment institutions shall require a licence issued by the FMA for such activities.
- 2) The licence shall be granted to audit offices if:
  - a) their general management, lead auditors, and organisation guarantee that the audit mandates are performed continuously and properly;
  - b) they are organised as public limited companies and have adequate share capital;
  - c) they have a licence under the Auditors Act or are registered under Article 69 of the Auditors Act; and
  - d) their lead auditors have a licence under the Auditors Act.
- 3) The audit offices shall dedicate themselves exclusively to audit activities and immediately related transactions such as inspections, liquidations, and reorganisations. They may not engage in payment services, banking transactions, investment services, or asset management.
- 4) The audit offices must be independent of the payment institutions to be audited.
- 5) The audit office must maintain secrecy concerning all facts it has learned about in the course of its audit, except vis-à-vis the competent bodies of the payment institution and the FMA.
- 6) The Government may provide further details by ordinance.

## Article 41

*Responsibilities and audit report*

- 1) The audit offices shall verify whether:
  - a) the business activities of the payment institution conform to the law, the articles of association, and the regulations;
  - b) the conditions for granting the licence are continuously met; and
  - c) the form and content of the annual report and the consolidated annual report conform to the requirements of the law, articles of association, and regulations.
- 2) The audit office shall summarise the results of the audits under paragraph 1 in a written audit report. The audit report shall be signed by the lead auditor and the audit office.
- 3) The audit report shall be submitted simultaneously to the board of directors of the payment institution, the FMA, and, where applicable, the audit office under the provisions of the Law on Persons and Companies.
- 4) The Government shall set out the other basic principles of the audit of payment institutions by ordinance. The FMA shall provide further details.

## Article 42

*Deficiencies*

- 1) If the external audit office finds violations of legal provisions or other deficits, it shall impose an appropriate deadline on the payment institution to bring about a lawful state of affairs. If the deadline is not met, the external audit office shall report to the FMA.
- 2) The audit office shall notify the FMA immediately if the imposition of a deadline appears useless, or if it finds that the general management has committed offences or that other serious abuses exist which conflict with the purpose of this Act.
- 3) Irrespective of paragraph 1, a duty to report within the meaning of paragraph 2 shall subsist:
  - a) in the case of serious violations of the law, associated ordinances, and articles of association by the general management, especially in the case of violations of the licensing conditions and the provisions applicable to the exercise of business activities;

- b) in the case of facts or decisions that might adversely affect the continuation of the activities of the payment institution;
- c) in the case of facts or decisions that might lead to a rejection of the annual report or the consolidated annual report or to reservations in the audit report.

4) A duty to report shall also subsist where, in the course of its audit activities, the audit office makes determinations in accordance with paragraph 3 with respect to undertakings closely linked with the payment institution subject to the audit.

5) Audit offices bringing fact patterns to the attention of the FMA in good faith shall not thereby be deemed in breach of any contractual or legal restrictions on passing on information. Meeting the information requirement in this sense does not entail any adverse consequences for the audit office or person passing on the information.

#### Article 43

##### *Supervision of audit offices*

In its supervision of audit offices, the FMA may in particular carry out quality controls and accompany the audit offices in their audit activities at payment institutions.

#### Article 44

##### *Audit costs*

1) The payment institution shall bear the costs of the audit. The costs of the audit shall be calculated according to the fee schedule issued by the Government by ordinance.

2) Agreement on lump-sum remuneration or a specific expenditure of time for the audit is prohibited.

## H. Procedure and legal remedies

### Article 45

#### *Procedure*

To the extent not otherwise specified in this Act, the provisions of the National Administration Act shall apply to the procedure.

### Article 46

#### *Legal remedies*

1) Appealable decisions and decrees of the FMA may be appealed within 14 days of service by way of complaint to the FMA Complaints Commission.

2) Decisions and decrees of the FMA Complaints Commission may be appealed within 14 days of service by way of a complaint to the Administrative Court.

3) The lodging of a complaint of omission with the FMA Complaints Commission is governed by Article 90(6a) of the National Administration Act. In the case of applications concerning the use of an agent pursuant to Article 25(2), the complaint of omission may be lodged after two months.

## III. Civil part

### A. General provisions

### Article 47

#### *Mandatory law*

1) Unless this Act expressly provides for an exception, agreements between payment service providers and payment service users which derogate from the provisions of this Act to the detriment of the payment service user shall be null and void (non-derogation).

2) A payment service provider may, however, grant a payment service user more favourable conditions than those provided for in this Act.



## **B. Transparency of conditions and information requirements for payment service providers**

### **1. General provisions**

#### Article 48

##### *Scope*

- 1) The provisions of this Section apply to:
- a) single payment transactions not covered by a framework contract (Articles 54 to 60);
  - b) payment transactions covered by a framework contract (Articles 61 to 67).

2) A payment service provider and a payment service user may agree that the payment service provider need not fulfil one or more of the information requirements of this Section if the payment service user is not a consumer.

#### Article 49

##### *Burden of proof*

In cases of doubt, a payment service provider shall prove that it has complied with the information requirements set out in this Section.

#### Article 50

##### *Charges for information*

1) A payment service provider shall not charge a payment service user for the provision of information under this Section.

2) A payment service provider and a payment service user may, however, agree that a payment service provider may impose reasonable charges on a payment service user for the following services, provided that they have been provided at the payment service user's request:

- a) the provision of information other than that provided for in this Section;
- b) more frequent provision of information than is required by law;

c) the transmission of information by means of communication other than those specified in the framework contract.

3) Where a payment service provider may impose charges for information in accordance with paragraph 2, they shall be reasonable and in line with the payment service provider's actual costs.

#### Article 51

##### *Information on additional charges or reductions*

1) A payee shall inform a payer prior to the initiation of the payment transaction if the payee requests a charge or offers a reduction for the use of a given payment instrument.

2) A payment service provider or any other party involved in the transaction shall inform a payment service user prior to the initiation of the payment transaction if it requests a charge for the use of a given payment instrument.

3) A payer shall be obliged to pay for the charges referred to in paragraphs 1 and 2 only if their full amount was informed prior to the initiation of the payment transaction.

#### Article 52

##### *Simplified information requirements for low-value payment instruments and electronic money*

1) The simplified information requirements under paragraphs 2 to 4 apply to payment instruments which, according to a framework contract:

- a) concern only individual payment transactions that do not exceed 30 francs or the equivalent in euros;
- b) have a spending limit of 150 francs or the equivalent in euros; or
- c) store funds that do not exceed 150 francs or the equivalent in euros at any time.

2) By way of derogation from Articles 55, 56, 61, and 64, a payment service provider shall communicate to the payer only:

- a) the main characteristics of the payment service;
- b) the way in which the payment instrument can be used;
- c) liability;

- d) charges levied;
- e) other material information needed to take an informed decision;
- f) the place where any other information and conditions specified in Article 55(1) and Article 56 are made available in an easily accessible manner.

3) By way of derogation from Article 63, a payment service provider and a payment service user may agree that a payment service provider is not required to propose changes to the framework contract in the form provided for in Article 63(1).

4) By way of derogation from Articles 65 and 66, a payment service provider and a payment service user may agree that:

- a) after the execution of a payment transaction, a payment service provider provides or makes available only a reference enabling the payment service user to:
  - 1. identify the payment transaction;
  - 2. identify the amount of the payment transaction;
  - 3. identify any charges;
- b) in the case of several payment transactions of the same kind made to the same payee, a payment service provider makes available information on the total amount and charges for those payment transactions;
- c) a payment service provider is not required to provide or make available information referred to in points (a) and (b) if the payment instrument is used anonymously or if the payment service provider is not otherwise technically in a position to provide it. However, the payment service provider shall provide the payer with a possibility to verify the amount of funds.

5) For domestic payment transactions, the amounts specified in paragraph 1(a) and (b) shall be doubled for the purposes of paragraphs 2 to 4. For payment instruments that store funds, an upper limit of 500 francs or the equivalent in euros applies.

#### Article 53

##### *Currency and currency conversion*

- 1) Payments shall be made in the currency agreed between the parties.

2) Where a currency conversion service is offered prior to the initiation of the payment transaction and where that currency conversion service is offered at an ATM, at the point of sale or by the payee, the party offering the currency conversion service to the payer shall disclose to the payer all charges as well as the exchange rate to be used for converting the payment transaction.

3) The payer shall agree to the currency conversion service on that basis.

## **2. Information for single payment transactions outside a framework contract**

### Article 54

#### *Pre-contractual information requirements*

1) Where a single payment transaction is not covered by a framework contract, a payment service provider shall provide or make available to a payment service user the information and conditions specified in Article 55(1)(b)(2) to (5) and Article 55(2) before the payment service user is bound by a single payment service contract or offer.

2) When a payment order for a single payment transaction is transmitted by a payment instrument covered by a framework contract, however, the payment service provider shall not be obliged to provide or make available information which is already given to the payment service user on the basis of a framework contract with another payment service provider or which will be given to the payment service user according to that framework contract.

3) The information and conditions specified in Article 55(1)(b)(2) to (5) and Article 55(2) shall be:

- a) given in easily understandable words and in a clear and comprehensible form;
- b) made available to the payment service user in an easily accessible manner;
- c) made available in a language agreed between the payment service provider and the payment service user, or in German where no such language has been agreed;
- d) made available or provided on paper or on another durable medium at the request of the payment service user;

e) made available free of charge.

4) A payment service provider may discharge the obligations under paragraph 1 also by supplying the payment service user with a draft single payment service contract or a draft payment order including the information and conditions specified in Article 55(1)(b)(2) to (5) and Article 55(2).

5) If a single payment service contract has been concluded at the request of the payment service user using a means of distance communication which does not enable the payment service provider to comply with paragraph 1, the payment service provider shall fulfil its obligations immediately after the execution of the payment transaction.

6) Where applicable, the information specified in Article 55(1)(a), (b)(1), and Article 55(2) and the conditions specified in Article 56 shall be made available to the payment service user in an easily accessible manner. This is without prejudice to other provisions governing the pre-contractual information requirements of a payment service provider.

#### Article 55

##### *Information*

1) A payment service provider shall provide or make available to a payment service user the following information:

a) on the payment service provider:

1. its name;
2. the geographical address of its head office;
3. where applicable, the geographical address of its agents or branches established in the EEA Member State where the payment is offered;
4. other contact addresses, including the electronic mail address at which the payment service provider is reachable;
5. the contact details of the competent authority;
6. the public register of licensing of the payment service provider and its registration number or means of identification;

b) on the payment service:

1. a description of the main characteristics of the payment service to be provided;

2. a specification of the information or unique identifier that has to be provided by the payment service user in order for a payment order to be properly initiated or executed;
  3. the maximum execution time for the payment service to be provided;
  4. all charges payable by the payment service user to the payment service provider and, where applicable, a breakdown of those charges;
  5. where applicable, the actual or reference exchange rate to be applied to the payment transaction.
- 2) A payment initiation service provider shall, prior to initiation, provide the payer with, or make available to the payer, the following clear and comprehensive information:
- a) the name of the payment initiation service provider;
  - b) the geographical address of its head office;
  - c) where applicable, the geographical address of its agents or branches established in the EEA Member State where the payment service is offered;
  - d) any other contact details, including electronic mail address, relevant for communication with the payment initiation service provider;
  - e) the contact details of the competent authority.

#### Article 56

##### *Conditions*

- 1) A payment service provider shall additionally provide or make available to a payment service user the following information and conditions, to the extent necessary for proper provision of services:
- a) on use of the payment service:
    1. the form of and procedure for giving consent to initiate a payment order or execute a payment transaction and withdrawal of such consent in accordance with Articles 72 and 88;
    2. a reference to the time of receipt of a payment order in accordance with Article 86 and the cut-off time, if any, established by the payment service provider;
    3. the maximum execution time for the payment services to be provided;

4. the possibility to agree on spending limits for the use of the payment instrument in accordance with Article 76(1);
  5. in the case of co-badged, card-based payment instruments, the payment service user's rights under Article 8 of Regulation (EU) 2015/751;
- b) on charges, interest and exchange rates:
1. all charges payable by the payment service user to the payment service provider including those to be paid for the provision of requested information and, where applicable, the breakdown of the amounts of such charges;
  2. where applicable, the interest and exchange rates to be applied for the payment services;
  3. where applicable, the reference interest and exchange rates to be applied, including the method for calculating the actual interest;
  4. the relevant date and index or base for determining the reference interest or exchange rate;
  5. if agreed, the immediate application of changes in reference interest or exchange rate and information requirements relating to the changes in accordance with Article 63(3) and (4);
- c) on communication:
1. where applicable, the available means of communication for the transmission of information and notifications;
  2. the technical requirements for the payment service user's equipment and software;
  3. the manner in, and frequency with which, information under this Act is to be provided or made available;
  4. the language in which the contract between the payment service provider and the payment service user is concluded;
  5. the language in which communication between the payment service provider and the payment service user is undertaken;
  6. the payment service user's right to receive the information and conditions in accordance with Article 62;
- d) on safeguards and corrective measures:
1. where applicable, a description of the steps that the payment service user is to take in order to keep safe a payment instrument;
  2. where applicable, an indication of how to notify the payment service provider for the purposes of Article 77(c);

3. the secure procedures employed by the payment service provider for notification of the payment service user by the payment service provider in the event of suspected or actual fraud or security threats;
  4. if agreed, the conditions under which the payment service provider reserves the right to block a payment instrument in accordance with Article 76(2);
  5. the liability of the payer in accordance with Article 82, including information on the relevant amount;
  6. how and within what period of time the payment service user is to notify the payment service provider of any unauthorised or incorrectly initiated or executed payment transaction in accordance with Article 79;
  7. information on the payment service provider's liability for unauthorised payment transactions in accordance with Article 81;
  8. the liability of the payment service provider for the initiation or execution of payment transactions in accordance with Article 96;
  9. the conditions for refund in accordance with Articles 84 and 85;
- e) on changes to, and termination of, the framework contract:
1. if agreed, information that the payment service user will be deemed to have accepted changes in the conditions in accordance with Article 63(3), unless the payment service user notifies the payment service provider before the date of their proposed date of entry into force that they are not accepted;
  2. the duration of the contract;
  3. the right of the payment service user to terminate the framework contract;
  4. any agreements relating to termination in accordance with Article 63(1) and Article 67;
- f) on redress:
1. any contractual clause on the law applicable to the contract and the competent courts;
  2. the alternative dispute resolution procedures available to the payment service user in accordance with Articles 46 and 108.
- 2) The conditions of a payment service provider must be objective, non-discriminatory, and proportionate.



## Article 57

*Information for the payer and payee after the initiation of a payment order*

In addition to the information and conditions specified in Articles 55(1) and 56, where a payment order is initiated through a payment initiation service provider, the payment initiation service provider shall, immediately after initiation of the payment order, provide or make available all of the following data to the payer and, where applicable, the payee:

- a) confirmation of the successful initiation of the payment order with the payer's account servicing payment service provider;
- b) a reference enabling the payer and the payee to identify the payment transaction;
- c) a reference enabling the payee to identify the payer;
- d) the amount of the payment transaction;
- e) where applicable, the amount of any charges payable to the payment initiation service provider for the transaction, and where applicable a breakdown of the amounts of such charges;
- f) any information transferred with the payment transaction.

## Article 58

*Information for payer's account servicing payment service provider in the event of a payment initiation service*

Where a payment order is initiated through a payment initiation service provider, it shall make available to the payer's account servicing payment service provider the reference of the payment transaction.

## Article 59

*Information for the payer after receipt of a payment order*

Immediately after receipt of a payment order, the payer's payment service provider shall provide the payer with or make available to the payer free of charge, in accordance with the requirements set out in Article 54(3), the following information with regard to its own services:

- a) the date of receipt of the payment order;
- b) a reference enabling the payer to identify the payment transaction;

- c) where appropriate, information relating to the payee;
- d) the amount of the payment transaction;
- e) the currency used in the payment order;
- f) the amount of any charges for the payment transaction payable by the payer and, where applicable, a breakdown of such charges;
- g) where applicable, the exchange rate used in the payment transaction by the payer's payment service provider, and the amount of the payment transaction after that currency conversion;
- h) where applicable, an indication that the exchange rate is different from the rate provided in accordance with Article 55(1)(b)(5).

#### Article 60

##### *Information for the payee after execution*

Immediately after the execution of the payment transaction, the payee's payment service provider shall provide the payee with or make available to the payee free of charge, in accordance with the requirements set out in Article 54(3), the following information with regard to its own services:

- a) a reference enabling the payee to identify the payment transaction and, where appropriate, the payer;
- b) the amount of the payment transaction;
- c) the currency in which the amount is available to the payee;
- d) the amount of any charges payable by the payee for the payment transaction and, where applicable, a breakdown of such charges;
- e) where applicable, the exchange rate used in the payment transaction by the payee's payment service provider, and the amount of the payment transaction before that currency conversion;
- f) the credit value date;
- g) any information transferred with the payment transaction.

### 3. Information for payment transactions covered by a framework contract

#### Article 61

##### *Pre-contractual information requirements*

1) In good time before the payment service user is bound by any framework contract or offer, the payment service provider shall provide the payment service user on paper or on another durable medium with the information and conditions specified in Article 55(1) and Article 56 free of charge.

2) Article 56 shall apply subject to the proviso that the information and conditions referred to therein shall in any event be communicated or made available.

3) The information and conditions specified in Articles 55 and 56 shall be given in easily understandable words and in a clear and comprehensible form, in German or in any other language agreed between the parties.

4) A payment service provider may discharge the obligations under paragraph 1 also by supplying the payment service user with a draft framework contract including the information and conditions specified in Article 55(1) and Article 56.

5) If the framework contract has been concluded at the request of the payment service user using a means of distance communication which does not enable the payment service provider to comply with paragraph 1, the payment service provider shall fulfil its obligations under that paragraph immediately after conclusion of the framework contract.

6) Article 54(6) shall apply *mutatis mutandis*.

#### Article 62

##### *Accessibility of information and conditions*

At all times during the contractual relationship, a payment service provider must, on request, make available or transmit to the payment service user the contractual terms of the framework contract as well as the information and conditions specified in Article 55(1) and Article 56 on paper or on another durable medium.

## Article 63

*Changes in conditions of the framework contract*

1) A payment service provider shall provide or make available to a payment service user, on paper or on another durable medium, any intended change in a framework contract or in the information and conditions specified in Article 55(1) and Article 56. Article 61(3) shall apply *mutatis mutandis*. The payment service user shall be notified at least two months before the planned entry into force of the changes.

2) A payment service user may either accept or reject the changes before the date of their proposed date of entry into force.

3) Where agreed in accordance with Article 56(1)(e)(1), a payment service provider shall inform the payment service user that the latter is to be deemed to have accepted those changes if it does not notify the payment service provider before the proposed date of their entry into force that they are not accepted.

4) At the same time as the information provided in accordance with paragraph 1, a payment service provider shall also inform a payment service user that the payment service user has the right to terminate the framework contract free of charge and with effect at any time until the date of entry into force of the changes.

5) Changes in the interest or exchange rates may be applied immediately and without notice, provided that this is agreed in the framework contract and that the changes in the interest or exchange rates are based on the reference interest or exchange rates agreed on in accordance with Article 56(1)(b)(2) to (5).

6) A payment service provider shall inform a payment service user of any change in the interest rate at the earliest opportunity on paper or on another durable medium, unless the parties have agreed on a specific frequency or manner in which the information is to be provided or made available.

7) Changes in interest or exchange rates which are more favourable to the payment service users may be applied without notice.

8) Changes in the interest or exchange rate used in payment transactions shall be implemented and calculated in a neutral manner that does not discriminate against a payment service user.

## Article 64

*Information before execution of individual payment transactions*

Where a payer initiates an individual payment transaction under a framework contract, a payment service provider shall, at the payer's request, transmit or make available the following information on paper or by means of another suitable medium:

- a) the maximum execution time;
- b) the charges payable by the payer;
- c) where applicable, a breakdown of such charges.

## Article 65

*Information for the payer on individual payment transactions*

1) After the amount of an individual payment transaction is debited from the payer's account or, where the payer does not use a payment account, after receipt of the payment order, the payer's payment service provider shall provide the payer, without delay and on paper or on another durable medium, with the following information:

- a) a reference enabling the payer to identify each payment transaction;
- b) where appropriate, information relating to the payee;
- c) the amount of the payment transaction;
- d) the currency in which the payer's payment account is debited or the currency used for the payment order;
- e) the amount of any charges for the payment transaction and, where applicable, a breakdown of such charges, or, where applicable, the interest payable by the payer;
- f) where applicable, the exchange rate used in the payment transaction by the payer's payment service provider, and the amount of the payment transaction after that currency conversion;
- g) the debit value date or the date of receipt of the payment order.

2) Article 61(3) shall apply *mutatis mutandis* to provision of the information specified in paragraph 1.

3) The framework contract shall include a condition that the payer may require the information referred to in paragraph 1 to be made available or provided periodically, at least once a month, free of charge and in an agreed manner which allows the payer to store and reproduce information unchanged.

#### Article 66

##### *Information for the payee on individual payment transactions*

1) After the execution of an individual payment transaction, the payee's payment service provider shall provide the payee, without delay and on paper or on another durable medium, with the following information:

- a) a reference enabling the payee to identify the payment transaction and the payer;
- b) the amount of the payment transaction;
- c) the currency in which the payee's payment account is credited;
- d) the amount of any charges for the payment transaction and, where applicable, a breakdown of such charges, or, where applicable, the interest payable by the payee;
- e) where applicable, the exchange rate used in the payment transaction by the payee's payment service provider, and the amount of the payment transaction before that currency conversion;
- f) the credit value date;
- g) any information transferred with the payment transaction.

2) Article 61(3) shall apply *mutatis mutandis* to provision of the information specified in paragraph 1.

3) In a framework contract, payment service providers and payment service users may agree that payment service providers shall make available or provide the information referred to in paragraph 1 periodically, at least once a month, and in an agreed manner which allows the payee to store and reproduce information unchanged.

## Article 67

*Termination of a framework contract*

1) A payment service user may terminate a framework contract at any time, unless the parties have agreed on a special period of notice. Such a period shall not exceed one month.

2) Termination of the framework contract shall be free of charge for the payment service user. The payment service provider and the payment service user may, however, agree that appropriate charges may be payable for termination where the framework contract has been in force for less than six months. Such charges may not exceed the actual costs of the payment service provider.

3) If agreed in the framework contract, the payment service provider may terminate a framework contract concluded for an indefinite period by giving at least two months' notice in writing or by means of another durable medium. Article 61(3) shall apply *mutatis mutandis*.

4) A payment service user shall pay charges for payment services levied on a regular basis only proportionally up to the termination of the contract. If such charges are paid in advance, the payment service provider shall reimburse them proportionally, even without a request by the payment service user.

5) The provisions of this Article are without prejudice to other legal provisions governing the unenforceability or voidability of a framework contract.

**C. Rights and obligations in relation to the provision and use of payment services****1. General provisions**

## Article 68

*Scope*

1) A payment service provider and a payment service user may conclude agreements that derogate in whole or in part from the provisions of Articles 69(1), 72(6), 79, 80, 82, 84, 85, 88, and 96 if the payment service user is not a consumer.

2) This Article is subject to special provisions on the granting of credit to consumers.

#### Article 69

##### *Charges applicable*

1) A payment service provider may charge a payment service user for fulfilment of its information obligations or corrective and preventive measures under this Section only to the extent expressly specified in Article 87(3), Article 88(6), and Article 95(5).

2) Charges referred to in paragraph 1 must be agreed between the payment service user and the payment service provider and must be appropriate and in line with the payment service provider's actual costs.

3) For payment transactions provided within the EEA, a payee pays the charges levied by the payee's payment service provider and a payer pays the charges levied by the payer's payment service provider where:

- a) both the payer's and the payee's payment service providers are located in the EEA; or
- b) the sole payment service provider if the payment transaction is located in the EEA.

4) A payment service provider shall not prevent a payee from requesting from the payer a charge, offering the payer a reduction or otherwise steering the payer towards the use of a given payment instrument. Any charges applied shall not exceed the direct costs borne by the payee for the use of the specific payment instrument.

5) A payee may not request charges:

- a) for the use of payment instruments for which interchange fees are regulated under Chapter II of Regulation (EU) 2015/751;
- b) for payment services to which Regulation (EU) No 260/2012 applies.

#### Article 70

##### *Derogation for low value payment instruments*

1) In the case of payment instruments which, according to the framework contract, solely concern individual payment transactions not exceeding 30 francs or the equivalent in euros or which either have a spending limit of 150 francs or the equivalent in euros, or store funds



which do not exceed 150 francs or the equivalent in euros at any time, a payment service provider and a payment service user may agree that:

- a) Article 77(c), Article 78(1)(c) to (e), and Article 82(4) do not apply if the payment instrument does not allow its blocking or prevention of its further use;
- b) Articles 80, 81, and 82(1) to (3), (5) and (6) do not apply if the payment instrument is used anonymously or the payment service provider is not in a position for other reasons which are intrinsic to the payment instrument to prove that a payment transaction was authorised;
- c) by way of derogation from Article 87(1), the payment service provider is not required to notify the payment service user of the refusal of a payment order, if the non-execution is apparent from the context;
- d) by way of derogation from Article 88, the payer may not revoke the payment order after transmitting the payment order or giving consent to execute the payment transaction to the payee;
- e) by way of derogation from Articles 91 and 92, other execution periods apply.

2) For payment transactions within Liechtenstein, the amounts referred to in paragraph 1 shall be doubled. For payment instruments storing funds, an upper limit of 500 francs or the equivalent in euros shall apply.

#### Article 71

##### *Derogation for electronic money*

Articles 81 and 82 shall apply also to electronic money as defined in Article 3(1)(b) of the Electronic Money Act, except where the payer's payment service provider does not have the ability to freeze the payment account on which the electronic money is stored or block the payment instrument.

## 2. Authorisation of payment transactions

### Article 72

#### *Consent and withdrawal of consent*

- 1) A payer must give consent to execute a payment transaction for it to be considered to be authorised.
- 2) A payer may authorise a payment transaction before execution. The payer may also authorise a payment transaction after its execution if this has been agreed by the payer with the payment service provider in advance.
- 3) Consent to execute one or more payment transactions may also be given via a payee or a payment initiation service provider.
- 4) A payer and a payment service provider must agree on the procedure and form by which the payer must give consent to execute a payment transaction.
- 5) Consent given by the payer shall be effective only if given in the form agreed in accordance with paragraph 4. Otherwise, a payment transaction shall be considered to be unauthorised.
- 6) A payer may withdraw consent at any time until a payment order becomes irrevocable under Article 88. Where a payer has withdrawn consent to execute a series of payment transactions, any future payment transaction shall be considered to be unauthorised.

### Article 73

#### *Confirmation on the availability of funds*

- 1) An account servicing payment service provider shall, upon the request of a payment service provider issuing card-based payment instruments, immediately confirm whether an amount necessary for the execution of a card-based payment transaction is available on the payment account of the payer. Confirmation shall be given if:
  - a) the payment account of the payer is accessible online at the time of the request; and
  - b) before the first request for confirmation under this paragraph is received, the payer has given explicit consent to the account servicing payment service provider to respond to such a request.

2) A payment service provider issuing card-based payment instruments may make a request in accordance with paragraph 1 if:

- a) the payer has given explicit consent to the payment service provider to make a request in accordance with paragraph 1;
- b) the payer has initiated the card-based payment transaction for a certain amount using a card-based payment instrument issued by the payment service provider;
- c) the payment service provider has authenticated itself to the account servicing payment service provider in accordance with the requirements of the regulatory technical standards referred to in Article 98(1)(d) of Directive (EU) 2015/2366 before submitting a request in accordance with paragraph 1; and
- d) the payment service provider communicates securely with the account servicing payment service provider in accordance with the requirements of the regulatory technical standards referred to in Article 98(1)(d) of Directive (EU) 2015/2366.

3) An account servicing payment service provider must respond to a request in accordance with paragraph 1 only with "yes" or "no". It is impermissible to state the account balance. The payment service provider making the request may not store the answer or use it for purposes other than for the execution of the card-based payment transaction.

4) If an account servicing payment service provider has confirmed a request in accordance with paragraph 1, the account servicing payment service provider shall not be permitted to block funds on the payer's payment account.

5) The payer may request the payer's account servicing payment service provider to communicate to the payer the identification of the payment service provider making the request and the answer provided. The account servicing payment service provider is obliged to transmit the data to the payer within a reasonable time period.

6) This Article does not apply to payment transactions initiated through card-based payment instruments on which electronic money as defined in Article 3(1)(b) of the Electronic Money Act is stored.

## Article 74

*Access to a payment account in the case of payment initiation services*

1) Any payer whose payment account is accessible online shall have the right to use the services of a payment initiation service provider as referred to in Article 4(1)(39).

2) A payment initiation service provider must comply with the following when exercising payment initiation services:

- a) The holding of the payer's funds in connection with the exercise of payment initiation services is not permitted.
- b) The personalised security credentials of the payment service user shall not, with the exception of the user and the issuer of the personalised security credentials, be accessible to other parties.
- c) Personalised security credentials shall be transmitted solely through safe and efficient channels.
- d) Information about the payment service user obtained by the payment initiation service provider when providing payment initiation services shall be provided only to the payee and only with the payment service user's explicit consent.
- e) For each initiated payment, the payment initiation service provider must identify itself towards the account servicing payment service provider of the payer in accordance with the requirements of the regulatory technical standards referred to in Article 98(1)(d) of Directive (EU) 2015/2366.
- f) Every communication with the account servicing payment service provider, the payer, and the payee shall be secure and in accordance with the requirements of the regulatory technical standards referred to in Article 98(1)(d) of Directive (EU) 2015/2366.
- g) Storage of sensitive payment data of the payment service user is not permitted.
- h) Only data of the payment service user necessary to provide the payment initiation service may be requested.
- i) Use, access, or storage of data for purposes other than for the provision of the payment initiation service as explicitly requested by the payer is not permitted.
- k) Changing the amount, the payee data, or any other feature of the transaction is prohibited.

3) Where a payer has given explicit consent to execute a payment in accordance with Article 72, the account servicing payment service provider is obliged:

- a) to communicate securely with payment initiation service providers in accordance with the requirements of the regulatory technical standards referred to in Article 98(1)(d) of Directive (EU) 2015/2366;
- b) immediately after receipt of the payment order from a payment initiation service provider, to provide or make available all information on the initiation of the payment transaction and all available information regarding the execution of the payment transaction to the payment initiation service provider;
- c) to treat payment orders transmitted through a payment initiation service provider without any discrimination other than for objective reasons, in particular in terms of timing, priority or charges vis-à-vis payment orders transmitted directly by the payer.

4) A payment initiation service provider must provide its services independently of the existence of contractual agreements between itself and an account servicing payment service provider.

#### Article 75

##### *Access to and use of payment account information in the case of account information services*

1) Any payment service user whose payment account is accessible online shall have the right to use the services of an account information service provider as referred to in Article 4(1)(25) in order to access payment account information.

2) An account information service provider must comply with the following when exercising account information services:

- a) Services may be provided only on the basis of the payment service user's explicit consent.
- b) The personalised security credentials of the payment service user shall not, with the exception of the user and the issuer of the personalised security credentials, be accessible to other parties.
- c) Personalised security credentials shall be transmitted solely through safe and efficient channels.
- d) For each communication session, the account information service provider must identify itself towards the account servicing payment service provider of the payment service provider.

- e) Every communication with the account servicing payment service provider and the payment service user shall be secure.
- f) Only information from designated payment accounts and associated payment transactions may be accessed.
- g) Data may be used, accessed, or stored only for the account information services expressly requested by the payment service user.
- h) The requesting and processing of sensitive payment data linked to payment accounts is not permitted.

3) In relation to payment accounts, an account servicing payment service provider is obliged:

- a) to communicate securely with account information service providers in accordance with the requirements of the regulatory technical standards referred to in Article 98(1)(d) of Directive (EU) 2015/2366; and
- b) to treat data requests transmitted through an account information service provider without any discrimination other than for objective reasons vis-à-vis data requests of a payment service user via the payment service user's payment account.

4) An account information service provider must provide its services independently of the existence of contractual agreements between itself and an account servicing payment service provider.

#### Article 76

##### *Limits of the use of a payment instrument and of the access to payment accounts by payment service providers*

1) Where a specific payment instrument is used for the purposes of giving consent, a payer and the payer's payment service provider may agree in a framework contract on spending limits for payment transactions executed through that payment instrument.

2) In an agreement pursuant to paragraph 1, the payment service provider may reserve the right to block the payment instrument:

- a) for objectively justified reasons relating to the security of the payment instrument;
- b) in the case of suspicion of unauthorised or fraudulent use of the payment instrument; or

c) in the case of a payment instrument with a credit line, a significantly increased risk exists that the payer may be unable to fulfil its liability to pay.

3) In cases under paragraph 2, the payment service provider shall inform the payer of the blocking of the payment instrument and the reasons for it in an agreed manner, where possible, before the payment instrument is blocked and at the latest immediately thereafter. No information need be provided if doing so would compromise objectively justified security reasons, and information shall not be provided if doing so would be prohibited by other applicable law.

4) A payment service provider shall unblock the payment instrument or replace it with a new payment instrument once the reasons for blocking no longer exist.

5) An account servicing payment service provider may deny an account information service provider or a payment initiation service provider access to a payment account for objectively justified and duly evidenced reasons relating to unauthorised or fraudulent access to the payment account by that account information service provider or that payment initiation service provider, including the unauthorised or fraudulent initiation of a payment transaction. In such cases the account servicing payment service provider shall inform the payer that access to the payment account is denied and the reasons therefor in the form agreed. That information shall, where possible, be given to the payer before access is denied and at the latest immediately thereafter. No information need be provided if doing so would compromise objectively justified security reasons, and information shall not be provided if doing so would be prohibited by other applicable law.

6) An account servicing payment service provider shall allow access to the payment account once the reasons for denying access no longer exist.

7) An account servicing payment service provider shall immediately report an incident referred to in paragraph 5 to the FMA. The report by the payment service provider shall include the relevant details of the incident and the reasons for taking action. The FMA shall assess the report and shall, if necessary, take appropriate measures.

#### Article 77

##### *Obligations of a payment service user in relation to payment instruments and personalised security credentials*

A payment service user entitled to use a payment instrument is obliged:

- a) when using the payment instrument, to comply with the conditions of the payment service provider governing the issue and use of the payment instrument;
- b) from the time of receipt of a payment instrument, to take all reasonable steps to keep its personalised security credentials safe;
- c) to notify the payment service provider, or the entity specified by the latter, without undue delay on becoming aware of the loss, theft, misappropriation or unauthorised use of the payment instrument.

#### Article 78

##### *Obligations of the payment service provider in relation to payment instruments*

1) A payment service provider issuing a payment instrument shall ensure that:

- a) the personalised security credentials of a payment instrument are not accessible to parties other than the payment service user that is entitled to use the payment instrument, without prejudice to the obligations on the payment service user set out in Article 77;
- b) no unsolicited payment instrument is sent to the payment service user, except where a payment instrument already given to the payment service user is to be replaced;
- c) a payment service user is able at all times to make a notification pursuant to Article 77(c) free of charge;
- d) a payment service user is able at all times to request unblocking of the payment instrument pursuant to Article 76(4);



- e) on request, a procedure is available to the payment service user to prove, for 18 months after notification pursuant to Article 77(c), that the payment service user made such a notification under that provision; and
- f) no use of the payment instrument occurs once notification pursuant to Article 77(c) has been received by the payment service provider.

2) A payment service provider may demand from a payer those reasonable costs for the replacement of the payment instrument which have been incurred by the payment service provider as a result of a notification pursuant to Article 77(c).

3) A payment service provider shall bear the risk of sending a payment instrument or any personalised security credentials relating to it to the payment service user.

#### Article 79

##### *Notification and rectification of unauthorised or incorrectly executed payment transactions*

1) Where a payment transaction is unauthorised or incorrectly executed, a payment service user may request rectification of the transaction from the payment service provider that executed the payment transaction if the payment service user:

- a) informed the payment service provider without undue delay on becoming aware of any such payment transaction giving rise to a claim, including that under Article 96; and
- b) made this notification no later than 13 months after the date on which the account was debited.

2) The time limits laid down in the paragraph 1 do not apply where a payment service provider has failed to provide or make available to a payment service user the information on the payment transaction as required by law.

3) To the extent that a payment initiation service provider is involved in the payment transaction, the payment service user must obtain rectification pursuant to paragraph 1 from the account servicing payment service provider. This is without prejudice to Articles 81(2), 96(1), and 97.

## Article 80

*Evidence on authentication and execution of payment transactions*

1) Where a payment service user denies having authorised an executed payment transaction or claims that the payment transaction was not correctly executed, the burden shall be on the payment service provider entrusted with execution of the payment transaction to prove that the payment transaction:

- a) was authenticated;
- b) was accurately recorded and entered in the accounts; and
- c) was not affected by a technical deficiency of the service provided by the payment service provider.

2) If the payment transaction was initiated through a payment initiation service provider, the burden shall be on the payment initiation service provider to prove that within its sphere of competence, the payment transaction:

- a) was authenticated;
- b) was accurately recorded; and
- c) was not affected by a technical deficiency linked to the payment service of which it is in charge.

3) Where a payment service user denies having authorised an executed payment transaction, a payment service provider or – if a payment transaction was initiated through a payment initiation service provider – a payment initiation service provider shall provide records of the use of a payment instrument as well as further supporting evidence to prove either that the payer authorised the payment transaction or that the payer acted fraudulently or failed with intent or gross negligence to fulfil one or more of the obligations under Article 77.

## Article 81

*Payment service provider's liability for unauthorised payment transactions*

1) Where a payer has not authorised a payment transaction, the payer's payment service provider is obliged to refund the payer the amount of the unauthorised payment transaction immediately, and in any event no later than by the end of the following business day. This period begins at the time when the payment service provider notes the transaction or is notified of the transaction.

2) The payer's payment service provider shall restore the debited payment account to the state in which it would have been had the unauthorised payment transaction not taken place. The payment service provider shall ensure that the credit value date for the payer's payment account shall be no later than the date the amount had been debited.

3) Where the payment transaction was initiated through a payment initiation service provider, the account servicing payment service provider shall refund immediately, and in any event no later than by the end of the following business day the amount of the unauthorised payment transaction. The account service payment service provider shall, where applicable, restore the debited payment account to the state in which it would have been had the unauthorised payment transaction not taken place.

4) If a payment initiation service provider is liable for an unauthorised payment transaction, it shall immediately compensate the account servicing payment service provider at its request for the losses incurred or sums paid as a result of the refund to the payer, including the amount of the unauthorised payment transaction. In accordance with Article 80(2), the burden shall be on the payment initiation service provider to prove that, within its sphere of competence, the payment transaction was authenticated, accurately recorded and not affected by a technical deficiency linked to the payment service of which it is in charge.

5) These provisions are without prejudice to any additional liability for damages on the part of the account servicing payment service provider or the payment initiation service provider. Such additional liability shall be determined in accordance with the law applicable in a given case to the contract concluded between the payer and the payment service provider or between the payer and the payment initiation service provider.

6) No refund obligation pursuant to paragraph 1 exists if the payment service provider has reasonable grounds to assume fraud. In such cases, the payment service provider shall immediately inform the FMA in writing, stating the grounds.

## Article 82

### *Payer's liability for unauthorised payment transactions*

1) A payer is obliged to bear losses up to a maximum of 50 francs or the equivalent in euros relating to:

- a) any unauthorised payment transactions resulting from the use of a lost or stolen payment instrument;
- b) the misappropriation of a payment instrument.
  - 2) A payer shall not be liable if:
    - a) the loss, theft or misappropriation of a payment instrument was not detectable to the payer prior to a payment, except where the payer has acted fraudulently; or
    - b) the loss of the payment instrument was caused by acts or lack of action of:
      1. an employee of a payment service provider;
      2. an agent of a payment service provider;
      3. a branch of a payment service provider; or
      4. an entity to which a payment service provider's activities were outsourced.
  - 3) The payer shall bear all of the losses relating to any unauthorised payment transactions if they were incurred by the payer acting fraudulently or failing to fulfil one or more of the obligations set out in Article 77 with intent or gross negligence. In such cases, the maximum amount referred to in paragraph 1 shall not apply.
  - 4) Where the payer's payment service provider does not require strong customer authentication, the payer shall not bear any financial losses unless the payer has acted fraudulently. Where the payee or the payment service provider of the payee fails to accept strong customer authentication, it shall refund the financial damage caused to the payer's payment service provider.
  - 5) In the event of the loss, theft, misappropriation, or unauthorised use of a payment instrument, the payer shall not bear any negative financial consequences if the payer notified such an incident without undue delay to the payment service provider or the entity specified by the payment service provider in accordance with Article 77(c). This does not apply where the payer has acted fraudulently.
  - 6) If the payment service provider does not provide appropriate procedures as required under Article 78(1)(c) and (e) for a notification in accordance with Article 77(c), the payer shall not be liable for the financial consequences resulting from use of that payment instrument. This does not apply where the payer has acted fraudulently.

## Article 83

*Payment transactions where the transaction amount is not known in advance*

1) Where a payment transaction was initiated by or through a payee in the context of a card-based payment transaction and the exact amount is not known at the moment when the payer gives consent to execute the payment transaction, the payer's payment service provider may block funds on the payer's payment account only if the payer has given consent to the exact amount of the funds to be blocked.

2) The payer's payment service provider shall release funds blocked on the payer's payment account under paragraph 1 without delay after receipt of the information about the exact amount of the payment transaction and at the latest after receipt of the payment order.

## Article 84

*Refunds for payment transactions initiated by or through a payee*

1) A payer shall be entitled to a refund from the payment service provider of the full amount of an authorised payment transaction which was initiated by or through a payee and which has already been executed, if:

- a) the authorisation did not specify the exact amount of the payment transaction when the authorisation was made; and
- b) the amount of the payment transaction exceeded the amount the payer could reasonably have expected taking into account the payer's previous spending pattern, the conditions in the framework contract and relevant circumstances of the case.

2) At the payment service provider's request, the payer shall bear the burden of proving that the conditions laid down in paragraph 1 are met. The credit value date of the refunded amount for the payer's payment account shall be no later than the date the amount was debited.

3) For direct debits as referred to in Article 1 of Regulation (EU) No 260/2012, the payer shall additionally have an unconditional right to a refund within the time limits laid down in Article 85, unless that right has been waived in accordance with paragraph 5.

4) For the purposes of paragraph 1(b), the payer shall not rely on any currency exchange objections if the reference exchange rate agreed with

its payment service provider in accordance with Article 56(1)(b)(3) was applied by the payment service provider to a payment transaction.

5) A payer and a payment service provider may agree in a framework contract that, by way of derogation from paragraph 1, the payer has no right to a refund where:

- a) the payer directly authorised the payment service provider to execute the payment transaction; and
- b) the payment service provider or payee provided information to the payer on the future payment transaction in an agreed manner at least four weeks before the due date.

#### Article 85

##### *Request for a refund and time limits*

1) A payer may request the refund of the full amount of a payment transaction as referred to in Article 84 for a period of eight weeks from the date on which the funds were debited from the payer's payment account.

2) Within ten business days of receiving a request for a refund, the payment service provider shall:

- a) refund the full amount to the payer; or
- b) provide a justification to the payer for refusing the refund, indicating the possibility of lodging a complaint or instituting legal action under Articles 106 to 108 if the payer does not accept the reasons provided by the payment service provider.

3) Paragraph 2(b) shall not apply to direct debits as referred to in Article 1 of Regulation (EU) No 260/2012.

### 3. Execution of payment transactions

#### a) Payment orders and amounts transferred

##### Article 86

###### *Receipt of payment orders*

1) The time of receipt of a payment order shall be when the payment order is received by the payer's payment service provider. The payer's account shall not be debited before receipt of the payment order.

2) If the time of receipt is not on a business day for the payer's payment service provider, the payment order shall be deemed to have been received on the following business day.

3) The payer's payment service provider may establish a cut-off time near the end of a business day beyond which any payment order received shall be deemed to have been received on the following business day instead.

4) If a payment service user initiating a payment order and a payment service provider agree that execution of the payment order shall start on a specific day or at the end of a certain period or on the day on which the payer has put funds at the payment service provider's disposal for the purpose of transfer, the time of receipt of the order for the purposes of Article 91 is deemed to be the agreed day. If the agreed day is not a business day for the payment service provider, the payment order received shall be deemed to have been received on the following business day.

##### Article 87

###### *Refusal of payment orders*

1) Where the payment service provider refuses to execute a payment order or to initiate a payment transaction, the refusal and the reasons for it as well as the procedure for correcting any factual mistakes that led to the refusal shall be notified to the payment service user. The reasons for the refusal shall not be communicated if doing so would violate relevant applicable law or a judicial or official order.

2) The payment service provider shall provide or make available the notification under paragraph 1 in an agreed manner at the earliest opportunity, and in any case, within the periods specified in Article 91.

3) It may be agreed in a framework contract that the payment service provider may charge a reasonable fee for a refusal of a payment order if the refusal was objectively justified.

4) Where all of the conditions set out in the payer's framework contract are met, the payer's account servicing payment service provider shall not refuse to execute an authorised payment order, unless prohibited by other applicable law. This applies irrespective of whether the payment order was initiated by a payer, by a payment initiation service provider, or by or through a payee.

5) For the purposes of Articles 91 and 96, a payment order for which execution has been refused shall be deemed not to have been received.

#### Article 88

##### Irrevocability of a payment order

1) To the extent not otherwise specified below, a payment service user shall not revoke a payment order once it has been received by the payer's payment service provider.

2) Where the payment transaction is initiated by a payment initiation service provider or by or through the payee, the payer shall not revoke the payment order after giving consent to the payment initiation service provider to initiate the payment transaction or after giving consent to execute the payment transaction to the payee.

3) In the case of a direct debit and without prejudice to refund rights, the payer may revoke the payment order at the latest by the end of the business day preceding the day agreed for debiting the funds from the payer's payment account.

4) In the case of an agreement under Article 86(4), a payment service user may revoke a payment order at the latest by the end of the business day preceding the agreed day for debiting the funds from the payment service user's payment account.

5) After expiry of a time limit laid down in paragraphs 1 to 4, a payment order may be revoked only if agreed between the payment service user and the payment service provider. In a case referred to in paragraphs 2 and 3, the payee's agreement shall also be required.

6) It may be agreed in a framework contract that a payment service provider may charge for revocation of a payment order.



## Article 89

*Amounts transferred and amounts received*

1) The payment service provider of the payer, the payment service provider of the payee, and any intermediaries of the payment service providers are obliged to transfer the full amount of the payment transaction and refrain from deducting charges from the amount transferred.

2) However, a payee and the payee's payment service provider may agree that the payment service provider deduct its charges from the amount transferred before crediting it to the payee. In such a case, the payment service provider shall separate the full amount of the payment transaction and charges in the information given to the payee.

3) If any charges other than those referred to in paragraph 2 are deducted from the amount transferred, the payment service provider of the payer shall ensure that the payee receives the full amount of the payment transaction initiated by the payer. Where the payment transaction is initiated by or through the payee, the payment service provider of the payee shall ensure that the full amount of the payment transaction is received by the payee.

## b) Execution time and value date

## Article 90

*Scope*

1) Articles 91 to 94 shall apply to:

- a) payment transactions in euros;
- b) payment transactions within Liechtenstein in francs;
- c) payment transactions involving only one currency conversion between the euro and the currency of a another EEA Member State, provided that the required currency conversion is carried out in the EEA Member State outside the euro area concerned and, in the case of cross-border payment transactions, the cross-border transfer takes place in euros.

2) Articles 91 to 94 shall also apply to other payment transactions, unless otherwise agreed between a payment service user and a payment service provider.

## Article 91

*Payment transactions to a payment account*

1) The payer's payment service provider shall ensure that after the time of receipt of a payment order as referred to in Article 86, the amount of the payment transaction is credited to the payee's payment service provider's account by the end of the following business day. That time limit for execution may be extended by a further business day for paper-initiated payment transactions.

2) The payee's payment service provider shall value date and make available the amount of the payment transaction to the payee's payment account after the payment service provider has received the funds in accordance with Article 94.

3) The payee's payment service provider shall transmit a payment order initiated by or through the payee to the payer's payment service provider within the time limits agreed between the payee and the payment service provider, in a timely manner enabling settlement, as far as direct debit is concerned, on the agreed due date.

4) Where a payment service user and a payment service provider agree in accordance with Article 90(2) on a longer period for payment transactions within the EEA which differs from paragraph 1, that period shall not exceed four business days calculated from the date of receipt of a payment order as referred to in Article 86(1).

## Article 92

*Absence of payee's payment account with the payment service provider*

A payment service provider who receives funds for a payee shall make these funds available to the payee within the time limit laid down in Article 91(1) if the payee does not have a payment account with that payment service provider.

## Article 93

*Cash placed on a payment account*

1) Where a consumer places cash on a payment account of a payment service provider in the currency of that payment account, the payment service provider shall ensure that the amount is made available and value dated immediately after placement of the funds.

2) Where the payment service user is not a consumer, the amount shall be made available and value dated at the latest on the following business day after placement of the funds.

#### Article 94

##### *Value date and availability of funds*

1) The credit value date for the payee's payment account shall be no later than the business day on which the amount of the payment transaction is credited to the payee's payment service provider's account.

2) The payment service provider of the payee shall ensure that the amount of the payment transaction is at the payee's disposal immediately after that amount is credited to the payee's payment service provider's account where the payee's payment service provider:

- a) has not performed a currency conversion;
- b) has performed a currency conversion between euros and a currency of an EEA Member State; or
- c) has performed a currency conversion between the currencies of different EEA Member States.

3) The obligation laid down in paragraph 2 shall also apply to payments within one payment service provider.

4) The debit value date for a payment account of a payer shall be no earlier than the time at which the amount of the payment transaction is debited to that account.

#### c) Liability

#### Article 95

##### *Incorrect unique identifiers*

1) If a payment order is executed in accordance with a unique identifier, the payment order shall be deemed to have been executed correctly with regard to the payee specified by the unique identifier.

2) If a payment service user provides an incorrect unique identifier, the payment service provider shall not be liable under Article 96 for defective execution or non-execution of the payment transaction.

3) The payer's payment service provider shall make all reasonable efforts to recover the funds involved in the defective payment transaction. The payee's payment service provider shall support the payer's payment service provider and communicate all relevant information for the collection of funds.

4) In the event that the recovery of funds under paragraph 3 is not possible, the payer's payment service provider shall provide to the payer, upon written request, all available information in order for the payer to file a legal claim to recover the funds.

5) To the extent agreed in a framework contract, a payment service provider may charge a payment service user a reasonable amount for the recovery of funds.

6) If the payment service user provides information in addition to that required under Article 55(1)(b)(2), the payment service provider shall be liable only for the execution of payment transactions in accordance with the unique identifier provided by the payment service user.

#### Article 96

##### *Liability of a payment service provider for non-execution, defective or late execution of payment transactions*

1) Where a payment order is initiated directly by the payer, the payer's payment service provider shall, without prejudice to Articles 79, 95(2) and (3), and 99, be liable to the payer for correct execution of the payment transaction. The payment service provider shall not be liable if it can prove to the payer and, where relevant, to the payee's payment service provider that the payee's payment service provider received the amount of the payment transaction in accordance with Article 91(1). In that case, the payee's payment service provider shall be liable to the payee for the correct execution of the payment transaction.

2) Where the payer's payment service provider is liable under the first sentence of paragraph 1, it shall, without delay, refund to the payer the amount of the non-executed or defective payment transaction, and, where applicable, restore the debited payment account to the state in which it would have been had the defective payment transaction not taken place. The credit value date for the payer's payment account shall be no later than the date on which the amount was debited.

3) Where the payee's payment service provider is liable under the third sentence of paragraph 1, it shall immediately place the amount of

the payment transaction at the payee's disposal and, where applicable, credit the corresponding amount to the payee's payment account. The credit value date for the payee's payment account shall be no later than the date on which the amount would have been value dated, had the transaction been correctly executed in accordance with Article 94.

4) Where a payment transaction is executed late, the payee's payment service provider shall ensure, upon the request of the payer's payment service provider acting on behalf of the payer, that the credit value date for the payee's payment account is no later than the date the amount would have been value dated had the transaction been correctly executed in accordance with Article 94.

5) In the case of a non-executed or defectively executed payment transaction where the payment order is initiated by a payer, the payer's payment service provider shall, on the payer's request, make all reasonable efforts to trace the payment transaction free of charge. The payment service provider shall notify the payer of the outcome of these efforts. This shall be without prejudice to any liability of the payment service provider under this Article.

6) Where a payment order is initiated by or through the payee, the payee's payment service provider shall, without prejudice to Articles 79, 95(2) and (3), and 99, be liable to the payee for correct transmission of the payment order to the payment service provider of the payer in accordance with Article 95(3).

7) Where the payee's payment service provider is liable under paragraph 6, it shall immediately re-transmit the payment order in question to the payment service provider of the payer. In the case of a late transmission of the payment order, the amount shall be value dated on the payee's payment account no later than the date the amount would have been value dated had the transaction been correctly executed.

8) In addition, the payment service provider of the payee shall, without prejudice to Articles 79, 95(2) and (3), and 99, be liable to the payee for handling the payment transaction in accordance with its obligations under Article 94.

9) Where the payee's payment service provider is liable under paragraph 8, it shall ensure that the amount of the payment transaction is at the payee's disposal immediately after that amount is credited to the payee's payment service provider's account. The amount shall be value dated on the payee's payment account no later than the date the amount would have been value dated had the transaction been correctly executed.

10) In the case of a non-executed or defectively executed payment transaction for which the payee's payment service provider is not liable under paragraphs 6 and 7, the payer's payment service provider shall be liable to the payer. In that case, the payer's payment service provider shall, without delay, refund to the payer the amount of the non-executed or defective payment transaction and restore the debited payment account to the state in which it would have been had the defective payment transaction not taken place. The credit value date for the payer's payment account shall be no later than the date the amount was debited.

11) Paragraph 10 shall not apply where the payer's payment service provider proves that the payee's payment service provider has received the amount of the payment transaction, even if execution of payment transaction is merely delayed. If so, the payee's payment service provider shall value date the amount on the payee's payment account no later than the date the amount would have been value dated had it been executed correctly.

12) In the case of a non-executed or defectively executed payment transaction where the payment order is initiated by the payee, the payee's payment service provider shall, on the payee's request, make all reasonable efforts to trace the payment transaction free of charge. The payment service provider shall notify the payee of the outcome of these efforts. This shall be without prejudice to any liability of the payment service provider under this Article.

13) In addition, payment service providers shall be liable to their respective payment service users for any charges for which they are responsible, and for any interest to which the payment service user is subject as a consequence of non-execution or defective, including late, execution of the payment transaction.

#### Article 97

##### *Liability of a payment initiation service provider for non-execution, defective or late execution of payment transactions*

1) Where a payment order is initiated by the payer through a payment initiation service provider, the account servicing payment service provider shall, without prejudice to Articles 79 and 95(2) and (3), refund to the payer the amount of the non-executed or defective payment transaction and restore the debited payment account to the state in which it would have been had the defective payment transaction not taken place.

2) The burden shall be on the payment initiation service provider to prove that:

- a) the payment order was received by the payer's account servicing payment service provider; and
- b) within its sphere of competence the payment transaction was authenticated, accurately recorded and not affected by a technical deficiency linked to the non-execution, defective or late execution of the transaction.

3) If the payment initiation service provider is liable for the non-execution, defective or late execution of the payment transaction, it shall immediately compensate the account servicing payment service provider at its request for the losses incurred or sums paid as a result of the refund to the payer.

#### Article 98

##### *Right of recourse*

1) Where the liability of a payment service provider under Articles 81 and 96 is attributable to another payment service provider or to an intermediary, those payment service providers or intermediaries shall compensate the first payment service provider for any losses incurred or sums paid in that case. That shall include compensation where any of the payment service providers has failed to use strong customer authentication.

2) Payment service providers and intermediaries may determine further financial compensation by way of agreements.

#### Article 99

##### *Exclusion of liability for abnormal and unforeseeable events*

No liability under Articles 72 to 98 exists:

- a) in cases of abnormal and unforeseeable circumstances beyond the control of the party pleading for the application of those circumstances, the consequences of which would have been unavoidable despite all efforts to the contrary; or
- b) where special legal obligations prevented a payment service provider from meeting obligations under this Act.

#### 4. Data protection

##### Article 100

###### *Data processing*

1) Payment system operators and payment service providers shall be entitled to process personal data, including personal data relating to criminal convictions and offences, to the extent necessary to safeguard the prevention, investigation and detection of payment fraud.

2) Payment service providers may process personal data for the provision of their services only to the extent absolutely necessary and only with the consent of a payment service user, subject to Article 7(3)(a).

3) Data protection legislation shall apply *mutatis mutandis* to the processing of personal data by payment service providers and to the provision of information to natural and legal persons on the processing of their personal data.

#### 5. Operational and security risks and authentication

##### Article 101

###### *Management of operational and security risks*

1) Payment service providers shall establish appropriate mitigation measures and control mechanisms to manage the operational and security risks relating to the payment services they provide. Payment service providers shall, *inter alia*, establish and maintain effective procedures for the detection, classification and handling of incidents, including major operational and security incidents.

2) Payment service providers shall provide to the FMA, at least on an annual basis, an updated and comprehensive assessment of the operational and security risks relating to the payment services they provide and on the adequacy of the mitigation measures and control mechanisms implemented in response to those risks. To the extent necessary in individual cases, the FMA may determine shorter reporting intervals.



## Article 102

*Incident reporting*

1) In the case of a major operational or security incident, payment service providers shall, without delay, notify the FMA. Where the incident has or may have an impact on the financial interests of its payment service users, the payment service provider shall additionally, without delay, inform its payment service users of the incident and of all measures that they can take to mitigate the adverse effects of the incident.

2) Upon receipt of a notification referred to in paragraph 1, the FMA shall, without delay, notify the incident to the EBA, the EFTA Surveillance Authority, and, where necessary, the Government. On the basis of the notification, the FMA and the Government shall, where appropriate, take all of the necessary measures to protect the immediate safety of the national financial system.

3) Payment service providers shall make available to the FMA, at least on an annual basis, statistical data on fraud relating to different means of payment. The FMA shall provide the EBA and the EFTA Surveillance Authority with such data in an aggregated form.

## Article 103

*Authentication*

1) A payment service provider shall apply strong customer authentication where a payer:

- a) accesses its payment account online;
- b) initiates an electronic payment transaction; or
- c) carries out any action through a remote channel which may imply a risk of payment fraud or other abuses.

2) For every electronic remote payment transaction as referred to in paragraph 1(b), a payment service provider shall apply strong customer authentication that includes elements which dynamically link the transaction to a specific amount and a specific payee.

3) In cases referred to in paragraph 1, a payment service provider shall have in place adequate security measures to protect the confidentiality and integrity of payment service users' personalised security credentials.

4) Paragraphs 1 and 3 shall apply *mutatis mutandis* when information is requested through an account information service provider.

5) Paragraphs 2 and 3 shall apply *mutatis mutandis* where payments are initiated through a payment initiation service provider.

6) An account servicing payment service provider shall allow the payment initiation service provider and the account information service provider to rely on the authentication procedures provided by the account servicing payment service provider to the payment service user.

## IV. Final part

### A. Leaflet on consumer rights

#### Article 104

##### *Publication requirement*

1) Payment service providers shall make the leaflet produced by the European Commission in accordance with Article 106(1) of Directive (EU) 2015/2366 available to consumers free of charge and in an easily accessible manner. They shall publish it on their website and make it available on paper at their branches, agents, and other entities to which their activities are outsourced.

2) Payment service providers shall ensure, by appropriate means, that the information contained in the leaflet referred to in Article 106(1) of Directive (EU) 2015/2366 is easily accessible and free of charge to persons with disabilities.

3) The FMA shall make the leaflet referred to in Article 106(1) of Directive (EU) 2015/2366 available on its website. Paragraph 2 shall apply *mutatis mutandis*.

### B. Judicial and extrajudicial dispute resolution

#### Article 105

##### *Complaints to the FMA*

1) Payment service users and other interested parties, including organisations dedicated nationally and in accordance with their articles of association to the protection of consumers or other topics relating to

payment services, may lodge a complaint with the FMA for alleged violations of rights and obligations under the provisions of Chapter III of this Act.

2) The FMA shall inform payment service users who lodge a complaint under paragraph 1 about the possibility of conciliation proceedings under Article 108.

#### Article 106

##### *Complaints to the payment service provider*

1) A payment service provider must put in place and apply adequate and effective complaint resolution procedures for the receipt and processing of a complaint of a payment service user for alleged violations of rights and obligations under the provisions of Chapter III of this Act.

2) Those procedures shall be applied in every EEA Member State where the payment service provider offers its payment services. They shall be available in an official language of the relevant EEA Member State or in another language if agreed between the payment service provider and the payment service user.

3) A payment service provider shall reply on paper or, to the extent agreed between payment service provider and payment service user, on another durable medium, to a payment service users' complaint. The reply to a complaint shall in principle be issued within 15 days of receipt of the complaint. In its reply to the complaint, the payment service provider shall address all points raised in the complaint.

4) If the answer cannot be given in a timely manner for reasons beyond the control of the payment service provider, the payment service provider shall be required to send a holding reply, in which the payment service provider:

- a) clearly indicates the reasons for the delay in answering to the complaint; and
- b) specifies the deadline by which the complaint will be answered at the latest.

5) In any event, the final reply must be provided no later than 35 business days after receipt of the complaint.

6) A payment service provider shall inform a payment service user about the possibility of conciliation proceedings under Article 108.

7) The information referred to in paragraph 6 must be clear and comprehensive. It shall be made available on the website of the payment service provider or at branches on paper and shall be included in the terms and conditions of the payment service provider. It shall specify how further information on the conciliation proceedings and the competent extrajudicial conciliation board can be accessed, in particular on the conditions for using it.

#### Article 107

##### *Court proceedings*

1) Proceedings may be brought before the Court of Justice for alleged infringement by a payment service provider of the provisions set out in Chapter III. This also applies to infringements by agents and branches that operate in Liechtenstein pursuant to the right of establishment.

2) The following shall be entitled to bring proceedings:

- a) payment service providers;
- b) payment service users;
- c) organisations dedicated nationally and in accordance with their articles of association to the protection of consumers or other topics relating to payment services;
- d) other interested parties.

3) The Court of Justice shall alert complainants as early as possible to the option of invoking the extrajudicial conciliation board as referred to in Article 108.

4) The general provisions of civil procedure shall apply *mutatis mutandis* to court proceedings.

#### Article 108

##### *Extrajudicial conciliation board*

1) The conciliation board for the purposes of Article 102 of Directive (EU) 2015/2366 shall be the Conciliation Board for financial services pursuant to Article 4(1)(c) of the Alternative Dispute Resolution Act.

2) The conciliation board shall also receive and process complaints by organisations that are dedicated nationally and in accordance with their articles of association to the protection of consumers or other topics relating to payment services.

3) If no settlement between the parties can be reached, then the parties shall be referred to the ordinary legal process.

### C. Penal provisions

#### Article 109

##### *Misdemeanours*

1) The Court of Justice shall punish with a custodial sentence of up to one year or with a monetary penalty of up to 360 daily penalty units for committing a misdemeanour anyone who:

- a) as a member of a governing body or employee or otherwise as a person working for a payment institution or as an auditor violates the obligation of confidentiality, or anyone who induces or tries to induce someone else to do so;
- b) carries out or offers an activity referred to in Article 2(2) without a licence or registration;
- c) provides payment services in Liechtenstein and uses agents in violation of Article 25;
- d) provides payment services under the freedom to provide services or the freedom of establishment in violation of Articles 27 and 28.

2) The Court of Justice shall punish with a custodial sentence of up to six months or with a monetary penalty of up to 180 daily penalty units for committing a misdemeanour anyone who:

- a) violates terms or conditions imposed in connection with a licence or registration;
- b) gives no, false, or incomplete information to the FMA or the audit office;
- c) does not keep account books properly or does not retain account books and receipts;
- d) as an auditor, grossly violates responsibilities, in particular by making untrue statements in the audit report or by withholding material facts, by failing to make prescribed requests to the payment institution, or by failing to submit prescribed reports and notifications.

3) If the offences are committed negligently, the maximum penalties are reduced by half.

## Article 110

*Contraventions*

1) Unless the act constitutes an offence falling within the jurisdiction of the courts, the FMA shall punish with a fine of up to 100 000 Swiss francs for committing a contravention anyone who:

- a) fails to prepare or publish the annual report, the consolidated annual report, the interim financial statement, or the consolidated interim financial statement as required;
- b) fails to have a regular audit or an audit required by the FMA carried out;
- c) fails to fulfil responsibilities vis-à-vis the audit office;
- d) fails to comply with a request to restore a lawful state of affairs or any other decree or order by the FMA;
- e) as an auditor, violates duties under this Act, especially under Articles 40 to 44;
- f) violates the provisions governing own funds (Article 18);
- g) fails to submit required reports or notifications to the FMA or submits them late, makes false statements, or withholds material facts;
- h) fails to submit required notifications to the FMA or submits them late, makes false statements, or withholds material facts.

2) Unless the act constitutes an offence falling within the jurisdiction of the courts, the FMA shall punish with a fine of up to 100 000 Swiss francs for committing a contravention anyone who:

- a) as a payment service provider:
  1. violates obligations to implement risk mitigation measures or control mechanisms under Article 101(1) or, in violation of that provision, does not have effective procedures for the detection, classification, and handling of security incidents;
  2. violates notification requirements under Article 102(1);
  3. in violation of Article 103(1) and 2, does not demand strong customer authentication;
  4. violates the obligation to implement security measures under Article 103(3);
  5. in violation of Article 104(1) and (2), fails to provide or make available the leaflet and its contents in accordance with Article 106(1) of Directive (EU) 2015/2366;

6. violates the obligation to implement complaints procedures under Article 106(1);
  7. fails to process or answer complaints or fails to do so in a timely manner, in violation of Article 106(3) to (5);
  8. violates the obligations to provide information under Article 106(6) and (7);
- b) as a payment institution:
1. in violation of Article 7(4), offers or services payment accounts for other purposes;
  2. grants credit in violation of Article 7(7);
  3. fails to comply with an order of the FMA as referred to in Article 9(3);
  4. violates the safeguarding obligations under Article 20;
  5. in violation of Article 23(1), fails to keep records or keeps insufficient records;
  6. outsources important operational functions without meeting the requirements set out in Article 24(1), (2), and (4);
  7. fails to comply fully and in a timely manner with an order of the FMA to present information or documents in accordance with Article 35(4)(a) and 35(8);
  8. interferes with or frustrates an on-site inspection of the FMA as referred to in Article 35(4)(b);
- c) as a payment initiation service provider:
1. in violation of Article 8(u), does not have adequate coverage through professional liability insurance or a comparable guarantee;
  2. in violation of Article 23(1), fails to keep records or keeps insufficient records;
  3. fails to comply fully and in a timely manner with an order of the FMA to present information or documents in accordance with Article 35(4)(a) and 35(8);
  4. interferes with or frustrates an on-site inspection of the FMA as referred to in Article 35(4)(b);
  5. violates the obligation to implement risk mitigation measures and control mechanisms under Article 101(1);
  6. in violation of Article 103(2) and (5), does not demand strong customer authentication;
  7. in violation of Article 103(3) and (5), fails to take security measures;

8. in violation of Article 104(1) and (2), fails to provide or make available the leaflet and its contents in accordance with Article 106(1) of Directive (EU) 2015/2366;
  9. violates the obligation to implement complaints procedures under Article 106(1);
  10. fails to process or answer complaints or fails to do so in a timely manner, in violation of Article 106(3) to (5);
  11. violates the obligations to provide information under Article 106(6) and (7);
- d) as an account information service provider:
1. in violation of Article 12(1)(m), does not have adequate coverage through professional liability insurance or a comparable guarantee;
  2. fails to comply fully and in a timely manner with an order of the FMA to present information or documents in accordance with Article 35(4)(a) and 35(8);
  3. interferes with or frustrates an on-site inspection of the FMA as referred to in Article 35(4)(b);
  4. violates the obligation to implement risk mitigation measures and control mechanisms under Article 101(1);
  5. in violation of Article 103(1) and (4), does not demand strong customer authentication;
  6. in violation of Article 103(3) and (4), fails to take security measures;
- e) as an operator of cash withdrawal services, violates the obligations to provide information under Article 3(2);
- f) as a bank:
1. in violation of Article 6(1), does not grant access to its accounts;
  2. in violation of Article 6(2), applies discriminatory or disproportionate provisions on account access.
- 3) Unless the act constitutes an offence falling within the jurisdiction of the courts, the FMA shall punish with a fine of up to 90 000 Swiss francs for committing a contravention anyone who violates the provisions of Regulation (EU) No 924/2009 by doing the following:
- a) in violation of Article 3, levies higher charges on payment service users in respect of cross-border payments in euros within the EEA than for corresponding national payments in euros within Liechtenstein;



- b) in violation of Article 4(1), charges a payment service user for the provision of information;
  - c) in violation of Article 6, charges a higher multilateral interchange fee than EUR 0.088 to the payee's payment service provider for cross-border direct debit transactions in euros within the EEA executed before 1 November 2012, in the absence of any bilateral agreement between the payment service providers of the payee and of the payer;
  - d) in violation of Article 7, for national direct debit transactions executed before 1 February 2017 and for which no bilateral agreement exists between the payment service providers of the payee and the payer:
    - 1. charges a higher multilateral interchange fee or other agreed remuneration than that applied between the payment service providers of the payee and the payer for national direct debit transactions executed before 1 November 2009, or fails to pass on a reduction thereof; or
    - 2. charges a multilateral interchange fee or other agreed remuneration, despite the abolition thereof.
- 4) Unless the act constitutes an offence falling within the jurisdiction of the courts, the FMA shall punish with a fine of up to 15 000 Swiss francs for committing a contravention anyone who:
- a) violates the provisions of Regulation (EC) No 924/2009 by failing to do the following, in violation of Article 4:
    - 1. indicate the payment service user's International Bank Account Number (IBAN) and the payment service provider's Bank Identifier Code (BIC) to the payment service user on statements of account, or in an annex thereto;
    - 2. communicate the payment service user's IBAN and the payment service provider's BIC to the payment service user on request;
    - 3. inform a payment service user in advance of the amount of the charges levied for the execution of a cross-border payment because the payment service user fails to communicate the IBAN of the payee or payer and, where provided for under Regulation (EU) No 260/2012, the BIC of the payment service provider of the payee or payer;
    - 4. make the charges levied in accordance with point 3 appropriate and in line with the costs;
    - 5. as a supplier of goods or services that accepts payments within the EEA, communicate its IBAN and the BIC of its payment service

provider to its customers for all invoicing of goods and services within the EEA.

- b) violates the provisions of Regulation (EU) No 260/2012 by doing the following:
1. in violation of Article 3, is not reachable as a payment service provider;
  2. in violation of the first sentence of Article 4(2), fails to ensure the technical interoperability of payment systems;
  3. in violation of the second sentence of Article 4(2), adopts a business rule that restricts interoperability;
  4. in violation of Article 4(3), hinders the processing of credit transfers and direct debits by a technical obstacle;
  5. carries out a credit transfer in violation of Article 5(1), (2), or (7);
  6. carries out a direct debit transaction in violation of Article 5(1), (3), or (6);
  7. in violation of Article 5(8), levies a charge on the read-out process referred to in that paragraph;
  8. in violation of Article 8, charges a multilateral interchange fee per direct debit transaction or other agreed remuneration with an equivalent object or effect;
  9. in violation of Article 9(1), as a payer specifies the EEA Member State in which the payment account of the payee is to be located;
  10. in violation of Article 9(2), as a payee specifies the EEA Member State in which the payment account of the payer is to be located.

5) The FMA shall impose fines against legal persons if the contraventions under paragraphs 1 to 4 are committed in the course of business of the legal person (underlying offences) by persons who acted either on their own or as members of the board of directors, general management, management board, or supervisory board of the legal person or pursuant to other leadership positions within the legal person, on the basis of which they:

- a) are authorised to represent the legal person externally;
- b) exercise control in a leading position; or
- c) otherwise have significant influence on the business management of the legal person.

6) For contraventions under paragraphs 1 to 4 committed by employees of the legal person, even though not culpably, the legal person shall be responsible also if the contravention was made possible or

significantly facilitated by the fact that the persons referred to in paragraph 5 failed to take necessary and reasonable measures to prevent such underlying offences.

7) The responsibility of the legal person for the underlying offence and the criminal liability of the persons referred to in paragraph 5 or of employees referred to in paragraph 6 for the same offence are not mutually exclusive. The FMA may refrain from punishing a natural person if a fine has already been imposed on the legal person for the same violation and there are no special circumstances preventing a waiver of the punishment.

8) If the offences are committed negligently, the maximum penalties under paragraphs 1 to 4 are reduced by half.

#### Article 111

##### *Proportionality and efficiency requirement*

1) When imposing penalties pursuant to Articles 109 and 110, the Court of Justice and the FMA shall take the following into account:

- a) in regard to the infringement, in particular:
    1. its gravity and duration;
    2. the gains achieved or losses prevented, to the extent quantifiable;
    3. injury to third parties, to the extent quantifiable;
    4. possible systemically important impact;
  - b) in regard to the natural and legal persons responsible for the infringement, in particular:
    1. the degree of responsibility;
    2. the financial strength;
    3. willingness to cooperate with the FMA;
    4. previous infringements and measures to prevent repeat infringements.
- 2) The General Part of the Criminal Code shall apply *mutatis mutandis*.

## Article 112

*Responsibility*

Where violations are committed in the business operations of a legal person, general or limited partnership, or sole proprietorship, the penal provisions shall apply to the persons who acted or should have acted on its behalf; the legal person, partnership, or sole proprietorship shall, however, be jointly and severally liable for monetary penalties, fines, and costs.

## Article 113

*Announcement of sanctions*

1) The FMA may publish legally binding penalties on its website, provided that the public disclosure of the personal data:

- a) would be proportionate, taking into account the damage suffered by the natural or legal persons concerned; and
- b) the stability of financial markets or ongoing criminal investigations would not be jeopardised.

2) Publication may be made in anonymised form under the conditions set out in paragraph 1.

3) Publication under this Article shall not constitute a breach of official secrecy under Article 31.

**D. Transitional provisions**

## Article 114

*Existing payment institutions*

1) Payment institutions which hold a licence under the law hitherto in force and which carried out their activities prior to entry into force of this Act may continue to carry out those activities until 1 April 2020 in accordance with the law hitherto in force.

2) Payment institutions as referred to in paragraph 1 which intend to perform the payment services covered by their license beyond the date of entry into force of this Act must provide the FMA with all necessary information, including copies, so that the FMA is able to review by 1

April 2020 whether these payment institutions comply with the prudential requirements under Articles 5 to 44 and, where applicable, what measures may need to be taken to ensure that these requirements are complied with.

3) If the review referred to in paragraph 2 indicates that a payment institution fulfils these requirements, the FMA shall grant a licence in accordance with Article 9; the FMA shall enter the payment institution in the Payment Services Register as provided for in Article 16 and inform the payment institution to that effect. If, however, a payment institution does not meet the requirements under paragraph 2, the FMA shall take the necessary measures to ensure compliance with these requirements by the payment service provider or, if necessary, to withdraw the license and prohibit the provision of payment services. Article 14 shall apply *mutatis mutandis*.

4) Payment institutions holding a license to provide payment services pursuant to Article 3(1)(20)(g) of the law hitherto in force may retain their license to provide payment services pursuant to Article 2(2)(f) of this Act if they have demonstrated to the FMA by 1 July 2021 at the latest that they meet the requirements under Articles 10(2)(c) and 18, failing which the licence shall lapse.

5) To the extent that Articles 73 to 75 and 103 require payment service providers to implement security measures, these measures shall be implemented for the first time 18 months after the date of entry into force of Commission Delegated Regulation (EU) 2018/389 of 27 November 2017 supplementing Directive (EU) 2015/2366 of the European Parliament and of the Council with regard to regulatory technical standards for strong customer authentication and common and secure open standards of communication (OJ L 69, 13.3.2018, p. 23), but no earlier than 18 months after the entry into force of this Act. Until that date, account servicing payment service providers shall be prohibited from blocking or obstructing the use of payment initiation and account information services for the accounts that they are servicing.

## E. Final provisions

### Article 115

#### *Implementing ordinances*

The Government shall issue the ordinances necessary to implement this Act; it shall take into account the requirements, standards, and procedures of the EBA.

### Article 116

#### *Reference to legal provisions of the European Union*

1) Where this Act or the associated ordinances refer to Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC, and the implementing measures thereof, those shall be regarded as national legal provisions until their incorporation into the EEA Agreement.

2) The full text of the implementing provisions referred to in paragraph 1 is published in the Official Journal of the European Union at <http://eurlex.europa.eu>; the full text may also be accessed on the FMA website at [www.fma-li.li](http://www.fma-li.li).

### Article 117

#### *Repeal of law hitherto in force*

The Payment Services Act (ZDG) of 17 September 2009, LGBl. 2009 No. 271, as amended, is hereby repealed.

### Article 118

#### *Entry into force*

1) Provided that the referendum period expires without a referendum being called, this Act shall enter into force on 1 October 2019, otherwise on the day of its promulgation.

2) Article 1(3)(a) shall enter into force at the same time as the EEA Joint Committee Decision incorporating Directive (EU) 2015/2366.

Representing the Reigning Prince:  
signed *Alois*  
Hereditary Prince

signed *Adrian Hasler*  
Prime Minister