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Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on payment services and electronic money services in the Internal Market amending Directive 98/26/EC, and repealing Directives 2015/2366/EU and 2009/110/EC

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The second Payment Services Directive (PSD2[1]) provides a legal framework for all retail payments in the EU, Euro and non-Euro, domestic and cross-border. The first Payment Services Directive (PSD1[2]), adopted in 2007, established a harmonised legal framework for the creation of an integrated EU payments market. Building on PSD1, PSD2 addressed barriers to new types of payment services and improved the level of consumer protection and security. Most of the rules in PSD2 have been applicable since January 2018, but some rules (e.g. on Strong Customer Authentication, hereafter SCA) have applied only since September 2019.

PSD2 contains both rules on the provision of payment services by Payment Service Providers, and rules on the licensing and supervision of one specific category of Payment Service Providers, namely Payment Institutions. Other categories of Payment Service Providers include notably credit institutions, which are regulated under EU banking legislation[3], and Electronic Money Institutions, which are regulated under the Directive on Electronic money[4].

The Commission's 2020 Communication on a Retail Payments Strategy (RPS) for the EU[5] laid down the Commission's priorities regarding the retail payments sector for the present Commission college mandate. It was accompanied by a Digital Finance Strategy, setting out priorities for the digital agenda in the finance sector other than payments. The RPS announced that "at the end of 2021, the Commission will launch a comprehensive review of the application and impact of PSD2". This review was duly undertaken, essentially in 2022, and led to a decision to propose legislative amendments to PSD2, in order to improve its functioning. These amendments are spread over two proposals, the present proposal for a Directive on licensing and supervision of payment institutions (and amending certain other Directives) and a Regulation on payment services in the EU.

The proposed revision of PSD2 features in the Commission Work Programme (CWP) for 2023, along with a planned legislative initiative on Open Finance, extending financial data access and use beyond payment accounts, and also to more financial services.

• Consistency with existing policy provisions in the policy area

Existing policy provisions of relevance to this initiative include other legislation in the area of retail payments, other financial services legislation also covering payment services providers and EU legislation of horizontal application that impacts the retail payments sector. Attention has been paid in the preparation of this proposal to coherence with those provisions.

Other legislation in the field of retail payments, apart from those mentioned above, includes the Single Euro Payments Area (SEPA) Regulation of 2012, which harmonises the technical requirements for credit transfers and direct debits in euro[6]. On 26 October 2022, the

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1 Directive (EU) 2015/2366 of 25 November 2015 on payment services in the internal market.

2 Directive (EU) 2007/64 of 13 November 2007 on payment services in the internal market.

3 Regulation (EU) No 575/2013 on prudential requirements for credit institutions, Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions.

4 Directive (EU) 2009/110 on the taking up, pursuit and prudential supervision of the business of electronic money institutions.

5 COM/2020/592 final, of 24/9/2020.

6 Regulation (EU) No 260/2012 of 14 March 2012.

Commission proposed an amendment to the SEPA Regulation, to accelerate and facilitate the use of euro Instant Payments in the EU[7]. The Regulation on cross-border payments equalises pricing of domestic and cross-border transfers in euro[8]. The Regulation on Interchange Fees lays down maximum levels for such fees[9], inter alia.

Other relevant financial services legislation includes the Settlement Finality Directive[10], to which a targeted change is made in this proposal, the Markets in Crypto-Assets Regulation (MiCA)[11], the Digital Operational Resilience Act concerning cyber-security (DORA)[12], and also the Anti-Money Laundering (AML) Directive, of which a package of proposed amendments is currently under discussion by the co-legislators[13].

The initiative is fully consistent with other Commission initiatives laid out in the Commission's digital finance strategy for the EU[14], adopted together with the retail payment strategy (RPS), aimed at promoting digital transformation of finance and the EU economy, and removing fragmentation in the digital single market.

- **Consistency with other Union policies**

The initiative is also consistent with the Commission's 2021 Communication 'The European economic and financial system: fostering openness, strength and resilience'[15], which reiterated the importance of its retail payments strategy and of digital innovation in finance for strengthening the single market for financial services. The same Communication confirmed that the Commission and European Central Bank services would jointly review at technical level a broad range of policy, legal and technical questions emerging from a possible introduction of a digital euro, taking into account their respective mandates provided for in the EU Treaties. A legislative initiative on digital euro is also in the Commission work programme for 2023.

A proposal for an EU legal framework on Open Finance is presented together with the two proposals to amend PSD2; that proposal covers access to financial data other than payment account data, which remains covered by payments legislation. The Open Finance proposal foresees a review a certain time after application of that framework, to ascertain whether account information services could be transferred from the retail payments legal framework to the Open Finance legal framework without disruption.

More general EU legislation of relevance includes the General Data Protection Regulation[16].

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7 COM(2022) 546 final.

8 Regulation (EU) 2021/1230 of 14 July 2021 on cross-border payments in the Union.

9 Regulation (EU) 2015/751 of 29 April 2015 on interchange fees for card-based payment transactions.

10 Directive 98/26/EC of 19 May 1998 on settlement finality in payment and securities settlement systems.

11 [add reference after OJ publication]

12 Regulation (EU) 2022/2554 of 14 December 2022 on digital operational resilience for the financial sector.

13 Payment Services Providers are, and will remain, Obliged Entities in the meaning of EU AML legislation

14 COM (2020) 591 final of 24 September 2020.

15 COM (2021) 32 final of 19 January 2021.

16 Regulation (EU) 2016/679 of 27 April 2016. See also below, under "fundamental rights".

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The legal basis of PSD2 is Article 114 of the Treaty on the Functioning of the European Union (TFEU), which tasks the European institutions with laying down provisions to establish the single market and ensure its proper functioning in line with Article 26 TFEU. However, given that the Directive on Electronic Money Institutions[17] is based on Articles 53 and 114 TFEU, and that that act is integrated into the present proposal for a Directive, it follows that any new legal act incorporating rules for authorisation of institutions issuing electronic money should follow such a dual legal base.

• Subsidiarity (for non-exclusive competence)

The freedom to provide services and freedom of establishment are widely used by payment service providers. In order to ensure harmonious conditions and a level playing field within the single market for retail payment services, EU-level legislation is required. This logic underlies the first and second Payment Services Directive of 2007 and 2015 and continues to apply to this proposal.

• Proportionality

The proposal contains targeted proportionality measures, such as different initial capital and own funds requirements for different types of payment services. The proposal also allows for possible exemptions by Member States of some of the authorization requirements for small Payment Institutions carrying out business below an established threshold of EUR 3 million in turnover. The proposed new provisions on cash withdrawals services in shops or for cash withdrawals provided by independent ATM deployers are also deemed proportionate.

• Choice of the instrument

PSD2 is currently a Directive which is applied by transposing legislation in the Member States. However, in various areas of EU financial services legislation[18], it has been found appropriate to enact rules applicable to financial undertakings in a directly applicable Regulation, in order to enhance the coherence of implementation in the Member States. The PSD2 review concluded that this approach would also be appropriate in payments legislation, which has led to the proposed amendments to PSD2 being divided across two distinct legislative acts: this Directive, containing rules concerning licensing and supervision of payment institutions and an accompanying Regulation, containing the rules for payment services providers (including payment institutions and some other categories of payment services providers) providing payment and electronic money services. A Directive is appropriate in the present case, given that licensing and supervision of financial institutions in general (including payment institutions and other categories of payment service providers, as credit institutions) remains a national competence of the Member States, and no EU-level licensing or supervision is proposed.

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17 Directive 2009/110/EC of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of E-Money Institutions.

18 Such as prudential rules for banks or rules on securities markets.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

An evaluation of PSD2 was carried out in 2022. Input to the evaluation included a report by an independent contractor, and views of stakeholders in various public consultations. The evaluation report is published as an annex of the impact assessment accompanying the present proposal[19].

- **Stakeholder consultations**

To ensure that the Commission's proposal takes account of the views of all interested stakeholders, the consultation strategy for this initiative comprised:

- An open public consultation, open from 10 May 2022 to 02 August 2022[20];
- A targeted (but nevertheless public and open) consultation, with more detailed questions than the public consultation, open from 10 May 2022 to 5 July 2022[21];
- A call for evidence, open from 10 May 2022 to 02 August 2022[22];
- A targeted consultation on the Settlement Finality Directive, open from 12 February 2021 to 7 May 2021;
- Consultation of stakeholders in a Commission expert group, the Payment Systems Market Expert Group (PSMEG);
- Ad hoc contacts with various stakeholders, either on their initiative or that of the Commission;
- Consultation of Member States' experts in the Commission Expert Group on Banking Payments and Insurance.

The outcome of these consultations is summarised in Annex 2 to the impact assessment accompanying this proposal.

- **Collection and use of expertise**

A number of inputs and sources of expertise were used in preparing this initiative, including the following:

– Evidence supplied through the various consultations listed above and on an ad hoc basis by stakeholders.

– Evidence provided by the European Banking Authority in its Advice of 23 June 2022.

– A study carried out by a contractor, Valdani Vicari & Associati Consulting, delivered in September 2022, "A study on the application and impact of

[19] SWD 2023/XXX final.

[20] https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13331-Payment-services-review-of-EU-rules/public-consultation_en

[21] https://finance.ec.europa.eu/regulation-and-supervision/consultations/finance-2022-psd2-review_en

[22] https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13331-Payment-services-review-of-EU-rules_en

Directive (EU) 2015/2366 on Payment Services (PSD2). Contract reference FISMA/2021/OP/0002[23].

– Data obtained from private sector operators.

• **Impact assessment**

This proposal (and the proposal for a Regulation on payment services in the internal market) is accompanied by an impact assessment[24], which was examined by the Regulatory Scrutiny Board (RSB) on 1 March 2023. The RSB issued a positive opinion with reservations on 3 March 2023 (the reservations were dealt with in the final version). The impact assessment found that there are four key problems in the EU payment market, despite the achievements of PSD2:

– Consumers are at risk of fraud and lack confidence in payments;

– The open banking sector functions imperfectly;

– Supervisors in EU Member States have inconsistent powers and obligations;

– There is an unlevel playing field between banks and non-bank PSPs.

The consequences of these problems include the following:

– Users (consumers merchants and SMEs) continue to be exposed to fraud risk and have limited choice of payment services, with prices higher than they need to be;

– Open Banking providers face obstacles to offering basic OB services and find it harder to innovate;

– Payment Service Providers experience uncertainty about their obligations, and non-bank PSPs are at a competitive disadvantage vis-à-vis banks;

– There are economic inefficiencies and higher costs of commercial operations, with negative impact on EU competitiveness;

– The single market for payments is fragmented, with "forum shopping" occurring.

There are four specific objectives of the initiative, linked to the identified problems:

1. Strengthen user protection and confidence in payments;

2. Improve the competitiveness of Open Banking services;

3. Improve enforcement and implementation in Member States;

4. Improve (direct or indirect) access to payment systems and bank accounts for non-bank PSPs.

The impact assessment presents a package of preferred options, aiming to achieve the specific objectives (the list below covers both measures contained in this Directive and in the accompanying Regulation):

– For specific objective 1, improvements to the application of SCA, a legal basis for exchange of information on fraud and an obligation to educate customers

[23] Available at this link : https://data.europa.eu/doi/10.2874/996945.

[24] Commission Staff Working Document SWD(2023) XXX.

about fraud, extension of IBAN verification to all credit transfers, and on conditional reversal of liability for APP fraud; an obligation on PSPs to improve accessibility of SCA for users who are disabled or otherwise challenged regarding SCA; measures to improve the availability of cash; improvements to user rights and information.

– For specific objective 2, a requirement for ASPSPs to put in place a dedicated data access interface; "permissions dashboards" to allow users to manage their granted open banking access permissions; more detailed specifications of minimum requirements for OB data interfaces;

– For specific objective 3, replacing the greater part of PSD2 with a directly applicable Regulation; strengthening of provisions on penalties; clarifications of elements which are ambiguous; integrating the electronic money and payment institutions licensing regimes.

– For specific objective 4, strengthening of PI/EMI rights to a bank account; granting the possibility of direct participation of PIs and EMIs to all payment systems, including those designated by Member States pursuant to the SFD, with additional clarifications on admission and risk assessment procedures.

A number of options were rejected in the impact assessment, on grounds of high implementation costs and uncertain benefits. Costs of the selected options are mainly one-off costs and fall largely on Account Servicing Payment Service Providers (ASPSPs -essentially banks). In open banking, costs are offset by savings (such as the removal of the fall-back interface and of its exemption procedure) and by the adoption of proportionality measures (possible derogations for niche ASPSPs). The cost to Member States of improved enforcement and implementation will be limited. The costs of direct access to key payment systems for Payment Institutions and E-Money Institutions will again be limited and fall on the payment systems in question. The benefits, on the other hand, will accrue to a wide range of stakeholders, including users of payment services (consumers, businesses, merchants and public administrations) and also PSPs themselves (especially non-bank fintech PSPs). The benefits are recurrent, while the costs are mainly one-off adjustment costs; therefore the cumulative benefits should exceed the total costs over time.

- **Regulatory fitness and simplification**

The present initiative is not a regulatory fitness and performance programme (REFIT) initiative. Nevertheless, as part of the evaluation and review process, opportunities for administrative simplification were sought. The main such simplification contained in the present initiative is the integration of the Second Electronic Money Directive into PSD2 and the large-scale reduction in differences between the regulatory regimes for Electronic Money Institutions and Payment Institutions (with some residual remaining differences, such as own funds requirements) – this proposal involves a repeal of the Second Electronic money Directive.

- **Fundamental rights**

The fundamental right which is particularly concerned by this initiative is the protection of personal data and right to privacy. To the extent that processing of personal data is necessary for the compliance with this initiative, the processing must be in line with the General Data

Protection Regulation (GDPR)[25], which applies directly to all of the payment services concerned by this proposal.

- **Application of the 'one in, one out' approach**

The present initiative does not involve administrative costs for businesses or citizens, as the initiative will not lead to any increased oversight or supervision of PSPs, or to specific new reporting obligations compared with PSD2. There are also no regulatory fees and charges arising from the initiative. It is therefore considered that this initiative does not generate administrative costs which require offsetting under the "One In One Out" principle (although it is relevant for "one in one out" in that it creates implementation costs). It may be noted that the bringing together of the legislative regime for E-Money Institutions and that for Payment Institutions will lead to reductions in administrative costs (for example, alleviating the requirement to obtain a new license in certain circumstances).

- **Climate and sustainability**

No negative implications of the initiative for climate of this initiative have been identified. The initiative will contribute to target 8.2 of the UN Sustainability Development Goals: "To achieve higher levels of economic productivity through diversification, technological upgrading and innovation, including through a focus on high-value added and labour-intensive sectors".

4. BUDGETARY IMPLICATIONS

The present proposal has no implications for the EU budget.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The initiative will provide for a review, to be completed 6 years after entry into force.

- **Detailed explanation of the specific provisions of the proposal**

This proposal for a Directive on licensing and supervision of payment institutions is largely based on Title II of PSD2, regarding "Payment Service Providers", which only applies to Payment Institutions. It updates and clarifies the provisions relating to Payment Institutions, and integrates former Electronic Money Institutions (EMI) as a sub-category of Payment Institutions (and consequently repeals the second Electronic Money Directive, 2009/110/EC). Furthermore, it includes provisions concerning cash withdrawal services provided by retailers (without a purchase) or independent ATM deployers and amends the Settlement Finality Directive (Directive 98/26/EC).

- **Subject matter scope and definitions**

The proposal concerns access to the activity of providing payment services and electronic money services by payment institutions (not by credit institutions). A number of key definitions are clarified and aligned with Regulation XXX [PSR].

[25] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.

- **Licensing and supervision of payment service providers**

The procedures for application for authorisation and control of shareholding are mostly unchanged from PSD2 but made fully consistent for institutions providing payment services and electronic money services. Amongst other changes, it is acknowledged that payment initiation service providers and account information service providers may hold initial capital instead of a professional indemnity insurance, considering that the requirement to hold a professional indemnity insurance at the licensing stage may be difficult to fulfil, taking into account previous experience. Requirements for initial capital are updated for inflation since the adoption of PSD2 (except for Payment Initiation Service Providers as this is considered not appropriate given the relatively short time they have been in operation). The possible methods for calculation of own funds are not changed, either for payment institutions covered by PSD2 or for former e-money institutions; nevertheless it is provided that method B should be considered the default option in order to enhance the level playing field – but exceptions are allowed for particular business models. Safeguarding rules for payment institutions proved to work well and are unchanged except that the possibility of safeguarding in an account of a central bank (at the discretion of the latter) is introduced in order to extend the options for PSPs in this regard. For payment institutions providing electronic money services, the safeguarding rules are fully aligned with those applying to payment institutions only providing payment services.

Provisions regarding agents, branches and outsourcing are unchanged from PSD2, but a new definition of distributors of electronic money and related provisions, closely aligned with those applicable to agents, are added.

Provisions on cross-border provision of services by Payment Institutions, and the supervision of such services are broadly unchanged. With respect to the exercise of the right of establishment and freedom to provide services where payment institutions use agents, distributors and branches, specific provisions are laid down for cases where three Member States are involved (the Member State of establishment of the Payment Institution, that of the agent, and a third Member State to which the agent provides services on a cross-border basis), thereby enhancing clarity.

Member States and the European Banking Authority shall continue to maintain a register of authorised Payment Institutions and in addition develop a list of machine-readable payment initiation services providers and account information services providers.

As in PSD2 and the Electronic Money Directive, competent authorities, with adequate powers, must be designated by Member States for licensing and supervision. Provisions for cooperation between national competent authorities are laid down, clarifying the rules in this regard, and adding the possibility for NCAs to request assistance of the EBA in solving possible disagreements between other NCAs.

As in PSD2, simplified requirements apply to Payment Institutions which only carry out account information services. The optional exemptions from certain provisions which Member States may grant to small Payment Institutions are unchanged.

- **Provisions concerning cash withdrawals**

Operators of retail stores are exempted from the requirement for a payment institution license when they offer cash withdrawal services without a purchase on their premises (on a voluntary basis), if the amount of cash distributed does not exceed 50 euro, in line with the need to avoid unfair competition with ATM deployers covered by the requirements of Article 38.

Distributors of cash via ATMs who do not service payment accounts (the so called "independent ATM deployers") are exempted from the licensing requirements of payment institutions, with certain exceptions.

- **Transitional provisions**

Transitional measures are appropriate regarding existing activities under PSD2 given the creation of a new legal licensing regime. For example, existing licenses for payment institutions and electronic-money institutions are prolonged in validity ("grandfathered") until 30 months after entry into force (one year after the transposition deadline and the beginning of application) on condition that application for a license under this Directive is made at the latest 24 months after entry into force.

- **Repeals and amendments to other legislation**

The electronic money Directive (Directive 2009/110/EC) is repealed, with effect from the date of entry into application of this Directive.

The second Payment Services Directive (Directive 2015/2366/EC) is repealed as of the same date. A correlation table of articles with respect to the corresponding articles of PSD2 and EMD2 is annexed, for purposes of legal continuity.

An amendment is made to the Settlement Finality Directive (SFD, Directive 98/26/EC) to add Payment Institutions to the list of institutions which have the possibility to participate directly in payment systems designated by a Member State pursuant to that Directive (but not to designated securities settlement systems). An amendment is also made to the definition of indirect participation in SFD, to revert the definition to the text which existed before 2019, when Directive (EU) 2019/879 changed this definition.

- **Other provisions**

There is an empowerment to the Commission to update amounts of own funds to take account of inflation by Delegated Act. The Directive is a full harmonisation Directive. It will enter into force 20 days after publication in the Official Journal. The transposition deadline for Member States and the start of the application period is 18 months after entry into force. A review clause to be presented 6 years after the coming into force of the Directive focuses in particular on the appropriateness of the Directive's scope and the appropriateness of extending it to payment systems and technical services.

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on payment services and electronic money services in the Internal Market amending Directive 98/26/EC, and repealing Directives 2015/2366/EU and 2009/110/EC

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 53 and 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[26],

Having regard to the opinion of the Committee of the Regions[27],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Since the adoption of Directive (EU) 2015/2366 (PSD2), the retail payment services market underwent significant changes largely related to the increasing use of cards and other digital means of payment, the decreasing use of cash and the growing presence of new players and services, including digital wallets and contactless payments. Large technology companies have become more prominent in the payments sector as technical service providers, or in some instances as payment service providers. Benefitting from significant network economies and from their large access to non-payments data, they can challenge established payment services providers. The Covid-19 pandemic and the transformations it brought to consumption and payment practices has increased the importance of having secure and efficient digital payments. The Communication from the Commission on a Retail Payments Strategy for the EU[28] announced the launch of a comprehensive review of the application and impact of Directive (EU) 2015/2366 "*which should include an overall assessment of whether it is still fit for purpose, taking into account market developments*".

(2) Directive (EU) 2015/2366 aimed at addressing barriers to new types of payment services and improving the level of consumer protection and security. The evaluation of the impact and application of Directive (EU) 2015/2366 carried out by the Commission, while finding that that directive has been largely successful with regard to many of its objectives, identified certain areas where the objectives of the Directive have not been fully achieved. In particular, the evaluation identified problems regarding divergent implementation and enforcement of the rules of the Directive,

[26] OJ C […], […], p. […].
[27] OJ C […], […], p. […].
[28] COM/2020/592 final.

which have directly impacted competition between payment service providers, by leading to effectively different regulatory conditions in Member States because of different interpretation of the rules, encouraging regulatory arbitrage.

(3) There should be no room for 'forum shopping' where payment services providers would choose, as home country, those Member States where the application of EU rules on payment services is more advantageous for them and provide cross-border services in other Member States which apply stricter rules or apply more active enforcement policies to payment service providers established there. This practice distorts competition. The EU rules on payment services should therefore be further harmonised, by incorporating rules governing the conduct of the payment service activity, including the rights and obligations of the parties involved, in a directly applicable Regulation, and separating them from the rules on authorisation and supervision of payment institutions, which should continue to be governed by this Directive.

(4) Despite the fact that the issuance of electronic money is regulated under Directive 2009/110/EC, payment transactions using electronic money have been hitherto to a very large extent regulated by Directive (EU) 2015/2366. Consequently, the legal framework applicable to electronic money institutions and payment institutions, in particular with regard to the conduct of business rules, is already substantially aligned. Over the years, competent authorities in charge of authorisation and supervision of payment institutions and electronic money institutions have experienced practical difficulties in clearly delineating the two regimes, and in distinguishing electronic money products and services from payment and electronic money services offered by payment institutions. This has led to concerns about regulatory arbitrage and an uneven level playing field, as well as issues related to the circumvention of the requirements of Directive 2009/110/EC, in cases where payment institutions issuing electronic money take advantage of the similarities between payment services and electronic money services and apply for authorisation as a payment institution. It is therefore appropriate that the authorisation and supervision regime applicable to electronic money institutions is further aligned with the regime applicable to payment institutions. However, the licensing requirements (in particular initial capital and own funds) and some key basic concepts governing the electronic money business (such as issuance of electronic money, electronic money distribution and redeemability) are quite distinct, as compared to the services provided by payment institutions. It is therefore appropriate to preserve these specificities when combining the provisions of Directive (EU) 2015/2366 and Directive 2009/110/EC.

(5) This Directive updates the prudential regime for payment institutions, including those issuing electronic money and providing electronic money services, by requiring a single licence for providers of payment services and electronic money services not taking deposits. Given that Regulation XXX [the MICA Regulation] lays down that issuers of e-money tokens are electronic money institutions which should also fulfil requirements concerning the issuance of e-money tokens in Regulation XXX [the MICA Regulation], the licensing regime for payment institutions also applies to issuers of e-money tokens. The prudential regime applicable to payment institutions is based on an authorisation, subject to a set of strict and comprehensive conditions, for legal persons offering payment services when not taking deposits. The prudential regime applicable to payment institutions ensures that the same conditions apply Union-wide to the activity of providing payment services. With a view to a full alignment with Regulation XXX [PSR], the scope of this Directive, in particular the

services provided by payment institutions, is fully aligned with the scope of that Regulation, including the relevant exemptions.

(6) With a view to enhancing the delineation of payment services and taking into account their different nature, it is appropriate to dissociate the activity of withdrawing cash from a payment account from the management of a payment account, as the providers of cash withdrawal services might not manage payment accounts. The activities of issuing of payment instruments and of acquiring of payment transactions which were listed together in point 5 of the Annex to Directive (EU) 2015/2366 should, given their respective specificities, be rather presented as being two separate payment services.

(7) Taking into account the rapid evolution of the retail payments market, and the constant new offering of payment services and payment solutions, it is appropriate to adapt some of the definitions under Directive (EU) 2015/2366, such as the definition of payment account, funds and payment instrument to the realities of the market to ensure that EU legislation remains fit for purpose and technology neutral.

(8) Given the diverging views identified by the Commission in it its review and highlighted by the EBA in its Opinion on 23 June 2022, it is necessary to clarify, in particular on the basis of the judgement of the Court of Justice of the European Union in case C-191/17, that a 'payment account' is an account that is used for sending and receiving funds to and from third parties. Any account that corresponds to this definition can be considered to be a payment account and can therefore be accessed for Open Banking purposes. If a credit card account can be used to send or receive funds from/to third parties, it may fall under the definition of payment account. Situations where another account is needed to execute payment transactions from/to third parties should not fall under the definition of a payment account. Savings accounts are not used for sending and receiving funds to or from a third party, excluding them therefore from the definition of a payment account.

(9) Given the emergence of new types of payment instruments and the uncertainties prevailing in the market as to their qualification, the definition of a 'payment instrument' should be further specified by providing some examples to illustrate what constitutes or does not constitute a payment instrument, bearing in mind the principle of technology neutrality.

(10) Despite the fact that Near-Field Communication (NFC) enables the initiation of a payment transaction, considering it as a fully-fledged 'payment instrument' would pose some challenges, for example for the application of strong customer authentication for contactless payments at the point of sale and of the payment service provider's liability regime. Therefore, in light of the need to ensure consistent application of the rules, NFC should be considered as a functionality of a payment instrument and not a payment instrument as such.

(11) The definition of 'payment instrument' under Directive (EU) 2015/2366 made reference to a 'personalised device'. Since there are pre-paid cards where the name of the holder of the instrument is not printed on the card, this could leave these cards outside the scope of the definition of a payment instrument. The definition of 'payment instrument' should, therefore, be amended to make reference to 'individualised' devices, instead of 'personalised' ones.

(12) 'Pass-through wallets', involving the tokenisation of an existing payment instrument, for example a payment card, are to be considered as technical services, and thus excluded from the scope of regulation, as a token cannot be regarded as being itself a

payment instrument but, rather, a payment application within the meaning of Article 2(21) of Regulation 2015/751/EU (Interchange Fee Regulation). However, if technology made it possible for a token to be used as a standalone payment instrument that could be used to initiate a payment order independently from the underlying tokenised payment instrument (for instance a card), such token could then be qualified as being a payment instrument whose issuance would be a regulated service requiring an authorisation under Directive XXX (PSD3). Pre-paid electronic wallets, such as "staged-wallets", where users can store money for any future online transaction are to be considered a payment instrument and their issuance as a payment service.

(13) Money remittance is a payment service that is usually based on cash provided by a payer to a payment service provider, without any payment accounts being created in the name of the payer or the payee, which remits the corresponding amount, for example via a communication network, to a payee or to another payment service provider acting on behalf of the payee. In some Member States, supermarkets, merchants and other retailers provide to the public a corresponding service enabling them to pay utilities and other regular household bills. Those bill-paying services should be treated as money remittance, unless the competent authorities consider the activity to fall under another payment service.

(14) It is appropriate to ensure that the definition of funds covers the future digital euro, and consequently that the rules apply to transactions in digital euros. In addition, Regulation XXX [the MICA Regulation] provides for e-money tokens to be a form of electronic money, which entails that the definition of funds also includes e-money tokens.

(15) The evaluation of the implementation of Directive (EU) 2015/2366 did not identify a clear need to substantially change the conditions for granting and maintaining authorisation as Payment Institutions or Electronic Money Institutions prescribed under respectively Directives 2007/64/EC (PSD) and 2015/2366/EC on the one hand, and Directive 2009/110/EC on the other. Such conditions continue to include prudential requirements proportionate to the operational and financial risks faced by Payment Institutions, including institutions issuing electronic money and providing electronic money services (hereinafter "Payment Institutions") in the course of their business. The EBA Peer Review on authorisation under Directive (EU) 2015/2366 published in January 2023[29] concluded that deficiencies in the authorisation process have led to a situation where applicants are subject to different supervisory expectations as regards the requirements for authorisation as a Payment Institution or Electronic Money Institution across the EU, and that sometimes the process of granting an authorisation may take an exceedingly long time. With a view to improving the authorisation process, it is appropriate for the EBA to draft regulatory technical standards specifying a common assessment methodology for the authorisation and registration process. In order to avoid that authorisation is granted for services that are not effectively provided by a payment institution, it is necessary to clarify that a payment institution should not be obliged to obtain an authorisation for payment services that it does not intend to provide.

(16) The prudential framework applicable to payment institutions continues to rest on the premise that those institutions are prohibited from accepting deposits from payment

[29] European Banking Authority, EBA/REP/2023/01, Report On The Peer Review On Authorisation Under PSD2, 11 January 2023; available here.

service users and are only permitted to use funds received from payment service users for the purpose of rendering payment services. Consequently, it is appropriate that prudential requirements applicable to payment institutions reflect the fact that payment institutions engage in more specialised and limited activities than credit institutions, thus generating risks that are narrower and easier to monitor and control than those that arise across the broader spectrum of activities of credit institutions.

(17) Whilst the authorisation requirements set out specific rules on information and communication technology (ICT) security controls and mitigation elements for the purposes of obtaining an authorisation to provide payment services, those should be aligned with the requirements under Regulation (EU) 2022/2554.

(18) Payment initiation service providers and account information service providers, when providing those services, do not hold client funds. Accordingly, it would be disproportionate to impose own funds requirements on those market players. Nevertheless, it is important that they are able to meet their liabilities in relation to their activities. In order to ensure a proper coverage of the risks associated with payment initiation or account information services, it is appropriate to require payment institutions offering these services to hold either a professional indemnity insurance or a comparable guarantee, and to further specify what risks need to be covered, in light of the provisions on liability included in Regulation XXX/XXX [PSR]. Taking into account the difficulties experienced by the providers of account information services and payment initiation services to contract a professional indemnity insurance covering the risks related to their activity, it is appropriate to provide for the possibility for these institutions to choose to hold initial capital of 50. 000 euros as an alternative to the professional indemnity insurance, at the licensing or registration stage only. This flexibility granted to account information and payment initiation service providers at the licensing or registration stage is without prejudice to the requirement for those providers to subscribe a professional indemnity insurance without undue delay after license or registration has been obtained.

(19) In order to ensure more consistency in the application process for payment institutions, it is appropriate to mandate the EBA to develop draft regulatory technical standards on authorisation, including on the information to be provided to the competent authorities in the application for the authorisation of payment institutions, a common assessment methodology for granting authorisation or for registration, what can be considered as a comparable guarantee to professional indemnity insurance and the criteria to be used to stipulate the minimum monetary amount of professional indemnity insurance or a comparable guarantee. The EBA should do so taking into account experience acquired in the application of its Guidelines on the information to be provided for the authorisation and registration, and of its Guidelines on the application of the criteria used to specify the minimum monetary amount of the professional indemnity insurance or other comparable guarantee of 12 September 2017.

(20) In order to address the risks of acquisition of a qualified holding of a payment institution within the meaning of Regulation (EU) 575/2013, it is appropriate to require notification to the relevant competent authority.

(21) In order to cater for the risk of their activities, payment institutions need to hold enough initial capital combined with own funds. Taking into account the possibility for payment institutions to engage in the different activities covered by this Directive it is appropriate to adjust the level of the initial capital attached to individual services to the nature and the risks attached to these services.

(22) Taking into account that the initial requirements applicable to payment institutions have not been adapted since the adoption of Directive 2007/64/EC, it is appropriate to adjust these requirements based on inflation. However, taking into account that the capital requirements applicable to payment institutions that provide only payment initiation services have only been implemented since the entry into force of Directive (EU) 2015/2366, and that no evidence was found with regard to the inadequacy of those requirements, it is not deemed appropriate to amend them.

(23) The large variety of business models in the retail payments industry justifies the possibility to apply distinct methods for the calculation of own funds, which cannot however fall below the level of the relevant initial capital.

(24) This Directive pursues the same approach as Directive (EU) 2015/2366, which allowed for several methods to be used for the purpose of calculating the combined own funds requirements with a certain degree of supervisory discretion to ensure that the same risks are treated the same way for all payment service providers.

(25) To improve consistency and ensure a level playing field, and taking into account that for most business models, method B, which refers to the use of the payment institution's payment volume of the previous year to compute its own funds requirements, is the most adequate and the most applied, it is appropriate to require national competent authorities to prescribe the use of method B by default. It should however be possible for national competent authorities to deviate from this principle and to require payment institutions to apply methods A or C in cases of business models that result in low volume but high value transactions. In order to ensure legal certainty and maximum clarity with regard to such business models, it is appropriate to mandate the EBA to develop RTS in this regard.

(26) Notwithstanding the objective of aligning the prudential requirements of payment institutions providing payment services and electronic money services, it is appropriate to take account of the specificity of the business of issuing electronic money and carrying out electronic money business, and to allow payment institutions issuing electronic money and providing electronic money services to apply method D.

(27) Taking into account the need to protect users' funds and to avoid that such funds are used for other purposes than to provide payment services or electronic money services, it is appropriate to require that payment service user funds are kept separate from the payment institution's own funds.

(28) Where the same payment institution executes a payment transaction for both the payer and the payee and a credit line is provided to the payer, it is appropriate to safeguard the funds in favour of the payee once they represent the payee's claim towards the payment institution.

(29) Considering the difficulties experienced by payment institutions in getting access to payment accounts provided by credit institutions, it is necessary to provide for an additional option for the safeguarding of users' funds, namely the possibility to hold those funds at a central bank. This is however without prejudice to the possibility for a central bank to not offer that option, based on their organic law.

(30) To ensure a level playing field between payment institutions providing payment services and those issuing electronic money and providing electronic money services, it is appropriate to align as much as possible the regimes applicable to the safeguarding of users' funds, whilst preserving the specificities of electronic money.

(31) It should be possible for Payment Institutions to engage in other activities, beyond those listed in Annexes I and II, such as the provision of operational and closely related ancillary services, the operation of payment systems or other business activities regulated by applicable Union law and national law.

(32) Considering the higher risks of deposit–taking activity, it is appropriate to prohibit payment institutions offering payment services as listed in Annex I from accepting deposits from users and to require them to only use funds received from users for rendering payment services. Similarly, any funds received from payment service users by Payment Institutions offering electronic money services should not constitute either a deposit or other repayable funds received from the public within the meaning of Article 5 of Directive 2006/48/EC.

(33) To limit the risks of payment accounts being used for other purposes than for the execution of payment transactions, it is appropriate to specify that when engaging in the provision of one or more of the payment services or electronic money services, payment institutions should always hold payment accounts used exclusively for payment transactions.

(34) It is appropriate to regulate the granting of credit by payment institutions in the form of credit lines and the issuance of credit cards, insofar as those services facilitate payment services, and credit is granted for a period not exceeding 12 months, including on a revolving basis. Given their principally lending nature, 'Buy Now Pay Later' services do not constitute a payment service. They are covered by the EU framework governing consumer credit and need not be covered by the present Directive.

(35) It is also appropriate to allow Payment Institutions to grant short-term credit with regard to their cross-border activities, on the condition that it is refinanced using mainly the Payment Institution's own funds, as well as other funds from the capital markets, and not the funds held on behalf of clients for payment services. Such rules should be without prejudice to Directive 2008/48/EC or other relevant Union law or national measures regarding conditions for granting credit to consumers.

(36) This Directive does not change the obligations, under Council Directive 86/635/EEC and Directive 2013/34/EU, concerning the drawing-up of annual and consolidated accounts, as well as the reporting and the auditing of those accounts, unless exempted under those Directives.

(37) To ensure that evidence on the compliance with the obligations of this Directive is duly preserved for a reasonable amount of time, it is appropriate to require Payment Institutions to keep all appropriate records for at least five years.

(38) To ensure that an undertaking does not provide payment services or electronic money services without being authorized, it is appropriate to require all undertakings intending to provide payment services or electronic money services to request an authorisation, except where this Directive provides for registration instead of authorisation. Furthermore, in order to ensure that such undertakings can be duly supervised, so as to ensure financial stability and consumer protection, it is appropriate to require them to be established in a Member State.

(39) To avoid abuses of the right of establishment and cases where a company would establish itself in a Member State without planning to perform any activity in that Member State, it is appropriate to require that a Payment Institution requesting authorisation in a Member State provides at least part of its payment services business

in that Member State. The obligation for an institution to carry out a 'part' of its business in its home country, which was already imposed by Directive (EU) 2015/2366, has been interpreted very differently, with some home countries imposing that most of the business be carried out in their country. A 'part' should mean less than the majority of the institution's business in order to preserve the "*effet utile"* of the institution's freedom to provide cross-border services.

(40) Taking into account that a Payment Institution may engage in other activities than the provision of payment services or electronic money services, including activities outside the scope of Regulation XXX [PSR], or explicitly excluded from the scope of Regulation XXX [PSR], it is appropriate to allow national competent authorities to require the establishment of a separate entity for the payments service or electronic money service where necessary to ensure a proper supervision of the Payment Institution. Such a decision by the competent authority should take account of the potential negative impact that an event affecting the other business activities could have on the Payment Institution's financial soundness, or the potential negative impact arising from a situation where the Payment Institution would not be able to provide separate reporting on own funds in relation to its payment and electronic money activities and its other activities.

(41) To ensure a level playing field and a harmonised process for the granting of an authorisation to undertakings applying for a Payment Institution license, it is appropriate to impose to competent authorities a time limit of 3 months for the authorisation process to be concluded, after the receipt of all the information required for the decision.

(42) To ensure a proper ongoing supervision of payment institutions and the availability of accurate and up-to-date information, it is appropriate to require Payment Institutions to inform national competent authorities of any change in their business affecting the accuracy of the information provided with regard to authorisation, including with regard to additional agents or entities to which activities are outsourced. Competent authorities should, in the event of doubt, verify that the information received is correct.

(43) To ensure a consistent authorisation regime of Payment Institutions throughout the EU, it is appropriate to lay out harmonised conditions under which national competent authorities may withdraw an authorisation issued to a Payment Institution.

(44) To enhance transparency of the operations of Payment Institutions that are authorised by, or registered with, competent authorities of the home Member State, including their agents, distributors and branches, and to ensure a high level of consumer protection in the Union, it is necessary to ensure easy public access to the list of the entities providing payment services, with their related brands, which should be included in a public national register.

(45) To ensure that information on authorised or registered payment institutions or entities entitled under national law to provide payment or electronic money services is available throughout the EU in a central register, it remains appropriate that EBA should operate such a register in which it should publish a list of the names of the institutions authorised or registered to provide payment services or electronic money services. Member States should ensure that the data that they provide on the relevant undertakings, including agents, distributors and branches, is accurate and up-to-date, and transmitted to the EBA without undue delay and if possible in an automated way, in accordance with methods and arrangements laid out in the regulatory technical standards to be developed by the EBA. Those regulatory technical standards should

ensure a high level of granularity and consistency of the information, and EBA should take into consideration the experience in applying Commission Delegated Regulation (EU) 2019/411. In order to enhance transparency, it is appropriate that the data includes the brands of all payment and electronic money services provided.

(46) To enhance transparency and awareness of the services provided by payment initiation and account information service providers, it is appropriate that the EBA maintains a machine-readable list containing basic information on such entities and services provided by them. The information contained in this list should allow for the payment initiation and account information service providers to be identified unequivocally.

(47) To expand the reach of their services, Payment Institutions may need to use entities providing payment services on their behalf, such as agents or, in the case of electronic money services, distributors. Payment Institutions may also exercise their right of establishment in a host Member State, different from the home Member State, through branches. In such cases, it is appropriate that the Payment Institution communicates to the national competent authority all the relevant information related to agents, distributors and branches and informs national competent authorities of any changes without undue delay. To ensure transparency vis-à-vis end users, it is also appropriate that agents, distributors or branches acting on behalf of a Payment Institution inform payment service users of that fact.

(48) In conducting their business, Payment Institutions may need to outsource operational functions of part of their activity. In order to ensure that this is not done to the detriment of the continuing compliance of a Payment Institution with the requirements of its authorisation, or other requirements under this Directive, it is appropriate to require a Payment Institution to inform without undue delay national competent authorities when it intends to outsource operational functions, and about any change regarding the use of entities to which activities are outsourced.

(49) To ensure a proper mitigation of the risks of outsourcing of operational functions, it is appropriate to require that Payment Institutions take reasonable steps to ensure that the requirements of this Directive are complied with. Notwithstanding this, it is also appropriate that Payment Institutions remain fully liable for any acts of their employees, or any agent, distributor or outsourced entity.

(50) To ensure the effective enforcement of the provisions of national law adopted pursuant to this Directive, it is appropriate to require Member States to designate competent authorities in charge of the authorisation and supervision of Payment Institutions. Without prejudice to the right to bring action in the courts to ensure compliance with this Directive, Member States should ensure that competent authorities are granted the necessary powers – and resources, including staff – to properly carry out their functions.

(51) To enable them to properly supervise Payment Institutions, it is appropriate to grant competent authorities investigatory and supervisory powers as well as powers to impose administrative penalties and measures necessary to perform their tasks. Accordingly, it is appropriate to grant competent authorities the power to request information, conduct on-site inspections and issue recommendations, guidelines and binding administrative decisions. Member States should lay down national provisions at least with respect to the suspension or withdrawal of the authorisation of a Payment Institution under the circumstances laid down in this Directive. Member States should empower their competent authorities to impose administrative sanctions and measures

aimed specifically at ending infringements of provisions concerning the supervision or pursuit of the payment service business.

(52) Due to the broad range of possible business models in the payments industry, it is appropriate to allow for a certain degree of supervisory discretion, in order to ensure that the same risks are treated in the same way.

(53) While this Directive specifies the minimum set of powers competent authorities should have when supervising compliance by payment institutions, those powers are to be exercised while respecting fundamental rights, including the right to privacy. Without prejudice to the control of an independent authority (national data protection authority) and in accordance with the Charter of Fundamental Rights of the European Union, Member States should have in place adequate and effective safeguards where there is a risk that the exercise of those powers could lead to abuse or arbitrariness amounting to serious interference with such rights, for instance, where appropriate, through the prior authorisation of the judicial authority of the Member State concerned.

(54) In order to ensure the protection of individual and business rights, Member States should ensure that all persons who work or who have worked for competent authorities are subjected to the obligation of professional secrecy.

(55) As the activity of payment institutions may span across borders and be relevant for different competent authorities as well as the EBA, ECB and national central banks in their capacity as monetary and oversight authorities, it is appropriate to provide for their effective cooperation and exchange of information between them.

(56) Where disagreements occur in the context of the cross-border cooperation between competent authorities, it is appropriate to provide them with the possibility to request assistance to the EBA, which should take a decision without undue delay. The EBA should also be given competence to assist competent authorities in reaching an agreement on its own initiative.

(57) When a Payment Institution exercises the right of establishment or freedom to provide services, it is appropriate to require it to notify to the competent authority of the home Member State relevant information with regard to its business and in which Member State(s) the payment institution intends to operate, and whether it intends to use branches, agents or distributors and if it intends to use outsourcing. In order to facilitate cooperation between competent authorities and an effective supervision of Payment Institutions, in the context of the use of the right of establishment or freedom to provide services, it is appropriate that competent authorities in the home Member State communicate this information to the host Member State. In situations of so-called “triangular passporting” (where a payment institution authorised in a country “A” uses an intermediary - such as an agent, distributor or branch- located in a country “B” for offering payment services in another country “C”), the host Member State should be considered to be the one where the services are offered to end-users. Taking into account challenges in cross-border cooperation between competent authorities, it is appropriate that the EBA develops regulatory technical standards on cooperation and information exchange. While doing so, it should take into consideration the experience gained in applying Commission Delegated Regulation (EU) 2017/2055.

(58) Member States should be able to require Payment Institutions operating on their territory, whose head office is situated in another Member State, to report to them periodically on their activities in their territory for information or statistical purposes.

Where those Payment Institutions operate pursuant to the right of establishment, the competent authorities of the host Member State(s) should be able to require that information to also be used for monitoring compliance with Regulation XXX [PSR]. The same should apply where there is no establishment in the host Member State(s), and the payment institution is providing services in the host Member State(s) on the basis of the free provision of services. In order to facilitate the supervision of networks of agents, distributors or branches by competent authorities, it is appropriate that Member States where agents, distributors or branches operate are able to require the parent Payment Institution to appoint a central contact point in their territory. EBA should develop regulatory standards setting out the criteria to determine when the appointment of a central contact point is appropriate and what its functions should be. While doing so, it should take into account experience of implementation of Commission Delegated Regulations (EU) 2021/ 1722 and 2020/1423[30]. The requirement to appoint a central contact point should be proportionate to achieving the aim of adequate communication and information reporting on compliance with the relevant provisions in Regulation XXX [PSR] in the host Member State.

(59) In emergency situations, where immediate action is necessary to address a serious threat to the collective interests of payment service users in the host Member State, such as large scale fraud, it should be possible for the competent authorities of the host Member State to take precautionary measures in parallel with the cross-border cooperation between competent authorities of the host and the home Member States and pending measures by the competent authority of the home Member State. Those measures should be appropriate, proportionate to the aim, non-discriminatory and temporary in nature. Any measures should be properly justified. The competent authorities of the home Member State of the relevant Payment Institution and other authorities concerned, such as the Commission and EBA, should be informed in advance or, if not possible in view of the emergency situation, without undue delay.

(60) It is important to ensure that all entities providing payment services be brought within the scope of certain minimum legal and regulatory requirements. Thus, it is desirable to require the registration of the identity and whereabouts of all persons providing payment services, including of entities which are unable to meet the full range of conditions for authorisation as Payment Institutions, such as some small Payment Institutions. Such an approach is in line with the rationale of Recommendation 14 of the Financial Action Task Force, which provides for a mechanism whereby payment service providers which are unable to meet all of the conditions set out in that Recommendation may nevertheless be treated as Payment Institutions. For those purposes, even where entities are exempt from all or part of the conditions for authorisation, Member States should enter them in the register of Payment Institutions. However, it is essential to make the possibility of an exemption subject to strict requirements relating to the value of payment transactions. Payment Institutions benefiting from an exemption should not enjoy the right of establishment or freedom to provide services and should not indirectly exercise those rights while being a participant in a payment system.

(61) In order to ensure transparency with regard to possible exemptions for small Payment Institutions, it is appropriate to require Member States to communicate such decisions to the Commission.

[30] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R2055&from=DE

(62) In view of the specific nature of the activity performed and the risks connected to the provision of account information services, it is appropriate to provide for a specific prudential regime for account information service providers. Account information service providers should be allowed to provide services on a cross-border basis, benefiting from the 'passporting' rules.

(63) In order to facilitate a wide access to cash and supplement the offering of cash by credit institutions, which has decreased over the years, in particular in rural areas, it is appropriate to enable natural or legal persons selling goods or services to be able to provide cash withdrawal services without the obligation for consumers to make a purchase. It is also appropriate to exempt entities providing such services from the authorisation process. This cash withdrawal service without a purchase is, by nature, voluntary and contingent on availability of cash in the shop. To prevent unfair competition between ATM deployers not servicing payment accounts and retailers offering cash withdrawals without a purchase, it is appropriate to impose a cap of €50 per transaction.

(64) Directives 2007/64/EC and 2015/2366/EC conditionally excluded from their scope payment services offered by certain deployers of automated teller machines (ATMs). That exclusion has stimulated the growth of ATM services in many Member States, in particular in less populated areas, supplementing bank ATMs. However, this exclusion has proven difficult to apply due to its ambiguity with regard to the entities covered by it. To address this issue, it is appropriate to make explicit that previously excluded ATM deployers are those which do not service payment accounts. Taking into account the limited risks involved in the activity of such ATM deployers, it is appropriate, instead of excluding them totally from the scope, to subject them to a specific prudential regime adapted to those risks, and to only require a registration regime and not an authorisation.

(65) Service providers seeking to benefit from an exclusion from the scope of Directive (EU) 2015/2366 often did not consult their authorities on whether their activities are covered by, or excluded from, that Directive, but often relied on their own assessments. This has led to a divergent application of certain exclusions across Member States. It also appears that some exclusions may have been used by payment service providers to redesign business models so that the payment activities offered would fall outside the scope of that Directive. This may result in increased risks for payment service users and divergent conditions for payment service providers in the internal market. Service providers should therefore be obliged to notify relevant activities to competent authorities so that the competent authorities can assess whether the requirements set out in the relevant provisions are fulfilled and to ensure a homogenous interpretation of the rules throughout the internal market. In particular, for all exclusions based on the respect of a threshold, a notification procedure should be provided in order to ensure compliance with the specific requirements. Moreover, it is important to include a requirement for potential payment service providers to notify competent authorities of the activities that they provide in the framework of a limited network on the basis of the criteria set out in Regulation XXX [PSR] if the value of payment transactions exceeds a certain threshold. Competent authorities should assess whether the activities so notified can be considered to be activities provided in the framework of a limited network, so as to ascertain if they shall remain excluded from the scope.

(66) The power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect

of updating the amounts specified in Articles 5, 34(1), and 37, to take account of inflation. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

(67) In order to ensure a consistent application of this Directive, the Commission should be able to rely on the expertise and support of the EBA, which should have the task of preparing guidelines and draft regulatory technical standards as specified in Articles 3, 7, 18, 30 and 31. The Commission should be empowered to adopt those draft regulatory technical standards. Those specific tasks are fully in line with the role and responsibilities of the EBA as provided in Regulation (EU) No 1093/2010.

(68) Since the objective of this Directive, namely the further integration of an internal market in payment services, cannot be sufficiently achieved by the Member States alone because it requires the harmonisation of a multitude of different rules currently existing in the legal systems of the various Member States but can rather, because of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(69) This Directive does not include licensing requirements for payment systems, payment schemes or payment arrangements, taking into account the need to avoid any duplication with the Eurosystem's oversight framework over retail payment systems, including over Systemically Important Payment Systems and other systems, as well as the Eurosystem's new 'PISA' Framework, and oversight by national central banks. This Directive also does not cover the provision of technical services such as processing, or the operation of digital wallets. However, considering the pace of innovation in the payments sector, and the possible emergence of new risks, it is necessary that in its future review of this Directive, the Commission gives particular consideration to those developments and assesses whether the scope of the Directive should in the future be extended to cover new services and players.

(70) In the interest of legal certainty, it is appropriate to make transitional arrangements allowing entities who have commenced the activities of Payment Institutions in accordance with the national law transposing Directive (EU) 2015/2366 before the entry into force of this Directive to continue those activities within the Member State concerned for a specified period.

(71) In the interest of legal certainty, transitional arrangements should be made to ensure that Electronic Money Institutions which have taken up their activities in accordance with the national laws transposing Directive 2009/110/EC are able to continue those activities within the Member State concerned for a specified period. That period should be longer for Electronic Money Institutions that have benefited from the waiver provided for in Article 9 of Directive 2009/110/EC.

(72) It is essential for any payment service provider to be able to access the services provided by payment systems operators. Payment Institutions are effectively barred from participation in payment systems designated by Member States pursuant to Directive 98/26/EC on settlement finality in payment and securities settlement systems, because of the absence of a mention of Payment Institutions in the list of entities which fall under the definition of "institutions" in article 2(b) of that Directive. This lack of access to certain key payment systems can impede Payment Institutions in

providing a full range of payment services to their clients effectively and competitively. It is therefore appropriate to include Payment Institutions under the definition of "institutions" in Directive 98/26/EC but also to limit the possible participation of Payment Institutions to payment settlement systems only and not to securities settlement systems. Payment Institutions should nevertheless be able to meet the requirements and respect the rules of payment systems in order to be admitted to participation.

(73) It should also be clarified in Directive 98/26/EC that participants in a system may act as a central counterparty, a settlement agent or a clearing house or carry out part or all of these tasks. This clarification, which was removed by Directive (EU) 2019/879, should be restored.

(74) Given the number of changes that need to be made to Directive (EU) 2015/2366 and the merger with Directive 2009/110/EC, it is appropriate to repeal both Directives and replace them by this Directive.

(75) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council and delivered an opinion on [XX XX 2023].

HAVE ADOPTED THIS DIRECTIVE:

TITLE I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter and scope

1. This Directive lays down rules concerning:

(a) Access to the activity of providing payment services as referred in Annex I and electronic money services as referred in Annex II, within the Union, by Payment Institutions, with the scope and exclusions as set out in Article 2 of Regulation XXX [PSR];

(b) Supervisory powers and tools for the supervision of Payment Institutions for the purposes of this Directive.

2. Member States may exempt institutions referred to in points (4) to (23) of Article 2 (5) of Directive 2013/36/EU from the application of all or part of the provisions of this Directive.

Article 2

Definitions

1. For the purposes of this Directive, the following definitions apply:

(1) 'home Member State' means either of the following:

(a) the Member State in which the payment service provider has its registered office; or

(b) if the payment service provider has, under its national law, no registered office, the Member State in which the payment service provider has its head office;

(2) 'host Member State' means the Member State other than the home Member State in which a payment service provider has an agent, distributor or a branch or provides payment services;

(3) 'payment service' means any business activity set out in Annex I;

(4) 'payment institution' means a legal person that has been authorised in accordance with Article 13 of this Directive to provide payment services or electronic money services throughout the Union;

(5) 'payment transaction' means an act of placing, transferring or withdrawing funds, based on a payment order placed by the payer, or on his behalf, or by the payee, or on his behalf, irrespective of any underlying obligations between the payer and the payee;

(6) 'execution of a payment transaction' means the process starting once the initiation of a payment transaction is completed and ending once the funds placed, withdrawn, or transferred are available to the payee.

(7) 'payment system' means a funds transfer system with formal and standardised arrangements and common rules for the processing, clearing or settlement of payment transactions;

(8) 'payment system operator' means the legal entity legally responsible for operating a payment system;

(9) 'payer' means a person who holds a payment account and places a payment order from that payment account, or, where there is no payment account, a natural or legal person who places a payment order;

(10) 'payee' means a person who is the intended recipient of funds which are the subject of a payment transaction;

(11) 'payment service user' means a natural or legal person making use of a payment service or of an electronic money service in the capacity of payer, payee, or both;

(12) 'payment service provider' means a body referred to in Article 2(2) of Regulation XXX [PSR] or a natural or legal person benefiting from an exemption pursuant to Articles 34, 36 and 38 of this Directive;

(13) 'payment account' means an account held in the name of one or more payment service users which is used for the execution of one or more payment transactions, and allows for sending and receiving funds to and from third parties;

(14) 'payment order' means an instruction by a payer or payee to its payment service provider requesting the execution of a payment transaction;

(15) ‘payment instrument’ means an individualised device(s) and/or set of procedures agreed between the payment service user and the payment service provider which enables the initiation of a payment transaction;

(16) ‘account servicing payment service provider’ means a payment service provider providing and maintaining a payment account for a payer;

(17) ‘payment initiation service’ means a service to place a payment order at the request of the payer or of the payee with respect to a payment account held at another payment service provider;

(18) ‘account information service’ means an online data consolidation service based on accessing and collecting, either directly or through a technical service provider, information held on one or more payment accounts of a payment service user with one or several account servicing payment service providers, at the request of the payment service user, with a view to either presenting this information, in a consolidated format, to the payment service user, or to transmitting it to another party to enable that party, on the basis of that information, to provide another service to the payment service user;

(19) ‘payment initiation service provider’ means a payment service provider providing payment initiation services;

(20) ‘account information service provider’ means a payment service provider providing account information services;

(21) ‘consumer’ means a natural person who, in payment service contracts covered by this Directive, is acting for purposes other than his or her trade, business or profession;

(22) ‘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, or where such funds are received on behalf of and made available to the payee;

(23) ‘funds’ means banknotes and coins, digital euro when established by EU regulation, [digital forms of Member States official currencies available to natural and legal persons], scriptural money and electronic money;

(24) ‘technical service provider’ means a provider of services which, although not being payment services within the meaning of this Directive, are necessary to support the provision of payment services, without the provider of technical services entering at any time into possession of the funds to be transferred;

(25) ‘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 ;

(26) ‘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;

(27) ‘Information and technology (ICT) services’ means ICT Services as defined in point 21 of Article 3 of Regulation (EU) 2022/2554;

(28) ‘agent’ means a natural or legal person who acts on behalf of a payment institution in providing payment services;

(29) ‘branch’ means a place of business other than the head office which is a part of a payment institution, which has no legal personality and which carries out directly some or all of the transactions inherent in the business of a payment institution; all of the places of business set up in the same Member State by a payment institution with a head office in another Member State shall be regarded as a single branch;

(30) ‘group’ means a group of undertakings which are linked to each other by a relationship as referred to in Article 22(1), (2) or (7) of Directive 2013/34/EU or undertakings as defined in Articles 4, 5, 6 and 7 of Commission Delegated Regulation (EU) No 241/2014[31], which are linked to each other by a relationship as referred to in Article 10(1) or in Article 113(6) or (7) of Regulation (EU) No 575/2013;

(31) ‘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;

(32) ‘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;

(33) ‘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;

(34) ‘electronic money’ means electronically, including magnetically, stored monetary value as represented by a claim on the issuer which is issued on the receipt of funds for the purpose of making payment transactions and which is accepted by other natural or legal persons than the issuer;

(35) ‘average outstanding electronic money’ means the average total amount of financial liabilities related to electronic money in issue at the end of each calendar day over the preceding six calendar months, calculated on the first calendar day of each calendar month and applied for that calendar month;

(36) ‘distributor’ means a natural or legal person who acts on behalf of a payment institution in distributing or redeeming electronic money;

(37) ‘issuance of electronic money’ means the act of issuing electronic money by a payment institution providing electronic money services on the basis of which the payment institution accepts that its customer, the holder of the electronic money units, has a claim on the payment institution;

(38) ‘electronic money services’ means any business activity as set out in Annex II;

[31] Commission Delegated Regulation (EU) No 241/2014 of 7 January 2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for Own Funds requirements for institutions (OJ L 74, 14.3.2014, p. 8).

TITLE II

PAYMENT INSTITUTIONS

CHAPTER I

Licensing and supervision

SECTION 1

GENERAL RULES

Article 3

Applications for authorisation

1. For authorisation as a Payment Institution, an application shall be submitted to the competent authorities of the home Member State, together with the following:

   (a) a programme of operations setting out in particular the type of payment services envisaged;

   (b) a business plan including a forecast budget calculation for the first 3 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 applicant holds initial capital as provided for in Article 5;

   (d) for the undertakings applying to provide services as referred to in points (1) to (5) of Annex I and in Annex II, a description of the measures taken for safeguarding payment service users' funds in accordance with Article 9;

   (e) a description of the applicant's governance arrangements and internal control mechanisms, including administrative, risk management and accounting procedures as well as arrangements for the use of ICT services in accordance with Regulation (EU) 2022/2554 of the European Parliament and of the Council, which demonstrates that those governance arrangements and internal control mechanisms are proportionate, appropriate, sound and adequate;

   (f) a description of the procedure in place to monitor, handle and follow up a security incident and security related customer complaints, including an incident reporting mechanism which takes account of the notification obligations of the payment institution laid down in Chapter III of Regulation (EU) 2022/ 2554;

   (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 ICT business continuity policy and plans and ICT response and recovery plans, and a procedure to regularly

test and review the adequacy and efficiency of such plans in accordance with Regulation (EU) 2022/2554;

(i) a description of the principles and definitions applied for the collection of statistical data on performance, transactions and fraud;

(j) a security policy document, including a detailed risk assessment in relation to its payment or electronic money 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 as well as any measures for sharing fraud related information;

(k) for Payment Institutions subject to the obligations in relation to money laundering and terrorist financing under Directive (EU) 2015/849 of the European Parliament and of the Council and Regulation (EU) 2015/847 of the European Parliament and of the Council, a description of the internal control mechanisms which the applicant has established in order to comply with those obligations;

(l) a description of the applicant's structural organisation, including, where applicable, a description of the intended use of agents, distributors or branches and of the off-site and 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;

(m) the identity of persons holding in the applicant, 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;

(n) the identity of directors and persons responsible for the management of the Payment Institution and, where relevant, persons responsible for the management of the payment services activities of the payment institution, as well as evidence that they are of good repute and possess appropriate knowledge and experience to perform payment services as determined by the home Member State of the applicant;

(o) where applicable, the identity of statutory auditors and audit firms as defined in Directive 2006/43/EC of the European Parliament and of the Council;

(p) the applicant's legal status and articles of association;

(q) the address of the applicant's head office;

(r) an overview of EU jurisdictions where the applicant is submitting or is planning to submit an application for authorisation under this Directive.

For the purposes of points (d), (e) (f) and (l) above, the applicant shall provide a description of its audit arrangements and of the organisational arrangements it has set up with a view to taking all reasonable steps to protect the interests of its users and to ensure continuity and reliability in the performance of payment or electronic money services.

The security control and mitigation measures referred to in point (j) of the first subparagraph shall indicate how the applicant will ensure a high level of digital operational resilience in accordance with Chapter II of Regulation (EU) 2022/2554, in

particular in relation to technical security and data protection, including for the software and ICT systems used by the applicant or the undertakings to which it outsources the whole or part of its operations.

2. Member States shall require undertakings that apply for authorisation to provide payment services as referred to in point (6) of Annex I, as a condition of their authorisation, to hold a professional indemnity insurance, covering the territories in which they offer services, or some other comparable guarantee against liability so that they ensure the following:

   (a) that they can cover their liabilities as specified in Articles 58, 59, 60, 61, 77, 78 and 80 of Regulation XXX [PSR];

   (b) that they cover the value of any excess, threshold or deductible from the insurance cover or comparable guarantee;

   (c) that they monitor the coverage of the insurance or comparable guarantee on an ongoing basis.

3. Member States shall require undertakings that apply for registration to provide payment services as referred to in point (7) of Annex I, as a condition of their registration, to hold a professional indemnity insurance covering the territories in which they offer services, or some other comparable guarantee, and that they ensure the following:

   (a) that they can cover 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;

   (b) that they can cover the value of any excess, threshold or deductible from the insurance or comparable guarantee;

   (c) that they monitor the coverage of the insurance or comparable guarantee on an ongoing basis.

Alternatively to holding a professional indemnity insurance as required in sub-paragraphs 2 and 3, the undertakings as referred in the previous sub-paragraphs 2 and 3 shall hold initial capital of EUR 50 000, which can be replaced by a professional indemnity insurance after they commence their activity as a payment institution, without undue delay.

4. The EBA shall develop draft regulatory technical standards specifying:

   (a) the information to be provided to the competent authorities in the application for the authorisation of Payment Institutions, including the requirements laid down in points (a), (b), (c), (e) and (g) to (k) and (r) of paragraph 1;

   (b) a common assessment methodology for granting authorisation as a payment institution, or registration as an account information service provider or ATM deployer, under this Directive;

   (c) what is a comparable guarantee, as referred in paragraph 2, which should be interchangeable with a professional indemnity insurance;

   (d) the criteria on how to stipulate the minimum monetary amount of the professional indemnity insurance or other comparable guarantee as referred in paragraphs 2 and 3.

5. In developing these regulatory technical standards, the EBA shall take account of the following:

(a) the risk profile of the undertaking;

(b) whether the undertaking provides other payment services as referred to in Annex I or is engaged in other business;

(c) the size of the activity;

(d) the specific characteristics of comparable guarantees and the criteria for their implementation.

The EBA shall submit those draft regulatory technical standards to the Commission no later than 18 months after the entry into force of this Directive.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

In accordance with Article 10 of Regulation (EU) No 1093/2010, EBA shall review and if appropriate, update these regulatory technical standards.

Article 4

Control of the shareholding

1. Any natural or legal person who has taken a decision to acquire or to further increase, directly or indirectly, a qualifying holding within the meaning of point (36) of Article 4(1) of Regulation (EU) No 575/2013 in a Payment Institution, as a result of which the proportion of the capital or of the voting rights held would reach or exceed 20 %, 30 % or 50 %, or so that the Payment Institution would become its subsidiary, shall inform the competent authorities of that Payment Institution in writing of their intention in advance. The same applies to any natural or legal person who has taken a decision to dispose, directly or indirectly, of a qualifying holding, or to reduce its qualifying holding so that the proportion of the capital or of the voting rights held would fall below 20 %, 30 % or 50 %, or so that the Payment Institution would cease to be its subsidiary.

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

3. Member States shall require that where the influence exercised by a proposed acquirer, as referred to in paragraph 2, is likely to operate to the detriment of the prudent and sound management of the Payment Institution, the competent authorities shall express their opposition or take other appropriate measures to bring that situation to an end. Such measures may include injunctions, penalties against directors or the persons responsible for the management, or the suspension of the exercise of the voting rights attached to the shares held by the shareholders or members of the Payment Institution in question.

Similar measures shall apply to natural or legal persons who fail to comply with the obligation to provide prior information, as laid down in this Article.

4. If a holding is acquired despite the opposition of the competent authorities, Member States shall, regardless of any other penalty to be adopted, provide for the exercise of the corresponding voting rights to be suspended, the nullity of votes cast or the possibility of annulling those votes.

Article 5

Initial capital

Member States shall require Payment Institutions to hold, at the time of authorisation, initial capital, comprised of one or more of the items referred to in Article 26(1)(a) to (e) of Regulation (EU) No 575/2013 as follows:

(a) where the Payment Institution provides only the payment service as referred to in point (5) of Annex I, its capital shall at no time be less than EUR 25 000;

(b) where the Payment Institution provides the payment service as referred to in point (6) of Annex I, its capital shall at no time be less than EUR 50 000;

(c) where the Payment Institution provides any of the payment services as referred to in points (1) to (4) of Annex I, its capital shall at no time be less than EUR 150 000;

(d) where the Payment Institution provides electronic money services as listed in Annex II, its capital shall at no time be less than EUR 400 000.

Article 6

Own funds

1. The Payment Institution's own funds shall not fall below the amount of initial capital as referred to in Article 5 or the amount of own funds as calculated in accordance with Article 7 for Payment Institutions not offering electronic money services or with Article 8 for Payment Institutions offering electronic money services, whichever is the highest.

2. Member States shall take the necessary measures to prevent the multiple use of elements eligible for own funds where the Payment Institution belongs to the same group as another payment institution, credit institution, investment firm, asset management company or insurance undertaking. This paragraph shall also apply where a Payment Institution has a hybrid character and carries out activities other than providing payment or electronic money services.

3. If the conditions laid down in Article 7 of Regulation (EU) No 575/2013 are met, Member States or their competent authorities may choose not to apply Articles 7 or 8 of this Directive, as applicable, to Payment Institutions which are included in the consolidated supervision of the parent credit institution pursuant to Directive 2013/36/EU.

Article 7

Calculation of own funds for Payment Institutions not offering electronic money services

1. Notwithstanding the initial capital requirements set out in Article 5, Member States shall require Payment Institutions, except those offering only services as referred to in points (6) or (7), or both, of Annex I, and except those offering electronic money services, to hold, at all times, own funds calculated as specified in paragraph 2.

2. Competent authorities shall require Payment Institutions to apply, by default, method B unless their business model is such that they only execute a small number of transactions, but of a high individual value, in which case method A or C shall be applied.

Method A

The Payment Institution's own funds shall amount to at least 10 % of its fixed overheads of the preceding year. The competent authorities 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 business plan, unless an adjustment to that plan is required by the competent authorities.

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 3, where payment volume (PV) represents one twelfth of the total amount of payment transactions executed by the Payment Institution in the preceding year:

(a) 4,0 % of the slice of PV up to EUR 5 million;

plus

(b) 2,5 % of the slice of PV above EUR 5 million up to EUR 10 million;

plus

(c) 1 % of the slice of PV above EUR 10 million up to EUR 100 million;

plus

(d) 0,5 % of the slice of PV above EUR 100 million up to EUR 250 million;

plus

(e) 0,25 % of the slice of PV above EUR 250 million.

The preceding year is to be understood as the full 12-month period prior to the moment of calculation.

Method C

The Payment Institution's own funds shall amount to at least the relevant indicator defined in point (a), multiplied by the multiplication factor defined in point (b) and by the scaling factor k defined in paragraph 3.

(a) The relevant indicator is the sum of the following:

(i) interest income;

(ii) interest expenses;

(iii) commissions and fees received; and

(iv) 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.

Own funds calculated according to Method C shall not fall below 80 % of the average of the previous 3 financial years for the relevant indicator. When audited figures are not available, business estimates may be used.

(b) The multiplication factor shall be:

(i) 10 % of the slice of the relevant indicator up to EUR 2,5 million;

(ii) 8 % of the slice of the relevant indicator from EUR 2,5 million up to EUR 5 million;

(iii) 6 % of the slice of the relevant indicator from EUR 5 million up to EUR 25 million;

(iv) 3 % of the slice of the relevant indicator from EUR 25 million up to 50 million;

(v) 1,5 % above EUR 50 million.

3. 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 point (5) of Annex I;

(b) 1 where the Payment Institution provides any of the payment services as referred to in any of points (1) to (4) of Annex I.

4. Member States shall require that Payment Institutions, as referred in paragraph 1 of this Article that also engage in the activities listed under Article 10 of this Directive, ensure that the own funds held for services (1) to (5) listed in Annex I are not considered as own funds held for the purpose of point (d) of paragraph 4 of Article 10 or other services not regulated under this Directive.

5. The competent authorities may, based on an evaluation of the risk-management processes, risk loss data base and internal control mechanisms of the Payment Institution, 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. Competent authorities may 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 to be applied in accordance with paragraph 1.

6. The EBA shall develop draft regulatory standards in accordance with Article 16 of Regulation (EU) No 1093/2010 concerning the criteria to determine when the Payment Institution’s business model is such that they only execute a small number

of transactions, but of a high individual value, as referred in paragraph 2 of this Article.

7. The EBA shall submit those draft regulatory technical standards to the Commission no later than 12 months after the entry into force of this Directive.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

In accordance with Article 10 of Regulation (EU) No 1093/2010, EBA shall review and if appropriate, update these regulatory technical standards.

Article 8

Calculation of own funds for Payment Institutions offering electronic money services

1. Notwithstanding the initial capital requirements as set out in Article 5, Member States shall require Payment Institutions offering both payment services and electronic money services to hold at all times own funds calculated in accordance with Article 7 for their payment services activity.

2. Notwithstanding the initial capital requirements as set out in Article 5, Member States shall require Payment Institutions only offering electronic money services to hold, at all times, own funds calculated in accordance with Method D as set out in paragraph 3 below.

3. Method D: The own funds for the activity of providing electronic money services shall amount to at least 2 % of the average outstanding electronic money.

4. Member States shall require that Payment Institutions offering both payment services and electronic money services hold at all times own funds that are at least equal to the sum of the requirements referred to in paragraphs 1 and 2.

5. Member States shall allow Payment Institutions providing both payment services and electronic money services which carry out any of the activities referred to in Annex I that are not linked to the electronic money services, or any of the activities referred to in Article 10 paragraphs 1 and 4, to calculate their own funds requirements on the basis of a representative portion assumed to be used for the electronic money services, provided that such a representative portion can be reasonably estimated on the basis of historical data and to the satisfaction of the competent authorities, where the amount of outstanding electronic money is unknown in advance. Where the Payment Institution has not completed a sufficient period of business, its own funds requirements shall be calculated on the basis of projected outstanding electronic money evidenced by its business plan subject to any adjustment to that plan required by the competent authorities.

6. Paragraphs 4 and 5 of Article 7 shall apply *mutatis mutandis* to Payment Institutions providing electronic money services.

Article 9

Safeguarding requirements

1. Member States or competent authorities shall require a Payment Institution which provides payment services as referred to in points (1) to (5) of Annex I or electronic money services as referred to in Annex II to safeguard all funds which have been received from payment service users or through another payment service provider for the execution of payment transactions, or where applicable the funds received in exchange for electronic money that has been issued, in either of the following ways:

   (a) funds shall not be commingled at any time with the funds of any natural or legal person other than payment service users on whose behalf the funds are held and, where they are still held by 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 in a credit institution authorised in a Member State or at a central bank at the latter´s discretion, or invested in secure, liquid low-risk assets as defined by the competent authorities of the home Member State; and they shall be insulated in accordance with national law 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;

   (b) funds shall be covered by an insurance policy or some other comparable guarantee from an insurance company or a credit institution, 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 required 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 services other than 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, Member States shall 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 to the satisfaction of the competent authorities.

3. Where a Payment Institution provides electronic money services referred to in Annex II, funds received for the purpose of issuing electronic money need not be safeguarded until the funds are credited to the Payment Institution's payment account or are otherwise made available to the Payment Institution in accordance with the execution time requirements laid down in Regulation XXX [PSR]. In any event, such funds shall be safeguarded by no later than the end of the business day following the day when the funds have been received, after the issuance of electronic money.

4. Where a Payment Institution provides electronic money services referred to in Annex II, for the purpose of application of paragraph 1, secure, low-risk assets are asset items falling into one of the categories set out in Table 1 of Article 336(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions (1) for which the specific

risk capital charge is no higher than 1,6 %, but excluding other qualifying items as defined in Article 336(4) of that Regulation.

For the purposes of paragraph 1, secure, low-risk assets are also units in an undertaking for collective investment in transferable securities (UCITS) which invests solely in assets as specified in the first subparagraph.

In exceptional circumstances and with adequate justification, the competent authorities may, based on an evaluation of security, maturity, value or other risk element of the assets as specified in the first and second subparagraphs, determine which of those assets shall not be considered as secure, low-risk assets for the purposes of paragraph 1.

5. A Payment Institution shall inform the competent authorities in advance of any material change in measures taken for safeguarding of funds received for payment services provided and/or in case of electronic money services in exchange for electronic money issued.

Article 10

Activities

1. In addition to the provision of payment services or electronic money 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;

   (c) business activities other than the provision of payment services and/or electronic money services, having regard to applicable Union and national law.

2. Where Payment Institutions engage in the provision of one or more payment services or electronic money services, they may hold only payment accounts which are used exclusively for payment transactions.

3. Any funds received by Payment Institutions from payment service users with a view to the provision of payment or electronic money services shall not constitute a deposit or other repayable funds within the meaning of Article 9 of Directive 2013/36/EU.

4. Payment Institutions may grant credit relating to payment services as referred to in point (2) of Annex I only if all of the following conditions are met:

   (a) the credit shall be ancillary and granted exclusively in connection with the execution of a payment transaction;

   (b) notwithstanding national rules, if any, on providing credit by issuers of credit cards, the credit granted in connection with a payment and executed in accordance with Article 13(9) and Article 30 shall be repaid within a short period which shall in no case exceed 12 months;

   (c) such credit shall not be granted from the funds received or held for the purpose of executing a payment transaction or from the funds which have been received

from payment services users in exchange of electronic money and held in accordance with Article 9(1);

(d) the own funds of the Payment Institution shall at all times and to the satisfaction of the supervisory authorities be appropriate in view of the overall amount of credit granted.

5. Payment Institutions shall not conduct the business of taking deposits or other repayable funds within the meaning of Article 9 of Directive 2013/36/EU.

6. When a Payment Institution provides electronic money services, any funds, such as cash or scriptural money, received by that Payment Institution from payment service users shall be exchanged for electronic money without delay. Such funds shall not constitute either a deposit or other repayable funds received from the public within the meaning of Article 5 of Directive 2006/48/EC.

7. This Directive shall be without prejudice to Directive 2008/48/EC, other relevant Union law or national measures regarding conditions for granting credit to consumers not harmonised by this Directive that comply with Union law.

Article 11

Accounting and statutory audit

1. Directives 86/635/EEC and 2013/34/EU, and Regulation (EC) No 1606/2002 of the European Parliament and of the Council (1), shall apply to Payment Institutions *mutatis mutandis*.

2. Unless exempted under Directive 2013/34/EU and, where applicable, Directive 86/635/EEC, the annual accounts and consolidated accounts of Payment Institutions shall be audited by statutory auditors or audit firms within the meaning of Directive 2006/43/EC.

3. For supervisory purposes, Member States shall require that Payment Institutions provide separate accounting information for payment services or electronic money services, and activities referred to in Article 10(1), which shall be subject to an auditor's report. That report shall be prepared, where applicable, by the statutory auditors or an audit firm.

4. The obligations established in Article 63 of Directive 2013/36/EU shall apply *mutatis mutandis* to the statutory auditors or audit firms of Payment Institutions in respect of payment services or electronic money services.

Article 12

Record-keeping

Member States shall require Payment Institutions to keep all appropriate records for the purpose of this Title for at least 5 years, without prejudice to Directive (EU) 2015/849 or other relevant Union law.

Article 13

Granting of authorisation

1. Member States shall require undertakings other than those referred to in points (a), (b), (d), and (e) of Article 2(2) of Regulation XXX [PSR], and other than natural or legal persons benefiting from an exemption pursuant to Articles 34, 36, 37 and 38 who intend to provide payment or electronic money services, to obtain authorisation as a Payment Institution before commencing the provision of payment services or electronic money services. An authorisation shall only be granted to a legal person established in a Member State.

2. Competent authorities shall grant an authorisation if the information and evidence accompanying the application complies with all of the requirements laid down in Article 3 and if the competent authorities' overall assessment, having scrutinised the application, is favourable. Before granting an authorisation, the competent authorities may, where relevant, consult the national central bank or other relevant public authorities.

3. A Payment Institution which, under the national law of its home Member State is required to have a registered office, shall have its head office in the same Member State as its registered office and shall carry out a part of its payment service or electronic money business there. The competent authorities of the Member State where the Payment Institution will have its registered office shall however not require the Payment Institution to carry out the majority of its business in the country where it will have its registered office.

4. The competent authorities shall grant an authorisation only if, taking into account the need to ensure the sound and prudent management of a Payment Institution, the Payment Institution has robust governance arrangements for its payment services or electronic money business, which include a clear organisational structure with well-defined, transparent and consistent lines of responsibility, effective procedures to identify, manage, monitor and report the risks to which it is or might be exposed, and adequate internal control mechanisms, including sound administrative and accounting procedures. Those arrangements, procedures and mechanisms shall be comprehensive and proportionate to the nature, scale and complexity of the payment services or electronic money business provided by the Payment Institution.

5. Where a Payment Institution provides any of the payment services as referred to in points (1) to (6) of Annex I and, at the same time, is engaged in other business activities, the competent authorities may require the establishment of a separate entity for the payment services business, where the non-payment services activities of the Payment Institution impair or are likely to impair either the financial soundness of the Payment Institution or the ability of the competent authorities to monitor the Payment Institution's compliance with all obligations laid down by this Directive.

6. The competent authorities shall refuse to grant an authorisation if, taking into account the need to ensure the sound and prudent management of a Payment Institution, they are not satisfied as to the suitability of the shareholders or members that have qualifying holdings.

   A Payment Institution shall not be obliged to obtain an authorisation for payment services that it does not intend to provide.

7. Where close links as defined in point (38) of Article 4(1) of Regulation (EU) No 575/2013 exist between the Payment Institution and other natural or legal persons, the competent authorities shall only grant an authorisation if those links do not prevent the effective exercise of their supervisory functions.

8. Competent authorities shall only grant an authorisation if the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the payment institution has close links, or difficulties involved in the enforcement of those laws, regulations or administrative provisions, do not prevent the effective exercise of their supervisory functions.

9. An authorisation shall be valid in all Member States and shall allow the Payment Institution concerned to provide the payment or electronic money services that are covered by the authorisation throughout the Union, pursuant to the freedom to provide services or the freedom of establishment.

Article 14

Communication of the decision

Within 3 months of receipt of an application or, if the application is incomplete, of all of the information required for the decision, the competent authorities shall inform the applicant whether the authorisation is granted or refused. The competent authority shall give reasons where it refuses an authorisation.

Article 15

Maintenance of authorisation

Where any change affects the accuracy of information and evidence provided in accordance with Article 3, the Payment Institution shall, without undue delay, inform the competent authorities of its home Member State accordingly.

Article 16

Withdrawal of authorisation

1. The competent authorities may withdraw an authorisation issued to a Payment Institution only if the institution:

   (a) does not make use of the authorisation within 12 months, expressly renounces the authorisation or has ceased to engage in business for more than 6 months, if the Member State concerned has made no provision for the authorisation to lapse in such cases;

   (b) has obtained the authorisation through false statements or any other irregular means;

   (c) no longer meets the conditions for granting the authorisation or fails to inform the competent authority on major developments in this respect;

   (d) commits serious breaches of AML/CFT rules

(e) would constitute a threat to the stability of or the trust in the payment system by continuing its payment or electronic money services business; or

(f) falls within a case where national law provides for withdrawal of an authorisation.

2. The competent authority shall give reasons for any withdrawal of an authorisation and shall inform those concerned accordingly.

3. The competent authority shall make public the withdrawal of an authorisation, including in the registers or lists referred to in Articles 17 and 18.

Article 17

Registration in the home Member State

1. Member States shall ensure that their public register on authorized Payment Institutions, or registered entities in accordance with Articles 34, 36, 38, and their agents or distributors contains the following information:

(a) authorised Payment Institutions and their agents and, where applicable, their distributors;

(b) natural and legal persons benefiting from an exemption pursuant to Articles 34, 36 and their agents or distributors and natural and legal persons benefitting from an exemption pursuant to Article 38; and

(c) the institutions referred to in Article 1(2) of this Directive that are entitled under national law to provide payment or electronic money services.

Branches of Payment Institutions shall be entered in the register of the home Member State if those branches provide services in a Member State other than their home Member State.

2. The public register shall identify the payment and electronic money services and respective brands for which the Payment Institution is authorised, or for which the natural or legal person has been registered. It shall also include the agents or distributors, as applicable, through which the Payment Institution provides payment or electronic money services, except issuance, and which services these agents or distributors carry out on behalf of the Payment Institution, and other Member States where the Payment Institution is active on the basis of passporting, including the initial date of the passporting. Authorised Payment Institutions shall be listed in the register separately from natural and legal persons benefiting from an exemption pursuant to Articles 34, 36 or 38. The register shall be publicly available for consultation, accessible online, and updated without delay.

3. Competent authorities shall enter in the public register dates of authorisation or registration, any withdrawal of authorisation, suspension of authorisation, and any withdrawal of an exemption pursuant to Articles 34, 36 or 38.

4. Competent authorities shall notify the EBA without any undue delay of the reasons for the withdrawal of the authorisation, suspension of authorisation or of any exemption pursuant to Articles 34 36 or 38.

Article 18

EBA register

1. The EBA shall operate and maintain an electronic central register on authorized Payment Institutions, registered entities in accordance with Articles 34, 36 and 38, and their agents or distributors, and branches where applicable. This register shall contain the information as notified by the competent authorities in accordance with paragraph 2. The EBA shall be responsible for the accurate presentation of that information.

   The EBA shall make the register publicly available on its website, and shall allow for easy access to and easy search for the information listed, free of charge.

2. Competent authorities shall ensure the submission to the EBA, without undue delay and at the latest within one business day, of the information being entered in their national public registers in accordance with the requirements specified under in Article 17 and in the regulatory technical standards mentioned in paragraph 4.

3. Competent authorities shall be responsible for the accuracy of the information contained in their national registers and submitted to the EBA, and for keeping that information up-to-date.

4. The EBA shall develop regulatory technical standards on the operation and maintenance of the electronic central register and on access to the information contained therein. These shall ensure that only the relevant competent authority or the EBA may modify the information contained in the register.

   The EBA shall submit those draft regulatory technical standards to the Commission no later than 18 months after the entry into force of this Directive.

   Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

   In accordance with Article 10 of Regulation (EU) No 1093/2010, the EBA shall review and if appropriate, update these regulatory technical standards.

5. The EBA shall develop implementing technical standards on the details and structure of the information to be notified pursuant to paragraph 1, including the data standards and formats for the information, as set out in the Commission Implementing Regulation (EU) 2019/410.

   The EBA shall submit those draft regulatory technical standards to the Commission no later than 18 months after the entry into force of this Directive.

   Power is delegated to the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

   In accordance with Article 10 of Regulation (EU) No 1093/2010, EBA shall review and if appropriate, update these regulatory technical standards.

6. The EBA shall develop, operate and maintain a central, machine-readable list of the payment service providers offering the payment services listed in points (6) and (7) in Annex I, based on the most recent information contained in the EBA register referred to in paragraph 1, and the EBA Credit Institution Register. This list shall

contain the name and identifier of these payment services providers and their authorisation status.

SECTION 2

USE OF AGENTS, DISTRIBUTORS, BRANCHES AND OUTSOURCING

Article 19

Use of agents

1. Where a Payment Institution intends to provide payment services through an agent it shall communicate the following information to the competent authorities in its home Member State:

   (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 in relation to money laundering and terrorist financing under Directive (EU) 2015/849, to 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 and, in cases where the agent is not a payment service provider, evidence that they are fit and proper persons;

   (d) the payment services provided by the Payment Institution for which the agent is mandated; and

   (e) where applicable, the unique identification code or number of the agent.

2. Within 2 months of receipt of the information referred to in paragraph 1, the competent authority of the home Member State shall communicate to the Payment Institution whether the agent has been entered in the register provided for in Article 17. Upon entry in the register, the agent may commence providing payment services.

3. Before listing the agent in the register, the competent authorities shall, if they consider that the information provided to them is incorrect, take further action to verify the information.

4. If, after taking action to verify the information, the competent authorities are not satisfied that the information provided to them pursuant to paragraph 1 is correct, they shall refuse to list the agent in the register provided for in Article 17 and shall inform the Payment Institution without undue delay.

5. If the Payment Institution wishes to provide payment services in another Member State by engaging an agent, it shall follow the procedures set out in Article 30. The same applies in cases where a Payment Institution intends to provide payment services in a Member State other than its home Member State via an agent located in a third Member State.

6. Payment Institutions shall ensure that agents acting on their behalf inform payment service users of this fact.

7. Payment Institutions shall communicate to the competent authorities of their home Member State without undue delay and in accordance with the procedure provided for in paragraphs 2, 3 and 4, any change regarding the use of agents, including about additional agents.

Article 20

Distributors of electronic money services

1. Member States shall allow Payment Institutions providing electronic money services to distribute and redeem electronic money through distributors.
2. Where the Payment Institution intends to provide electronic money services through a distributor it shall apply the requirements and procedures as set out in Article 19 *mutatis mutandis*.
3. Where the Payment Institution intends to distribute electronic money services in another Member State by engaging a distributor, Articles 30 to 33, with exception of Article 31(4) and (5), of this Directive, including the delegated acts adopted in accordance with Article 28(5) and Article 29(6) of Directive (EU) 2015/2366, shall apply *mutatis mutandis* to such a Payment Institution.

Article 21

Branches

1. If the Payment Institution intends to provide payment services in another Member State by establishing a branch, it shall follow the procedures set out in Article 30. This also applies in cases where a payment institution intends to provide payment services in a Member State other than its home Member State via a branch located in a third Member State.
2. Payment Institutions shall ensure that branches acting on their behalf inform payment service users of this fact.

Article 22

Entities to which activities are outsourced

1. Where a Payment Institution intends to outsource operational functions of payment or electronic money services, it shall inform the competent authorities of its home Member State accordingly.

Outsourcing of important operational functions, including ICT systems, shall not be undertaken in such way as to impair materially the quality of the Payment Institution's internal control and the ability of the competent authorities to monitor and retrace the payment institution's compliance with all of the obligations laid down in this Directive.

An operational function shall be regarded as important if a defect or failure in its performance would materially impair the continuing compliance of a payment institution with the requirements of its authorisation requested pursuant to this Title, its other obligations under this Directive, its financial performance, or the soundness or the continuity of its payment or electronic money services. Member States shall ensure that when Payment Institutions outsource important operational functions, they shall meet the following conditions:

(a) the outsourcing shall not result in the delegation by senior management of its responsibility;

(b) the relationship and obligations of the Payment Institution towards its payment service users under this Directive shall not be altered;

(c) the conditions with which the Payment Institution is to comply in order to be authorised and remain so in accordance with this Title shall not be undermined;

(d) none of the other conditions subject to which the Payment Institution's authorisation was granted shall be removed or modified.

2. A Payment Institution shall communicate to the competent authorities of their home Member State without undue delay any change regarding the use of entities to which activities are outsourced.

.Article 23

Liability

1. Member States shall ensure that, where Payment Institutions rely on third parties for the performance of operational functions, those Payment Institutions take reasonable steps to ensure that the requirements of this Directive are complied with.

2. Member States shall require that Payment Institutions remain fully liable for any acts of their employees, or any agent, distributor, branch or entity to which activities are outsourced.

SECTION 3

COMPETENT AUTHORITIES AND SUPERVISION

Article 24

Designation of competent authorities

1. Member States shall designate as the competent authorities responsible for the authorisation and prudential supervision of Payment Institutions which are to carry out the duties provided for under this Title either public authorities, or bodies recognised by national law or by public authorities expressly empowered for that purpose by national law, including national central banks.

The competent authorities shall guarantee independence from economic bodies and avoid conflicts of interest. Without prejudice to the first subparagraph, Payment Institutions, credit institutions, or post office giro institutions shall not be designated as competent authorities.

The Member States shall inform the Commission accordingly.

2. Member States shall ensure that the competent authorities designated under paragraph 1 possess all powers necessary for the performance of their duties.

Member States shall ensure that competent authorities have the necessary resources, notably in terms of dedicated staff, in order to comply with their tasks as per the obligations under this Directive.

3. Member States that have appointed within their jurisdiction more than one competent authority for matters covered by this Title shall ensure that those authorities cooperate closely so that they can discharge their respective duties effectively. The same applies where the authorities competent for matters covered by this Title are not the competent authorities responsible for the supervision of credit institutions.

4. The tasks of the competent authorities designated under paragraph 1 shall be the responsibility of the competent authorities of the home Member State.

5. Paragraph 1 shall not imply that the competent authorities are required to supervise business activities of the Payment Institutions other than the provision of payment services and the activities referred to in point (a) of Article 10(1).

Article 25

Supervision

1. Member States shall ensure that the controls exercised by the competent authorities for checking continued compliance with this Title are proportionate, adequate and responsive to the risks to which Payment Institutions are exposed.

In order to check compliance with this Title, the competent authorities shall, in particular, be entitled to take the following steps:

(a) to require the Payment Institution to provide any information needed to monitor compliance specifying the purpose of the request, as appropriate, and the time limit by which the information is to be provided;

(b) to carry out on-site inspections at the business premises of the Payment Institution, of any agent, distributor or branch providing payment services or electronic money services under the responsibility of the Payment Institution, or at the business premises of any entity to which activities are outsourced;

(c) to issue recommendations, guidelines and, if applicable, binding administrative provisions;

2. Member States shall ensure that their laws, regulations and administrative provisions lay down administrative sanctions and other administrative measures at least in respect of the possibility to suspend or to withdraw an authorisation pursuant to Article 16.

3. Without prejudice to Article 16 and the provisions of criminal law, Member States shall provide that their competent authorities may impose penalties or measures aimed specifically at ending observed infringements, and removing the causes of such infringements, upon Payment Institutions or those who effectively control the business of payment institutions which breach the provisions transposing this Directive.

4. Notwithstanding the requirements of Article 5, Article 6(1) and (2) Article 7 and Article 8, Member States shall ensure that the competent authorities are entitled to take steps described under paragraph 1 of this Article to ensure sufficient capital for payment institutions, in particular where activities other than payment services or electronic money services impair or are likely to impair the financial soundness of the latter.

Article 26

Professional secrecy

1. Without prejudice to cases covered by criminal law, Member States shall ensure that all persons who work or who have worked for the competent authorities, as well as experts acting on behalf of the competent authorities, are bound by the obligation of professional secrecy.
2. The information exchanged in accordance with Article 28 shall be subject to the obligation of professional secrecy by both the sharing and recipient authority to ensure the protection of individual and business rights.
3. Member States may apply this Article taking into account, *mutatis mutandis*, Articles 53 to 61 of Directive 2013/36/EU.

Article 27

Right to apply to the courts

1. Member States shall ensure that decisions taken by the competent authorities in respect of a Payment Institution pursuant to the laws, regulations and administrative provisions adopted in accordance with this Directive may be contested before the courts.
2. Paragraph 1 shall apply also in respect of a failure to act.

Article 28

Cooperation and exchange of information

1. The competent authorities of the different Member States shall cooperate with each other and, where appropriate, with the ECB and the national central banks of the Member States, the EBA and other relevant competent authorities designated under Union or national law applicable to payment service providers.
2. Member States shall allow for the exchange of information between their competent authorities and:
   (a) the competent authorities of other Member States responsible for the authorisation and supervision of Payment Institutions;
   (b) the ECB and the national central banks of Member States, in their capacity as monetary and oversight authorities, and, where appropriate, other public authorities responsible for overseeing payment and settlement systems;

(c) other relevant authorities designated under this Directive, and other Union law applicable to payment service providers, such as Directive (EU) 2015/849;

(d) the EBA, in its capacity of contributing to the effective and consistent functioning of supervising mechanisms as referred to in point (a) of Article 1(5) of Regulation (EU) No 1093/2010.

Article 29

Settlement of disagreements between competent authorities of different Member States

1. Where a competent authority of a Member State considers that, in a particular matter, cross-border cooperation with competent authorities of another Member State referred to in Articles 28, 30, 31, 32 or 33 of this Directive does not comply with the relevant conditions set out in those provisions, it may refer the matter to EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010.

2. Where the EBA has been requested to assist pursuant to paragraph 1 of this Article, it shall take a decision under Article 19(3) of Regulation (EU) No 1093/2010 without undue delay. The EBA may also assist the competent authorities in reaching an agreement on its own initiative in accordance with the second subparagraph of Article 19(1) of that Regulation. In either case, the competent authorities involved shall defer their decisions pending resolution under Article 19 of that Regulation.

Article 30

Application to exercise the right of establishment and freedom to provide services

1. Any authorised Payment Institution wishing to provide payment or electronic money services for the first time in a Member State other than its home Member State, including when this is done via an establishment in a third Member State, in the exercise of the right of establishment or the freedom to provide services, shall communicate the following information to the competent authorities in its home Member State:

(a) the name, the address and, where applicable, the authorisation number of the Payment Institution;

(b) the Member State(s) in which it intends to operate;

(c) the payment or electronic money service(s) to be provided;

(d) where the Payment Institution intends to make use of an agent or distributor, the information referred to in Articles 19(1) and 20(2);

(e) where the Payment Institution intends to make use of a branch, the information referred to in points (b) and (e) of Article 3(1) with regard to the payment or electronic money service business in the host Member State, a description of the organisational structure of the branch and the identity of those responsible for the management of the branch.

Where the Payment Institution intends to outsource operational functions of the payment or electronic money services to other entities in the host Member State, it shall inform the competent authorities of its home Member State accordingly.

2. Within 1 month of receipt of all of the information referred to in paragraph 1 the competent authorities of the home Member State shall send it to the competent authorities of the host Member State. In case the services are provided via a third Member State, the Member State to be notified is the one where the services are provided to payment service users.

Within 1 month of receipt of the information from the competent authorities of the home Member State, the competent authorities of the host Member State shall assess that information and provide the competent authorities of the home Member State with relevant information in connection with the intended provision of payment or electronic money services by the relevant Payment Institution in the exercise of the freedom of establishment or the freedom to provide services. The competent authorities of the host Member State shall inform the competent authorities of the home Member State in particular of any reasonable grounds for concern in connection with the intended engagement of an agent, distributor or establishment of a branch with regard to money laundering or terrorist financing within the meaning of Directive (EU) 2015/849. Before doing so, the competent authority of the host Member State shall liaise with the relevant competent authorities under Directive (EU) 2015/849 to establish whether such grounds exist.

Where the competent authorities of the home Member State do not agree with the assessment of the competent authorities of the host Member State, they shall provide the latter with the reasons for their decision.

If the assessment of the competent authorities of the home Member State in particular in light of the information received from the competent authorities of the host Member State, is not favourable, the competent authority of the home Member State shall refuse to register the agent, branch or distributor, or shall withdraw the registration if already made.

3. Within 3 months of receipt of the information referred to in paragraph 1 the competent authorities of the home Member State shall communicate their decision to the competent authorities of the host Member State and to the payment institution.

Upon entry in the register referred to in Article 17, the agent, distributor or branch may commence its activities in the relevant host Member State.

The payment institution shall notify to the competent authorities of the home Member State the start date of the activities conducted on its behalf through the agent, distributor or branch in the relevant host Member State. The competent authorities of the home Member State shall inform the competent authorities of the host Member State accordingly.

4. The payment institution shall communicate to the competent authorities of the home Member State without undue delay any relevant change regarding the information communicated in accordance with paragraph 1, including additional agents, distributors, branches or entities to which activities are outsourced in the host Member States in which it operates. The procedure provided for under paragraphs 2 and 3 shall apply.

5. The EBA shall develop regulatory technical standards specifying the framework for cooperation, and for the exchange of information, between competent authorities of the home and of the host Member State in accordance with this Article. Those draft regulatory technical standards shall specify the method, means and details of cooperation in the notification of Payment Institutions operating on a cross-border

basis and, in particular, the scope and treatment of information to be submitted, including common terminology and standard notification templates to ensure a consistent and efficient notification process.

The EBA shall submit those draft regulatory technical standards to the Commission no later than 18 months after the entry into force of this Directive.

Power is delegated to the Commission to adopt the draft regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

In accordance with Article 10 of Regulation (EU) No 1093/2010, EBA shall review and if appropriate, update these regulatory technical standards.

Article 31

Supervision of Payment Institutions exercising the right of establishment and freedom to provide services

1. In order to carry out the controls and take the necessary steps provided for in this Title in respect of the agent, distributor or branch of a Payment Institution located in the territory of another Member State, the competent authorities of the home Member State shall cooperate with the competent authorities of the host Member State.

   By way of cooperation in accordance with the first subparagraph, the competent authorities of the home Member State shall notify the competent authorities of the host Member State where they intend to carry out an on-site inspection in the territory of the latter.

   However, the competent authorities of the home Member State may delegate to the competent authorities of the host Member State the task of carrying out on-site inspections of the institution concerned.

2. The competent authorities of the host Member States may require that Payment Institutions having agents, distributors or branches within their territories shall report to them periodically on the activities carried out in their territories.

   Such reports shall be required for information or statistical purposes and, as far as the agents, distributors or branches conduct the payment service or electronic money service under the right of establishment, to monitor compliance with the provisions as set out in Titles II, III and IV of Regulation XXX [PSR]. Such agents, distributors or branches shall be subject to professional secrecy requirements at least equivalent to those referred to in Article 26.

   Without prejudice to this paragraph, the competent authorities of the host Member State may request ad hoc information from Payment Institutions if these authorities have evidence of non-compliance with supervisory rules.

3. The competent authorities of the home and host Member States shall provide each other with all essential and/or relevant information, in particular in the case of infringements or suspected infringements by an agent, a distributor or a branch, and where such infringements occurred in the context of the exercise of the freedom to provide services. In that context, the competent authorities shall communicate, upon request, all relevant information and, on their own initiative, all essential information, including on the compliance of the Payment Institution with the conditions under Article 13(3).

4. Member States may require Payment Institutions operating on their territory through agents under the right of establishment, the head office of which is situated in another Member State, to appoint a central contact point in their territory to ensure adequate communication and information reporting in compliance with provisions as set out in Titles II, III and IV of Regulation XXX [PSR], without prejudice to any provisions on anti-money laundering and countering terrorist financing provisions and to facilitate supervision by competent authorities of home Member State and host Member States, including by providing competent authorities with documents and information on request.

5. The EBA shall develop draft regulatory technical standards which specify the criteria to be applied when determining, in accordance with the principle of proportionality, the circumstances under which the appointment of a central contact point is appropriate, and the functions of those contact points, pursuant to paragraph 4.

6. The EBA shall submit those draft regulatory technical standards to the Commission no later than 18 months after the entry into force of this Directive.

Power is delegated to the Commission to adopt the draft regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

In accordance with Article 10 of Regulation (EU) No 1093/2010, EBA shall review and if appropriate, update these regulatory technical standards.

Article 32

Measures in case of non-compliance, including precautionary measures

1. Without prejudice to the responsibility of the competent authorities of the home Member State, where the competent authority of the host Member State ascertains that a Payment Institution having agents, distributors or branches in its territory does not comply with this Title or with requirements as set out in Titles II, III or IV of Regulation XXX [PSR], it shall inform the competent authority of the home Member State without undue delay.

The competent authority of the home Member State, after having evaluated the information received pursuant to the first subparagraph, shall, without undue delay, take all appropriate measures to ensure that the Payment Institution concerned puts an end to its failure of compliance. The competent authority of the home Member State shall communicate those measures without delay to the competent authority of the host Member State and to the competent authorities of any other Member State concerned.

2. In emergency situations, where immediate action is necessary to address a serious threat to the collective interests of the payment service users in the host Member State, the competent authorities of the host Member State may, in parallel to the cross-border cooperation between competent authorities and pending measures by the competent authorities of the home Member State as set out in Article 31, take precautionary measures.

3. Any precautionary measures under paragraph 2 shall be appropriate and proportionate to their purpose to protect against a serious threat to the collective interests of the payment service users in the host Member State. They shall not result

in a preference for payment service users of the Payment Institution in the host Member State over payment service users of the Payment Institution in other Member States.

Precautionary measures shall be temporary and shall be terminated when the serious threats identified are addressed, including with the assistance of or in cooperation with the home Member State's competent authorities or with the EBA as provided for in Article 29(1).

4. Where compatible with the emergency situation, the competent authorities of the host Member State shall inform the competent authorities of the home Member State and those of any other Member State concerned, the Commission and the EBA in advance and in any case without undue delay, of the precautionary measures taken under paragraph 2 and of their justification.

Article 33

Reasons and communication

1. Any measure taken by the competent authorities pursuant to Article 25, 30, 31 or 32 involving penalties or restrictions on the exercise of the freedom to provide services or the freedom of establishment shall be properly justified and communicated to the Payment Institution concerned.

2. Articles 30, 29 and 32 shall be without prejudice to the obligation of competent authorities under Directive (EU) 2015/849 and Regulation (EU) 2015/847, in particular under Article 47(1) of Directive (EU) 2015/849 and Article 22(1) of Regulation (EU) 2015/847, to supervise or monitor the compliance with the requirements laid down in those instruments.

CHAPTER II

Exemptions and notifications

Article 34

Optional exemptions

1. Member States may exempt or allow their competent authorities to exempt, natural or legal persons providing payment services as referred to in points (1) to (5) of Annex I and/or providing electronic money services as referred to in Annex II, from the application of all or part of the procedures and conditions set out in Sections 1, 2 and 3, with the exception of Articles 17, 18, 24, 26, 27 and 28, where:

   (a) in the case of payment services, the monthly average of the preceding 12 months' total value of payment transactions executed by the person concerned, including any agent for which it assumes full responsibility, does not exceed a limit set by the Member State but that, in any event, amounts to no more than EUR 3 million. That requirement shall be assessed on the projected total amount of payment transactions in its business plan, unless an adjustment to that plan is required by the competent authorities; and/or

(b) in the case of electronic money services, the total business activities generate an average amount of outstanding electronic money that does not exceed a limit set by the Member State but that, in any event, should not exceed EUR 5 million; and

(c) none of the natural persons responsible for the management or operation of the business has been convicted of offences relating to money laundering or terrorist financing or other financial crimes.

Where a Payment Institution providing electronic money services also offers any of the services referred to in Annex I or any of the activities referred to in Article 10, and the amount of outstanding electronic money is unknown in advance, the competent authorities shall allow that Payment Institution to apply point (b) of the first subparagraph on the basis of a representative portion assumed to be used for the electronic money services, provided that such a representative portion can be reasonably estimated on the basis of historical data and to the satisfaction of the competent authorities. Where a Payment Institution has not completed a sufficiently long period of business, that requirement shall be assessed on the basis of projected outstanding electronic money evidenced by its business plan subject to any adjustment to that plan having been required by the competent authorities.

Member States may also provide for the granting of the optional exemptions under this Article to be subject to an additional requirement of a maximum storage amount on the payment instrument or payment account of the consumer where the electronic money is stored.

A legal person benefitting from an exemption under paragraph 1 (b) may provide payment services not related to electronic money services only in accordance with and if conditions set out in paragraph 1 (a) are met.

2. Any natural or legal person registered in accordance with paragraph 1 shall be required to have its head office or place of residence in the Member State in which it actually carries out its business.

3. The persons referred to in paragraph 1 of this Article shall be treated as Payment Institutions, save that Article 13(9) and Articles 30, 31 and 32 shall not apply to them.

4. Member States may also provide that any natural or legal person registered in accordance with paragraph 1 of this Article may engage only in certain activities listed in Article 10.

5. The persons referred to in paragraph 1 of this Article shall notify the competent authorities of any change in their situation which is relevant to the conditions specified in that paragraph, and at least annually, on the date specified by the competent authorities, report on the average of the preceding 12 months' total value of payment transactions in case they provide payment services and/or on the average outstanding electronic money in case of electronic money services. Member States shall take the necessary steps to ensure that where the conditions set out in paragraphs 1, 2 or 4 of this Article are no longer met, the persons concerned shall seek authorisation within 30 calendar days in accordance with Article 13. Member States shall ensure that their competent authorities are sufficiently empowered to verify continued compliance with the requirements laid down in this Article.

6. Paragraphs 1 to 5 of this Article shall be without prejudice to Directive (EU) 2015/849 or of national laws on anti-money laundering or terrorist financing

Article 35

Notification and information

If a Member State applies an exemption pursuant to Article 34, it shall notify the Commission of its decision accordingly and it shall notify the Commission forthwith of any subsequent change. In addition, the Member State shall inform the Commission of the number of natural and legal persons concerned and, on an annual basis, of the total value of payment transactions executed as of 31 December of each calendar year, as referred to in point (a) of Article 34(1), and of the total amount of outstanding electronic money issued, as referred to in point (b) of Article 34(1).

Article 36

Account information service providers

1. Natural or legal persons providing only the payment service as referred to in point (7) of Annex I shall be exempt from the application of the procedure and conditions set out in Sections 1 and 2, with the exception of points (a), (b), (e) to (h), (j), (l), (n), (p) and (q) of Article 3(1), and Article 3(3). Section 3 shall apply, with the exception of Article 25(4).

2. The persons referred to in paragraph 1 of this Article shall be treated as Payment Institutions.

Article 37

Services where cash is provided in retail stores without a purchase

1. Member States shall exempt from the application of this Directive natural or legal persons providing cash in retail stores independently of any purchase provided the following conditions are met:

   (a) the service is offered at its premises by a natural or legal person selling goods or services as a regular occupation;

   (b) the amount of cash provided does not exceed 50 EUR per withdrawal.

2. This Article shall be without prejudice to Directive (EU) 2015/849 or any other relevant Union or national anti-money-laundering/terrorist financing laws.

Article 38

Services enabling cash withdrawals offered by ATM deployers not servicing payment accounts

1. Member States shall exempt cash withdrawal services as referred to in point (1) of Annex I offered by ATM deployers which do not service payment accounts, and do not conduct other payment services included in Annex I, from the application of the procedure and conditions set out in Sections 1 and 2, with the exception of points (a), (b), (e) to (j), (l), (n), (p) and (q) of Article 3(1). Section 3 shall apply, with the exception of Article 25(4).

2. The persons providing the services referred to in paragraph 1 of this Article shall be treated as Payment Institutions.

Article 39

Duty of notification

1. Member States shall require that service providers carrying out either of the activities referred to in points (i) and (ii) of point (j) of paragraph 1 of Article 2 of Regulation XXX [PSR] or carrying out both activities, for which the total value of payment transactions executed over the preceding 12 months exceeds the amount of EUR 1 million, send a notification to competent authorities containing a description of the services offered, specifying under which exclusion referred to in point (j) (i) and (ii) of paragraph 1 of Article 2 of Regulation XXX [PSR] the activity is considered to be carried out.

   On the basis of that notification, the competent authority shall take a duly motivated decision on the basis of criteria referred to in point (j) of paragraph 1 of Article 2 of PSR where the activity does not qualify as a limited network, and inform the service provider accordingly.

2. Member States shall require that service providers carrying out an activity referred to in point (j) of paragraph 1 of Article 2 of PSR send a notification to competent authorities and provide competent authorities an annual audit opinion, testifying that the activity complies with the limits set out in point (j) of paragraph 1 of Article 2 of PSR.

3. Member States shall ensure that competent authorities shall inform the EBA of the services notified pursuant to paragraph 1, stating under which exclusion the activity is carried out.

4. The description of the activity notified under paragraphs 2 and 3 of this Article shall be made publicly available in the registers provided for in Articles 17 and 18.

TITLE III

DELEGATED ACTS AND REGULATORY TECHNICAL STANDARDS

Article 40

Delegated acts

The Commission shall be empowered to adopt delegated acts in accordance with Article 41 concerning:

(a) updating the amounts specified in Articles 5, 34(1), and 37 to take account of inflation.

Article 41

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 40 shall be conferred on the Commission for an undetermined period of time from [one year after the coming into force of this Directive].

3. The delegation of power referred to in Article 40 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect on the day following the publication of the decision in the Official Journal of the European Union or on a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 40 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 3 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 3 months at the initiative of the European Parliament or of the Council.

TITLE IV

FINAL PROVISIONS

Article 42

Full harmonisation

1. Without prejudice to Articles 6(3) and 34, insofar as this Directive contains harmonised provisions, Member States shall not maintain or introduce provisions other than those laid down in this Directive.

2. Where a Member State makes use of any of the options referred to in Articles 6(3) or 34, it shall inform the Commission thereof as well as of any subsequent changes. The Commission shall make the information public on a website or other easily accessible means.

3. Member States shall ensure that payment service providers do not derogate, to the detriment of payment service users, from the provisions of national law transposing this Directive except where explicitly provided for therein.

   However, payment service providers may decide to grant more favourable terms to payment service users.

Article 43

Review clause

The Commission shall, by [6 years after entry into force], submit to the European Parliament, the Council, the ECB and the European Economic and Social Committee, a report on the application and impact of this Directive, and in particular on the appropriateness of the Directive's scope, in particular regarding the possibility of extending it to certain services, such as the operation of payment systems, the provision of technical services such as processing, or the operating of digital wallets, which are not covered in the scope.

If appropriate, the Commission shall submit a legislative proposal together with its report.

Article 44

Transitional provision

1. Member States shall allow Payment Institutions that have taken up activities in accordance with the national law transposing Directive (EU) 2015/2366 by [date of entry into force of this Directive], to continue those activities in accordance with the requirements provided for in Directive (EU) 2015/2366 without being required to seek authorisation in accordance with Article 3 of this Directive or to comply with the other provisions laid down or referred to in Title II of this Directive until [date corresponding to 18 months after coming into force of this Directive].

   Member States shall require such Payment Institutions to submit all relevant information to the competent authorities in order to allow the latter to assess, by [date corresponding to 18 months after coming into force of this Directive], whether those Payment Institutions comply with the requirements laid down in Title II and, if not, which measures need to be taken in order to ensure compliance or whether a withdrawal of authorisation is appropriate.

   Payment Institutions which upon verification by the competent authorities comply with the requirements laid down in Title II shall be granted authorisation and shall be entered in the registers referred to in Articles 17 and 18. Where those payment institutions do not comply with the requirements laid down in Title II by [date corresponding to 18 months after coming into force of this Directive], they shall be prohibited from providing payment services.

2. Member States may provide for Payment Institutions referred to in paragraph 1 of this Article to be automatically granted authorisation and entered in the registers referred to in Articles 17 and 18 if the competent authorities already have evidence that the requirements laid down in Articles 3 and 17 are complied with. The competent authorities shall inform the Payment Institutions concerned before the authorisation is granted.

3. This paragraph applies to natural or legal persons who benefited under Article 32 of Directive (EU) 2015/2366 before [date corresponding to 18 months after coming into force of this Directive], and pursued payment services activities within the meaning of Directive (EU) 2015/2366.

   Member States shall allow those persons to continue those activities within the Member State concerned in accordance with Directive (EU) 2015/2366 until [date corresponding to 24 months after coming into force of this Directive] without being

required to seek authorisation under Article 3 of this Directive or, to obtain an exemption pursuant to Article 34 of this Directive, or to comply with the other provisions laid down or referred to in Title II of this Directive.

Any person referred to in the first subparagraph who has not, by [date corresponding to 24 months after coming into force of this Directive], been authorised or exempted under this Directive shall be prohibited from providing payment services.

4. Member States may allow natural and legal persons benefiting from an exemption as referred to in paragraph 3 of this Article to be deemed to benefit from an exemption and automatically entered in the registers referred to in Articles 17 and 18 where the competent authorities have evidence that the requirements laid down in Article 34 are complied with. The competent authorities shall inform the payment institutions concerned.

Article 45

Transitional provision – electronic money institutions authorised under Directive 2009/110/EC

1. Member States shall allow Payment Institutions that have taken up, before [date of entry into force of the Directive], activities in accordance with national law transposing [Directive 2009/110/EC] as Electronic Money Institutions in the Member State in which their head office is located, to continue those activities in that Member State or in another Member State without being required to seek authorisation in accordance with Article 3 of this Directive or to comply with the other provisions laid down or referred to in Title II of this Directive.

2. Member States shall require such institutions as referred in sub-paragraph 1 to submit all relevant information to the competent authorities in order to allow the latter to assess, by [date corresponding to 18 months after coming into force of this Directive], whether they comply with the requirements laid down in this Directive and, if not, which measures need to be taken in order to ensure compliance or whether a withdrawal of authorisation is appropriate.

   Compliant Payment Institutions providing electronic money services shall be granted authorisation, shall be entered in the register according to Articles 17 and 18, and shall be required to comply with the requirements in Title II. Where Payment Institutions providing electronic money services do not comply with the requirements laid down in this Directive by [date corresponding to 18 months after coming into force of this Directive], they shall be prohibited from providing electronic money services.

3. Member States may allow for a Payment Institution providing electronic money services to be automatically granted authorisation and entered in the register provided for in Article 17 if the competent authorities already have evidence that the Payment Institution concerned complies with the requirements laid down in this Directive. The competent authorities shall inform the Payment Institutions concerned before the authorisation is granted.

4. Member States shall allow legal persons that have taken up, before [date of entry into force of the Directive], activities in accordance with national law transposing Article 9 of Directive 2009/110/EC, to continue those activities within the Member State concerned in accordance with that Directive until [date corresponding to 24 months

after coming into force of this Directive], without being required to seek authorisation under Article 3 of this Directive or to comply with the other provisions laid down or referred to in Title II of this Directive. Payment institutions offering electronic money services which, during that period, have been neither authorised nor exempted within the meaning of Article 34 of this Directive, shall be prohibited from providing electronic money services.

Article 46

Amendments to DIRECTIVE 98/26/EC

New recitals:

"*Payment Institutions are effectively barred from participation in payment systems designated by Member States pursuant to Directive 98/26/EC on settlement finality in payment and securities settlement systems, because of the absence of a mention of Payment Institutions in the list of entities which fall under the definition of "institutions" in article 2(b) of that Directive. This lack of access to certain key payment systems can impede Payment Institutions in providing a full range of payment services to their clients effectively and competitively. It is therefore appropriate to include Payment Institutions under the definition of "institutions" in that Directive, but also to limit the possible participation of Payment Institutions to payment settlement systems and not to securities settlement systems. Payment Institutions should nevertheless be able to meet the requirements and respect the rules of payment systems in order to be admitted to participation. Article 6 of Regulation XX [PSR] lays down requirements on operators of payment systems regarding the admission of new applicants for participation, including carrying out of an assessment of relevant risks."*

"Whereas, it was previously stated in Directive 98/26/EC that participants may act as a central counterparty, a settlement agent or a clearing house or carry out part or all of these tasks this clarification should be reinserted in that Directive to ensure a similar understanding in the Member States. Similarly, where justified due to systemic risk, it should be made clear that Member States should be allowed to consider an indirect participant as a participant of the system and apply the provisions of that Directive to such an indirect participant. However, to ensure that this does not limit the responsibility of the participant through which the indirect participant passes transfer orders to the system, this should be made clear in that Directive to ensure legal certainty."

In point (b) of Article 2 of Directive 98/26/EC, the following is inserted before the last sub-paragraph:

"- A payment institution as defined in point 4 of Article 2 of Directive XXX [PSD3] with the exception of payment institutions benefitting from an exemption pursuant to Articles 36, 38 and 40 of that Directive,

which participates in a system whose business consists of the execution of transfer orders as defined in the first indent of (i) and which is responsible for discharging the financial obligations arising from such transfer orders within that system."

Point (f) of Article 2 of Directive 98/26/EC is replaced by the following:

"participant" shall mean an institution, a central counterparty, a settlement agent, a clearing house a system operator or a clearing member of a CCP authorised pursuant to Article 17 of Regulation (EU) No 648/2012.

According to the rules of the system, the same participant may act as a central counterparty, a settlement agent or a clearing house or carry out part or all of these tasks.

A Member State may decide that, for the purposes of this Directive, an indirect participant may be considered a participant if that is justified on the grounds of systemic risk. When an indirect participant is considered to be a participant on grounds of systemic risk, this does not limit the responsibility of the participant through which the indirect participant passes transfer orders to the system.

Article 47

Repeal

Directive (EU) 2015/2366 is repealed with effect from [18 months after entry into force].

Directive 2009/110/EC is repealed with effect from [18 months after entry into force].

All references made to Directive (EU) 2015/2366 and to Directive 2009/110/EC in legal acts that are in force at the time this Directive enters into force should be construed as references to this Directive or [PSR] and shall be read in accordance with the correlation table in Annex III to this Directive.

Article 48

Transposition

1. Member States shall adopt and publish, by [18 months after entry into force] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

2. They shall apply those measures from [18 months after entry into force].

   When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

3. Member States shall communicate to the Commission the text of the main measures of national law which they adopt in the field covered by this Directive.

Article 49

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

Article 50

Addresses

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President