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## **Act No 370/2017 Sb. on Payments**

The Parliament has adopted the following Act of the Czech Republic:

### **PART ONE GENERAL PROVISIONS**

#### **Section 1 Subject matter**

This law incorporates the relevant European Union law<sup>1)</sup>, and also relates to directly applicable EU regulations<sup>2)</sup> and regulates

- (a) the activities of certain persons authorized to provide payment services and to issue electronic money, including the activities of such persons abroad,
- (b) the participation in payment systems and the establishment and operation of payment systems with settlement finality,
- (c) the rights and duties of entrepreneurs that provide payment services (hereinafter the "provider") and payment service users (hereinafter the "user"),
- (d) the rights and duties of entrepreneurs that issue electronic money (hereinafter the "issuer") and electronic money holders (hereinafter the "holder"),

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<sup>1)</sup> Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems, as amended by Directives 2009/44/EC and 2010/78/EC of the European Parliament and of the Council and Regulation (EU) No 648/2012 and No 909/2014 of the European Parliament and of the Council. Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, the pursuit and the prudential supervision of the business of electronic money institutions, amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC, as amended by Directives 2013/36/EU and 2015/2366 of the European Parliament and of the Council.

Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features.

Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC.

<sup>2)</sup> Regulation (EC) No 924/2009 of the European Parliament and the Council of 16 September 2009 on cross-border payments in the Community and repealing Regulation (EC) No 2560/2001, as amended.

Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009, as amended.

Regulation No 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions.

- (e) the rights and duties of entrepreneurs that use websites to compare charges for services linked to payment accounts required by different providers (hereinafter the “comparison website operator”),
- (f) the use of standardised terms of services linked to payment accounts,
- (g) the process for switching payment accounts,
- (h) the access to payment accounts.

## Section 2 Definitions

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

- (a) ‘payment transaction’ means the placement of funds on a payment account, the withdrawal of funds from a payment account, or the transfer of funds, if the payment transaction is executed as part of a payment service,
- (b) ‘payment account’ means an account used for the execution of payment transactions,
- (c) ‘funds’ means banknotes, coins, scriptural money and electronic money,
- (d) ‘payment instrument’ means any device(s) or a set of procedures agreed between the provider and the user that relate to the person of the user and whereby the user initiates a payment order,
- (e) ‘direct debit’ means the transfer of funds from a payment account, the payment order for which is initiated by the payee on the basis of the consent given by the payer to the payee, to the payee’s provider or to the payer’s own provider,
- (f) ‘credit transfer’ means the transfer of funds from the payer’s payment account to the payee’s payment account on the basis of a payment order given by the payer directly to the payer’s provider,
- (g) ‘standing order’ means the payer’s payment order to execute transfers of funds from the payer’s payment account on predetermined days or at regular intervals,
- (h) ‘overdraft facility’ means an explicit contractual arrangement by the parties to make available funds that exceed the current balance in the consumer’s payment account,
- (i) ‘overrunning’ means the actual making available of funds that exceed the balance on the payment account or the overdraft facility,
- (j) ‘service linked to the payment account’ means a payment service or another service provided in connection with the opening or maintaining a payment account, including overrunning, overdraft facility, issue of instruments referred to in Section 3(3)(c)(1) to (3), and payment transactions executed using these instruments,
- (k) ‘indirect payment order service’ means a service consisting of initiating a payment order for the transfer of funds from the payment account in the name of the payer by a provider other than the provider that maintains the payment account for the payer, if the payment order is given online,
- (l) ‘payment account information service’ means a service consisting of providing information about a payment account via the Internet by a provider other than the provider that maintains the payment account.

(2) For the purposes of this Act, the following definitions also apply:

- (a) ‘Member State’ means a state of the European Union or another State Party to the Agreement on the European Economic Area,
- (b) ‘another Member State’ means a Member State other than the Czech Republic,
- (c) ‘home Member State’ means the Member State in which the registered office of the provider or issuer is situated or, in the absence of such a registered office, the Member State in which its head office is situated,
- (d) ‘host Member State’ means the Member State other than the home Member State of the provider or issuer in which the provider or issuer has a branch, authorised agent or in which it provides services in a manner other than through a branch or an authorised agent,
- (e) ‘qualifying holding’ means qualifying holding under Article 4(1)(36) of Regulation (EU) No 575/2013 of the European Parliament and of the Council<sup>3)</sup>,
- (f) ‘close links’ means close links under Article 4(1)(38) of Regulation (EU) No 575/2013 of the European Parliament and of the Council,

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<sup>3)</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, as amended.

- (g) ‘director’ means:
1. in the case of a legal person, a member of its governing body or any other person who effectively manages its business in another capacity, in the case of a payment institution and a small-scale payment service provider, a person who effectively manages their payment service activities and, in the case of an electronic money institution and a small-scale electronic money institution, also a person who effectively manages their activities in the field of issuing electronic money or providing payment services; if another legal person is a member of the governing body, director also means a natural person who represents the legal person in that body,
  2. in the case of an entrepreneurial natural person, a person who effectively controls its business and, in the case of a small-scale payment service provider, a person who effectively manages its business in the field of providing payment services,
- (h) ‘branch’ means:
1. a business establishment or a part thereof in a Member State other than the home Member State; all business establishments or parts thereof in that Member State are regarded as one branch,
  2. a place of business in the home Member State, unless it is the registered office,
- (i) ‘authorised agent’ means a person who, under a contract with the provider, acts on behalf of the provider when entering into a payment service contract or providing payment services, or who, under a contract with the issuer, acts in the name of the issuer in the distribution or exchange of electronic money; an employee, a corporate agent (*in Czech: “prokurista”*) or a member of the governing body of the provider or issuer is not an authorised agent,
- (j) ‘group’ means a group of:
1. persons as defined in Articles 4, 5, 6 or 7 of Commission Regulation (EU) No 241/2014<sup>4)</sup> which are linked to each other by a relationship referred to in Article 7, 10(1) or 113(6) of Regulation (EU) No 575/2013 of the European Parliament and of the Council,
  2. the controlling person and its controlled persons, or
  3. persons whose governing, managing or supervisory body consists in the majority of the same persons as the governing, managing or supervisory body of another person referred to in point 2,
- (k) ‘payment system’ means a system with uniform rules, the purpose of which is to process, clear or settle payment transactions.

(3) For the purposes of this Act, the following definitions also apply:

- (a) ‘payer’ means a user whose payment account is to be debited funds to execute a payment transaction, or who makes funds available to execute a payment transaction,
- (b) ‘payee’ means a user whose payment account is to be credited based on a payment order or to whom funds are to be made available based on a payment order,
- (c) ‘payment order’ means an instruction to the provider whereby the payer or the payee requests the execution of a payment transaction,
- (d) ‘value date’ means the time when the payment transaction becomes recorded for the calculation of interest on the funds in the payment account,
- (e) ‘reference exchange rate’ means the exchange rate which is used as the basis to calculate any currency exchange and which comes from a publicly available source or which is made available by the provider,
- (f) ‘reference interest rate’ means the interest rate to be used as the basis for the calculation of interest and which comes from a publicly available source,
- (g) ‘unique identifier’ means a combination of letters, numbers or symbols determined by the provider to identify the user or his account when executing payment transactions,
- (h) ‘durable medium’ means any instrument which enables the user to store information addressed personally to that user in a way that allows their use for a period of time adequate to the purposes of the information, and which allows unchanged reproduction of that information,
- (i) ‘business day’ means a day on which the payer’s provider or payee’s provider executing a payment transaction normally performs the activities necessary for the execution of the payment transaction,

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<sup>4)</sup> 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, as amended.

- (j) ‘operating hours’ means a part of a business day on which the payer’s provider or payee’s provider executing the payment transaction normally performs the activities necessary for the execution of the payment transaction,
- (k) ‘person legally resident in a Member State’ means:
  1. a national of a Member State and the national’s family member,
  2. a foreign national residing in the Czech Republic temporarily or permanently pursuant to the law governing the residence of foreign nationals in the Czech Republic,
  3. a foreign national who has applied for international protection in the Czech Republic or who has been granted asylum or subsidiary protection pursuant to the law governing asylum,
  4. a foreign national residing in the Czech Republic pursuant to the law governing the temporary protection of foreign nationals,
  5. a person residing in the Czech Republic pursuant to the law governing the residence of armed forces of other States in the Czech Republic,
  6. a person enjoying privileges and immunities in the Czech Republic pursuant to international law, or
  7. a person legally residing in another Member State,
- (l) ‘authentication’ means a procedure which allows the provider to verify the identity of a user or the validity of the use of a payment instrument or the user’s personalised security features,
- (m) ‘personalised security credential’ means a security feature provided by the provider to a user for the purposes of authentication,
- (n) ‘sensitive payment data’ means data which can be misused to carry out payment services fraud, excluding the unique identifier and the name of the payment account holder in the case of a payment account information service provider or an indirect payment order service provider,
- (o) ‘credit’ means any form of temporarily granted funds.

(4) For the purposes of this Act, the following definitions also apply:

- (a) ‘settlement’ means:
  1. netting of monetary claims, or
  2. discharging of mutual monetary debts by a transfer of funds,
- (b) ‘settlement order’ means an instruction issued by a participant of a payment system with settlement finality or by a participant or operator of a payment system with settlement finality linked pursuant to Section 116, on the basis of which clearing is to be made in accordance with the rules of the payment system with settlement finality (hereinafter the ‘system rules’),
- (c) ‘central counter party’ (CCP) means a person that interposes itself between the participants of a payment system with settlement finality under Section 111(1)(a) to (h) as their exclusive counterparty,
- (d) ‘settlement agent’ means a person providing to the participants of the payment system with settlement finality under Section 111(1)(a) to (h) or (j) a settlement account,
- (e) ‘clearing house’ means a person that carries out settlement by calculating the net positions of the participants of a payment system with settlement finality under Section 111(1)(a) to (h), (j) or (k),
- (f) ‘settlement day’ means a regularly recurring period laid down in the system rules during which the payment system with settlement finality accepts and executes settlement orders and other operations related to that settlement.

### Section 3 Payment service

(1) Payment services include:

- (a) a service enabling cash to be placed on a payment account maintained by the provider,
- (b) a service enabling cash to be withdrawn from a payment account maintained by the provider,
- (c) the transfer of funds from a payment account initiated by a payment order given by:
  1. the payer,
  2. the payee, or
  3. the payer through the payee,
 unless the provider provides the transferred funds to the user as a credit,
- (d) the transfer of funds from a payment account initiated by a payment order given by:
  1. the payer,

- 2. the payee, or
  - 3. the payer through the payee,
- if the provider provides the transferred funds to the user as a credit,
- (e) the issue and administration of payment instruments and, where the user is the payee, the transfer of payment orders and the processing of payment transactions,
  - (f) the transfer of funds where neither the payer nor the payee uses a payment account held with the payer's provider (money remittance),
  - (g) an indirect payment order service,
  - (h) a payment account information service.

(2) Transfers of funds also include scriptural foreign currency trading, unless it is an activity which is an investment service under the law regulating the business on the capital market. For the purposes of this Act, scriptural foreign currency trading means the purchase or sale of funds in Czech or foreign currency for funds in another currency if the funds are received from the user or made available to the user in a cashless form, excluding the exchange of currency under Section 254(3) and a purchase to which the payer has given a payment order through the payee and where the funds are paid cash.

(3) Payment services exclude:

- (a) the transport, collection, processing and delivery of banknotes and coins,
- (b) foreign exchange activities,
- (c) the issue or payments made through:
  - 1. cheques, bills of exchange or traveller's cheques,
  - 2. paper vouchers for goods or services,
  - 3. postal vouchers pursuant to the law governing postal services,
  - 4. funds intended solely for the payment of goods or services in premises used by the issuer of the instrument or goods or services to a narrowly defined range of suppliers or for the payment of a narrowly defined range of goods or services,
  - 5. funds for which an order may be given solely for a national payment and which are intended solely to pay for meals provided, under the income tax law, as in-kind performance by the employer to employees for consumption in the workplace or for in-house catering provided through other entities, if the in-kind performance is provided on the basis of a contract between the supplier and the person who issued the funds,
  - 6. funds for which an order may be given solely for a national payment and which are intended solely for the payment of an in-kind performance provided by the employer to the employee or his family member from the fund for cultural and social needs, from the social fund, from the profits after his taxation, or from the expenditure other than expenditure to achieve, secure and maintain revenue, and in the form that is tax exempt under the income tax law, if the in-kind performance is provided on the basis of a contract between the supplier and the person who issued the funds,
  - 7. funds for which a payment order may be issued only for a national payment and which are intended solely for the payment of benefits under the law governing assistance in material need,
- (d) a payment made:
  - 1. between providers or their authorised agent on their own account,
  - 2. within a business group without the participation or intermediation of a person outside this business group,
  - 3. within a payment system or securities settlement system between the participants in that system and the providers, or between the participants within that system,
  - 4. in the administration of securities,
  - 5. in the administration of the property of another under the law governing the activities of lawyers, the law governing the activities of notaries or the law governing the activities of court enforcement officer,
  - 6. by a person acting in the name of the payer or the payee in the case of a purchase or sale of goods or the provision or use of services, or by a person who intermediates such purchase, sale, supply or use on the account of the payer or the payee in the case of a payment resulting from this purchase, sale, provision or use,
- (e) a payment made by an electronic communications service provider or an operator by a law governing electronic communications if the amount of the payment is equal to or less than EUR 50, the total amount

of payments for which order was given by one end user over a period of 1 month corresponds to a maximum of EUR 300 and:

1. the payment is intended to pay for digital content or voice services, or
  2. the payment is made via an electronic communication device to pay for an entrance ticket or a travel ticket or for charitable purposes,
- (f) the payout of cash:
1. by a supplier of goods or services to a customer in the case of a payment for goods or services beyond this payment (cashback),
  2. using a cash machine by a person acting in the name of the issuer of a payment instrument unless that person provides other payment services,
- (g) a service of technical service providers that support the provision of payment services without the funds concerned by the payment being transferred to their possession unless it is an indirect payment order service or a payment account information service.

#### Section 4 **Electronic money**

(1) Electronic money is a monetary value which:

- (a) represents a claim against the person that issued it,
- (b) is stored electronically,
- (c) is issued against the receipt of funds for the purpose of executing payment transactions, and
- (d) is received by a person other than the person that issued it.

(2) Electronic money is not a monetary value that can be used only for the payment specified in Section 3(3)(c)(4) to (7) or in Section 3(3)(e).

## PART TWO **PERSONS AUTHORISED TO PROVIDE PAYMENT SERVICES AND ISSUE ELECTRONIC MONEY**

### Title I **General provisions**

#### Section 5 **Authorisation to provide payment services**

Only the following persons may provide payment services as a business activity:

- (a) banks under the conditions laid down by a law governing the activities of banks,
- (b) foreign banks and foreign financial institutions under the conditions laid down by a law governing the activities of banks,
- (c) savings and credit cooperatives under the conditions laid down by a law governing the activities of savings and credit cooperatives,
- (d) electronic money institutions under the conditions laid down by this Act,
- (e) foreign electronic money institutions under the conditions laid down by this Act,
- (f) small-scale electronic money issuers under the conditions laid down by this Act,
- (g) payment institutions under the conditions laid down by this Act,
- (h) foreign payment institutions under the conditions laid down by this Act,
- (i) small-scale payment service providers under the conditions laid down by this Act,
- (j) administrators of the payment account information under the conditions laid down by this Act,
- (k) foreign administrators of the payment account information under the conditions laid down by this Act,
- (l) a postal licence holder whose postal licence expressly includes a postal money order delivery service,
- (m) the Czech National Bank under the conditions laid down by a law governing the activity and position of the Czech National Bank.

Section 6  
**Authorisation to issue electronic money**

Only the following persons may issue electronic money as a business activity:

- (a) banks under the conditions laid down by a law governing the activities of banks,
- (b) foreign banks and foreign financial institutions under the conditions laid down by a law governing the activities of banks,
- (c) savings and credit cooperatives under the conditions laid down by a law governing the activities of savings and credit cooperatives,
- (d) electronic money institutions under the conditions laid down by this Act,
- (e) foreign electronic money institutions under the conditions laid down by this Act,
- (f) small-scale electronic money issuers under the conditions laid down by this Act,
- (g) the Czech National Bank under the conditions laid down by a law governing the activity and position of the Czech National Bank.

Title II  
**Payment institutions**

Chapter 1  
**Basic provisions**

Section 7

A payment institution is a legal person authorised to provide payment services under a payment institution licence issued by the Czech National Bank.

Section 8

(1) A payment institution licence entitles the payment institution to:

- (a) provide payment services subject to the payment institution licence,
- (b) to perform activities related to the provision of payment services under (a), including the provision of credit, and
- (c) operate a payment system with the exception of a payment system with settlement finality.

(2) The provision of credit is an activity permitted under subsection (1)(b) if:

- (a) it relates to the provision of the payment service referred to in Section 3(1)(d) or (e) and this payment service is subject to payment institution licence,
- (b) the capital of the payment institution is proportionate to the total amount of the credit granted, and
- (c) under a contract concluded between the payment institution and the borrower, the credit is to be repaid within one year; this does not apply if the loan is provided in the Czech Republic.

(3) A payment institution may not use funds entrusted to it to execute a payment transaction for the granting of credit.

Chapter 2  
**Payment institution licence**

**Granting of a payment institution licence**

Section 9

(1) The Czech National Bank grants a payment institution licence to an applicant:

- (a) which is a legal person,
- (b) which has its registered office and head office in the Czech Republic,
- (c) which has an initial capital of at least the amount specified in this Act,

- (d) which is a beneficiary of an insurance contract or a comparable guarantee in accordance with this Act if the payment institution licence is to apply to indirect payment order service or payment account information service,
- (e) whose business plan, including the estimated budget for the first three accounting periods, is based on realistic economic calculations,
- (f) whose material, technical, personal and organizational capacity is appropriate for the sound and prudent provision of payment services,
- (g) whose management and control system meets the requirements set out in this Act,
- (h) which provides for the protection of funds entrusted to it by users to execute a payment transaction,
- (i) whose potential other business other than the provision of payment services does not pose a significant threat to the financial stability of the payment institution, nor can it prevent the effective supervision over the activities of the payment institution,
- (j) with qualifying holding exclusively of persons that are credible and capable of ensuring the sound and prudent management of a payment institution,
- (k) whose close link with another person does not prevent effective supervision of the activities of the payment institution; in the case of a close link with a person governed by the law of a State other than a Member State, that law or its application may not prevent the effective supervision of the activities of the payment institution,
- (l) which will operate at least part of its business related to the provision of payment services in the Czech Republic,
- (m) whose directors in the provision of payment services are professionally competent and have sufficient experience with regard to the sound and prudent provision of payment services, and
- (n) whose directors are credible in terms of the sound and prudent provision of payment services.

(2) Subsection (1)(b) does not apply if an international treaty which forms part of the legal order entails a duty to allow an applicant with its registered office in a State other than a Member State to provide payment services in the Czech Republic under conditions analogous to those applying to the provision of payment services to persons with their registered office in the Czech Republic and if the legal order of the State where the applicant has its registered office does not prevent the effective protection of the funds entrusted to the payment institution to execute a payment transaction. Sections 32 to 40 do not apply to payment institutions with the registered office in a State other than a Member State.

## Section 10

(1) An application for a payment institution licence may be submitted only electronically. In addition to the requirements laid down in the Administrative Procedure Code, the application contains the data on the compliance with the conditions for a payment institution licence. The application must be accompanied by documents demonstrating compliance with these conditions.

(2) The Czech National Bank issues the decision on the application pursuant to subsection (1) within three months after the commencement of the proceedings. If the application does not have the prescribed elements or if it suffers from other material defects that prevent the continuation of the proceedings, this period commences on the day when the defects of the application have been removed.

(3) In the decision to grant a payment institution licence, the Czech National Bank specifies the payment services to which the licence applies.

(4) The details of the application requirements, including the annexes demonstrating the compliance with the conditions for a payment institution licence, its formats and other technical requirements, are laid down in a secondary regulation.

## Section 11

(1) The payment institution notifies the Czech National Bank without undue delay of any changes in the data specified in the application for a payment institution licence or its annexes based on which the licence has been granted.



(2) The notification under subsection (1) may only be made electronically. The details of the notification requirements, including the annexes containing the documents demonstrating the facts in the notification, its formats and other technical requirements are laid down in a secondary regulation.

### **Lapse of a payment institution licence**

#### Section 12

A payment institution licence lapses on the day when:

- (a) the payment institution is dissolved,
- (b) the decision on the insolvency of the payment institution becomes final and enforceable,
- (c) the decision whereby the Czech National Bank has granted a payment institution an electronic money institution licence, a small-scale payment service provider licence, a small-scale electronic money issuer licence, or a payment account information administrator licence becomes enforceable, or
- (d) the decision to withdraw the payment institution licence becomes enforceable.

#### Section 13

(1) From the lapse of the payment institution licence, the person whose licence has lapsed may not carry out the activities under Section 8. The funds which have been entrusted to the person to execute a payment transaction must be returned to the users. If it is not possible to determine the part of the money which was transferred by the user to the payment institution for payment transactions, it is necessary to return to the user such a part of the funds that the user requests within 1 year from the lapse of the payment institution licence.

(2) Until the date on which the debts to the users have been discharged, the person whose payment institution licence has lapsed continues to be considered a payment institution for the purposes of money protection and supervision.

(3) Subsections (1) and (2) do not apply to activities which the person whose payment institution licence has lapsed continues to be entitled to carry out under another authorisation.

#### Section 14

### **Extension of payment institution licence**

If a payment institution submits an application for an extension of the scope of payment services subject to a licence, Section 9(1)(c) to (m) and Sections 10 and 11 apply *mutatis mutandis*.

#### Chapter 3

### **Certain conditions for the performance of the activities of a payment institution**

#### Section 15

### **Initial capital**

(1) The initial capital of a payment institution must be at least the amount of:

- (a) EUR 20,000 if the payment institution licence only applies to a payment service pursuant to Section 3(1)(f),
- (b) EUR 50,000 if the payment institution licence applies to a payment service pursuant to Section 3(1)(g), or
- (c) EUR 125,000 if the payment institution licence applies to any of the payment services pursuant to Section 3(1)(a) to (e).

(2) The initial capital referred to in subsection (1) means the sum of the items defined in Article 26(1)(a) to (e) of Regulation (EU) No 575/2013 of the European Parliament and of the Council.

#### Section 16

### **Capital**

(1) Payment institutions hold at all times capital at least equivalent to the initial capital set out in Section 15.

(2) Payment institutions whose licence applies to payment services pursuant to Section 3(1)(a), (b), (c), (d), (e) or (f), simultaneously with the fulfilment of the duty referred to in subsection (1), holds at all times capital at least equivalent the amount corresponding to the capital requirement to cover risks (hereinafter the “capital adequacy”).

(3) In the decision to grant a payment institution licence, the Czech National Bank determines the approach to be applied by the payment institution referred to in subsection (2) when calculating capital adequacy and which is appropriate in terms of the proper provision of payment services or given the situation of the payment institution. The specified approach may be changed by the Czech National Bank at a later date if the circumstances or conditions under which the access was determined change.

(4) The Czech National Bank may, on the basis of an evaluation of the payment institution’s management and control system, decide that the payment institution referred to in subsection (2) is required to maintain at all times capital adequacy of up to 20% higher or up to 20% lower than that provided for in subsection (2).

(5) A secondary regulation lays down rules for calculating the amount of the capital of a payment institution as well as the rules for the calculation of capital adequacy, including the individual approaches that a payment institution may use in the calculation of capital adequacy.

#### Section 17

##### **Insurance and guarantee**

(1) A payment institution the licence of which relates to an indirect payment order service ensures that it is the beneficiary of an insurance contract or comparable guarantee based on which users or providers maintaining the payment account have the right to a performance resulting from the payment institution’s duty to remedy an unauthorised or incorrectly executed payment transaction.

(2) A payment institution the licence of which relates to a payment account information service ensures that it is the beneficiary of an insurance contract or comparable guarantee based on which users or providers maintaining the payment account have the right to performance from the payment institution’s duty to remedy an unauthorized acquisition or use of information about a payment account.

(3) A secondary regulation establishes the minimum indemnity limit from insurance and the minimum amount of comparable guarantee under subsections (1) and (2) with respect to:

- (a) the risks to which the payment institution is or may be exposed,
- (b) other activities of the payment institution,
- (c) the characteristics of a comparable guarantee,
- (d) volume of payment transactions for which a payment order is given indirectly through the payment institution, and
- (e) the number of users of the payment account information service.

#### Section 18

##### **Qualifying holding in a payment institution and taking control thereof**

(1) The person or persons acting in concert notify the Czech National Bank in advance of their intention to:

- (a) acquire a qualifying holding in a payment institution,
- (b) give up a qualifying holding in a payment institution,
- (c) increase the qualifying holding in a payment institution to or above the level of 20%, 30% or 50%,
- (d) decrease the qualifying holding in a payment institution below 50%, 30% or 20%,
- (e) become a person controlling a payment institution, or
- (f) stop controlling a payment institution.

(2) If the person or persons acting in concert who have made the notification under subsection (1)(a), (c) or (e) are not credible or capable of ensuring the proper and prudent management of a payment institution, the Czech National Bank shall disagree with the acquisition or increase of a qualifying holding or taking control of a payment institution. This applies *mutatis mutandis* even if the notification was not inconsistent with subsection (1)(a), (c) or (e).

(3) Disagreement proceedings may be commenced within 60 working days from the date when the notification to the Czech National Bank pursuant to subsection (1)(a), (c) or (e) was made or when the Czech National Bank learned that the notification was not inconsistent with subsection (1)(a), (c) or (e).

(4) If the Czech National Bank finds before the expiry of the time limit for commencing the disagreement proceedings that the person or persons acting in concert that made the notification pursuant to subsection (1)(a), (c) or (e) are credible or capable of ensuring the sound and prudent management of a payment institution, it informs them thereof.

(5) If the Czech National Bank expresses disagreement pursuant to subsection (2), the person that made the notification under subsection (1)(a), (c) or (e), or that failed to make the notification in breach of subsection (1)(a), (c) or (e), may not exercise the voting rights attached to the holding in the payment institution to the extent that the participation was acquired or increased.

(6) The notification under subsection (1) may only be made electronically. The details of the notification requirements, including the annexes containing the documents demonstrating the facts in the notification, its formats and other technical requirements are laid down in a secondary regulation.

## **Management and control system**

### Section 19

(1) The payment institution performs the activities pursuant to Section 8 in a proper and prudent manner.

(2) In order to ensure the sound and prudent exercise of the activities pursuant to Section 8, a payment institution applies a management and control system.

### Section 20

(1) A payment institution's management and control system includes:

- (a) strategic and operational management,
- (b) organisational arrangement, including the internal rules governing it, with a sound, transparent and coherent definition of activities, including the activities of the payment institution's bodies and their associated competences and decision-making powers; within the organizational arrangement, the duties which are mutually incompatible are to be defined,
- (c) a risk management system that always includes:
  - 1. the approach of the payment institution to the risks to which it is or may be exposed, including risks arising from the internal or external environment and liquidity risk, and
  - 2. recognizing, evaluating, measuring, monitoring, reporting and limiting risks, including the adoption of measures to reduce the occurrence or impacts of risks,
- (d) an internal control system that always includes:
  - 1. the control of subordinate workers by senior workers,
  - 2. ongoing monitoring of compliance with legal duty of the payment institution,
  - 3. internal audit ensuring independent and objective internal control of the performance of the payment institution's activities and presenting clear recommendations to remedy the deficiencies thus identified at the appropriate management level,
- (e) sound administrative and accounting procedures,
- (f) system of internal and external communication,
- (g) monitoring, evaluation and updating of internal regulations,
- (h) management of conflicts of interest in the performance of activities, including their detection and prevention,
- (i) control and security measures in processing and recording information, taking into account their nature, including control and security measures to secure and verify information transfer means, minimise the risk of data corruption and unauthorized access, and prevent information leaks in order to maintain confidentiality at all times,
- (j) handling complaints and reclamations,

- (k) ensuring the smooth operation and continuous functioning of a payment institution in the financial market in accordance with the objects and plan of its activities, including measures and procedures to ensure the sound and smooth provision of services,
- (l) the system of selection of authorized agents ensuring the fulfillment of the requirements pursuant to Section 25(1)(a) and (b),
- (m) control of the activities of authorised agents through which the payment institution provides payment services, and
- (n) the rules for keeping records of funds that have been entrusted to a payment institution to execute a payment transaction.

(2) The management and control system must be effective, coherent and proportionate to the nature, scale and complexity of the risks associated with the business model and the activities of the payment institution in its entirety and in parts.

(3) Payment institution verifies and regularly evaluates the effectiveness, coherence and adequacy of the management and control system in its entirety and in its parts and provides for appropriate remedy without undue delay.

(4) A secondary regulation determines the way of fulfilling the requirements for the payment institution's management and control system.

### **Protection of funds intended for payment transactions**

#### Section 21

The funds that have been entrusted to a payment institution to execute a payment transaction are not considered as a deposit received by a payment institution under the law governing the activities of banks, or as electronic money.

#### Section 22

(1) The funds that have been entrusted to a payment institution to execute a payment transaction must:

- (a) be recorded separately from the payment institution's own funds and from the funds of other persons, except for other funds that have been entrusted to the payment institution to execute a payment transaction, and
- (b) after the business day following the day on which the payment institution received them, be deposited on a separate account of the payment institution with a bank, a savings and credit cooperative, a foreign bank having its registered office in a Member State or a foreign bank having its registered office in a State other than a Member State which is subject to the supervision comparable to that of the Czech National Bank, or must be invested in low-risk liquid assets, unless the payment institution passes them to the payee or to another provider.

(2) Subsection (1) does not apply where a payment institution is the beneficiary of an insurance contract or comparable guarantee under which the users have the right to a payment equivalent to the right to be given the funds entrusted to the payment institution to execute a payment transaction if the payment institution is unable to satisfy this right itself, in particular in the event of a decision declaring that payment institution insolvent.

(3) Only an insurance company or a foreign person with similar objects of business having its registered office in a Member State or having its registered office in a State other than a Member State which is subject to supervision comparable to that of the Czech National Bank, unless such persons are members of the same group as the payment institution, may enter into an insurance contract under subsection (2) as an insurer.

(4) Only a bank, savings and credit cooperative or a foreign bank or a foreign person with similar objects of business having its registered office in a Member State or having its registered office in a State other than a Member State which is subject to supervision comparable to that of the Czech National Bank, unless such persons are members of the same group as the payment institution, may provide comparable guarantee under subsection (2).

(5) For the purposes of this Act, low-risk assets mean:

- (a) debt securities which, under the standardized approach for credit risk referred to in Article 336(1), Table 1 of Regulation (EU) No 575/2013 of the European Parliament and of the Council, have been assigned a risk weight of up to 50%, and
- (b) securities issued by a standard fund which invests exclusively in securities referred to in (a).

### Section 23

Where it is not possible to determine what part of the funds transferred by the user to the payment institution is intended for payment transactions, the payment institution must, in accordance with Section 22, protect such part of the funds that is equivalent to an estimate based on data from previous periods.

### Section 24

(1) Where the decision on insolvency of a payment institution has become final and enforceable, the special insolvency administrator is obliged to return to the users the funds that have been entrusted to the payment institution to execute a payment transaction. If it is not possible to determine reliably what part of the funds transferred by the user to the payment institution is intended for payment transactions, the special insolvency administrator is obliged to return the funds that have been entrusted to the payment institution and could be used to execute a payment transaction.

(2) The special insolvency administrator shall, within 15 days from the date of his appointment, in at least 2 nationally distributed daily newspapers in each State where the payment institution has or had business operations, publish an invitation for the users who have entrusted funds to the payment institution for the execution of a payment transaction to claim such funds, including the time limits and advice on the consequences of the lapse of these time limits during which no act is made.

(3) The special insolvency administrator shall, within 7 months from the date of the publication under subsection (2), return the funds which have been entrusted to the payment institution to execute a payment transaction to users who have claimed such funds within:

- (a) 3 months from the date of the publication under subsection (2), and have proved the right to their return, or
- (b) 6 months from the date of the publication under subsection (2) and whose right to their return follows from the records of the payment institution.

(4) The special insolvency administrator monetises the assets under Section 22(1)(b). Insurance or guarantee indemnity under Section 22(2) is paid by the obligor to the special insolvency administrator.

(5) If the funds under Section 22(1), the proceeds of the monetised assets under subsection (4) and the insurance or guarantee indemnity or under Section 22(2) are insufficient to satisfy all users under subsection (3), the rights of such users shall be satisfied on a pro-rata basis.

(6) To the extent that the right to the return of the funds under subsection (1) has not been satisfied in accordance with subsections (2) to (5), the claim is considered to have been registered duly and in good time in accordance with the law governing insolvency and the methods for its resolution.

(7) If bankruptcy has been cancelled because the debtor's assets are entirely insufficient for the satisfaction of the creditors, the liquidator acts in accordance with subsections (4) and (5) *mutatis mutandis*.

### Section 25

#### **Provision of payment services through an authorised agent**

(1) Payment institutions may provide payment services through an authorised agent if:

- (a) internal control mechanisms of the authorised agent are appropriate in order to comply with the duties relating to the fight against money laundering and the financing of terrorism,
- (b) the authorised agent from among natural persons and the directors of the authorised agent are credible, professionally qualified and have sufficient experience with regard to the sound and prudent provision of payment services, and

(c) the authorised agent is registered with the relevant payment institution in the list of payment institutions.

(2) Section 8 applies to the provision of payment services through an authorised agent *mutatis mutandis*.

### **Registration of an authorised agent in the list of payment institutions**

#### Section 26

(1) On the basis of the notification under Section 27 submitted by the payment institution, the Czech National Bank enters an authorised agent with the relevant payment institution in the list of payment institutions if:

- (a) the information given in the notification allows the identification of the persons specified in the notification, and
- (b) the notification indicates the payment services to be provided by the payment institution through the authorised agent.

(2) The Czech National Bank registers the authorised agent in the list of payment institutions without undue delay, but no later than 5 working days from the date of delivery of the notification.

(3) The Czech National Bank informs immediately the payment institution electronically of the registration of the authorised agent on the list of payment institutions, or of its decision not to do so and of the reason for such a decision; parts two and three of the Administrative Procedure Code do not apply.

#### Section 27

(1) A payment institution may only notify such an authorized agent who fulfills the conditions pursuant to Section 25(1)(a) and (b).

(2) A payment institution may notify an authorised agent only by an electronic application of the Czech National Bank for the registration of entities.

(3) The notification contains, in addition to the submission elements required by the Administrative Procedure Code, also the identification data of the person intending to act as the authorised agent.

(4) The details of the notification requirements, its formats and other technical requirements are laid down in a secondary regulation.

#### Section 28

(1) A payment institution notifies the Czech National Bank without undue delay of any change in the data specified in the notification under Section 27.

(2) A payment institution may make the notification under subsection (1) only by an electronic application of the Czech National Bank for the registration of entities.

(3) The details of the notification requirements, its formats and other technical requirements are laid down in a secondary regulation.

#### Section 29

### **Performance of some operating activities through another person**

(1) A payment institution which intends to entrust to another person the performance of certain operating activities related to the provision of payment services notifies this fact to the Czech National Bank.

(2) The performance of a significant operating activity related to the provision of payment services may be entrusted by the payment institution to another person only if it does not result in a significant deterioration in the functioning of the management and control system of the payment institution, significant deterioration in the ability of the Czech National Bank to exercise supervision over the activities of the payment institution or the transfer of the liability of persons carrying out the business management of the payment institution to other persons.

(3) A significant operating activity under subsection (2) is an operating activity, the failure or incorrect implementation of which would substantially undermine the systematic fulfillment of the payment institution's duties under this Act.

(4) The notification under subsection (1) may only be made electronically. The details of the notification requirements, including the annexes demonstrating the conditions under subsections (2) and (3), its formats and other technical requirements are laid down in a secondary regulation.

#### Section 30

##### **Information duty**

(1) A payment institution provides the Czech National Bank with information on its financial situation, the results of its economic management, the fulfillment of the conditions for the performance of its activities and the information on authorised agents through which it provides payment services.

(2) A secondary regulation determines the scope, form, time limits and method of providing information.

#### Section 31

##### **Retention of documents and records**

(1) A payment institution retains documents and records relating to the fulfillment of the payment institution's duties under this Title for at least five years from the date on which those documents or records were created. This does not affect the duty to retain documents under other legislation.

(2) The duty referred to in subsection (1) also applies to the legal successor of the payment institution and the person whose payment institution licence has lapsed.

#### Chapter 4

##### **Performance of the activity of a payment institution and a foreign payment institution in a host Member State**

##### **Performance of the activity of a payment institution in the host Member State through a branch or an authorised agent**

#### Section 32

(1) The Czech National Bank grants a payment institution its authorisation to provide payment services in a host Member State through a branch if:

- (a) the business plan concerning the branch, including the estimated budget for the first three accounting periods, is based on realistic economic calculations, and
- (b) the components of the management and control system of the payment institution referred to in Section 20(1)(b) to (d) are appropriate for the sound provision of payment services in the host Member State through a branch.

(2) The Czech National Bank grants a payment institution its authorisation to provide payment services in a host Member State through an authorised agent if:

- (a) internal control mechanisms of the authorised agent are appropriate in order to comply with the duties relating to the fight against money laundering and the financing of terrorism,
- (b) the authorised agent from among natural persons and the directors of the authorised agent are credible, professionally qualified and have sufficient experience with regard to the sound and prudent provision of payment services, and

(3) Section 8 applies to the provision of payment services in the host Member State through a branch or authorised agent *mutatis mutandis*.

#### Section 33

(1) An application for authorization to provide payment services in a host Member State through a branch or an authorised agent may be submitted only electronically. In addition to the elements required by

the Administrative Procedure Code, the application also contains information on the fulfillment of the conditions for authorisation to provide payment services in a host Member State through a branch or an authorised agent. The application must be accompanied by documents demonstrating compliance with these conditions.

(2) The Czech National Bank issues the decision on the application pursuant to subsection (1) within three months after the commencement of the proceedings.

(3) If the Czech National Bank complies with the application under subsection (1) in full, it registers the branch or authorised agent with the relevant payment institution in the list of payment institutions. In such a case, the decision is not made in writing. The decision becomes final and enforceable upon the registration of the branch or authorised agent in the list of payment institutions. The Czech National Bank informs immediately the payment institution electronically of the registration of a branch or authorised agent in the list of payment institutions.

(4) In the registration of a branch or an authorised agent in the list of payment institutions, the Czech National Bank indicates the payment services which the payment institution is authorised to provide through that branch or that authorised agent in the host Member State.

(5) The details of the application requirements, including the annexes demonstrating the compliance with the conditions for authorisation to provide payment services in a host Member State through a branch, its formats and other technical requirements, are laid down in a secondary regulation.

#### Section 34

(1) The payment institution notifies the Czech National Bank without undue delay of any changes in the application for authorisation to provide payment services in a host Member State through a branch or an authorised agent or in its annexes based on which the authorisation has been granted.

(2) The notification under subsection (1) may only be made electronically. The details of the notification requirements, including the annexes containing the documents demonstrating the facts in the notification, its formats and other technical requirements are laid down in a secondary regulation.

#### Section 35

If a payment institution submits an application for an extension of the scope of payment services covered by the authorisation to provide payment services in a host Member State through a branch, Sections 32 to 34, 36 and 37 apply *mutatis mutandis*.

### **Informing the supervisory authority of the host Member State**

#### Section 36

(1) The Czech National Bank communicates to the supervisory authority of the host Member State the name of the payment institution, its registered office and other data contained in the application within one month from the day on which it receives an application for authorization to provide payment services in a host Member State through a branch or authorised agent, and request this authority to give its opinion.

(2) The Czech National Bank informs the supervisory authority of the host Member State of the result or termination of the proceedings concerning an application for authorisation to provide payment services in a host Member State through a branch or an authorised agent. If the Czech National Bank decides contrary to the opinion of the supervisory authority of the host Member State, it communicates the reasons for its decision to that authority.

(3) The Czech National Bank provides the information referred to in subsections (1) and (2) to the extent and in the manner provided for by the directly applicable European Union regulation implementing Article 28(5) of Directive 2015/2366 of the European Parliament and of the Council<sup>1)</sup>.



### Section 37

A payment institution shall, without undue delay after the day on which the Czech National Bank informs it of the granting of authorisation to provide payment services in a host Member State through a branch or an authorised agent, notify the Czech National Bank of the date on which it intends to start providing payment services in the host Member State. The Czech National Bank informs the supervisory authority of the host Member State of that date.

#### **Performance of the activity of a payment institution in a host Member State by means other than through a branch or an authorised agent**

### Section 38

(1) A payment institution intending to carry out the activities referred to in Section 8 in a host Member State by means other than through a branch or an authorised agent notifies the Czech National Bank thereof.

(2) The details of the notification requirements, including the annexes containing the documents demonstrating the facts in the notification, its formats and other technical requirements are laid down in a secondary regulation.

### Section 39

(1) The Czech National Bank shall, within one month from the date when it received notification under Section 38, communicate to the supervisory authority of the host Member State the name of the payment institution, its registered office and other information contained in the notification, request its opinion and take this opinion into account.

(2) The Czech National Bank provides the information referred to in subsection (1) to the extent and in the manner provided for by the directly applicable European Union regulation implementing Article 28(5) of Directive 2015/2366 of the European Parliament and of the Council.

### Section 40

#### **Performance of the activity of a foreign payment institution with registered office in another Member State in the Czech Republic**

(1) A foreign payment institution with its registered office in another Member State may carry out in the Czech Republic the activities referred to in Section 8 which it is allowed to carry out under a licence granted to it by the supervisory authority of its home Member State. It may carry out such activities through a branch or an authorised agent if that branch or such authorised agent with the relevant foreign payment institution is entered in the list of foreign payment institutions maintained by the supervisory authority of the home Member State.

(2) If the Czech National Bank is informed by the supervisory authority of the home Member State of the intention of a foreign payment institution with its registered office in another Member State to carry out the activities referred to in Section 8 in the Czech Republic, the Czech National Bank shall, within one month, provide this authority with its opinion on the intention of the foreign payment institution.

Title III  
**Payment account information administrator**

Chapter 1  
**Basic provisions**

Section 41

The payment account information administrator is a person authorised to provide the payment account information service under a payment account information administrator licence granted by the Czech National Bank.

Chapter 2  
**Payment account information administrator licence**

**Granting of the payment account information administrator licence**

Section 42

(1) The Czech National Bank grants a payment account information administrator licence to an applicant:

- (a) which has its registered office and head office in the Czech Republic,
- (b) whose business plan, including the estimated budget for the first three accounting periods, is based on realistic economic calculations,
- (c) which is the beneficiary of an insurance contract or comparable guarantee in accordance with this Act,
- (d) whose material, technical, personal and organizational capacity is appropriate for the sound and prudent provision of payment account information service,
- (e) whose management and control system meets the requirements set out in this Act,
- (f) whose directors are credible in terms of the sound and prudent provision of payment account information service,
- (g) whose directors in the provision of payment account information service are professionally competent and have sufficient experience with regard to the sound and prudent provision of payment account information service,
- (h) which is not concerned by any fact that would constitute an obstacle to the pursuit of the licensed trade under the law governing licensed trade business, and
- (i) who, if he is a natural person, satisfies the general conditions governing the pursuit of a licensed trade under the law governing the licensed trade business.

(2) Subsection (1)(a) does not apply if an international treaty forming part of the legal order implies a duty to allow an applicant with its registered office in a State other than a Member State to provide a payment account information service in the Czech Republic under conditions analogous to those governing the provision of this service to persons with their registered office in the Czech Republic. Sections 50 to 52 do not apply to payment account information administrators with the registered office in a State other than a Member State.

Section 43

(1) An application for a payment account information administrator licence may only be submitted electronically. In addition to the requirements laid down in the Administrative Procedure Code, the application contains the data on the compliance with the conditions for a payment account information administrator licence. The application must be accompanied by documents demonstrating compliance with these conditions.

(2) The Czech National Bank issues the decision on the application pursuant to subsection (1) within three months after the commencement of the proceedings. If the application does not have the prescribed

elements or if it suffers from other material defects that prevent the continuation of the proceedings, this period commences on the day when the defects of the application have been removed.

(3) The details of the application requirements, including the annexes demonstrating the compliance with the conditions for a payment account information administrator licence, its formats and other technical requirements, are laid down in a secondary regulation.

#### Section 44

(1) The payment account information administrator notifies the Czech National Bank without undue delay of any changes in the data specified in the application for a payment account information administrator licence or its annexes based on which the licence has been granted.

(2) The notification under subsection (1) may only be made electronically. The details of the notification requirements, including the annexes containing the documents demonstrating the facts in the notification, its formats and other technical requirements are laid down in a secondary regulation.

#### Section 45

##### **Lapse of payment account information administrator licence**

A payment account information administrator licence lapses:

- (a) upon the death or termination of the payment account information administrator,
- (b) on the date when the decision on the insolvency of the payment account information administrator becomes final and enforceable,
- (c) on the date when a decision whereby the Czech National Bank has granted the payment account information administrator a payment institution licence or electronic money institution licence became enforceable, or
- (d) on the date when a decision to withdraw the payment account information administrator licence becomes enforceable.

#### Chapter 3

##### **Certain conditions for the performance of the activity of a payment account information administrator**

#### Section 46

(1) A payment account information administrator ensures that it is the beneficiary of an insurance contract or comparable guarantee based on which users or providers maintaining the payment account have the right to performance from the payment account information administrator's duty to remedy an unauthorized acquisition or use of information about a payment account.

(2) A secondary regulation establishes the minimum indemnity limit from insurance and the minimum amount of comparable guarantee under subsection (1) with respect to:

- (a) the risks to which the payment account information administrator is or may be exposed,
- (b) other activities of a payment account information administrator,
- (c) the characteristics of a comparable guarantee, and
- (d) the number of users of the payment account information service.

#### Section 47

(1) The payment account information administrator administers the payment account information soundly and prudently.

(2) In order to ensure the sound and prudent administration of payment account information, the payment account information administrator applies the management and control system.

## Section 48

(1) The management and control system of the payment account information administrator includes:

- (a) strategic and operational management,
- (b) organisational arrangement, including the internal rules governing it, with a sound, transparent and coherent definition of activities, including the activities of the payment account information administrator's bodies and their associated competences and decision-making powers; within the organizational arrangement, the duties which are mutually incompatible are to be defined,
- (c) a risk management system that always includes:
  - 1. the approach of the payment account information administrator to the risks to which it is or may be exposed, including risks arising from the internal or external environment, and
  - 2. recognizing, evaluating, measuring, monitoring, reporting and limiting risks, including the adoption of measures to reduce the occurrence or impacts of risks,
- (d) an internal control system that always includes:
  - 1. the control of subordinate workers by senior workers,
  - 2. ongoing monitoring of compliance with legal duties of the payment account information administrator, and
  - 3. internal audit ensuring independent and objective internal control of the performance of the payment account information administrator's activities and presenting clear recommendations to remedy the deficiencies thus identified at the appropriate management level,
- (e) sound administrative and accounting procedures,
- (f) system of internal and external communication,
- (g) monitoring, evaluation and updating of internal regulations,
- (h) management of conflicts of interest in the performance of activities, including their detection and prevention,
- (i) control and security measures in processing and recording information, taking into account their nature, including control and security measures to secure and verify information transfer means, minimise the risk of data corruption and unauthorized access, and prevent information leaks in order to maintain confidentiality at all times,
- (j) handling complaints and reclamations, and
- (k) ensuring the smooth operation and continuous functioning of the payment account information administrator in the financial market in accordance with the objects and plan of its activities, including measures and procedures to ensure the sound and smooth provision of payment account information service.

(2) The management and control system must be effective, coherent and proportionate to the nature, scale and complexity of the risks associated with the business model and the activities of the payment account information administrator in its entirety and in parts.

(3) Payment account information administrator verifies and regularly evaluates the effectiveness, coherence and adequacy of the management and control system in its entirety and in its parts and provides for appropriate remedy without undue delay.

(4) A secondary regulation determines the way of fulfilling the requirements for the payment account information administrator's management and control system.

## Section 49

(1) Sections 30 and 31 apply to the payment account information administrator *mutatis mutandis*.

(2) The payment account information administrator may not provide a payment service other than the payment account information service.

## Chapter 4

### **Performance of the activity of a payment account information administrator in a host Member State**

#### **Performance of the activity of a payment account information administrator in a host Member State through a branch or an authorised agent**

##### Section 50

(1) The Czech National Bank grants a payment account information administrator its authorisation to provide payment account information service in a host Member State through a branch if:

- (a) the business plan concerning the branch, including the estimated budget for the first three accounting periods, is based on realistic economic calculations, and
- (b) the components of the management and control system of the payment account information administrator referred to in Section 48(1)(b) to (d) are appropriate for the sound provision of payment account information service in the host Member State through a branch.

(2) The Czech National Bank grants a payment account information administrator its authorisation to provide payment account information service in a host Member State through an authorised agent if:

- (a) internal control mechanisms of the authorised agent are appropriate in order to comply with the duties relating to the fight against money laundering and the financing of terrorism,
- (b) the authorised agent from among natural persons and the directors of the authorised agent are credible, professionally qualified and have sufficient experience with regard to the sound and prudent provision of payment account information service.

##### Section 51

(1) An application for authorization to provide payment account information service in a host Member State through a branch or an authorised agent may be submitted only electronically. In addition to the elements required by the Administrative Procedure Code, the application also contains information on the fulfillment of the conditions for authorisation to provide payment account information service in a host Member State through a branch or an authorised agent. The application must be accompanied by documents demonstrating compliance with these conditions.

(2) The Czech National Bank issues the decision on the application pursuant to subsection (1) within three months after the commencement of the proceedings.

(3) If the Czech National Bank complies with the application under subsection (1) in full, it registers the branch or authorised agent with the relevant payment account information administrator in the list of payment account information administrators. In such a case, the decision is not made in writing. The decision becomes final and enforceable upon the registration of the branch or authorised agent in the list of payment account information administrators. The Czech National Bank informs immediately the payment account information administrator electronically of the registration of a branch or authorised agent in the list of payment account information administrators.

(4) The details of the application requirements, including the annexes demonstrating the compliance with the conditions for authorisation to provide payment account information service in a host Member State through a branch or an authorised agent, its formats and other technical requirements, are laid down in a secondary regulation.

##### Section 52

(1) The payment account information administrator notifies the Czech National Bank without undue delay of any changes in the application for authorisation to provide payment account information service in a host Member State through a branch or an authorised agent or in its annexes based on which the authorisation has been granted.

(2) The notification under subsection (1) may only be made electronically. The details of the notification requirements, including the annexes containing the documents demonstrating the facts in the notification, its formats and other technical requirements are laid down in a secondary regulation.

### **Informing the supervisory authority of the host Member State**

#### Section 53

(1) The Czech National Bank communicates to the supervisory authority of the host Member State the name of the payment account information administrator, its registered office and other data contained in the application within one month from the day on which it receives an application for authorization to provide payment account information service in a host Member State through a branch or authorised agent, and request this authority to give its opinion.

(2) The Czech National Bank informs the supervisory authority of the host Member State of the result or termination of the proceedings concerning an application for authorisation to provide payment account information service in a host Member State through a branch or an authorised agent. If the Czech National Bank decides contrary to the opinion of the supervisory authority of the host Member State, it communicates the reasons for its decision to that authority.

(3) The Czech National Bank provides the information referred to in subsections (1) and (2) to the extent and in the manner provided for by the directly applicable European Union regulation implementing Article 28(5) of Directive 2015/2366 of the European Parliament and of the Council.

#### Section 54

A payment account information administrator shall, without undue delay after the day on which the Czech National Bank informs it of the granting of authorisation to provide payment account information service in a host Member State through a branch or an authorised agent, notify the Czech National Bank of the date on which it intends to start providing the payment account information service in the host Member State. The Czech National Bank informs the supervisory authority of the host Member State of that date.

### **Performance of the activity of a payment account information administrator in a host Member State by means other than through a branch or an authorised agent**

#### Section 55

(1) A payment account information administrator intending to carry out the payment account information service in a host Member State by means other than through a branch or an authorised agent notifies the Czech National Bank thereof.

(2) The details of the notification requirements, including the annexes containing the documents demonstrating the facts in the notification, its formats and other technical requirements are laid down in a secondary regulation.

#### Section 56

(1) The Czech National Bank shall, within one month from the date when it received notification under Section 55(1), communicate to the supervisory authority of the host Member State the name of the payment account information administrator, its registered office and other information contained in the notification, request its opinion and take this opinion into account.

(2) The Czech National Bank provides the information referred to in subsection (1) to the extent and in the manner provided for by the directly applicable European Union regulation implementing Article 28(5) of Directive 2015/2366 of the European Parliament and of the Council.

## Section 57

### **Performance of the activity of a foreign payment account information administrator with registered office in another Member State in the Czech Republic**

(1) A foreign payment account information administrator with its registered office in another Member State may provide in the Czech Republic the payment account information service if it is allowed to provide this service under a licence granted to it by the supervisory authority of its home Member State. It may carry out such activities through a branch or an authorised agent if that branch or such authorised agent registered with the relevant foreign payment account information administrator in the list of foreign payment account information administrators maintained by the supervisory authority of the home Member State.

(2) If the Czech National Bank is informed by the supervisory authority of the home Member State of the intention of a foreign payment account information administrator with its registered office in another Member State to provide payment account information service in the Czech Republic, the Czech National Bank shall, within one month, provide this authority with its opinion on the intention of the foreign payment account information administrator.

## Title IV

### **Small-scale payment service provider**

#### Chapter 1

#### **Basic provisions**

## Section 58

(1) A small-scale payment service provider is a person that is authorized to provide payment services under a small-scale payment service provider licence granted by the Czech National Bank. Section 8 applies to small-scale payment service providers *mutatis mutandis*. However, a small-scale payment service provider is authorised to provide consumer credit, to the provision of which only certain persons are authorised under the law governing consumer credit, if its licence applies to the provision of consumer credit.

(2) A small-scale payment service provider is authorized to provide payment services only if the monthly average of the amounts of payment transactions executed by this provider in the Czech Republic, including payment transactions executed through its authorised agents, does not exceed the amount of EUR 3,000,000 for the last 12 months. If a small-scale payment service provider is a member of a group, these average monthly amounts also include payment transactions that the other small-scale payment service providers, which are members of the group, have executed in the Czech Republic over the last 12 months, including payment transactions made through their authorized agents.

(3) If a small-scale payment service provider provides payment services for a period shorter than 12 months, the amount of payment transactions under subsection (2) is determined from its business plan.

#### Chapter 2

### **Small-scale payment service provider licence**

#### **Granting the small-scale payment service provider licence**

## Section 59

- (1) The Czech National Bank grants a small-scale payment service provider licence to an applicant:
- (a) which has its registered office in a Member State in which it actually carries out business activities, and a branch in the Czech Republic,
  - (b) whose business plan is supported by real economic calculations and is in accordance with the conditions laid down in Section 58(2),
  - (c) which provides for the protection of funds entrusted to it by users to execute a payment transaction,
  - (d) which has a security and operating risk management system and a system for handling user complaints and reclamations in place,

- (e) which has not been convicted of a criminal offence against property, an economic criminal offence or a terrorist financing offence; this applies *mutatis mutandis* to the directors of the applicant and the persons who have a qualifying holding therein,
- (f) which is not concerned by any fact that would constitute an obstacle to the pursuit of the licensed trade under the law governing licensed trade business, and
- (g) who, if he is a natural person, satisfies the general conditions governing the pursuit of a licensed trade under the law governing the licensed trade business.

(2) If the applicant for small-scale payment service provider licence is registered in the Licensed Trades Register, the conditions referred to in subsection (1)(f) and (g) are presumed to have been satisfied.

(3) If the small-scale payment service provider licence is to apply to the provision of consumer credit, the Czech National Bank grants a small-scale payment service provider licence to an applicant which:

- (a) is a European company, a joint-stock company, a limited liability company or which has a legal form similar to a joint-stock company or a limited liability company,
- (b) has an initial capital whose origin is transparent and lawful, at least in the amount of CZK 20,000,000, and
- (c) meets the conditions set out in subsection (1)(a) to (f).

(4) A secondary regulation determines the way of fulfilling the requirements for a system managing security and operational risks and a system handling user complaints and reclamations under subsection (1)(d).

#### Section 60

(1) An application for a small-scale payment service provider licence may be submitted only electronically. In addition to the requirements laid down in the Administrative Procedure Code, the application contains the data on the compliance with the conditions for a small-scale payment service provider licence. The application must be accompanied by documents demonstrating compliance with these conditions.

(2) If the Czech National Bank complies with the request under subsection (1) in full, it registers the applicant in the list of small-scale payment service providers. In such a case, the decision is not made in writing. The decision becomes final and enforceable when the applicant becomes registered in the list of small-scale payment service providers. The Czech National Bank electronically informs the applicant of the registration immediately. In the registration in the list, the Czech National Bank indicates which payment services the small-scale payment service provider is authorized to provide.

(3) The details of the application requirements, including the annexes demonstrating the compliance with the conditions for a small-scale payment service provider licence, its formats and other technical requirements, are laid down in a secondary regulation.

#### Section 61

(1) A small-scale payment service provider licence notifies the Czech National Bank without undue delay of any changes in the data specified in the application for a small-scale payment service provider licence or its annexes based on which the licence has been granted.

(2) The notification under subsection (1) may only be made electronically. The details of the notification requirements, including the annexes containing the documents demonstrating the facts in the notification, its formats and other technical requirements are laid down in a secondary regulation.

### **Lapse of a small-scale payment service provider licence**

#### Section 62

(1) A small-scale payment service provider licence lapses:

- (a) upon the death or dissolution of a small-scale payment service provider,



- (b) on the date when the decision on the insolvency of the small-scale payment service provider becomes final and enforceable,
- (c) on the date when a decision whereby the Czech National Bank has granted a small-scale payment service provider a payment institution licence, an electronic money institution licence or a small-scale electronic money issuer licence becomes enforceable, or
- (d) on the date when a decision to withdraw the small-scale payment service provider licence becomes enforceable.

(2) If a small-scale payment service provider submits, within 30 days from the date on which it ceased to meet the condition set out in Section 58(2), an application for a payment institution licence, an application for an electronic money institution licence or an application for a small-scale electronic money issuer licence, the Czech National Bank may provide in its decision to withdraw the licence that the decision will not come into effect before the effective date of the decision on the application.

#### Section 63

(1) From the lapse of the small-scale payment service provider licence, the person whose licence has lapsed may not carry out the activities under Section 8. The funds which have been entrusted to the person to execute a payment transaction must be returned to the users. If it is not possible to determine the part of the money which was transferred by the user to the small-scale payment service provider for payment transactions, it is necessary to return to the user such a part of the funds that the user requests within 1 year from the lapse of the small-scale payment service provider licence.

(2) Until the date on which the debts to the users have been discharged, the person whose small-scale payment service provider licence has lapsed continues to be considered a small-scale payment service provider for the purposes of money protection and supervision.

(3) Subsections (1) and (2) do not apply to activities which the person whose small-scale payment service provider licence has lapsed continues to be entitled to carry out under another authorisation.

#### Section 64

##### **Extension of small-scale payment service provider licence**

If a small-scale payment service provider submits an application for an extension of the scope of payment services subject to a small-scale payment service provider licence, Section 59(1)(b) and (c) and Sections 60 and 61 apply *mutatis mutandis*. If a small-scale payment service provider submits an application for an extension of the licence to include the provision of consumer credit, Section 59(1)(b) and (3)(a) and (b), and Sections 60 and 61 apply *mutatis mutandis*.

#### Chapter 3

##### **Certain conditions for the performance of the activity of a small-scale payment service provider**

#### Section 65

(1) Sections 21 to 24, 30 and 31 apply to small-scale payment service providers *mutatis mutandis*. The provisions of the law governing consumer credit regulating the capital of a non-bank consumer credit provider apply to small-scale payment service providers whose licence applies to the provision of consumer credit.

(2) A small-scale payment service provider may not provide to the user interest or other benefits depending on the length of the period for which it has been entrusted with funds to execute a payment transaction.

(3) A small-scale payment service provider may not provide an indirect payment order service or a payment account information service.

Title V  
**Electronic money institutions**

Chapter 1  
**Basic provisions**

Section 66

Electronic money institution is a legal person authorised to issue electronic money under an electronic money institution licence issued by the Czech National Bank.

Section 67

(1) An electronic money institution licence entitles an electronic money institution to:

- (a) issue electronic money,
- (b) provide payment services relating to electronic money,
- (c) provide payment services which do not relate to electronic money covered by an electronic money institution licence,
- (d) perform activities related to the activities under (a) to (c), including the provision of credit, and
- (e) operate a payment system with the exception of a payment system with settlement finality.

(2) The provision of credit is an activity permitted under subsection (1)(d) if:

- (a) it relates to the provision of the payment service referred to in Section 3(1)(d) or (e) and this payment service is subject to an electronic money institution licence,
- (b) the capital of the electronic money institution is proportionate to the total amount of the credit granted, and
- (c) under a contract concluded between the electronic money institution and the borrower, the credit is to be repaid within one year; this does not apply if the loan is provided in the Czech Republic.

(3) An electronic money institution may not grant credit from funds against the receipt of which electronic money has been issued or which have been entrusted to an electronic money institution to execute a payment transaction.

Chapter 2  
**Electronic money institution licence**

**Granting an electronic money institution licence**

Section 68

(1) The Czech National Bank grants an electronic money institution licence to an applicant:

- (a) which is a legal person,
- (b) which has its registered office and head office in the Czech Republic,
- (c) which has an initial capital of at least the amount specified in this Act,
- (d) which is a beneficiary of an insurance contract or a comparable guarantee in accordance with this Act if the electronic money institution licence is to apply to indirect payment order service or payment account information service,
- (e) whose business plan, including the estimated budget for the first three accounting periods, is based on realistic economic calculations,
- (f) whose material, technical, personal and organizational capacity is appropriate for the sound and prudent issue of electronic money and the provision of payment services,
- (g) whose management and control system meets the requirements set out in this Act,
- (h) which safeguards the protection of funds against the receipt of which electronic money has been issued or which users have entrusted to it to execute a payment transaction,
- (i) whose potential other business other than issuing electronic money and the provision of payment services does not pose a significant threat to the financial stability of the electronic money institution, nor may it prevent the effective supervision over the activities of the electronic money institution,

- (j) with qualifying holding exclusively of persons that are credible and capable of ensuring the sound and prudent management of an electronic money institution,
- (k) whose close link with another person does not prevent effective supervision of the activities of the electronic money institution; in the case of a close link with a person governed by the law of a State other than a Member State, that law or its application may not prevent the effective supervision of the activities of the electronic money institution,
- (l) whose directors are credible in terms of the sound and prudent issuance of electronic money and the provision of payment services.
- (m) whose directors in the issuance of electronic money and the provision of payment services are professionally competent and have sufficient experience with regard to the sound and prudent issuance of electronic money and the provision of payment services, and
- (n) which will operate at least part of its business related to the provision of payment services in the Czech Republic.

(2) Subsection (1)(b) does not apply if an international treaty which forms part of the legal order entails a duty to allow an applicant with its registered office in a State other than a Member State to issue electronic money in the Czech Republic under conditions analogous to those applying to the provision of payment services to persons with their registered office in the Czech Republic and if the legal order of the State where the applicant has its registered office does not prevent the effective protection of the funds for the receipt of which electronic money has been issued or which have been entrusted to the applicant to execute a payment transaction. Sections 91 to 98 do not apply to electronic money institutions with the registered office in a State other than a Member State.

#### Section 69

(1) An application for an electronic money institution licence may be submitted only electronically. In addition to the requirements laid down in the Administrative Procedure Code, the application contains the data on the compliance with the conditions for an electronic money institution licence. The application must be accompanied by documents demonstrating compliance with these conditions.

(2) The Czech National Bank issues the decision on the application pursuant to subsection (1) within three months after the commencement of the proceedings. If the application does not have the prescribed elements or if it suffers from other material defects that prevent the continuation of the proceedings, this period commences on the day when the defects of the application have been removed.

(3) In the decision to grant an electronic money institution licence, the Czech National Bank specifies the payment services which do not relate to electronic money to which the licence applies.

(4) The details of the application requirements, including the annexes demonstrating the compliance with the conditions for an electronic money institution licence, its formats and other technical requirements, are laid down in a secondary regulation.

#### Section 70

(1) The electronic money institution notifies the Czech National Bank without undue delay of any changes in the data specified in the application for an electronic money institution licence or its annexes based on which the licence has been granted.

(2) The notification under subsection (1) may only be made electronically. The details of the notification requirements, including the annexes containing the documents demonstrating the facts in the notification, its formats and other technical requirements are laid down in a secondary regulation.

## **Lapse of an electronic money institution licence**

### Section 71

An electronic money institution licence lapses:

- (a) upon the dissolution of the electronic money institution,
- (b) on the date when the decision on the insolvency of the electronic money institution becomes final and enforceable,
- (c) on the date when the decision whereby the Czech National Bank has granted an electronic money institution a payment institution licence, a small-scale payment service provider licence, a small-scale electronic money issuer licence, or a payment account information administrator licence becomes enforceable, or
- (d) on the date when the decision to withdraw the electronic money institution licence becomes enforceable.

### Section 72

(1) As from the date when the electronic money institution licence lapses, the person whose licence has lapsed may not carry out the activities referred to in Section 67. The funds that have been entrusted to such a person to execute the payment transaction must be returned to users. Funds against which electronic money have been issued must be returned to the holders. If it is not possible to determine the part of the money which was transferred by the holder or user to the electronic money institution for payment transactions, it is necessary to return to the holder or user such a part of the funds that the holder or user requests within 1 year from the lapse of the electronic money institution licence.

(2) Until the date on which the debts to the holders and users have been discharged, the person whose electronic money institution licence has lapsed continues to be considered an electronic money institution for the purposes of money protection and supervision.

(3) Subsections (1) and (2) do not apply to activities which the person whose electronic money institution licence has lapsed continues to be entitled to carry out under another authorisation.

### Section 73

#### **Extension of an electronic money institution licence**

If an electronic money institution submits an application for an extension of the scope of payment services which are not related to electronic money and which are subject to a licence, Section 68(1)(d) to (k) and (m), Sections 69 and 70 apply *mutatis mutandis*.

### Chapter 3

#### **Certain conditions for the performance of the activities of an electronic money institution**

### Section 74

#### **Capital**

(1) The initial capital of an electronic money institution must at least amount to EUR 350,000.

(2) The initial capital referred to in subsection (1) means the sum of the items defined in Article 26(1)(a) to (e) of Regulation (EU) No 575/2013 of the European Parliament and of the Council.

(3) An electronic money institution maintains capital adequacy at all times. At the same time, the capital of an electronic money institution must not drop below the amount of the initial capital set out in subsection (1).

(4) In its decision to grant an electronic money institution licence, the Czech National Bank determines the approach that the electronic money institution will apply to the calculation of the capital requirement to cover the risks associated with the provision of payment services which do not relate to electronic money and which is suitable in terms of the sound provision of such payment services or given the situation of the electronic money institution. The specified approach may be changed by the Czech National Bank at a later date if the circumstances or conditions under which the access was determined change.

(5) The Czech National Bank may, on the basis of an evaluation of the electronic money institution's management and control system, decide that the electronic money institution is required to maintain at all times capital adequacy of up to 20% higher or up to 20% lower than that provided for in subsection (3), first sentence.

(6) The secondary regulation lays down rules for calculating the amount of the capital of an electronic money institution, as well as the rules for calculating capital adequacy, including the individual approaches that an electronic money institution may apply to the calculation of the capital requirement to cover the risks associated with the provision of payment services not related to electronic money.

#### Section 75

##### **Insurance and guarantee**

(1) An electronic money institution the licence of which relates to an indirect payment order service ensures that it is the beneficiary of an insurance contract or comparable guarantee based on which users or providers maintaining the payment account have the right to a performance resulting from the electronic money institution's duty to remedy an unauthorised or incorrectly executed payment transaction.

(2) An electronic money institution, the licence of which relates to a payment account information service ensures that it is the beneficiary of an insurance contract or comparable guarantee based on which users or providers maintaining the payment account have the right to performance from the electronic money institution's duty to remedy an unauthorized acquisition or use of information about a payment account.

(3) A secondary regulation establishes the minimum indemnity limit from insurance and the minimum amount of comparable guarantee under subsections (1) and (2) with respect to:

- (a) the risks to which the electronic money institution is or may be exposed,
- (b) other activities of the electronic money institution,
- (c) the characteristics of a comparable guarantee,
- (d) volume of payment transactions for which a payment order is to be given indirectly through the electronic money institution, and
- (e) the number of users of the payment account information service.

#### Section 76

##### **Qualifying holding in an electronic money institution and taking control thereof**

(1) The person or persons acting in concert notify the Czech National Bank in advance of their intention to:

- (a) acquire a qualifying holding in an electronic money institution,
- (b) give up a qualifying holding in an electronic money institution,
- (c) increase the qualifying holding in an electronic money institution to or above the level of 20%, 30% or 50%,
- (d) decrease the qualifying holding in an electronic money institution below 50%, 30% or 20%,
- (e) become a person controlling an electronic money institution, or
- (f) stop controlling the electronic money institution.

(2) If the person or persons acting in concert who have made the notification under subsection (1)(a), (c) or (e) are not credible or capable of ensuring the proper and prudent management of an electronic money institution, the Czech National Bank shall disagree with the acquisition or increase of a qualifying holding or taking control of an electronic money institution. This applies *mutatis mutandis* even if the notification was not inconsistent with subsection (1)(a), (c) or (e).

(3) Disagreement proceedings may be commenced within 60 working days from the date when the notification to the Czech National Bank pursuant to subsection (1)(a), (c) or (e) was made or when the Czech National Bank learned that the notification was not inconsistent with subsection (1)(a), (c) or (e).

(4) If the Czech National Bank finds before the expiry of the time limit for commencing the disagreement proceedings that the person or persons acting in concert that made the notification pursuant to subsection (1)(a), (c) or (e) are credible or capable of ensuring the sound and prudent management of an electronic money institution, it informs them thereof.

(5) If the Czech National Bank expresses disagreement pursuant to subsection (2), the person that made the notification under subsection (1)(a), (c) or (e), or that failed to make the notification in breach of subsection (1)(a), (c) or (e), may not exercise the voting rights attached to the holding in the electronic money institution to the extent that the participation was acquired or increased.

(6) The notification under subsection (1) may only be made electronically. The details of the notification requirements, including the annexes containing the documents demonstrating the facts in the notification, its formats and other technical requirements are laid down in a secondary regulation.

### **Management and control system**

#### Section 77

(1) An electronic money institution performs the activities pursuant to Section 67 in a proper and prudent manner.

(2) In order to ensure the sound and prudent exercise of the activities pursuant to Section 67, an electronic money institution applies a management and control system.

#### Section 78

(1) An electronic money institution's management and control system includes:

- (a) strategic and operational management,
- (b) organisational arrangement, including the internal rules governing it, with a sound, transparent and coherent definition of activities, including the activities of the electronic money institution's bodies and their associated competences and decision-making powers; within the organizational arrangement, the duties which are mutually incompatible are to be defined,
- (c) a risk management system that always includes:
  - 1. the approach of the electronic money institution to the risks to which it is or may be exposed, including risks arising from the internal or external environment and liquidity risk, and
  - 2. recognizing, evaluating, measuring, monitoring, reporting and limiting risks, including the adoption of measures to reduce the occurrence or impacts of risks,
- (d) an internal control system that always includes:
  - 1. the control of subordinate workers by senior workers,
  - 2. ongoing monitoring of compliance with legal duties of the electronic money institution,
  - 3. internal audit ensuring independent and objective internal control of the performance of the electronic money institution's activities and presenting clear recommendations to remedy the deficiencies thus identified at the appropriate management level,
- (e) sound administrative and accounting procedures,
- (f) system of internal and external communication,
- (g) monitoring, evaluation and updating of internal regulations,
- (h) management of conflicts of interest in the performance of activities, including their detection and prevention,
- (i) control and security measures in processing and recording information, taking into account their nature, including control and security measures to secure and verify information transfer means, minimise the risk of data corruption and unauthorized access, and prevent information leaks in order to maintain confidentiality at all times,
- (j) handling complaints and reclamations,
- (k) ensuring the smooth operation and continuous functioning of an electronic money institution in the financial market in accordance with the objects and plan of its activities, including measures and procedures to ensure the sound and smooth provision of services,
- (l) the system of selection of authorized agents through which electronic money institution provides payment services which ensures the fulfillment of the requirements pursuant to Section 84(2)(a) and (b),
- (m) control of the activities of authorised agents through which the electronic money institution provides payment services, and

(n) the rules for keeping records of funds that have been entrusted to an electronic money institution to execute a payment transaction.

(2) The management and control system must be effective, coherent and proportionate to the nature, scale and complexity of the risks associated with the business model and the activities of the electronic money institution in its entirety and in parts.

(3) An electronic money institution verifies and regularly evaluates the effectiveness, coherence and adequacy of the management and control system in its entirety and in its parts and provides for appropriate remedy without undue delay.

(4) A secondary regulation determines the way of fulfilling the requirements for the electronic money institution's management and control system.

### **Protection of funds**

#### Section 79

(1) Funds against the receipt of which electronic money has been issued or which have been entrusted to an electronic money institution to execute a payment transaction do not constitute a deposit under a law governing the activities of banks.

(2) An electronic money institution issues electronic money immediately after it has received funds against the receipt of which electronic money is to be issued.

#### Section 80

(1) Funds against the receipt of which electronic money has been issued or which have been entrusted to an electronic money institution to execute a payment transaction must:

- (a) be recorded separately from the electronic money institution's own funds and from the funds of other persons, except for other funds against the receipt of which electronic money has been issued or which have been entrusted to an electronic money institution to execute a payment transaction, and
- (b) after the business day following the day on which the electronic money institution received them, be deposited on a separate account of the electronic money institution with a bank, a savings and credit cooperative, a foreign bank having its registered office in a Member State or a foreign bank having its registered office in a State other than a Member State which is subject to the supervision comparable to that of the Czech National Bank, or must be invested in low-risk liquid assets, unless the electronic money institution passes them to the payee or to another provider.

(2) Subsection (1) does not apply where an electronic money institution is the beneficiary of an insurance contract or comparable guarantee under which the holders and users have the right to a payment equivalent to the right to be given the funds against the receipt of which electronic money has been issued or which have been entrusted to an electronic money institution to execute a payment transaction if the electronic money institution is unable to satisfy this right itself, in particular in the event of a decision declaring that electronic money institution insolvent.

(3) Only an insurance company or a foreign person with similar objects of business having its registered office in a Member State or having its registered office in a State other than a Member State which is subject to supervision comparable to that of the Czech National Bank, unless such persons are members of the same group as the electronic money institution, may enter into an insurance contract under subsection (2) as an insurer.

(4) Only a bank, savings and credit cooperative, a foreign bank or a foreign person with similar objects of business having its registered office in a Member State or having its registered office in a State other than a Member State which is subject to supervision comparable to that of the Czech National Bank, unless such persons are members of the same group as the electronic money institution, may provide comparable guarantee under subsection (2).

## Section 81

(1) For reasons deserving special consideration, the Czech National Bank may, by means of a measure of a general nature, temporarily prohibit electronic money institutions from investing funds pursuant to Section 80(1)(b), against which electronic money has been issued, in assets under Section 22(5), this measure at the same time defining the types of these assets. The Czech National Bank takes into account the security, maturity and value of these assets.

(2) The measure of a general nature under subsection (1) is issued outside the proceedings on a proposal for a measure of a general nature. The Czech National Bank publishes the measure of a general nature on its website. The measure of a general nature takes effect upon publication unless a later effective date is determined. publication on the official board is not required.

## Section 82

(1) Where it is not possible to determine what part of the funds transferred by the holder or user to the electronic money institution is intended for payment transactions, the electronic money institution must, in accordance with Section 80, protect such part of the funds that is equivalent to an estimate based on data from previous periods.

(2) If an electronic money institution receives from a holder funds against the receipt of which electronic money has been issued in the form of acceptance of a payment instrument, the funds are deemed to have been received when the payment instrument was used to give a payment order. In such a case, an electronic money institution protects such funds pursuant to Section 80 only after they have been credited to its payment account or made available to it, but no later than 5 business days after the issue of the electronic money.

## Section 83

(1) Where a decision on the insolvency of an electronic money institution has become final and enforceable, the special insolvency administrator must return to the holders and users the funds against the receipt of which electronic money has been issued or which have been entrusted to the electronic money institution to execute a payment transaction. If it is not possible to determine reliably what part of the funds transferred by the holder or user to the electronic money institution is intended for payment transactions, the special insolvency administrator is obliged to return the funds that have been entrusted to the electronic money institution and could be used to execute a payment transaction.

(2) The special insolvency administrator shall, within 15 days from the date of his appointment, in at least 2 nationally distributed daily newspapers in each State where the electronic money institution has or had business operations, publish an invitation for the holders to which the electronic money institution issued electronic money, and users which have entrusted funds to the electronic money institution for the execution of a payment transaction, to claim such funds, including the time limits and advice on the consequences of the lapse of these time limits during which no act is made.

(3) The special insolvency administrator shall, within 7 months from the date of the publication under subsection (2), return the funds against the receipt of which electronic money has been issued or which have been entrusted to the electronic money institution to execute a payment transaction to users who have claimed such funds within:

- (a) 3 months from the date of the publication under subsection (2), and have proved the right to their return, or
- (b) 6 months from the date of the publication under subsection (2) and whose right to their return follows from the records of the electronic money institution.

(4) The special insolvency administrator monetises the assets under Section 80(1)(b). Insurance or guarantee indemnity under Section 80(2) is paid by the obligor to the special insolvency administrator.

(5) If the funds under Section 80(1), the proceeds of the monetised assets under subsection (4) and the insurance or guarantee indemnity or under Section 80(2) are insufficient to satisfy all holders and users under subsection (3), the rights of such holders and users shall be satisfied on a pro-rata basis.



(6) To the extent that the right to the return of the funds under subsection (1) has not been satisfied in accordance with subsections (2) to (5), the claim is considered to have been registered duly and in good time in accordance with the law governing insolvency and the methods for its resolution.

(7) If bankruptcy has been cancelled because the debtor's assets are entirely insufficient for the satisfaction of the creditors, the liquidator acts in accordance with subsections (4) and (5) *mutatis mutandis*.

#### Section 84

##### **Issuing and distribution of electronic money and provision of payment services through an authorised agent of an electronic money institution**

(1) An electronic money institution may not issue electronic money through a person acting in its name when issuing electronic money; this does not apply to an employee or a corporate agent (*in Czech: prokurista*) of the electronic money institution.

(2) An electronic money institution may provide payment services through an authorised agent if:

- (a) internal control mechanisms of the authorised agent are appropriate in order to comply with the duties relating to the fight against money laundering and the financing of terrorism,
- (b) the authorised agent from among natural persons and the directors of the authorised agent are credible, professionally qualified and have sufficient experience with regard to the sound and prudent provision of payment services, and
- (c) the authorised agent is registered with the relevant electronic money institution in the list of payment institutions.

(3) Section 67 applies to the provision of payment services through an authorised agent *mutatis mutandis*.

#### Section 85

##### **Registration of an authorised agent in the list of electronic money institutions**

(1) On the basis of the notification under Section 86 submitted by the electronic money institution, the Czech National Bank enters an authorised agent registered with the relevant electronic money institution in the list of payment institutions if:

- (a) the information given in the notification allows the identification of the persons specified in the notification, and
- (b) the notification indicates the payment services to be provided by the electronic money institution through the authorised agent.

(2) The Czech National Bank enters the authorised agent in the list of electronic money institutions without undue delay, but no later than 5 working days from the date of delivery of the notification.

(3) The Czech National Bank informs immediately the electronic money institution electronically of the registration of the authorised agent in the list of electronic money institutions, or of its decision not to do so and of the reason for such a decision; parts two and three of the Administrative Procedure Code do not apply.

#### Section 86

(1) An electronic money institution may only notify such an authorized agent that fulfills the conditions pursuant to Section 84(2)(a) and (b).

(2) An electronic money institution may notify an authorised agent only by an electronic application of the Czech National Bank for the registration of entities.

(3) The notification contains, in addition to the submission elements required by the Administrative Procedure Code, also the identification data of the person intending to act as the authorised agent.

(4) The details of the notification requirements, its formats and other technical requirements are laid down in a secondary regulation.

## Section 87

(1) An electronic money institution notifies the Czech National Bank without undue delay of any change in the data specified in the notification under Section 86.

(2) An electronic money institution may make the notification under subsection (1) only by an electronic application of the Czech National Bank for the registration of entities.

(3) The details of the notification requirements, its formats and other technical requirements are laid down in a secondary regulation.

## Section 88

### **Performance of some operating activities through another person**

(1) An electronic money institution which intends to entrust to another person the performance of certain operating activities related to the issuance of electronic money or to the provision of payment services notifies this fact to the Czech National Bank.

(2) The performance of a significant operating activity related to the issuance of electronic money or the provision of payment services may be entrusted by the electronic money institution to another person only if it does not result in a significant deterioration in the functioning of the management and control system of the electronic money institution, significant deterioration in the ability of the Czech National Bank to exercise supervision over the activities of the electronic money institution or the transfer of the liability of persons carrying out the business management of the electronic money institution to other persons.

(3) A significant operating activity under subsection (2) is an operating activity, the failure or incorrect implementation of which would substantially undermine the systematic fulfillment of the electronic money institution's duties under this Act.

(4) The notification under subsection (1) may only be made electronically. The details of the notification requirements, including the annexes demonstrating the conditions under subsections (2) and (3), its formats and other technical requirements are laid down in a secondary regulation.

## Section 89

### **Information duty**

(1) An electronic money institution provides the Czech National Bank with information on its financial situation, the results of its economic management, the fulfillment of the conditions for the performance of its activities and the information on authorised agents through which it distributes electronic money in another Member State or provides payment services.

(2) An electronic money institution informs the Czech National Bank sufficiently in advance of any substantial changes in the measures related to the protection of funds against the receipt of which electronic money has been issued.

(3) A secondary regulation determines the scope, form, time limits and method of providing information pursuant to subsection (1).

## Section 90

### **Retention of documents and records**

(1) An electronic money institution retains documents and records relating to the fulfillment of the electronic money institution's duties under this Title for at least five years from the date on which those documents or records were created. This does not affect the duty to retain documents under other legislation.

(2) The duty referred to in subsection (1) also applies to the legal successor of the electronic money institution and the person whose electronic money institution licence has lapsed.

## Chapter 4

### **Performance of the activity of an electronic money institution and a foreign electronic money institution in a host Member State**

#### **Performance of the activity of an electronic money institution in the host Member State through a branch or an authorised agent**

##### Section 91

(1) The Czech National Bank grants an electronic money institution its authorisation to provide payment services or distribute electronic money in a host Member State through a branch if:

- (a) the business plan concerning the branch, including the estimated budget for the first three accounting periods, is based on realistic economic calculations, and
- (b) the components of the management and control system of the electronic money institution referred to in Section 78(1)(b) to (d) are appropriate for the sound provision of payment services or distribution electronic money in the host Member State through a branch.

(2) The Czech National Bank grants an electronic money institution its authorisation to provide payment services or distribute electronic money in a host Member State through an authorised agent if:

- (a) internal control mechanisms of the authorised agent are appropriate in order to comply with the duties relating to the fight against money laundering and the financing of terrorism,
- (b) the authorised agent from among natural persons and the directors of the authorised agent are credible, professionally qualified and have sufficient experience with regard to the sound and prudent provision of payment services or distribution electronic money, and

(3) Section 67 applies to the provision of payment services in the host Member State through a branch or authorised agent *mutatis mutandis*.

##### Section 92

(1) An application for authorization to provide payment services or distribute electronic money in a host Member State through a branch or an authorised agent may be submitted only electronically. In addition to the elements required by the Administrative Procedure Code, the application also contains information on the fulfillment of the conditions for authorisation to carry out activities in a host Member State through a branch or an authorised agent. The application must be accompanied by documents demonstrating compliance with these conditions.

(2) The Czech National Bank issues the decision on the application pursuant to subsection (1) within three months after the commencement of the proceedings.

(3) If the Czech National Bank complies with the application under subsection (1) in full, it registers the branch or authorised agent with the relevant electronic money institution in the list of electronic money institutions. In such a case, the decision is not made in writing. The decision becomes final and enforceable upon the registration of the branch or authorised agent in the list of electronic money institutions. The Czech National Bank informs immediately the electronic money institution electronically of the registration of a branch or authorised agent in the list of electronic money institutions.

(4) In the registration of a branch or an authorised agent in the list of electronic money institutions, the Czech National Bank indicates the payment services which the electronic money institution is authorised to provide through that branch or that authorised agent in the host Member State and if the authorisation apply also to distribution of electronic money.

(5) The details of the application requirements, including the annexes demonstrating the compliance with the conditions for authorisation to provide payment services or distribute electronic money in a host Member State through a branch, its formats and other technical requirements, are laid down in a secondary regulation.

## Section 93

(1) An electronic money institution notifies the Czech National Bank without undue delay of any changes in the application for authorisation to provide payment services or distribute electronic money in a host Member State through a branch or an authorised agent or in its annexes based on which the authorisation has been granted.

(2) The notification under subsection (1) may only be made electronically. The details of the notification requirements, including the annexes containing the documents demonstrating the facts in the notification, its formats and other technical requirements are laid down in a secondary regulation.

## Section 93a

If an electronic money institution submits an application for an extension of the scope of payment services covered by the authorisation to provide payment services in a host Member State through a branch, or for an extension of the scope of authorisation to distribute electronic money, Sections 32 to 34, 36 and 37 apply *mutatis mutandis*.

## **Informing the supervisory authority of the host Member State**

### Section 94

(1) The Czech National Bank communicates to the supervisory authority of the host Member State the name of the electronic money institution, its registered office and other data contained in the application within one month from the day on which it receives an application for authorization to provide payment services in a host Member State through a branch or an application for authorisation to distribute electronic money or provide payment services through an authorised agent, and request this authority to give its opinion.

(2) The Czech National Bank informs the supervisory authority of the host Member State of the result or the termination of the authorisation proceedings under subsection (1). If the decision of the Czech National Bank is contrary to the opinion of the supervisory authority of the host Member State, it communicates the reasons for its decision to that authority.

(3) The Czech National Bank provides the information referred to in subsections (1) and (2) to the extent and in the manner provided for by the directly applicable European Union regulation implementing Article 28(5) of Directive 2015/2366 of the European Parliament and of the Council.

### Section 95

An electronic money institution shall, without undue delay after the day on which the Czech National Bank informs it of the granting of authorisation to provide payment services or distribute electronic money in a host Member State through a branch or an authorised agent, notify the Czech National Bank of the date on which it intends to start carrying out these activities in the host Member State. The Czech National Bank informs the supervisory authority of the host Member State of that date.

## **Performance of the activity of an electronic money institution by means other than through a branch or an authorised agent**

### Section 96

(1) An electronic money institution intending to carry out the activities referred to in Section 67 or distribute electronic money in a host Member State by means other than through a branch or an authorised agent notifies the Czech National Bank thereof.

(2) The details of the notification requirements, including the annexes containing the documents demonstrating the facts in the notification, its formats and other technical requirements are laid down in a secondary regulation.

## Section 97

(1) The Czech National Bank shall, within one month from the date when it received notification under Section 96(1), communicate to the supervisory authority of the host Member State the name of the electronic money institution, its registered office and other information contained in the notification, request its opinion and take this opinion into account.

(2) The Czech National Bank provides the information referred to in subsection (1) to the extent and in the manner provided for by the directly applicable European Union regulation implementing Article 28(5) of Directive 2015/2366 of the European Parliament and of the Council.

## Section 98

### **Performance of the activity of a foreign electronic money institution with registered office in another Member State in the Czech Republic**

(1) A foreign electronic money institution with its registered office in another Member State may carry out in the Czech Republic the activities referred to in Section 67 which it is allowed to carry out under a licence granted to it by the supervisory authority of its home Member State. It may carry out these activities through a branch if this branch is included in the list of foreign electronic money institutions kept by the supervisory authority of the home Member State.

(2) A foreign electronic money institution with its registered office in another Member State may, through an authorised agent in the Czech Republic, carry out the activities referred to in subsection (1), except for the issuance of electronic money, or distribute electronic money if such an authorised agent is included in the list of foreign electronic money institutions kept by the supervisory authority of the home Member State.

(3) If the Czech National Bank is informed by the supervisory authority of the home Member State of the intention of a foreign electronic money institution with its registered office in another Member State to carry out the activities referred to in Section 67 in the Czech Republic, the Czech National Bank shall, within one month, provide this authority with its opinion on the intention of the foreign electronic money institution.

## Title VI

### **Small-scale electronic money issuer**

#### Chapter 1

#### **Basic provisions**

## Section 99

(1) A small-scale electronic money issuer is a legal person authorised to issue electronic money under a small-scale electronic money issuer licence issued by the Czech National Bank. Section 67 applies *mutatis mutandis*. However, a small-scale electronic money issuer is entitled to provide consumer credit, to the provision of which only certain persons are authorised under the law governing consumer credit, if its licence applies to the provision of consumer credit.

(2) A small-scale electronic money issuer is entitled to issue electronic money and to provide payment services related to electronic money only if the average amount of the electronic money issued by this issuer which is in circulation in the Czech Republic does not exceed EUR 5,000,000. Where it is not possible to determine what part of the funds transferred by the holder to the small-scale electronic money issuer is intended for payment transactions which relate to electronic money, the average amount of electronic money in circulation is determined based on such part of these funds that is equivalent to an estimate based on data from previous periods. If a small-scale electronic money issuer issues electronic money for a period shorter than 6 months, the average amount of the electronic money issued by that issuer in circulation is determined based on its business plan.

(3) A small-scale electronic money issuer is entitled to provide payment services not related to electronic money only if the monthly average of the amounts of payment transactions not related to electronic money executed by this provider in the Czech Republic, including payment transactions executed through its

authorised agents, does not exceed the amount of EUR 3,000,000 for the last 12 months. If a small-scale electronic money issuer is a member of a group, these average monthly amounts also include payment transactions that the other small-scale electronic money issuers, which are members of the group, have executed in the Czech Republic over the last 12 months, including payment transactions made through their authorised agents.

(4) If a small-scale electronic money institution provides payment services not related to electronic money for a period shorter than 12 months, the amount of payment transactions under subsection (3) is determined from its business plan.

(5) For the purposes of this Act, the average amount of electronic money in circulation means the arithmetic average of the issuer's obligations arising from electronic money at the end of the calendar day for the last 6 calendar months.

## Chapter 2

### Small-scale electronic money issuer licence

#### Granting a small-scale electronic money issuer licence

##### Section 100

(1) The Czech National Bank grants a small-scale electronic money issuer licence to an applicant:

- (a) which is a legal person,
- (b) which has its registered office in a Member State in which it actually carries out business activities, and a branch in the Czech Republic,
- (c) whose business plan is supported by real economic calculations and is in accordance with the conditions laid down in Section 99(2) and (3),
- (d) which has a security and operating risk management system and a system for handling user complaints and reclamations in place,
- (e) which safeguards the protection of funds against the receipt of which electronic money has been issued or which have been entrusted to it to execute a payment transaction,
- (f) if none of its directors has been convicted of a criminal offence against property, an economic criminal offence or a terrorist financing offence; this applies *mutatis mutandis* to the persons who have a qualifying holding therein, and
- (g) which is not concerned by any fact that would constitute an obstacle to the pursuit of the licensed trade under the law governing licensed trade business.

(2) If the applicant for a small-scale electronic money issuer licence is registered in the Licensed Trades Register, the condition referred to in subsection (1)(g) is presumed to have been satisfied.

(3) If the small-scale electronic money issuer licence is to apply to the provision of consumer credit, the Czech National Bank grants a small-scale electronic money issuer licence to an applicant which:

- (a) is a European company, a joint-stock company, a limited liability company or which has a legal form similar to a joint-stock company or a limited liability company,
- (b) has an initial capital whose origin is transparent and lawful, at least in the amount of CZK 20,000,000, and
- (c) meets the conditions set out in subsection (1).

(4) A secondary regulation determines the way of fulfilling the requirements for a system managing security and operational risks and a system handling user complaints and reclamations under subsection (1)(d).

##### Section 101

(1) An application for a small-scale electronic money issuer licence may be submitted only electronically. In addition to the requirements laid down in the Administrative Procedure Code, the application contains the data on the compliance with the conditions for a small-scale electronic money issuer licence. The application must be accompanied by documents demonstrating compliance with these conditions.

(2) If the Czech National Bank complies with the request under subsection (1) in full, it registers the applicant in the list of small-scale electronic money issuers. In such a case, the decision is not made in writing. The decision becomes final and enforceable when the applicant becomes registered in the list of small-scale electronic money issuers. The Czech National Bank electronically informs the applicant of the registration immediately.

(3) The details of the application requirements, including the annexes demonstrating the compliance with the conditions for a small-scale electronic money issuer licence, its formats and other technical requirements, are laid down in a secondary regulation.

#### Section 102

(1) A small-scale electronic money issuer notifies the Czech National Bank without undue delay of any changes in the data specified in the application for a small-scale electronic money issuer licence or its annexes based on which the licence has been granted.

(2) The notification under subsection (1) may only be made electronically. The details of the notification requirements, including the annexes containing the documents demonstrating the facts in the notification, its formats and other technical requirements are laid down in a secondary regulation.

#### **Lapse of a small-scale electronic money issuer licence**

#### Section 103

(1) A small-scale electronic money issuer licence lapses:

- (a) upon the dissolution of the small-scale electronic money issuer,
- (b) on the date when the decision on the insolvency of the small-scale electronic money issuer becomes final and enforceable,
- (c) on the date when a decision whereby the Czech National Bank has granted a small-scale electronic money issuer a payment institution licence, an electronic money institution licence or a small-scale payment service provider licence becomes enforceable, or
- (d) on the date when a decision to withdraw the small-scale electronic money issuer licence becomes enforceable.

(2) If a small-scale electronic money issuer has submitted, within 30 days from the date on which it ceased to meet the conditions set out in Section 99(2), an application for a payment institution licence, an application for an electronic money institution licence or an application for a small-scale payment service provider licence, the Czech National Bank may provide in its decision to withdraw the licence that the decision will not come into effect before the effective date of the decision on the application.

#### Section 104

(1) As from the date when the small-scale electronic money issuer licence has lapsed, the person whose licence has lapsed may not carry out the activities referred to in Section 67. The funds that have been entrusted to such a person to execute the payment transaction must be returned to users. Funds against which electronic money have been issued must be returned to the holders. If it is not possible to determine the part of the money which was transferred by the holder or user to the small-scale electronic money issuer for payment transactions, it is necessary to return to the holder or user such a part of the funds that the holder or user requests within 1 year from the lapse of the small-scale electronic money issuer licence.

(2) Until the date on which the debts to the holders and users have been discharged, the person whose small-scale electronic money issuer licence has lapsed continues to be considered a small-scale electronic money issuer for the purposes of money protection and supervision.

(3) Subsections (1) and (2) do not apply to activities which the person whose small-scale electronic money issuer licence has lapsed continues to be entitled to carry out under another authorisation.

## Section 105

### **Extension of a small-scale electronic money issuer licence**

If a small-scale electronic money issuer submits an application for an extension of the scope of payment services not related to electronic money and subject to a small-scale electronic money issuer licence, Section 100(1)(c) and Sections 101 and 102 apply *mutatis mutandis*. If a small-scale electronic money issuer submits an application for an extension of the licence to include the provision of consumer credit, Section 100(1)(c) and (3)(a) and (b), and Sections 101 and 102 apply *mutatis mutandis*.

## Chapter 3

### **Certain conditions for the performance of the activity of a small-scale electronic money issuer**

## Section 106

(1) Sections 79 to 83, 89 and 90 apply to small-scale electronic money issuers *mutatis mutandis*. The provisions of the law governing consumer credit regulating the capital of a non-bank consumer credit provider apply to small-scale electronic money issuers whose licence applies to the provision of consumer credit.

(2) A small-scale electronic money issuer may not provide to the user interest or other benefits depending on the length of the period for which it has been entrusted with funds to execute a payment transaction.

(3) A small-scale electronic money issuer may not issue electronic money through a person acting in its name when issuing electronic money; this does not apply to an employee or a corporate agent (*in Czech: prokurista*) of the small-scale electronic money issuer.

(4) A small-scale electronic money issuer may not provide an indirect payment order service or a payment account information service.

## **PART THREE PAYMENT SYSTEMS**

### Title I

#### **Access to payment systems**

## Section 107

(1) An operator or a participant in a payment system may not prevent legal persons authorized to provide payment services from accessing the payment system by making the access of such persons subject to compliance with the requirements which:

- (a) are discriminatory or unreasonable, or
- (b) limit their access to the payment system more than is strictly necessary to safeguard against specific risks and to protect the financial and operational stability of the payment system.

(2) An operator or a participant in a payment system may not impose on providers, users or other payment systems, their operators or participants:

- (a) restrictions concerning their effective participation in other payment systems,
- (b) requirements that discriminate against some participants in the payment system, or
- (c) restrictions based on a distinction between the categories of persons entitled to provide payment services pursuant to Section 5.

## Section 108

The conditions for access to the payment systems referred to in Section 107 do not apply to:

- (a) a payment system with settlement finality, and
- (b) a payment system the participants of which are only providers that are members of the same group.



## Section 109

(1) If a participant in a payment system with settlement finality has entered into a contract for the transmission of payment orders through this system with a person authorised to provide payment services that is not a participant in the system, the participant also enters into such a contract under the same conditions with another person entitled to provide payment services. The terms of the contract must be objective and proportionate to the nature of the payment system with settlement finality.

(2) If a participant of a payment system with settlement finality refuses to enter into a contract with the provider pursuant to subsection (1), the participant informs the provider of the reasons for such refusal.

## Title II

### **Payment system with settlement finality**

#### Chapter 1

#### **Basic provisions**

### Section 110

(1) A payment system with settlement finality is a system:

- (a) which has at least 3 participants referred to in Section 111(1)(A) to (h),
- (b) which performs settlement on the basis of established rules,
- (c) whose participants, at least one of which has its registered office and head office in the Czech Republic, agree that their mutual obligations are governed by Czech law when performing the settlement, and
- (d) the existence of which the Czech National Bank has notified to the European Supervisory Authority (European Securities and Markets Authority)<sup>5)</sup> (hereinafter the ‘European Securities and Markets Authority’) under Section 126(1) or (3).

(2) A foreign payment system with settlement finality is a payment system the existence of which has been notified to the European Securities and Markets Authority by a supervisory authority of another Member State pursuant to a European Union regulation on the settlement finality in payment systems<sup>1)</sup>.

(3) A payment system with settlement finality and participation in this system are established by a contract.

### Section 111

#### **Participant in a payment system with settlement finality**

(1) In a payment system with a settlement finality may only participate:

- (a) bank,
- (b) foreign bank,
- (c) savings and credit cooperative,
- (d) securities dealer,
- (e) foreign person authorized to provide principal investment services,
- (f) a legal person governed by public law or a legal person whose obligations are guaranteed by a public-law person,
- (g) the Czech National Bank, a foreign central bank or the European Central Bank,
- (h) a legal person with a special status as referred to in Article 2(5) of Directive 2013/36/EU of the European Parliament and of the Council<sup>6)</sup>,
- (i) operator of a payment system with settlement finality,

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<sup>5)</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC.

<sup>6)</sup> Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.

- (j) central counterparty,
- (k) settlement agent,
- (l) clearing house,
- (m) persons that perform a similar activity as any of the persons under letters (i) to (l) in a settlement system with settlement finality, in a foreign payment system with settlement finality or in a foreign settlement system with settlement finality.

(2) The activities of a central counterparty, settlement agent or a clearing house may also be carried out by several participants in a payment system with settlement finality.

## Chapter 2

### **Operation of a payment system with settlement finality**

#### **System rules**

##### Section 112

(1) The operator of a payment system with settlement finality lays down the system rules.

(2) The rules of the system at least regulate:

- (a) the name, registered office and identification number, if assigned, of the operator of a payment system with settlement finality,
- (b) the conditions for participation in a payment system with settlement finality, which must be transparent and contain objective criteria for access to the payment system with settlement finality,
- (c) the rights and duties of the participants of a payment system with settlement finality resulting from their participation in the system,
- (d) the manner and conditions for securing obligations arising from participation in a payment system with settlement finality,
- (e) the method and conditions for settlement, including the determination of the procedure for correcting errors occurring during settlement,
- (f) details of a settlement order, the manner and conditions to enter such an order into the payment system with settlement finality,
- (g) the data that a participant in a payment system with settlement finality provides to the operator of the payment system with settlement finality to meet its duties, and the manner in which they are provided,
- (h) the measures that the operator of a payment system with settlement finality may take against a participant in a payment system with settlement finality, and the procedure to do so,
- (i) a schedule for the execution of settlement, including the timetable for the individual phases in which the settlement takes place,
- (j) definition of the operating day,
- (k) moment when the settlement order is considered to have been received by the payment system with settlement finality,
- (l) moment when the settlement order entered into the payment system with settlement finality is considered unilaterally irrevocable and the technical conditions to ensure its irrevocability,
- (m) the currency in which the settlement is carried out, and
- (n) the rules governing the approach to risks, including at least:
  1. the risks to which a payment system with settlement finality is or may be exposed, including a systemic risk, operational risk, liquidity risk and credit risk,
  2. procedures for the recognition, evaluation, measurement, monitoring and reporting of risks, and
  3. procedures for the adoption of risk mitigation measures, including setting appropriate conditions for participation in the payment system with settlement finality.

##### Section 113

(1) The operator of and participants in a payment system with settlement finality comply with the system rules.

(2) The operator of a payment system with settlement finality publishes the system rules on its website. Anyone may consult them at the registered office and at the place of business of the operator of a payment system with settlement finality.

#### Section 114

##### **Changes in system rules**

(1) Changes in system rules become effective upon publication unless the operator of a payment system with settlement finality sets a later time. Changes in system rules may not be published until the Czech National Bank has given its consent thereto.

(2) Only the operator of a payment system with settlement finality is the party to the procedure for authorisation of a change in system rules. If the Czech National Bank fails to decide on the application for authorisation of a change in system rules within one month from the date when the application was received, the authorisation is conclusively deemed to have been granted.

#### Section 115

##### **Finality of a settlement order**

(1) A settlement order may not be withdrawn unilaterally from the time specified in the system rules.

(2) A decision declaring insolvency or a decision or another intervention by a public authority aimed at stopping or limiting settlement, excluding or limiting the use of funds in an account subject to settlement, or excluding or limiting the exercise of a right to satisfaction from a guarantee do not affect:

- (a) the force, effect or enforceability of a settlement order if such an order is accepted by a payment system with settlement finality before the decision or intervention has been made,
- (b) the possibility to use funds in the account of a participant in a payment system with settlement finality which is subject to settlement in order to discharge the participant's obligations arising in a payment system with settlement finality or in an interlinked system pursuant to Section 116 if the funds are used in this manner in the course of a settlement day during which the decision or the intervention was made, and
- (c) force, effect or enforceability of the right to satisfaction from guarantee provided to a participant or an operator of a payment system with settlement finality or an interlinked system pursuant to Section 116.

(3) The effects of a decision declaring insolvency or a decision or another intervention by a public authority pursuant to subsection (2)(a) are also excluded if a settlement order is received by a payment system with settlement finality after the decision or intervention has been made if:

- (a) the settlement is made during a settlement day during which the decision or intervention was made, and
- (b) at the time when the settlement order became final pursuant to subsection (1), the operator of a payment system with settlement finality was not notified of the decision or intervention or was otherwise not aware and was not supposed to be aware thereof; the fact that the insolvency was published in the insolvency register does not in itself mean that the operator of a payment system with settlement finality was aware or was supposed to be aware of the decision.

(4) A decision on bankruptcy or a decision or other intervention by a public authority pursuant to subsection (2) shall not have retroactive effects on the rights and duties that arose in a payment system with settlement finality pursuant to Section 116 before the decision or intervention was made.

#### Section 116

##### **Interlinking of systems**

(1) If an operator of a payment system with settlement finality has entered into a system interlinking contract with another operator of a payment system with settlement finality, settlement system with settlement finality, foreign payment system with settlement finality or a foreign settlement system with settlement finality allowing the mutual execution of settlement orders, this does not create a new payment system with settlement finality.

(2) Where possible, an operator of a payment system with settlement finality ensures that the rules of an interlinked system pursuant to subsection (1) are coordinated as to the time when the settlement order is considered unilaterally final and the time when such an order is considered to be received by the system.

Unless otherwise agreed by the parties in the contract under subsection (1), the rules of the interlinked systems apply in respect of these times independently of each other.

Chapter 3  
**Operation of a payment system with settlement finality**

Section 117  
**Basic provisions**

(1) An operator of a payment system with settlement finality is a legal person authorised to operate such a system on the basis of a licence granted by the Czech National Bank.

(2) An operator of a payment system with settlement finality is obliged to operate such a payment system with professional care.

**Licence to operate a payment system with settlement finality**

Section 118

(1) The Czech National Bank grants a licence to operate a payment system with settlement finality to an applicant:

- (a) which is a joint-stock company or a limited liability company,
- (b) which has its registered office and head office in the Czech Republic,
- (c) which has an initial capital of at least EUR 730,000,
- (d) whose business plan, including the estimated budget for the first three accounting periods, is based on realistic economic calculations,
- (e) whose material, technical, personal and organizational capacity is appropriate for the sound and prudent operation of a payment system with settlement finality,
- (f) whose potential business other than the operation of a payment system with settlement finality does not pose a significant threat to the financial stability of this operator, nor can it prevent the effective supervision over the activities of the operator,
- (g) with qualifying holding exclusively of persons that are credible and capable of ensuring the sound and prudent management of the operator of a payment system with settlement finality,
- (h) whose close link with another person does not prevent effective supervision of the activities of the operator of a payment system with settlement finality; in the case of a close link with a person governed by the law of a State other than a Member State, that law or its application may not prevent the effective supervision of the activities of the operator of a payment system with settlement finality,
- (i) whose directors are credible,
- (j) whose directors in the operation of a payment system with settlement finality are professionally competent and have sufficient experience with regard to the sound and prudent operation of a payment system with settlement finality, and
- (k) which has laid down system rules which are appropriate for the sound and prudent operation of a payment system with settlement finality and systemic risk.

(2) The Czech National Bank also grants a licence to operate a payment system with settlement finality to an applicant:

- (a) which is a legal person,
- (b) which has its registered office and head office in another Member State,
- (c) which is entitled to operate a system similar to a payment system with settlement finality in which the mutual obligations of the system's participants in the settlement process are governed by the law of another Member State, and
- (d) which has laid down system rules which are appropriate for the sound and prudent operation of a payment system with settlement finality and systemic risk.

(3) An application for a licence to operate a payment system with settlement finality may be submitted only electronically. In addition to the requirements laid down in the Administrative Procedure Code,

the application contains the data on the compliance with the conditions for a licence to operate a payment system with settlement finality.

(4) The details of the application requirements, including the annexes demonstrating the compliance with the conditions for a licence to operate a payment system with settlement finality, its formats and other technical requirements, are laid down in a secondary regulation.

#### Section 119

(1) The Czech National Bank issues a decision on the application for a licence to operate a payment system within six months after the commencement of the proceedings.

(2) In the decision to grant the licence to operate a payment system with settlement finality, the Czech National Bank approves the system rules.

(3) The operator of a payment system with settlement finality notifies the Czech National Bank without undue delay of any changes in the data specified in the application for a licence to operate a payment system with settlement finality or its annexes based on which the licence has been granted.

(4) The notification under subsection (3) may only be made electronically. The details of the notification requirements, including the annexes containing the documents demonstrating the facts in the notification, its formats and other technical requirements are laid down in a secondary regulation.

### **Lapse of a licence to operate a payment system with settlement finality**

#### Section 120

A licence to operate a payment system with settlement finality lapses:

- (a) upon the dissolution of the operator of a payment system with settlement finality,
- (b) on the date when the decision declaring insolvency of the operator of a payment system with settlement finality becomes final and enforceable, or
- (c) upon the withdrawal of a licence to operate a payment system with settlement finality.

#### Section 121

The person whose licence to operate a payment system with settlement finality has lapsed shall, without undue delay, notify the participants in this payment system with settlement finality thereof. Until the completion of settlement based on settlement orders received prior to the date of lapse of the licence, the person continues to be considered an operator of a payment system with settlement finality.

### Chapter 4

### **Information duties of an operator of and a participant in a payment system with settlement finality**

#### Section 122

(1) An operator of a payment system with settlement finality informs the Czech National Bank without undue delay of:

- (a) the names of the participant in a payment system with settlement finality, their registered office, their identification number, if assigned, and, in the case of natural persons, the date of their birth and their personal identification number, if assigned, and of any changes in such data, and
- (b) a proposal for decision to dissolve the operator with or without liquidation, or of a change in its object of business; it also notifies the decision made by the competent authority to the operator of a payment system with settlement finality.

(2) A participant in a payment system with settlement finality shall, without undue delay, inform the operator of a payment system with settlement finality of the data within the scope of subsection (1)(a).

(3) An operator of a payment system with settlement finality informs immediately the participants in a payment system with settlement finality and the operator of a payment system with settlement finality interlinked pursuant to Section 116 of the notification pursuant to Section 126(5).

(4) An operator of a payment system with settlement finality provides the Czech National Bank with information about its financial situation, the results of its economic management and the fulfillment of the conditions of performance of its activities.

(5) A secondary regulation determines the scope, form, time limits and method of providing information pursuant to subsection (4).

#### Section 123

A participant in a payment system with settlement finality shall, upon request, inform the person that demonstrates legal interest therein of the payment system with settlement finality in which it participates and of its rules.

#### Section 124

A participant in a foreign payment system with settlement finality, which has its registered office in the Czech Republic, shall:

- (a) upon request, inform the person that demonstrates legal interest therein of the system and its rules, and
- (b) without undue delay, inform the Czech National Bank of its participation in that system, of the Member State which has notified the European Securities and Markets Authority of the existence of this system, of its registered office and of any changes in these facts.

### Chapter 5

#### **Notification duties of public authorities**

#### Section 125

##### **Notification duty of the court and other public authority**

If an operator of a payment system with settlement finality becomes aware of a decision or another intervention by a public authority pursuant to Section 115(2), it informs the Czech National Bank of this fact without undue delay; this does not apply if the decision or intervention is made in insolvency proceedings.

#### Section 126

##### **Notification duties of the Czech National Bank**

(1) The Czech National Bank shall, without undue delay, notify the European Securities and Markets Authority of the existence of a payment system with settlement finality to the operator of which it has granted a licence to operate a payment system with settlement finality. In the notification, the Czech National Bank specifies the operator of the payment system with settlement finality. In the case of any changes in this notification, the Czech National Bank shall, without undue delay, inform the European Securities and Markets Authority thereof.

(2) If a licence to operate a payment system with settlement finality has lapsed, the Czech National Bank notifies the European Securities and Markets Authority of the lapse of this payment system with settlement finality without undue delay after the settlement based on orders received prior to the date of the lapse of the licence has been completed.

(3) The Czech National Bank may notify the European Commission of the existence of a payment system which it operates under the law governing the status and competence of the Czech National Bank if the system meets the conditions set out in Section 110(1)(a) to (c). In the notification, the Czech National Bank states that it is the operator of this system. Section 114(1), second sentence, Section 114(2), and Sections 118, 119, 122(1) and (4) do not apply to this system and to the Czech National Bank when acting as its operator. The Czech National Bank withdraws the notification under the first sentence without undue delay if the system no longer complies with the conditions set out in Section 110(1)(a), (b) or (c).

(4) If the Czech National Bank receives a notification pursuant to Section 125 concerning a participant in a foreign payment system with settlement finality which has its registered office in the Czech Republic, it notifies immediately the European Securities and Markets Authority, the European Systemic Risk Board and the supervisory authority of the Member State which has notified the existence of this system to the European Commission.

(5) If the Czech National Bank receives a notification under Section 125 or a similar notification from an authority of another Member State concerning a participant in a payment system with settlement finality, it notifies immediately the operator of a payment system with settlement finality thereof.

**PART FOUR**  
**RIGHTS AND DUTIES IN THE PROVISION OF PAYMENT SERVICES AND THE ISSUANCE**  
**OF ELECTRONIC MONEY**

Title I  
**Rights and duties in the provision of payment services**

Chapter 1  
**Basic provisions**

Section 127  
**Payment services contract**

Under a payment services contract, a provider undertakes at least:

- (a) to execute for the user payment transactions not individually specified in the contract (hereinafter the “framework contract”),
- (b) to execute for the user an individual payment transaction not stipulated under the framework contract (hereinafter the “single payment transaction contract”),
- (c) provide the indirect payment order service, or
- (d) provide the payment account information service.

Section 128

(1) The provider and user may not agree to derogate from the provisions of this Title to the detriment of the user, unless provided otherwise by this Act.

(2) If both the payer's provider and the payee's provider provide a payment service in a Member State and a payment transaction is executed in a currency other than that of a Member State, Section 132(2)(b), Section 135(e) and Section 145(a) do not apply.

(3) If both the payer's provider and the payee's provider provide a payment service in a Member State and a payment transaction is executed in a currency other than that of a Member State, the provider and user may agree to derogate from Section 169, 173 and 177.

(4) If a payment service is provided in a Member State only by the payer's provider, or only by the payee's provider, Section 130(2), Section 132(2)(b), Section 135(e), Section 139(f) and Section 145(a) do not apply.

(5) If a payment service is provided in a Member State only by the payer's provider, or only by the payee's provider, the provider and the user may agree to derogate from Sections 169, 176, 177, Section 184(1) to (4) and Section 185.

(6) A provider and a user other than a consumer may agree to derogate from Section 130(1), Sections 132 to 155, 160, 176, 182 to 185 and Section 187(1) and from the time limits specified in Section 188(1) and (2).

## Section 129

(1) A provider and a user may agree to derogate from Section 165(b), Section 166(1)(c) to (e) and Section 182 if the payment instrument for small payments cannot be blocked.

(2) A provider and a user may agree to derogate from Section 181, Section 187(1) and from the maximum amount laid down in Section 182(1)(a) in case of anonymous use of the payment instrument for small payments, and also in case where the payment instrument for small payments, by its nature, does not enable the provider to prove whether the payment transaction has been authorised.

(3) A provider and a user may, in the case of payment instruments for small payments, derogate from Section 152(1), the time limits set out in Sections 169 to 173 and, if the non-receipt of the payment order is evident to the user, also from Section 159(2).

(4) For the purposes of this Act, a payment instrument for small payments means a payment instrument:

(a) whereby the framework contract allows an order to be given to:

1. execute a payment transaction for an amount not exceeding EUR 30,
2. execute a national transaction for an amount not exceeding EUR 60, or
3. execute a payment transaction involving electronic money for an amount not exceeding EUR 500, or

(b) for which the framework contract specifies a spending limit of, or which holds funds not exceeding:

1. EUR 150,
2. EUR 300 if this payment instrument may, under the framework contract, only be used to give an order for a national payment transaction, or
3. EUR 500 if this payment instrument may, under the framework contract, only be used to give an order for a payment transaction related to electronic money.

## Section 130

(1) Excluding the fee for a payment service, the provider shall be entitled to a fee for the fulfillment of its duty under this Title only if so expressly provided in this Act and if the agreed fee is reasonable and corresponds to the actual costs of the provider.

(2) The payer pays the fee of the payer's provider and the payee pays the fee of the payee's provider.

(3) A provider may not prevent a payee from requesting fee from a payer for the use of a payment instrument, from offering him a discount for its use or otherwise directing the payer to use a certain payment instrument.

(4) The user and its provider may agree that the provider is entitled to a fee for additional or more frequent information specified in Sections 142 to 147 and Section 151 provided at the request of the user.

## Section 131

### **Provision and making available of information**

(1) A provider fulfills the duty to provide information to a user if he communicates to the user information recorded on a durable medium and informs the user about the existence and the availability of the communication if the communication was made through a means of communication not commonly used by the users to communicate with the provider.

(2) A provider fulfills the duty to make information available to a user if the provider allows the user to find the information in a manner which is not unreasonably burdensome for the user.

(3) A provider provides or makes available to the user the information referred to in subsections (1) and (2) in a clear and comprehensible manner in the official language of the country in which the payment service is offered, or in a language agreed upon by the parties.



Chapter 2  
**Information duties**

Subchapter 1  
**Information duties of a provider before the entering into the payment services contract**

Division 1  
**Information before the entering into the single payment transaction contract**

Section 132

(1) A provider makes available to the user the information referred to in subsection (2) in good time before the user becomes bound by the single payment transaction contract; at the user's request, this information must be provided to the user.

(2) The following information must be made available or provided to the user in accordance with subsection (1):

- (a) information or unique identifier the provision of which is a condition for the proper execution of a payment transaction,
- (b) the maximum time limit for the execution of a payment service,
- (c) information about fee a user must pay to a provider and, if the fee is made up of several separate items, the breakdown of those items,
- (d) where applicable, the information on actual or reference exchange rate to be used in a payment transaction, and
- (e) other information under Sections 134 to 139, where relevant given the content of the single payment transaction contract.

(3) If a user has made a proposal to enter into a single payment transaction contract before the information under subsection (1) has been made available to him, he may withdraw the proposal until the acceptance of the proposal by the provider.

(4) If a payment order for a single payment transaction is transmitted by a payment instrument regulated under the framework contract, the provider is not obliged to provide or make available to the user the information referred to in subsection (1) if it has been or will be provided or made available to the user under that framework contract.

(5) If a single payment transaction contract has been concluded at the request of a user by a means of distance communication which does not enable the provider to meet the duty set out in subsection (1), the provider meets this duty immediately after executing the payment transaction.

Division 2  
**Information to be provided before the entering into the framework contract**

Section 133

(1) A provider provides the user with the information under Sections 134 to 139 in sufficient time before the user becomes bound by the framework contract.

(2) If a user has made a proposal to enter into a framework contract before the information under subsection (1) has been provided to him, he may withdraw the offer until the provider has accepted the proposal.

(3) If a framework contract has been concluded at the request of a user by a means of distance communication which does not enable the provider to meet the duty set out in subsection (1), the provider meets this duty immediately after the entering into the framework contract.

## Section 134

The following information about the provider must be provided to the user in accordance with Section 133(1):

- (a) the name of the provider,
- (b) the provider's registered office, and, where relevant, other addresses, including the electronic address, which are of importance for the communication between the user and the provider,
- (c) the address of the authorised agent or branch of the provider, where the payment service is provided through them,
- (d) indication of whether the provider is registered in the list of providers, its registration number or other information enabling the provider to be identified in such a list, and
- (e) the name and registered office of the authority supervising the provider's activities in the field of payment service provision.

## Section 135

The following information about the payment service being provided must be provided to the user in accordance with Section 133(1):

- (a) a description of the payment service,
- (b) information or unique identifier the provision of which is a condition for the proper execution of a payment transaction,
- (c) the form and procedure for granting consent to the execution of a payment transaction and withdrawing such consent in accordance with Section 157,
- (d) information on the time of receipt of a payment order pursuant to Section 158 and the time close to the end of the operating hours pursuant to Section 158(3), if agreed,
- (e) the maximum time limit for the provision of a payment service,
- (f) information on the limitation of the total amount of payment transactions made using a payment instrument over a certain period in accordance with Section 163, if agreed, and
- (g) information on the right of the consumer concerning the co-badging on card-based payment instruments in accordance with Article 8 of Regulation (EU) 2015/751 of the European Parliament and of the Council<sup>2)</sup> if the provider offers such a service.

## Section 136

(1) The following information about the payment service being provided and operating a payment account must be provided to the user in accordance with Section 133(1):

- (a) information about fee a user must pay to a provider and, if the fee is made up of several separate items, the breakdown of those items,
- (b) where applicable, information on interest rates and exchange rates to be used, or information on the method of calculating the interest or currency conversion, and the relevant day and index, and
- (c) an indication that the provider may at any time unilaterally and without prior notice change the contract of the parties on interest rates and exchange rates pursuant to Section 152(5), if agreed, and other related information.

(2) If a payment service is provided in a Member State only by the payer's provider or only by the payee's provider, the information referred to in subsection (1)(a) is to be provided in respect of the part of a payment transaction which is carried out in a Member State.

## Section 137

The following information about the method of communication between the user and the provider must be provided to the user in accordance with Section 133(1):

- (a) where applicable, information on the means of communication between the parties and on the technical requirements for the user's equipment for such communication,
- (b) indication of the method of and time limits for the provision or making available of information,

- (c) indication of the language in which the framework contract is to be entered into and the language in which communication between the user and the provider will take place for its duration,
- (d) indication of the method in which the provider informs the user of suspected unauthorized or fraudulent use of the payment instrument, and
- (e) information on the right of the user to obtain on request the information and the contractual terms and conditions of the framework contract under Section 144.

#### Section 138

The following information about the framework contract must be provided to the user in accordance with Section 133(1):

- (a) information that the provider's proposal for an amendment to the framework contract is considered to have been accepted under the conditions of Section 152(3), if agreed,
- (b) indication of the duration of the framework contract,
- (c) information on the right of the user to terminate the framework contract and the conditions and consequences of termination,
- (d) information on the law governing the framework contract and on the jurisdiction of courts, where these are agreed between the parties, and
- (e) information on the method of out-of-court settlement of disputes between the user and the provider and the possibility of the user to file a complaint with a supervisory authority.

#### Section 139

The following information about the duties and liability of the user and the provider must be provided to the user in accordance with Section 133(1):

- (a) if a payment instrument is to be issued to the user under the framework contract:
  1. description of the measures the user must take to protect his personalised security features, and information on how the user is to report the loss, theft, misuse or unauthorized use of the payment instrument,
  2. conditions under which the provider may block the payment instrument, if agreed,
- (b) information on the conditions under which the payer bears the loss arising out of an unauthorised payment transaction, including information on the maximum amount of the loss which may be incurred by the payer,
- (c) information on the method and time limit for reporting to the provider an unauthorised or incorrectly executed payment transaction,
- (d) information on the provider's liability for an unauthorised payment transaction,
- (e) information on the provider's liability for an incorrectly executed payment transaction,
- (f) information on the conditions for the repayment of the amount of an authorised payment transaction pursuant to Section 176, and
- (g) information on the conditions under which the payee's provider is entitled to make a corrective settlement under the law governing the activities of banks or under the law governing the activities of savings and credit unions.

#### Division 3

### **Information before the entering into a contract to provide an indirect payment order service or a payment account information service**

#### Section 140

(1) A provider of an indirect payment order service makes available to the user the information referred to in subsection (2) in good time before the user becomes bound by the contract to provide indirect payment order service; at the user's request, this information must be provided to the user.

(2) The following information must be made available or provided to the user in accordance with subsection (1):

- (a) the name of the provider,
- (b) the provider's registered office, and, where relevant, other addresses, including the electronic address, which are of importance for the communication between the user and the provider,
- (c) the address of the authorised agent or branch of the provider, where the payment service is provided through them,
- (d) the name and registered office of the authority supervising the provider of indirect payment order service,
- (e) the description of indirect payment order service,
- (f) the form and procedure for granting consent to the execution of a payment transaction and withdrawing such consent in accordance with Section 157,
- (g) where relevant, information about fee a user must pay to a provider of the indirect payment order service and, if the fee is made up of several separate items, the breakdown of those items,
- (h) where applicable, information on the means of communication between the parties and on the technical requirements for the user's equipment for such communication,
- (i) information on the conditions under which the payer bears the loss arising out of an unauthorised payment transaction, including information on the maximum amount of the loss which may be incurred by the payer,
- (j) information on the method and time limit for reporting to the provider an unauthorised or incorrectly executed payment transaction,
- (k) information on the provider's liability for an unauthorised payment transaction,
- (l) information on the provider's liability for an incorrectly executed payment transaction,
- (m) information on the law governing the contract to provide indirect payment order service and on the jurisdiction of courts, where these are agreed between the parties, and
- (n) information on the method of out-of-court settlement of disputes between the user and the provider and the possibility of the user to file a complaint with a supervisory authority.

#### Section 141

(1) A provider of a payment account information service makes available to the user the information referred to in subsection (2) in good time before the user becomes bound by the contract to provide the payment account information service.

(2) The following information must be made available to the user in accordance with subsection (1):

- (a) the name of the provider,
- (b) the provider's registered office, and, where relevant, other addresses, including the electronic address, which are of importance for the communication between the user and the provider,
- (c) the address of the authorised agent or branch of the provider, where the payment service is provided through them,
- (d) where relevant, information about fee a user must pay to a provider of the payment account information service and, if the fee is made up of several separate items, the breakdown of those items,
- (e) the description of the payment account information service,
- (f) where applicable, information on the means of communication between the parties and on the technical requirements for the user's equipment for such communication,
- (g) information on the law governing the contract to provide payment account information service and on the jurisdiction of courts, where these are agreed between the parties, and
- (h) information on the method of out-of-court settlement of disputes between the user and the provider and the possibility of the user to file a complaint with a supervisory authority.

Subchapter 2  
**Information duties of a provider over the duration of a payment services contract**

Division 1  
**Information over the duration of a single payment transaction contract**

Section 142  
**Information for the payer after the receipt of a payment order**

(1) The payer's provider shall, immediately after the receipt of a payment order for a payment transaction not covered by the framework contract, provide or make available to the payer the following information:

- (a) an identifier enabling the payer to identify the payment transaction and, where applicable, also the payee's details,
- (b) the amount of the payment transaction in the currency used in the payment order,
- (c) information about fee a payer must pay to a provider for the execution of a payment transaction and, if the fee is made up of several separate items, the breakdown of those items,
- (d) where applicable, the exchange rate used by the payer's provider or a reference thereto if the exchange rate is different from the exchange rate referred to in Section 132(2)(d), and the amount of the payment transaction after this currency exchange, and
- (e) the date of receipt of the payment order.

(2) If a payment order for a single payment transaction is transmitted by a payment instrument regulated under the framework contract, the provider is not obliged to provide or make available to the user the information referred to in subsection (1) if it has been or will be provided or made available to the user under that framework contract.

Section 143  
**Information for the payee after the execution of a payment transaction**

(1) The payee's provider shall, immediately after executing a payment transaction not covered by the framework contract, provide or make available to the payee the following information:

- (a) information enabling the payee to identify the payment transaction and, if applicable, also the payer's details and other data transmitted in connection with the payment transaction,
- (b) the amount of the payment transaction in the currency in which the funds are made available to the payee,
- (c) information about fee a payee must pay to a provider for the execution of a payment transaction and, if the fee is made up of several separate items, the breakdown of those items,
- (d) where applicable, the exchange rate used by the payee's provider and the amount of the payment transaction prior to that exchange, and
- (e) value date of the amount credited to the payment account.

(2) If a payment order for a single payment transaction is transmitted by a payment instrument regulated under the framework contract, the provider is not obliged to provide or make available to the user the information referred to in subsection (1) if it has been or will be provided or made available to the user under that framework contract.

Division 2  
**Information over the duration of a framework contract**

Section 144  
**Information on the content of the framework contract**

Over the duration of a framework contract, the provider is obliged to provide the user, at his request, with the content of the framework contract and other information specified in Sections 134 to 139.

#### Section 145

##### **Information for the payer before the execution of a payment transaction**

Before executing a payment transaction covered by the framework contract, the payment order for which is given by the payer, the provider provides the payer, at his request, with information on:

- (a) the maximum time limit for the execution of a transaction, and
- (b) the fee a payer must pay to a provider for the execution of a payment transaction and, if the fee is made up of several separate items, the breakdown of those items.

#### Section 146

##### **Information for the payer about a payment transaction**

(1) Without undue delay after debiting the amount of the payment transaction covered by the framework contract from the payer's payment account or, if the payment transaction is not made from the payer's payment account, after the receipt of the payment order, the payer's provider provides the payer with the following information:

- (a) an identifier enabling the payer to identify the payment transaction and, where applicable, also the payee's details,
- (b) the amount of the payment transaction in the currency in which the payer's payment account is debited or in the currency used in the payment order,
- (c) information about fee a payer must pay to a provider for the execution of a payment transaction and, if the fee is made up of several separate items, the breakdown of those items,
- (d) where applicable, the exchange rate used by the payer's provider and the amount of the payment transaction after that exchange, and
- (e) the debit value date debited from the payer's payment account or the date of receipt of the payment order.

(2) The parties may agree that the information referred to in subsection (1) shall be provided or made available to the payer at regular intervals not exceeding one month in an agreed manner so that the payer may store and copy such information in the same condition.

#### Section 147

##### **Information for the payee about a payment transaction**

(1) The payee's provider shall, without undue delay after executing a payment transaction covered by the framework contract, provide to the payee the following information:

- (a) information enabling the payee to identify the payment transaction and, if applicable, also the payer's details and other data transmitted in connection with the payment transaction,
- (b) the amount of the payment transaction in the currency in which the payee's payment account was credited,
- (c) information about fee a payee must pay to a provider for the execution of a payment transaction and, if the fee is made up of several separate items, the breakdown of those items,
- (d) where applicable, the exchange rate used by the payee's provider and the amount of the payment transaction prior to that exchange, and
- (e) value date of the amount credited to the payee's payment account.

(2) The parties may agree that the information referred to in subsection (1) shall be provided or made available to the payee at regular intervals not exceeding one month in an agreed manner so that the payee may store and copy such information in the same condition.

#### Section 148

derogated

#### Section 149

##### **Information on standing orders and direct debits**

The provider provides the user, at his request, with information on his current standing orders and direct debit authorisations provided by the user when they were granted.

### Division 3

#### **Information over the duration of a contract to provide indirect payment order service**

##### Section 150

(1) The provider of an indirect payment order service shall, immediately after obtaining the information on the receipt of the payment order by the payer's provider that maintains the payer's payment account, provide or make available to the payer:

- (a) information on the receipt of the payment order by the payer's provider,
- (a) information enabling the payer to identify the payment transaction and, if applicable, also the payee's details and other data transmitted in connection with the payment transaction,
- (c) the amount of the payment transaction, and
- (d) where relevant, information about fee a user must pay to a provider of the indirect payment order service and, if the fee is made up of several separate items, the breakdown of those items.

(2) If so agreed by the provider of an indirect payment order service and the payee, the provider of an indirect payment order service shall, immediately after obtaining the information on the receipt of the payment order by the payer's provider that maintains the payer's payment account, provide or make available to the payee an identifier identifying the payment transaction and, where applicable, also the payer details and other data transmitted in connection with the payment transaction.

(3) The provider of an indirect payment order service makes available to the payer's provider an identifier allowing the payment transaction to be identified.

### Subchapter 3

#### **Information duties in the case of payment instruments for small payments**

##### Section 151

(1) In the case of payment instruments for small payments, Sections 133 to 139 and 145 do not apply; in this case, the provider:

- (a) provides the user with the data on the payment service, including information on the method of use of the payment instrument, the liability of the provider and the user, on the fee to be paid by the user to the provider, and other essential information that is necessary for the user to make an informed decision, and
- (b) makes available to the user the information referred to in Sections 134 to 139.

(2) In the case of payment instruments for small payments, Sections 133 and 147 do not apply if so agreed. In such a case, the provider provides or make available an identifier allowing the user to identify the payment transaction, the amount of the payment transaction and the fee the user must pay to the provider for the execution of the payment transaction. In the case of several payment transactions of the same kind for the benefit of the same payee, only data on the total amount and total fee for these payment transactions may be provided or made available.

(3) Subsection (2), second and third sentences do not apply in the case of anonymous use of a payment instrument for small payments, and also where the provision of information is technically impossible. In this case, however, the provider allows the user to verify the total amount of funds that can be used to make a payment transaction on the basis of the payment order given by the payment instrument.

### Chapter 3

#### **Amendment to and termination of a framework contract**

##### Section 152

#### **Amendment to a framework contract**

(1) If a provider proposes to a user an amendment to a framework contract, the provider must do so on a durable medium in the manner specified in Section 131(3) no later than 2 months before the effective date of the amendment to the framework contract specified in the proposal. In the case of payment instruments for

small payments, a provider and a user may agree in the framework contract that the provider is not obliged to propose to the user the amendment to the framework contract on a durable medium as specified in Section 131(3).

(2) In the case of an amendment other than an amendment to the framework contract, the provider must notify the user of the change in information referred to in Sections 133 to 139 in the manner and within the time limit set out in subsection (1). Subsection (1), second sentence, applies *mutatis mutandis*.

(3) If agreed, the user is deemed to have accepted a proposal for an amendment to a framework contract if:

- (a) the provider has proposed the amendment to the framework contract no later than two months before the proposed effective date of the amendment,
- (b) the user had not rejected the proposal for an amendment to the framework contract before the effective date of the amendment,
- (c) the provider has informed the user of this consequence in the proposal for an amendment to the framework contract, and
- (d) the provider, in the proposal for an amendment to the framework contract, has informed the user of his right to terminate the framework contract in accordance with subsection (4).

(4) If a user rejects a proposal for an amendment to the framework contract in the case referred to in subsection (3), the user may terminate the framework contract gratuitously and with immediate effect prior to the proposed effective date of the amendment.

(5) If so agreed, the provider may at any time unilaterally and without prior notice change the interest rates and exchange rates used in payment transactions if the change is based on a change in the reference rates or exchange rates pursuant to Section 136(1)(b). Changes in the interest rates or exchange rates used in payment transactions are implemented and calculated in a neutral manner. Changes in interest rates must be notified to the user without undue delay in the manner provided for in Section 131(1) and (3), unless the parties have agreed a different manner or time limits to provide or make available information. However, any change in interest rates or exchange rates which is more favourable to the users may be applied without notice.

### **Termination of a framework contract**

#### Section 153

(1) A user may terminate a framework contract at any time, even if the framework contract has been concluded for a definite period. If a notice period has been agreed, the framework contract ceases to exist upon the expiration of the notice period. The notice period may not be longer than 1 month.

(2) If the provider's right to a fee for the termination of the framework contract by a user has been agreed, the provider is entitled to such a fee only if:

- (a) the framework contract lasted less than 6 months, and
- (b) the fee is reasonable and corresponds to the actual costs of the provider.

#### Section 154

(1) A provider may terminate a framework contract concluded for an indefinite period only if it has been agreed. The notice period may not be longer than 2 months.

(2) The obligation must be terminated in the manner specified in Section 131(1) and (3).

#### Section 155

If the fee for the provision of payment services is determined as a fixed amount for a given period, the supplier shall, in the event of termination of the framework contract, be entitled to only a proportionate part of that fee for the period until the termination of the framework contract.



Chapter 4  
**Execution of a payment transaction**

Subchapter 1  
**Authorisation of a payment transaction**

Section 156  
**Consent of the payer**

(1) A payment transaction is authorised if the payer has given its consent thereto.

(2) A payment transaction which must be executed by the payer's provider under another law regardless of the payer's consent is considered authorised.

Section 157  
**Withdrawal of payer's consent**

(1) A payer may withdraw his consent to a payment transaction until the payment order for this payment transaction can be withdrawn.

(2) The payer's consent may not be withdrawn after the operating hours of the payer's provider immediately preceding the day agreed between the payer and the payee as the day on which the amount of the payment transaction is to be debited from the payer's payment account. The payer's consent to another payment transaction to which the payee gives a payment order may not be withdrawn after the payer has transmitted his consent to the payee; this does not affect Section 160(2).

(3) The contract between the payer and the payer's provider that the payer may, after the expiry of the time limits specified in subsection (2), withdraw the consent to a payment transaction to which the payee gives a payment order, requires the consent of the payee.

(4) A payer and the payer's provider may agree that the provider is entitled to a fee for the withdrawal of the payer's consent to a payment transaction if the consent has been withdrawn after the expiry of the time limits under subsections (1) or (2).

(5) If a payer has given consent to several payment transactions at the same time, the conditions for withdrawal of his consent are considered separately for each payment transaction.

Subchapter 2  
**Payment order**

Section 158  
**Receipt of a payment order**

(1) A payment order is received as soon as it reaches the payer's provider.

(2) If the user that gives the payment order and the user's provider agree that the execution of the payment transaction will start at a certain point in time, at a point in time when certain conditions are met, or at the end of a certain period, the payment order is considered to have been received when the point in time occurs.

(3) If a payment order reaches the payer's provider or if the point in time under subsection (2) occurs at a time other than during the payer's operating hours or, after the point in time, close to the operating hours of the payer's provider agreed by the provider and the user, the payment order is considered received at the beginning of the next operating hours of the provider.

Section 159  
**Receipt of a payment order**

(1) A provider may reject a payment order unless the provider is obliged to execute the payment transaction. A provider of an indirect payment order service may reject a payment order unless such a provider is obliged to transmit the indirect payment order to the provider operating the payment account.

(2) If a provider rejects a payment order, the provider provides or make available to the user the information on this fact in the agreed manner at the earliest opportunity, but no later than within the time limit specified in Sections 169 and 173, and shall, if possible, notify the user of the reasons for the rejection and the procedure for the removal of errors which led to the rejection.

(3) The provider and the user may agree that the provider is entitled to a fee for the provision or making available of the information under subsection (2).

#### Section 160

### **Withdrawal of a payment order**

(1) The user that gives a payment order may withdraw it until the payment order has been received.

(2) The payment order under Section 158(2) may not be withdrawn after the provider's operating hours immediately preceding the day on which the payment order is received.

(3) A payment order given by the payer through the payee may not be withdrawn after the payer has transmitted it to the payee. An indirect payment order may not be withdrawn after the payer has transferred it to the provider of the indirect payment order service.

(4) The contract between the payer and the payer's provider that the payer may, after the expiry of the time limit specified in subsection (3), withdraw a payment order given by payer through the payee or an indirect payment order, requires the consent of the payee.

(5) A user that gives a payment order and the user's provider may agree that the provider is entitled to a fee for the withdrawal of the payment order if the payment order has been withdrawn after the expiry of the time limits under subsections (1) to (3).

(6) If a user has given a payment order to several payment transactions at the same time, the conditions for withdrawal of this payment order are considered separately for each payment transaction.

### **Indirect payment order**

#### Section 161

(1) If a payer has given a payment order indirectly, the provider that maintains the user's payment account:

- (a) shall, immediately upon the receipt of the indirect payment order, notify the provider of the indirect payment order service the information available to him regarding the receipt of the indirect payment order and the execution of the related payment transaction, and
- (b) may not, upon receipt or rejection of a payment order, make undue differences between an indirect payment order and other payment orders; this also applies to the execution of a related payment transaction.

(2) A provider that maintains the user's payment account may not make the receipt of an indirect payment order conditional upon the existence of an contract with the provider of the indirect payment order service.

(3) A provider that maintains the user's payment account may reject an indirect payment order:

- (a) if the provider suspects unauthorised or fraudulent use of the payment instrument or personalised security features of the user,
- (b) if the payment order has been given indirectly through a person that is not authorised to provide the indirect payment order service,
- (c) if the provider of an indirect payment order service has failed to identify itself in accordance with Section 162(e), or
- (d) if the conditions under Section 159(1) have been met.

(4) A provider that intends to reject an indirect payment order under subsection (3) informs the user of the reasons for the rejection; if this is not possible, the provider informs the user without undue delay after the rejection. This does not apply if this would endanger the security concerning payment system.

(5) If a provider has rejected an indirect payment order under subsection (3) (a) to (c), the provider informs the Czech National Bank of the reasons for this rejection without undue delay.

(6) A provider that maintains the user's payment account is not obliged to act in accordance with subsections (1) to (5) unless the payment account the provider maintains for the user is accessible via the Internet.

## Section 162

A provider of an indirect payment order service:

- (a) does not receive funds to execute a payment transaction,
- (b) makes the payer's personalised security features accessible only to the payer and to the person that issued them,
- (c) shares data on the payer, with the exception of the payer's personalised security features, only with the payee and with the explicit consent of the payer,
- (d) does not keep sensitive data on payer's payments,
- (e) upon each indirect payment order, identifies itself to the provider that maintains the user's payment account accessible via the Internet,
- (f) in connection with the indirect payment order service, does not require the payer to provide payer data other than the data required for the execution of the indirect payment order, nor does it store or process such data, and
- (g) does not change the information given in an indirect payment order.

## Subchapter 3

### **Payment instrument**

## Section 163

### **Limitation of a payment instrument**

If a provider and a user agree that a payment instrument may be used to give consent to a payment transaction or payment order only up to a certain amount of a payment transaction over a certain period, the consent or payment order given using the payment instrument above that amount is disregarded, unless the user approves the consent or payment order subsequently.

## Section 164

### **Blocking a payment instrument at the initiative of the provider**

(1) If so agreed by a provider and a user, the provider may block the payment instrument only for reason of:

- (a) the security of the payment instrument, in particular where there is suspicion of unauthorised or fraudulent use of the payment instrument, or
- (b) a significant increase in the risk that the payer will be unable to repay the credit that can be drawn using this payment instrument.

(2) Before blocking the payment instrument under subsection (1) or, if this is not possible, immediately afterwards, the provider informs the user, in an agreed manner, of the blocking of the payment instrument and of its reasons, unless informing the user could frustrate the purpose of blocking the payment instrument or would be in conflict with other legislation.

(3) As soon as the reasons for blocking the payment instrument cease, the provider unblocks the payment instrument or replace it with a new payment instrument.

Section 165  
**Duties of the user**

A user:

- (a) uses a payment instrument in accordance with the framework contract, in particular, immediately after receiving the payment instrument, the user takes all reasonable measures to protect its personalised security features, and
- (b) without undue delay after finding out, notifies the provider or a person designated by the provider of the loss, theft, misuse or unauthorised use of a payment instrument.

Section 166  
**Duties of the provider**

(1) A provider that issues a payment instrument:

- (a) ensures that personalised security features of the payment instrument are accessible only to the user; this does not affect the duties of the user of a payment instrument set out in Section 165,
- (b) does not issue an unsolicited payment instrument unless it is a replacement for a previously issued payment instrument,
- (c) ensures that appropriate means are available to the user which at all times make it possible to:
  - 1. report the loss, theft, misuse or unauthorised use of a payment instrument,
  - 2. request the unblocking of a payment instrument or its replacement by a new payment instrument in accordance with Section 164(3),
- (d) upon request, provides the user with a document whereby the user may, for a period of 18 months from the notification under Section 165(b), prove that it has made such a notification, and
- (e) prevents any use of a payment instrument once the notification under Section 165(b) has been made, unless this involves electronic money, the nature of which does not allow such prevention.

(2) A provider bears the risk associated with the delivery of a payment instrument or personalised security features to the user.

(3) A provider ensures that the rules for the use of the payment instrument in the framework contract are objective and reasonable.

Section 167  
**Fee for the issuance of a new payment instrument**

The provider and the user may agree that the provider is entitled to a fee for the issuance of a new payment instrument as a result of its loss, theft, misuse or unauthorised use, such a fee not being higher than the actual costs incurred by the provider on the issuance of the payment instrument.

Subchapter 4  
**Time limits for the execution of payment transactions**

Section 168

Where the point in time of receipt of cash from the user or the point in time when the payment transaction amount is credited to the account of the payee's provider occurs during a period other than the operating hours of the provider, the cash is considered received or the payment transaction amount credited at the beginning of the next operating hours of the provider.

Section 169  
**Time limit for the execution of a payment transaction by the payer's provider**

(1) The payer's provider ensures that the payment transaction amount is credited to the payee's account by the end of the following business day following the receipt of the payment order.

(2) A payer and the payer's provider may agree on a time limit which is one business day longer than the time limit referred to in subsection (1) if it is a payment transaction in:

- (a) euro currency to which a paper payment order is given and which does not involve currency exchange,

- (b) euro currency to which a paper payment order is given and which involves the exchange of currencies between the euro and the currency of the Member State in which the currency exchange takes place, or
- (c) the Czech currency, which is exclusively carried out in the Czech Republic and involves a currency exchange other than the exchange between the Czech currency and the euro.

(3) A payer and the payer's provider may agree on a time limit which is three business days longer than the time limit referred to in subsection (1) if it is a payment transaction in:

- (a) euro currency which includes the exchange of currencies between the euro and a currency other than the currency of the Member State on whose territory the currency is exchanged,
- (b) the Czech currency which is not carried out exclusively in the Czech Republic, or
- (c) the currency of another Member State other than the euro.

#### Section 170

##### **Time limit for the execution of a payment transaction by the payee's provider**

Immediately after the payment transaction amount has been credited to the account of the payee's provider or, where the payee's provider performs an exchange between currencies other than those of Member States, by the end of the business day following the day on which the payment transaction amount was credited to the account of the payee's provider, the payee's provider:

- (a) credits the payment transaction amount to the payee's payment account, or
- (b) if the payee's provider does not maintain the payee's payment account, makes the payment transaction amount available to the payee.

#### Section 171

##### **Time limit for the execution of a payment transaction within one provider in the Czech currency**

Section 169 does not apply to a payment transaction within the same provider in the Czech Republic in the Czech currency. In this case, the payment transaction amount must be credited to the payee's payment account or, if the provider does not maintain the payee's payment account, it must be made available to the payee no later than at the end of the day on which the point in time of receipt of the order occurred. If such a payment transaction involves a currency exchange, the payer and the payer's provider may agree on a time limit extended by one business day.

#### Section 172

##### **Time limit for the execution of a payment transaction consisting of the placing of cash on a payment account**

(1) In the event of cash being placed on a consumer's payment account in the currency of the Member State in which the payment account is maintained, the payee's provider credits the payment transaction amount to the payee's payment account immediately upon the receipt of the cash. At the same time, the value date occurs.

(2) In the event of cash being placed on a consumer's payment account in a currency other than that of the Member State in which the payment account is maintained or on a payment account of a user other than a consumer in the currency in which the payment account is maintained, the payee's provider credits the payment transaction amount to the payee's payment account no later than on the next business day following the day of receipt of the cash. No later than on the expiration of this period, the value date occurs.

#### Section 173

##### **Time limit for the transmission of a payment order in the case of a payment transaction to which the payment order is given by the payee or the payer through the payee**

(1) In the case of a payment transaction to which payment order is given by the payee or the payer through the payee, the payee's provider transmits the payment order to the payer's provider within a time limit agreed between the payee and the payee's provider.

(2) In the case of direct debits, the payee's provider transmits the payment order to the payer's provider within a time limit agreed between the payee and the payee's provider so as to allow the point in time of receipt of the payment order agreed between the payer and the payee to be observed.

Subchapter 5  
**Other rights and duties when executing a payment transaction**

Section 174  
**Value date**

(1) Value date occurs when the payment transaction amount is debited from the payer's payment account no earlier than when the payment transaction amount is debited from the payer's payment account.

(2) Value date occurs when the payment transaction amount is credited to the payee's payment account no later than when the payment transaction amount is credited to the account of the payee's provider. If the payment transaction amount is credited to the account of the payee's provider, and this is more favourable for the payee given the interest agreed, the value date occurs at the point in time when the payment transaction amount is credited to the payee's payment account.

Section 175  
**Crediting and debiting a payment transaction amount**

(1) The payer's provider debits the payment transaction amount from the payer's payment account no earlier than upon the receipt of the payment order.

(2) The payee's provider makes the payment transaction amount available to the payee no later than when the payment transaction amount is credited to the payee's payment account.

Section 176  
**Refund of the amount of a payment transaction to which payment order is given by the payee or payer through the payee**

(1) A provider refunds the amount of an authorized payment transaction as provided under subsection (2) if:

- (a) the payment order for the authorized payment transaction was given by the payee or the payer through the payee,
- (b) the payer has requested the refund of the amount of the authorized payment transaction within 8 weeks after the date on which the payment transaction amount was debited from the payer's payment account,
- (c) upon authorisation, the exact payment transaction amount was not determined, and
- (d) the payment transaction amount exceeds the amount which the payer could have reasonably expected given all the circumstances; however, the payer may not invoke unexpected change in the exchange rate if the reference exchange rate agreed between the payer and his provider in accordance with Section 136(1)(b) was used.

(2) If the conditions for the refund of the amount of an authorised payment transaction under subsection (1) are fulfilled, the provider shall, within 10 business days from the date on which the payer has requested the refund:

- (a) bring the payment account from which the payment transaction amount was debited to a state in which it would have been if the funds had not been debited, or
- (b) refund the payment transaction amount, the fee paid and the lost interest to the payer if the procedure under letter (a) cannot be used.

(3) In the case of direct debit under Article 1 of Regulation (EU) No 260/2012 of the European Parliament and of the Council<sup>2</sup>, the provider refunds the amount of an authorised payment transaction as provided under subsection (2) even if the conditions under subsection (1)(c) and (d) have not been met.

(4) In the framework contract, the payer and the payer's provider may agree that the provisions of subsections (1) to (3) do not apply if:

- (a) the payer gave the consent to the payment transaction directly to the payer's provider, and
- (b) where applicable, information on the exact amount of the payment transaction was provided or made available to the payer by the provider or the payee in an agreed manner at least 4 weeks prior to the receipt of the payment order.

(5) A payer provides the provider at the provider's request with information and documents indicating that the conditions for the refund of the payment transaction amount under subsection (1)(d) have been met.

(6) If the provider does not refund the amount of an authorised payment transaction in accordance with subsection (2), the provider informs the payer, within 10 business days after the payer requested the refund, of the reason for the rejection together with information on the method of out-of-court settlement of disputes between the payer and the payer's provider and on the payer's right to inform the supervisory authority.

#### Section 177

### **Prohibition of deductions from the payment transaction amount**

(1) The payer's provider, the payee's provider and other persons through which these providers directly or indirectly fulfill their duties when executing payment transactions (hereinafter the "intermediary providers") are obliged to transfer the payment transaction amount in full without any deductions. However, the payee and the payee's provider may agree that the provider deducts its fee from the amount to be transferred before the amount is credited to the payee's payment account or paid out; in this case, the amount of the payment transaction and fee must be separated in the information under Section 143(1)(c) or Section 147(1)(c).

(2) In the event of a breach of the duty set out in subsection (1), the payer's provider in the case of a payment transaction the payment order for which is given by the payer, or the payee's provider in the case of a payment transaction the payment order for which is given by the payee or the payer through the payee, must ensure that the payee receives the full amount of the payment transaction.

### **Confirmation of the balance of funds**

#### Section 178

(1) A provider that maintains the user's payment account shall, at the request of another provider issuing a card payment instrument, inform such a provider only whether or not the balance on the payment account of the user, including any credit facility, is sufficient in respect of the amount of the card payment transaction executed by the provider requesting the balance information if:

- (a) the user whose payment account the provider maintains has expressly authorized this provider to do so in relation to a particular provider requesting the balance information,
- (b) the payment account the provider maintains is accessible online at the time of the request, and
- (c) the provider requesting the information identifies itself when requesting the balance.

(2) A provider may request the information under subsection (1) if:

- (a) the user has given the provider explicit consent thereto,
- (b) issued a card payment instrument by which the user gave a payment order for a payment transaction corresponding to the amount requested, and
- (c) electronic money is not kept on the card payment instrument under letter (b).

(3) A provider who has obtained information on the existence of a minimum balance on a payment account in accordance with subsection (1) may only use the information obtained in connection with the execution of the corresponding card payment transaction.

#### Section 179

A provider who maintains the user's payment account provides to the user at the user's request:

- (a) the name of the provider that has requested the information under Section 178(1), and
- (b) information communicated to another provider under Section 178(1).

#### Section 180

### **Blocking of funds**

(1) In the context of a card payment transaction to which a payment order is given by the payee or the payer through the payee and whose amount is unknown at the time the payer gives the consent thereto,

the payer's provider may block the funds on the payer's account only with the payer's consent. The payer's consent must be given in respect of an exact amount of funds to be blocked.

(2) The payer's provider cancels the blocking of funds under subsection (1) as soon as it becomes aware of the amount of the related card payment transaction, but no later than upon the receipt of the payment order for the related card payment transaction.

## Chapter 5

### **Rectifying an unauthorised or incorrectly executed payment transaction**

#### Subchapter 1

#### **Rectifying an unauthorised payment transaction**

##### Section 181

(1) If an unauthorised payment transaction has been executed, the payer's provider shall immediately, but no later than by the end of the business day following after the payer's provider has find out or payer has notified him the unauthorised payment transaction:

- (a) bring the payment account from which the payment transaction amount was debited to a state in which it would have been if the funds had not been debited, or
- (b) refund the payment transaction amount, the fee paid and the lost interest to the payer if the procedure under letter (a) cannot be used.

(2) If the payment order for an unauthorised payment transaction has been given indirectly, the duty under subsection (1) lies with the provider that maintains the payer's payment account.

(3) The time limit under subsection (1) does not commence as long as the payer's provider has reason to believe that the payer acted fraudulently, provided that the payer's provider has notified the supervisory authority thereof in writing, together with justification.

(4) Subsection (1) does not apply if the loss from an unauthorised payment transaction is borne by the payer.

##### Section 182

(1) The payer bears the loss from unauthorised payment transactions:

- (a) up to an amount of EUR 50 if such loss was caused by the use of a lost or stolen payment instrument or misuse of a payment instrument, or
- (b) in full if the payer has caused such a loss by fraudulent conduct or by breaching any of its duties set out in Section 165 deliberately or by gross negligence.

(2) Subsection 1(a) does not apply if the payer did not act fraudulently and:

- (a) the payer could not have become aware of any loss, theft or misuse of a payment instrument before the unauthorised payment transaction was executed, or
- (b) loss, theft or misuse of a payment instrument was caused by the provider.

(3) Subsection 1 does not apply if the payer did not act fraudulently and:

- (a) the payment instrument became lost after the payer has reported the loss, theft or misuse of the payment instrument,
- (b) the provider failed to ensure that appropriate means are available to enable the user to report loss, theft, misuse or unauthorised use of a payment instrument at any time, or
- (c) the provider has breached the duty to require strong user authentication.

(4) A payer bears the loss of an unauthorised payment transaction with electronic money, the nature of which does not allow the provider to prevent them from being used for any purpose.



Subchapter 2  
**Rectifying an incorrectly executed payment transaction**

Section 183

(1) The payer's provider rectifies an incorrectly executed payment transaction towards the payer, unless the payer's provider proves to the payer and, where applicable, also to the payee's provider that the amount of the incorrectly executed payment transaction has been credited to the account of the payee's provider. In this case, the payee's provider rectifies an incorrectly executed payment transaction towards the payee.

(2) Where a payment order for an executed payment transaction has been given indirectly, a payment transaction that has been executed contrary to the payment order which the payer has transmitted to the provider of an indirect payment order service is also considered to have been executed incorrectly, even if it was executed in accordance with the payment order received. The duty under subsection (1) towards the payer lies in this case with the provider that maintains the user's payment account.

(3) Subsection 1 does not apply in the case of a payment transaction for which the payment order is given by the payee or payer through the payee if the payee's provider has failed to fulfil its duty to transmit the payment order to the payer's provider. The payee's provider shall, at the payee's request, prove to the payee that the payee's provider has fulfilled that duty.

Section 184

(1) If the payer's provider is obliged to rectify an incorrectly executed payment transaction towards the payer and the payer informs the payer's provider that the payer does not insist on the execution of the payment transaction, the payer's provider immediately:

- (a) brings the payment account from which the payment transaction amount was debited to a state in which it would have been if the funds had not been debited, or
- (b) refunds the payment transaction amount, the fee paid and the lost interest to the payer if the procedure under letter (a) cannot be used.

(2) The procedure under subsection (1) applies only in relation to the amount of the incorrectly executed payment transaction not credited to the account of the payee's provider before the payer has notified the payer's provider that the payer does not insist on the execution of the payment transaction, provided that the payer's provider proves this to the payer and, where applicable, the payee's provider.

(3) If the payer's provider is obliged to rectify an incorrectly executed payment transaction towards the payer and the payer does not inform the payer's provider that the payer does not insist on the execution of the payment transaction, the payer's provider ensures immediately that the amount of the incorrectly executed payment transaction is credited to the account of the payee's provider and:

- (a) bring the payer's payment account to a state in which it would have been if the payer's provider had executed the payment transaction correctly, or
- (b) refund the incorrect fee paid and the lost interest to the payer if the procedure under letter (a) cannot be used.

(4) Where the payee's provider is obliged to rectify an incorrectly executed payment transaction towards the payee, the payee's provider immediately:

- (a) brings the payee's payment account to a state in which it would have been if the payee's provider had executed the payment transaction correctly, or
- (b) makes the amount of the incorrectly executed payment transaction, the fee paid and the lost interest available to the payee if the procedure under letter (a) cannot be used.

(5) If the payer's provider that has breached the duty to ensure that a payment transaction amount be credited to the account of the payee's provider within the specified time limit so requests, the payee's provider brings the payee's payment account to a state in which it would have been if the payer's provider had ensured that the payment transaction amount be credited to the account of the payee's provider in time.

## Section 185

### **Tracing of a payment transaction**

(1) If a payment transaction for which the payment order has been given by the payer has been executed incorrectly, the payer's provider shall, at the request of the payer, make the effort that can be fairly requested therefrom, to trace the payment transaction and inform the payer of the result.

(2) If a payment transaction for which the payment order is given by the payee or the payer through the payee has been executed incorrectly, the payee's provider shall, at the request of the payee, make the effort that can be fairly requested therefrom, to trace the payment transaction and inform the payee of the result.

## Section 186

### **Incorrect unique identifier**

(1) A payment transaction has been correctly executed with respect to the payee's identity if it has been executed in accordance with the payee's unique identifier. This also applies if payment details other than those agreed by the provider and the user are included in the payment order.

(2) If the user has stated the wrong unique identifier of the payee, the payer's provider makes efforts that may be fairly required thereof to ensure that the funds from the payment transaction are returned to the payer. If so requested by the payer in writing, the payer's provider discloses to the payer all the information at its disposal which the payer needs to assert the right to the refund of funds against the payee in court or before another competent authority. In doing so, the payee's provider provides the payer's provider with the necessary assistance.

(3) The payer and the payer's provider may agree that the provider is entitled to a fee for the acts under subsection (2).

## Subchapter 3

### **Common provisions**

## Section 187

(1) If a user claims that a payment transaction has not been authorised by this user or that a payment transaction has been executed incorrectly, the provider proves to the user that the payment transaction has been verified, correctly recorded, accounted for and that it was not affected by any technical failure or other defect, otherwise, the payment transaction is deemed to be an unauthorised or incorrectly executed payment transaction.

(2) If a payment order for a payment transaction has been given indirectly, the duty under subsection (1) lies with the provider of an indirect payment order service in respect of the provider that maintains the user's payment account, in so far as it relates to the indirect payment order service, otherwise the provider of an indirect payment order service is deemed to have caused an unauthorised payment transaction or incorrect execution of a payment transaction.

(3) The right arising from an unauthorised or incorrectly executed payment transaction does not exclude the right to compensation for damage or restitution of unjust enrichment. However, what can be obtained from the provider by asserting a right arising from an unauthorised or incorrectly executed payment transaction cannot be claimed on any other legal grounds.

## Section 188

### **Time limit for notification of an unauthorised or incorrectly executed payment transaction**

(1) A payer may assert its right to rectification of an unauthorised or incorrectly executed payment transaction before a court or another competent authority if the payer notifies the provider of the unauthorised or incorrectly executed payment transaction without undue delay after becoming aware of it, but no later than 13 months after the date on which the payment transaction amount was debited from the payer's payment account or otherwise made available by the payer for the execution of the payment transaction.

(2) A payee may assert its right to rectification of an incorrectly executed payment transaction before a court or another competent authority if the payer notifies the provider of the incorrectly executed payment transaction without undue delay after becoming aware of it, but no later than 13 months after the date on which the payment transaction amount was credited to the payee's payment account or otherwise made available to the payee.

(3) If the provider breaches the duty under Section 142, 143, 146 or 147, the deadlines for notification of an unauthorized or incorrectly executed payment transaction are suspended until the provider has fulfilled this duty, even subsequently.

(4) If the user fails to notify of an unauthorised or incorrectly executed payment transaction in time and if the provider invokes late notification, a court or another competent authority shall not grant the user the right to rectification of an unauthorised or incorrectly executed payment transaction.

#### Section 189

##### **Subsequent recourse**

(1) A provider who has fulfilled its duty to rectify an incorrectly executed payment transaction has a right of recourse against the provider or intermediary provider that caused the incorrect execution of the payment transaction.

(2) A provider that maintains the user's payment account and who has fulfilled its duty to rectify an unauthorised or incorrectly executed payment transaction has the right of recourse against the provider of an indirect payment order service that caused the unauthorised payment transaction or the incorrect execution of the payment transaction. The provider of an indirect payment order service provides relevant performance within 30 days from the delivery of the written request.

(3) If a payee's provider or a payee does not use a strong user authentication, the payer that has fulfilled his duty to rectify an unauthorised or incorrectly executed payment transaction has recourse against them.

(4) The payee's provider that, at the request of the payer's provider, has fulfilled its duty under Section 184(5), has a recourse against the payer's provider.

(5) If the provider that maintains the user's payment account assert its right of recourse under subsection (2), the provider is entitled to require the relevant performance directly from the insurance company or from third person with who the provider of an indirect payment order service have entered into an insurance contract or have arranged comparable guarantee under Section (17)(1). The insurance company or third person provide relevant performance within 30 days from the delivery of the written request.

#### Section 190

##### **Release from obligation**

If a circumstance which is unusual, unforeseeable, independent of the will of the obligated party and whose consequences could not have been avoided by the obligated party, has prevented the fulfillment of a duty laid down in this Chapter and in Chapter 4, the obligated party is not liable for the failure to fulfil this duty.

#### Chapter 6

##### **Payment account information service**

#### Section 191

(1) If a user has given its consent to the disclosure of payment account information, the provider that maintains the user's payment account provides the information about the user's payment account to the payment account information service provider to the extent they are accessible to the user via the Internet.

(2) A provider that maintains the user's payment account may not make unjustified differences between requests for payment account information.

(3) A provider that maintains the user's payment account may refuse to provide the payment account information to the payment account information service provider:

- (a) if the provider suspects unauthorised or fraudulent use of the payment instrument or personalised security features of the user,
- (b) if the provider requesting the information is not authorised to provide the payment account information service, or
- (c) if the provider of a payment account information service has failed to identify itself in accordance with Section 192(c).

(4) A provider that intends to reject the provision of information under subsection (3) informs the user of its intention; if this is not possible, the provider informs the user without undue delay after the rejection.

(5) If a provider has rejected to provide payment account information under subsection (3), the provider informs the Czech National Bank thereof without undue delay.

(6) A provider that maintains the user's payment account is not obliged to act in accordance with subsections (1) to (5) unless the account the provider maintains for the user is accessible via the Internet.

## Section 192

A payment account information service provider:

- (a) provides the payment account information service on the basis of the explicit consent given by the user,
- (b) makes the user's personalised security features accessible only to the user and to the person that issued them,
- (c) identifies itself at each request for payment account information to the provider that maintains the user's payment account,
- (d) receives and processes, in connection with the payment account information service, only the payment account information specified by the user,
- (e) does not require sensitive data about the user's payments, and
- (f) in connection with the payment account information service, does not require from the user, retain or process any data about the user or the user's payment account other than those needed to provide the payment account information service.

## Title II

### **Rights and duties in the issuance of electronic money**

#### Section 193

##### **Electronic money issuance contract**

(1) The issuer issues electronic money on the basis of an electronic money issuance contract concluded with the holder. The rights and duties of the issuer and the holder in executing payment transactions relating to the electronic money issued are governed by the provisions on payment service contract.

(2) The issuer issues electronic money against the receipt of funds equivalent to the nominal value of the electronic money issued.

(3) The issuer may not provide to the holder interest or other advantages depending on the length of time for which the holder holds electronic money.

##### **Redeemability of electronic money**

#### Section 194

(1) For the purposes of this Act, redemption means the exchange of electronic money for banknotes, coins, or scriptural funds at the nominal value of the electronic money being redeemed, made by the issuer at the request of the holder. The holder may request redemption from the issuer at any time.

(2) If the holder requests redemption prior to the date of termination of the electronic money issuance contract, the issuer redeems the electronic money to the extent requested by the holder.

(3) If the holder requests a redemption on the day of the termination of the electronic money issuance contract or within 1 year thereafter, the issuer redeems the electronic money in full. If it is not possible to determine the part of the funds received by electronic money institutions or by a small-scale electronic money issuer which is intended for payment transactions involving electronic money, the right to redemption applies to all the funds so received to the extent requested by the holder.

(4) The limitation period for the right of redemption commences on the date of termination of the electronic money issuance contract.

#### Section 195

(1) The issuer informs clearly and comprehensibly the holder of the conditions of the redemption in good time before the holder becomes bound by the electronic money issuance contract.

(2) If the holder has made a proposal for the entering into the electronic money issuance contract before being informed about the conditions of the redemption under subsection (1), the holder may withdraw the proposal until the issuer has accepted it.

(3) If the issuer's right to a fee for carrying out the redemption has been agreed, the issuer is entitled to such a fee only if:

- (a) the holder requests the redemption prior to the date of termination of the electronic money issuance contract or more than one year thereafter, or if the holder terminates the electronic money issuance contract that has been concluded for a definite period, and
- (b) the fee is reasonable and corresponds to the actual costs of the issuer.

#### Section 196

If redemption is required by a person accepting electronic money, Section 194(2) and (3) and Section 195(3) do not apply. In such a case, the conditions of the redemption are governed by an contract between the issuer and the person accepting electronic money.

### PART FIVE SPECIAL PROVISIONS ON CERTAIN PAYMENT ACCOUNTS

#### Title I Comparability of services linked to payment account

#### Section 197 Standardised terms

(1) In the payment account contract, if concluded in writing, in the information provided before the entering into a payment service contract and in written commercial and advertising information addressed to consumers, the provider uses standardised terms to name the services linked to payment account.

(2) The provider may use a different term to name the services linked to payment account only if the provider also clearly indicates their standardised terms. In pre-contractual information on fee and in the overview of fee for services provided, the provider may provide a different term only as a supplement to the standardised terms.

(3) The services linked to payment account covered by the standardised terms, their standardised terms and their characteristics shall be laid down in a secondary regulation so that the standardised terms covers 10 to 20 services linked to payment account which are charged by at least one provider and which are most used by consumers in the Czech Republic or are associated with the highest fees for the consumer.

## Section 198

### **Joint offer of services and goods**

If the provider offers the maintaining of a payment account together with goods or a service other than a service linked to payment account, it informs the users in good time before the entering into the payment account contract whether the payment account contract may be entered into without the purchase of the goods or use of the service and on the charge for the individual goods and services.

## Section 199

### **Pre-contractual information on fee**

(1) The provider provides the user with pre-contractual information about the fee for services linked to payment account covered by the standardised terms in good time before the entering into the payment account contract. Section 133(3) applies *mutatis mutandis*.

(2) The pre-contractual information about the fee must be clear and expressed in the currency in which the payment account is maintained. The parties may agree on the provision of this information in another currency.

(3) The provider provides pre-contractual information on the fee in a separate document, in the form laid down by a directly applicable European Union regulation implementing Article 4 of Directive 2014/92/EC of the European Parliament and of the Council<sup>1)</sup>.

(4) Pre-contractual information on the fee must be legible without any particular difficulty, even when reproduced in black and white, and must include information that they do not constitute the full text of the payment service contract or information provided before the entering into the payment service contract. If the services linked to payment account are provided as a set of services for an aggregate amount, the pre-contractual information on the fee includes information on this aggregate amount, a list of these services and information on the fee for services provided in addition to this set of services.

(5) The provider makes the pre-contractual information on fee gratuitously available on its website and at its business premises.

(6) The provider provides pre-contractual information on the fee gratuitously to any person that requests it.

## Section 200

### **List of standardised terms**

(1) The provider makes gratuitously available on its website and at its business premises a list of the standardised terms of its services linked to payment account covered by the standardised terms duty, including the characteristics of those services.

(2) In addition to standardised terms, the list may also include the designations and characteristics of other services linked to payment account not covered by the standardised terms duty.

(3) The provider provides gratuitously the list of standardised terms to any person that requests it.

## Section 201

### **Overview of fee for services provided**

(1) The provider provides gratuitously the user, by the end of February, an overview of the fee for the services linked to payment account for the previous calendar year. At the request of a user, the provider provides this overview in printed form gratuitously.

(2) The overview of fee for the services provided includes at least:

- (a) unit fee for the service provided and the number of times the services were provided,
- (b) total fee for individual services,
- (c) total fee for all services,
- (d) consumer credit interest rate provided in the form of an overdraft facility,
- (e) total amount of interest paid by the user for a credit provided in the form of an overdraft facility,

- (f) interest rate applied to the funds on the payment account,
- (g) total amount of interest credited to the balance of funds in the payment account, and
- (h) details of the contractual penalty and default interest requested by the provider.

(3) The overview of the fee for the services provided must be clear and expressed in the currency in which the payment account is maintained. The parties may agree on the provision of this overview in another currency.

(4) The provider provides the overview of fee for the services provided in a separate document, in the form laid down by a directly applicable European Union regulation implementing Article 5 of Directive 2014/92/EC of the European Parliament and of the Council.

## Section 202

### **Comparison websites**

(1) The operator of a comparison website ensures:

- (a) equal treatment of providers when publishing the results of the comparison,
- (b) that this comparison website allows a gratuitous comparison of all services linked to payment account covered by the standardised terms duty,
- (c) that this comparison website includes data about the operator's identity,
- (d) that this comparison website includes an indication that its operation and content are subject to supervision,
- (e) that the information on this comparison website is true, certain, comprehensible and up-to-date at least at the end of each calendar quarter,
- (f) that the designation of the services linked to payment account on this comparison website corresponds to the standardised terms provided for by the secondary regulation under Section 197(3),
- (g) that the comparison is made on the basis of clear and objective criteria which are published on that comparison website in advance,
- (h) that this comparison website contains information about the date of the last update of the published information,
- (i) that the results of the comparison of fees contain information on the complete offer of services linked to payment account in the payment services market in the Czech Republic or at least a significant part thereof, and
- (j) that if the results of the comparison of fees do not contain information on the complete offer of services linked to payment account on the payment services market in the Czech Republic, this fact is specified on this comparison website before the comparison results are presented.

(2) The comparison website operator puts in place appropriate procedures for the receipt of complaints concerning incorrect comparison results.

(3) Prior to the start of operation of the comparison website, the comparison website operator notifies the Czech Trade Inspection Authority and the Czech National Bank of the operator's name, the date of commencement of operation and the address of this comparison website. The comparison website operator informs the Czech Trade Inspection Authority and the Czech National Bank without undue delay of its intention to terminate the operation of the comparison website and notify them of the date of the expected end of operation.

(4) The Czech Trade Inspection Authority and the Czech National Bank publish the data they receive pursuant to subsection (3) on their websites.

Title II  
**Switching of payment account**

Chapter 1  
**National switching of payment account**

Section 203  
**Initiation of switching of payment account**

(1) A provider that has entered into a payment account contract with a user and that received the user's request for a switching of payment account (hereinafter the "new provider") shall, through a form, allow the user:

- (a) to identify the provider that maintains the user's payment account and is to perform the activities under Section 204 (hereinafter the "existing provider"),
- (b) to determine which activities, under Section 204(1), should be performed by the existing provider,
- (c) to identify the individual transfers of funds which the new provider should begin to execute pursuant to Section 205(4), which the existing provider should cease to execute pursuant to Section 204(1)(b) and the information on which the existing provider should communicate to the new provider pursuant to Section 204(2), or to determine that these activities are to apply to all such transfers,
- (d) to determine the date on which the existing provider is to carry out the activities pursuant to Section 204(1),
- (e) to determine whether the user wishes to receive information pursuant to Section 204(3),
- (f) to determine whether the new provider should inform the payer or the payee about the switching of the payment account pursuant to Section 205(1) and provide the relevant contact details,
- (g) to determine the date from which the new provider is to initiate transferring funds pursuant to Section 205(4),
- (h) to determine whether the user terminates the payment account contract he has entered into with the current provider, and
- (i) to determine whether the existing provider should transmit to the new provider the information on regular transfers and direct debits pursuant to Section 204(2).

(2) The form referred to in subsection (1) must be drawn up in the official language of the country in which the payment service is offered, or in a language agreed upon by the parties.

(3) The new provider provides the user, at the user's request, with a copy of the completed form referred to in subsection (1).

(4) The new provider shall, on behalf of the user and within 5 business days from the date when the user communicated to the new provider the data under subsection (1), request the existing provider to carry out the activities under Section 204.

(5) The new provider verifies the identity of the user before requesting the existing provider to perform the activities under Section 204 on the user's behalf; if at the provider's request the user fails to provide the required co-operation when proving the user's identity, the user is considered to have never requested a switching of a payment account.

Section 204  
**Duties of the existing provider**

(1) In relation to the payment account, to the extent and as at a date specified by the user, but no earlier than on the eighth business day from the date when the new provider requested the existing provider pursuant to Section 203(4), the existing provider:

- (a) ceases to execute transfers of funds where the user is the payee (hereinafter the "incoming transfer"),
- (b) ceases to execute transfers of funds to which the user has given a standing order, and direct debits where the user is the payer (hereinafter the "outgoing direct debit"), and
- (c) transfers the balance of the funds of which the user is entitled to dispose to a payment account maintained by the new provider.



(2) The existing provider shall, to the extent specified by the user and within 5 business days from the date when the new provider has requested the existing provider pursuant to Section 203(4), transmit to the new provider information on existing standing orders and direct debit authorisations and on regular incoming transfers and outgoing direct debits made over the 13 months prior to the date when the new provider has requested the existing provider pursuant to Section 203(4). The existing provider transmits such information to the extent necessary for the proper execution of the payment transaction.

(3) If so specified by the user pursuant to Section 203(1)(e), the existing provider also provides the information under subsection (2) to the user.

#### Section 205

##### **Duties of the new provider**

(1) Within two business days after receiving the information pursuant to Section 204(2) from the existing provider, in relation to the payment account and to the extent specified by the user, the new provider:

- (a) sends to a payer who, in relation to the user's payment account maintained by the existing provider, executed regular transfers of funds, information on the switching of the user's payment account, together with an indication or a unique identifier the provision of which is required for the proper execution of the payment transaction in relation to the user's payment account maintained by the new provider,
- (b) sends to a payee authorised based on the user's consent to issue a direct debit payment order, the information on the time from which the direct debit can be made in relation to the payment account maintained by the new provider, and on the switching of the user's payment account, together with an indication or a unique identifier the provision of which is required for the proper execution of the payment transaction in relation to the user's payment account maintained by the new provider, and
- (c) invites the user to complete the information needed to inform the payer or the payee under (a) or (b) if the data available to the new provider is insufficient.

(2) If the new provider informs the payer or the payee under subsection (1)(a) or (b), it provides them with a copy of the power of attorney of the user.

(3) If the user does not request the new provider to inform the payer or the payee pursuant to subsection (1)(a) or (b), the new provider provides to the user, at the user's request, specimens of information communications on the switching of the payment account intended for the payer or the payee. The specimen of the information communication contains an indication or a unique identifier the provision of which is required for the proper execution of the payment transaction in relation to the payment account of the user and the information on when it will be possible to make direct debits and transfers of funds in relation to the user's payment account maintained by the new provider.

(4) The new provider initiates to execute transfers of funds to which the user has given a standing order and outgoing direct debits in relation to the account, to the extent and on the date specified by the user, but no earlier than on the third business day from the date on which the new provider received the information pursuant to Section 204(2) from the existing provider.

#### Section 206

##### **Fee related to a switching of payment account**

(1) The provider and the user may agree that the provider is entitled to a fee for the services under Section 203, Section 204(1) or Section 205(1) to (3) if such fee is reasonable and corresponds to the actual costs of the provider.

(2) The existing provider is not entitled to a fee for providing information pursuant to Section 204(2) and (3).

#### Section 207

##### **Information on a switching of payment account**

(1) The provider makes gratuitously available on its website and on a durable medium at its business premises information on:

- (a) the procedure for initiating the switching of the payment account pursuant to Section 203 and the duties of the existing provider and the new provider under Sections 204 and 205,
- (b) the time limits set for the performance of individual activities in the switching of the payment account,
- (c) the fee in accordance with Section 206(1), and
- (d) the method of out-of-court settlement of disputes between the user and the provider.

(2) The provider provides gratuitously the information under subsection (1) to any person that requests it.

(3) By the end of each February, the provider notifies the Czech National Bank how many switching of the payment account the provider has made in the previous calendar year and indicates when it acted as the new provider and when as the existing provider. The provider notifies the Czech National Bank, within the same time limit, of the number of requests for a switching of the payment account filed in the previous calendar year which it refused to execute, and the reasons for the refusal.

#### Section 208

##### **Common provisions**

(1) The provider is not obliged to make a switching of the payment account if the payment account maintained by the existing provider and the payment account maintained by the new provider are maintained in different currencies.

(2) The provisions of this Chapter do not apply to the Czech National Bank.

#### Chapter 2

##### **Cooperation when switching a payment account in relation to another Member State**

#### Section 209

##### **Duties of the provider**

(1) A provider that maintains a user's payment account and that was requested by the user to cooperate in a switching of the payment account in relation to another Member State shall, to the extent and on the day specified by the user:

- (a) provide the user with information on existing standing orders and direct debit authorisations and regular incoming transfers and outgoing direct debits made over the 13 months prior to the date when the user requested the provider to cooperate in the switching of the payment account in relation to another Member State, and
- (b) transfer the balance of the funds of which the user is entitled to dispose to a payment account maintained in another Member State.

(2) Unless otherwise agreed by the parties, the provider performs the activities under subsection (1) no earlier than on the sixth business day following the date on which the user has requested the provider to cooperate in the switching of the payment account in relation to another Member State.

#### Title III

##### **Basic payment account**

#### Section 210

##### **Opening of a basic payment account**

(1) After a consumer who is a person legally resident in a Member State invites a provider to enter into a basic payment account contract and proves that the user has satisfied the conditions laid down by law, the provider shall, without undue delay but no later than within 10 business days:

- (a) submit to the consumer, in the form of a draft contract, the proposal of the terms and conditions constituting the content of the contract on the basic payment account maintained in the Czech currency, or
- (b) reject the proposal of the terms and conditions under (a) in accordance with subsection (3) or (5).

(2) If the provider submits to the consumer the proposal of the terms and conditions, the provider may not change or withdraw the proposal within 5 business days unless circumstances referred to in subsection (3)

or (5) have been revealed during that period. If the consumer communicates to the provider within 5 business days of the date when the proposal of the terms and conditions were submitted to him that he accepts the proposal, the provider is obliged, without undue delay, to enter into a basic payment account contract with the consumer on the basis of the submitted proposal of the terms and conditions. Section 1787 of the Civil Code applies *mutatis mutandis*.

(3) The provider may refuse to submit the proposal of the terms and conditions to the consumer if:

- (a) the consumer is the holder of a payment account maintained in the Czech Republic by a provider that is a bank or a foreign bank operating in the Czech Republic through a branch, and it is possible to use the payment account to use services specified in Section 212(1); this does not apply if the consumer demonstrates that the provider has informed him of the intended cancellation of this payment account, or
- (b) the provider has terminated or withdrawn from basic payment account contract in the preceding 12 months with that consumer in accordance with Section 215, or has withdrawn from another payment service contract concluded with that consumer for a serious breach of contract.

(4) The provider may require a consumer to submit a statutory declaration to prove that the consumer is not the owner of the payment account under subsection 3(a).

(5) The consumer refuses to submit the proposal of the terms and conditions if, by entering into the basic payment account contract, the provider would breach the provisions of the law governing the measures against money laundering and financing of terrorism or another legal regulation.

(6) If the provider refuses to submit a proposal of the terms and conditions or amends or withdraws the proposal, the provider shall, without undue delay, notify the consumer in writing of the reasons for the refusal, amendment or withdrawal, together with information on the method of out-of-court settlement of disputes between the consumer and the provider, information on the possibility for the holder to file a complaint with the supervisory authority and information on the possibility of filing a complaint directly with the provider. The provider does not communicate to the consumer the reasons for the refusal, amendment or withdrawal if, by doing so, the provider would breach the provisions of the law governing the measures against money laundering and financing of terrorism or another legal regulation.

#### Section 211

##### **Linked offer**

The provider may not link the entering into a basic payment account contract to the purchase of a service not provided under Section 212(1).

#### Section 212

##### **Services provided**

(1) The provider provides the basic payment account holder with at least the following services:

- (a) the opening and operation of a basic payment account,
- (b) the service enabling cash to be placed on a basic payment account,
- (c) the service enabling the withdrawal of cash from the basic payment account,
- (d) credit transfers, including credit transfers to which the user has given a standing order,
- (e) outgoing direct debit,
- (f) a transfer of funds to which a payment order is initiated via a debit payment card, and
- (g) issuance and administration of a debit payment card and the possibility to control the basic payment account online.

(2) The provider provides the services under subsection (1) to the extent and in the manner in which it provides them to users for whom it maintains a payment account other than a basic payment account.

#### Section 213

##### **Fee**

For the services under Section 212(1), the provider shall be entitled to fee equivalent to no more than the usual price under the Prices Act.

Section 214  
**Contractual penalty**

Provisions on contractual penalty for breach of duties under the basic payment account contract, with the exception of contractual penalty agreed in relation to overruling and overdraft facilities, are disregarded.

Section 215  
**Closure of a basic payment account**

(1) The provider may terminate the basic payment account contract only if the basic payment account holder:

- (a) does not make any payment transaction through this payment account for more than 24 months,
- (b) is not a person legally resident in a Member State,
- (c) is the holder of another payment account maintained in the Czech Republic by a bank or foreign bank operating in the Czech Republic through a branch, through which the services under Section 212(1) may be used, or
- (d) rejects the proposal to amend the basic payment account contract without having a fair reason for doing so.

(2) The provider may also terminate the basic payment account contract if it no longer satisfies the conditions of Section 217.

(3) The provider may withdraw from the basic payment account contract only if the basic payment account holder:

- (a) uses a basic payment account in breach of the law governing measures against money laundering and the financing of terrorism or in breach of another legal regulation,
- (b) manages to open the basic payment account by deliberately providing false or grossly distorted data, or
- (c) substantially breaches the basic payment account contract.

(4) The provider may also withdraw from the basic payment account contract if the existence of the basic payment account contract is in conflict with another legal regulation.

(5) It is possible to withdraw from the basic payment account contract on the grounds under subsection (1) or terminate the basic payment account contract on the grounds under subsection (3)(b) or (c) no later than 3 months from the date on which the provider became aware of such grounds.

(6) The provider shall, together with the termination of the basic payment account contract or with the notice of withdrawal from the basic payment account contract, communicate in writing to the basic payment account holder the reason for termination or withdrawal, together with information on the method of out-of-court settlement of disputes between the basic payment account holder and its provider, information on the possibility for the holder to file a complaint with the supervisory authority and information on the possibility of filing a complaint directly with the provider. The provider does not give the basic payment account holder the reason for termination or withdrawal if this is in breach of a other regulation.

Section 216  
**Information on a basic payment account**

(1) The provider makes gratuitously available on its website and at its business premises information on:

- (a) the procedure for the opening of a basic payment account,
- (b) the possibility to enter into a basic payment account contract without the purchase of additional services in accordance with Section 211,
- (c) basic payment account it offers,
- (d) fee under Section 213, and
- (e) the method of out-of-court settlement of disputes between the basic payment account holder and the provider.

(2) The provider provides gratuitously the information under subsection (1) to any person that requests it.

(3) The provider notifies the Czech National Bank by the end of each February of the number of basic payment account contracts concluded in the previous calendar year. Within the same period, the provider

notifies the Czech National Bank of the number of times in the previous calendar year it refused to present or withdraw a proposal of the terms and conditions in accordance with Section 210(2), (3) or (5), and the reasons for such refusals or withdrawals.

#### Section 217

#### **Common provision**

The provisions of this Title apply to a provider that is a bank or foreign bank operating in the Czech Republic through a branch and operating payment accounts for consumers.

#### Title IV

#### **General provisions**

#### Section 218

If the provider has a claim towards the user after the termination of the payment account contract, the provider shall, without undue delay after the termination of the payment account contract, inform the user thereof.

#### Section 219

When entering into a payment account contract, the provider may not discriminate against a user who is a person legally resident in a Member State, even on the grounds of his or her nationality or place of residence.

#### Section 220

The provisions of this Part apply to a payment account held by a consumer from which it is at least possible to withdraw cash, to transfer funds, including making a payment, to third parties and to which it is possible to credit funds, including the crediting of an incoming transfer from third parties.

### PART SIX

### **SECURITY IN THE FIELD OF PAYMENTS**

#### Section 221

#### **Reporting of security and operational incidents**

(1) A person authorized to provide payment services notifies the supervisory authority of the home Member State of a serious security or operational incident in the payments without undue delay upon its discovery.

(2) A person authorised to provide payment services informs the user of the occurrence of a serious security or operational incident in the payments if this may result in damage to the user's property. The person also informs the user of how to intervene to avert the property damage.

(3) The person authorised to provide payment services informs the user if the reasons for the measure under subsection (2) no longer exist.

(4) The Czech National Bank informs the European Banking Authority and the European Central Bank of the notification it has received pursuant to subsection (1).

(5) The notification under subsection (1) may only be made electronically. The details of the notification requirements, its formats, other technical requirements and manner of transmission are laid down in a secondary regulation.

## Section 222

### **Reporting of security and operational risks**

(1) The person authorised to provide payment services informs the Czech National Bank of the security and operational risks to which it is exposed in connection with the provision of payment services, and of the frauds it has detected in the payments.

(2) The Czech National Bank informs the European Banking Authority and the European Central Bank in a summary form of the frauds in the payments of which it was informed by the persons authorised to provide payment services in accordance with subsection (1).

(3) The scope, form, period and manner of provision of information pursuant to subsection (1) shall be determined by a secondary regulation.

### **Strong user authentication**

## Section 223

(1) A person authorised to provide payment services uses strong user authentication if the payer:

- (a) accesses its payment account via the Internet,
- (b) gives a payment order for an electronic payment transaction,
- (c) performs another operation that is associated with the risk of fraud in the payments, or the misuse of payment instrument or payment account information, or
- (d) requests payment account information through a payment account information service provider.

(2) If a user gives a payment order via the Internet or via an electronic device that can be used for remote communication, or if a user gives a payment order indirectly, the person authorised to provide payment services uses a strong user authentication that includes one-off elements linking the payment transaction with the exact amount and the specific payee.

(3) Strong authentication of a user for the purposes of this Act means verification based on the use of at least 2 of the following elements:

- (a) data that is known only to the user,
- (b) a thing which the user has under his control,
- (c) user's biometric data.

(4) The elements referred to in subsection (3) must be independent of each other and the breaking of one element must not affect the reliability of the other elements. The authentication procedure must prevent misuse of the elements that are used for authentication.

(5) The method of strong user authentication referred to in subsections (1) and (2) is provided for by the directly applicable European Union regulation implementing Article 98 of Directive 2015/2366 of the European Parliament and of the Council.

(6) Subsections (1) and (2) do not apply to cases laid down under the directly applicable European Union regulation implementing Article 98 of Directive 2015/2366 of the European Parliament and of the Council.

## Section 224

A person authorised to provide payment services that maintains a user's payment account enables the person authorized to provide an indirect payment order service or a payment account information service to rely on the procedures that the person authorised to provide payment services has established pursuant to Section 223(1) to (3).

## Section 225

### **Relation to a directly applicable European Union regulation**

The person authorised to provide payment services provides payment services communicates with users and persons authorised to provide payment services in accordance with directly applicable European Union

regulation supplementing Directive (EU) 2015/2366 of the European Parliament and of the Council and regulates common and secure open standards of communication<sup>8</sup>.

## PART SEVEN OFFENCES

### Section 226

#### **Offences committed by a payment institution and a small-scale payment service provider**

(1) A payment institution commits an offence by:

- (a) not issuing funds to users in violation of Section 13(1),
- (b) failing to comply with any of the capital requirements pursuant to Section 16,
- (c) having no insurance contract or a comparable guarantee pursuant to Section 17,
- (d) not applying the management and control system pursuant to Section 20,
- (e) providing payment services through an authorized agent in violation of Section 25(1),
- (f) entrusting the performance of significant operational activity relating to the provision of payment services to another person in violation of Section 29(2), or
- (g) failing to comply with the notification duty pursuant to Section 11(1), Section 28(1), Section 29(1), Section 34(1), Section 37 or Section 38(1).

(2) A small-scale payment service provider commits an offence by:

- (a) failing to notify the change of data pursuant to Section 61(1),
- (b) not issuing funds to users in violation of Section 63(1),
- (c) failing to comply with any of the capital requirements under the Consumer Credit Act in violation of Section 65(1), second sentence, or
- (d) in breach of Section 65(2), providing the user with interest or another advantage dependent on the period for which the funds are entrusted to the provider to execute a payment transaction.

(3) A payment institution or a small-scale payment service provider commits an offence by:

- (a) failing to handle funds that have been entrusted to it to execute a payment transaction pursuant to Section 22,
- (b) failing to comply with the information duty pursuant to Section 30, or
- (c) failing to retain documents or records pursuant to Section 31.

(4) An offence is punishable by a fine of up to:

- (a) CZK 5,000,000 in the case of an offence under subsection (1)(e) or (g), subsection (2)(a), (c) or (d), or subsection 3(b) or (c),
- (b) CZK 10,000,000 in the case of an offence under subsection (1)(b), (c), (d) or (f), or
- (c) CZK 20,000,000 in the case of an offence under subsection (1)(a), subsection (2)(b), or subsection 3(a).

### Section 227

#### **Offences committed by a payment account information administrator**

(1) A payment account information administrator commits an offence by:

- (a) having no insurance contract or a comparable guarantee pursuant to Section 46(1),
- (b) not applying the management and control system pursuant to Section 48,
- (c) failing to comply with the information duty pursuant to Section 30,
- (d) failing to retain documents and records pursuant to Section 31, or
- (e) failing to comply with the notification duty pursuant to Section 44(1), Section 52(1), Section 54 or Section 55(1).

(2) An offence is punishable by a fine of up to:

- (a) CZK 5,000,000 in the case of an offence under subsection (1)(c) to (e), or
- (b) CZK 10,000,000 in the case of an offence under subsection (1)(a) or (b).

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<sup>8</sup> Article 28 to 36 of Commission Delegated Regulation (EU) 2018/389 of 27 November 2017 supplementing Directive (EU) 2015/2366 of the European Parliament and of the Council with regard to regulatory technical standards for strong customer authentication and common and secure open standards of communication.

## Section 228

### **Offences committed by an electronic money institution and a small-scale electronic money issuer**

(1) An electronic money institution commits an offence by:

- (a) not issuing funds to holders or users in violation of Section 72(1),
- (b) failing to comply with any of the capital requirements pursuant to Section 74,
- (c) having no insurance contract or a comparable guarantee pursuant to Section 75,
- (d) not applying the management and control system pursuant to Section 78,
- (e) issuing, in violation of Section 84(1), electronic money through another person that acts in its name when issuing electronic money,
- (f) providing payment services through an authorized agent in violation of Section 84(2),
- (g) entrusting the performance of significant operational activity relating to the issuance of electronic money or provision of payment services to another person in violation of Section 88(2), or
- (h) failing to comply with the notification duty pursuant to Section 70(1), Section 87(1), Section 88(1), Section 95 or Section 96(1).

(2) A small-scale electronic money issuer commits an offence by:

- (a) failing to notify the change of data pursuant to Section 102(1),
- (b) not issuing funds to holders or users in violation of Section 104(1),
- (c) failing to comply with any of the capital requirements under the Consumer Credit Act in violation of Section 106(1), second sentence,
- (d) in breach of Section 106(2), providing the user with interest or another advantage dependent on the period for which the funds are entrusted to the provider to execute a payment transaction, or
- (e) issuing, in violation of Section 106(3), electronic money through another person that acts in its name when issuing electronic money.

(3) An electronic money institution or a small-scale electronic money issuer commits an offence by:

- (a) failing to handle funds against which electronic money has been issued or which have been entrusted to it to execute a payment transaction pursuant to Section 80,
- (b) failing to comply with the information duty pursuant to Section 89, or
- (c) failing to retain documents or records pursuant to Section 90.

(4) An offence is punishable by a fine of up to:

- (a) CZK 5,000,000 in the case of an offence under subsection (1)(f) or (h), subsection (2)(a), (c) or (d), or subsection 3(b) or (c),
- (b) CZK 10,000,000 in the case of an offence under subsection (1)(b) to (e) or (g) or subsection (2)(e), or
- (c) CZK 20,000,000 in the case of an offence under subsection (1)(a), subsection (2)(b), or subsection 3(a).

## Section 229

### **Offences committed by an operator of and a participant in a payment system**

(1) An operator of or a participant in a payment system commits an offence by making the access of legal persons authorised to provide payment services conditional on meeting any of the requirements specified in Section 107(1)(a) or (b), or imposing any of the requirements set out in Section 107(2)(a), (b) or (c) on a provider or user of a payment system other than a payment system which it itself operates or in which it participates.

(2) An offence under subsection (1) is punishable by a fine of up to CZK 20,000,000.

## Section 230

### **Offences committed by an operator of and a participant in a payment system with settlement finality**

(1) An operator of a payment system with settlement finality commits an offence by:

- (a) publishing, in violation of Section 114(1), a change in the system rules without the consent of the Czech National Bank,
- (b) failing to notify the change of data pursuant to Section 119(3), or
- (c) failing to comply with the information duty pursuant to Section 122(1).



(2) An operator of a payment system with settlement finality with its registered office in the Czech Republic commits an offence by:

- (f) operating the payment system with settlement finality in violation of Section 117(2),
- (b) failing to comply with the notification duty pursuant to Section 121, or
- (c) failing to comply with the information duty pursuant to Section 122(3).

(3) A participant in a payment system with settlement finality commits an offence by:

- (a) failing to enter into a contract on transmitting payment orders through a payment system with settlement finality in violation of Section 109(1),
- (b) failing to disclose the reasons for refusal to enter into the contract pursuant to Section 109(2), or
- (c) failing to comply with the information duty pursuant to Section 122(2) or Section 123.

(4) A participant in a foreign payment system with settlement finality with its registered office in the Czech Republic commits an offence by breaching the information duty pursuant to Section 124.

(5) An offence is punishable by a fine of up to:

- (a) CZK 5,000,000 in the case of an offence under subsection (1)(b) or (c), subsection (2)(b) or (c), subsection (3)(b) or (c) or subsection 4,
- (b) CZK 10,000,000 in the case of an offence under subsection (2)(a) or subsection (3)(a), or
- (c) CZK 20,000,000 in the case of an offence under subsection (1)(a).

#### Section 231

#### **Offences committed by a provider**

(1) A provider commits an offence by:

- (a) breaching the information duty pursuant to Sections 132, 133, 140, 141, 144, 149, 150, 151, 152(2), 198, 199, 200, 201, 207, 210(6), 215(6), 216 or 218,
- (b) breaching the duties concerning an amendment to a framework contract under Section 152(1) or (5),
- (c) terminating a framework contract concluded for an indefinite period in violation of Section 154,
- (d) blocking payment instruments in violation of Section 164,
- (e) breaching the duties concerning a rejection of a payment order under Section 159(1) or (2),
- (f) failing to meet the time limits for the execution of payment transactions under Sections 169 to 173,
- (g) not making funds available to a payee in violation of Section 175(2),
- (h) failing to use standardised terms pursuant to Section 197(1),
- (i) breaching the duties concerning a switching of payment account under Sections 203, 204 or 205,
- (j) requiring a fee for a switching of payment account in violation of Section 206,
- (k) failing to cooperate in switching of payment account pursuant to Section 209,
- (l) breaching the duty to submit to the consumer a proposal of terms and conditions or to conclude with the consumer the basic payment account contract pursuant to Section 210(1) or (2),
- (m) making, in violation of Section 211, the entering into a basic payment account contract conditional on the purchase of a service not provided under Section 212(1),
- (n) failing to provide the holder of a basic payment account the services under Section 212(1) or (2),
- (o) requiring a fee for services provided as part of the basic payment account in violation of Section 213,
- (p) requiring a contractual penalty in violation of Section 214,
- (q) discriminating, in violation of Section 219, against users when entering into a payment account contract,
- (r) not providing a user, in violation of Section 258, a response to his complaint or reclamation,
- (s) breaching the duty or prohibition concerning indirect payment order service under Sections 161 or 162,
- (t) breaching the duty or prohibition concerning confirmation of the balance of funds under Sections 178 or 179, or
- (u) breaching the duty or prohibition concerning payment account information service under Sections 191 or 192.

(2) A payer's provider commits an offence by breaching the information duties pursuant to Section 142(1), 145 or 146.

(3) A payee's provider commits an offence by breaching the information duties pursuant to Section 143(1) or 147.

(4) A provider that issues a payment instrument commits an offence by breaching the duties under Section 166(1).

(5) A payer's provider, payee's provider or a person these providers used to meet their duties in executing a payment transaction commits an offence by performing deductions from the amount of the payment transaction in violation of Section 177(1).

(6) An offence is punishable by a fine of up to:

- (a) CZK 500,000 in the case of an offence under subsection (1)(r),
- (b) CZK 1,000,000 in the case of an offence under subsection (1)(a), (h) or (k) or subsections (2) or (3),
- (c) CZK 10,000,000 in the case of an offence under subsection (1)(b), (c), (i), (j), (l) to (q) or (s) to (u), or
- (d) CZK 20,000,000 in the case of an offence under subsection (1)(d), (e), (f) or (g) or subsections (4) or (5).

#### Section 232

##### **Offences committed by an issuer**

(1) An issuer commits an offence by:

- (a) issuing electronic money in violation of Section 193(2),
- (b) providing a holder with interest or other benefits in violation of Section 193(3),
- (c) failing to perform redemption pursuant to Section 194(2) or (3), or
- (d) failing to comply with the information duty pursuant to Section 195(1).

(2) An offence under subsection (1) is punishable by a fine of up to CZK 1,000,000.

#### Section 233

##### **Offences of a persons authorised to provide payment services**

(1) A person authorised to provide payment services commits an offence by:

- (a) failing to comply with the notification duty pursuant to Section 221(1),
- (b) failing to comply with the information duty pursuant to Section 221(2) or (3) or Section 222(1), or
- (c) failing to communicate with users and persons authorised to provide payment services pursuant to Section 225.

(2) An offence under subsection (1) is punishable by a fine of up to CZK 1,000,000.

##### **Other offences**

#### Section 234

(1) A person commits an offence by:

- (a) providing payment services or issues electronic money without being authorised to do so,
- (b) giving incorrect data or concealing any fact in an application for a licence under this Act,
- (c) failing to comply with the notification duty pursuant to Section 18 or Section 76, or
- (d) failing to provide the Czech National Bank with the requested information or explanation pursuant to Section 237(3).

(2) A person subject to the supervision of the Czech National Bank commits an offence by:

- (a) failing to provide the Czech National Bank in the course of its supervision with the necessary information or requested explanation pursuant to Section 237(3).
- (b) failing to take within the set time limit any of the remedial measures pursuant to Section 242(b) to (i), or
- (c) failing to comply with the information duty pursuant to Section 242(2).

(3) A comparison website operator commits an offence by:

- (a) failing to ensure compliance with the requirements of the comparison website pursuant to Article 202(1),
- (b) failing to establish procedures for the receipt of complaints under Article 202(2), or
- (c) failing to comply with the notification duty pursuant to Section 202(3).

(4) An offence is punishable by a fine of up to:

- (a) CZK 300,000 in the case of an offence under subsection (3),
- (b) CZK 5,000,000 in the case of an offence under subsection (1)(c) or (d) or subsection (2)(c),

- (c) CZK 10,000,000 in the case of an offence under subsection (1)(b) or subsection (2)(a) or (b), or
- (d) CZK 20,000,000 in the case of an offence under subsection (1)(a).

#### Section 235

(1) A provider commits an offence by:

- (a) failing to meet any of the duties or violating any of the prohibitions under Article 3(1) of Regulation (EC) No 924/2009 of the European Parliament and of the Council<sup>2)</sup>,
- (b) failing to meet any of the duties or violating any of the prohibitions under Article 4(1) or Article 7 of Regulation (EC) No 924/2009 of the European Parliament and of the Council,
- (c) failing to meet any of the duties or violating any of the prohibitions under Article 3(1) or (2), Article 4(1), Article 5(1), (2), (3), (6), (7) or (8) or Article 8 of Regulation (EC) No 260/2012 of the European Parliament and of the Council,
- (d) failing to meet any of the duties or violating any of the prohibitions under Article 8(2), second sentence, Article 8(6), first sentence, Article 9, Article 10(1) or (5), Article 11 or Article 12(1) of Regulation (EC) No 2015/751 of the European Parliament and of the Council<sup>2)</sup>, or
- (e) failing to meet any of the duties or violating any of the prohibitions under Article 3(1) or Article 4 of Regulation (EU) No 2015/751 of the European Parliament and of the Council,

(2) A retail payment system operator commits an offence by failing to meet any of the duties or breaching one of the prohibitions under the first or second sentence of Article 4(2) of Regulation (EU) No 260/2012 of the European Parliament and of the Council.

(3) A participant in a retail payment system without an operator commits an offence by failing to meet any of the duties or breaching one of the prohibitions under the first or second sentence of Article 4(2) of Regulation (EU) No 260/2012 of the European Parliament and of the Council.

(4) A payment card scheme operator having its registered office in the Czech Republic commits an offence by failing to meet any of its duties or by breaching any of the prohibitions under Article 6, Article 7(1), (3), (4) or (5), Article 8(1), (3), (4) or (5), Article 8(6) first sentence, Article 10(1) or Article 11 of Regulation (EU) 2015/751 of the European Parliament and of the Council.

(5) A processor having its registered office in the Czech Republic commits an offence by failing to meet any of its duties or by breaching any of the prohibitions under Article 7(1) or (5), or Article 8(6) first sentence of Regulation (EU) 2015/751 of the European Parliament and of the Council.

(6) A payee commits an offence by failing to meet any of its duties or by breaching any of the prohibitions under Article 8(6), second sentence, or (5), or Article 10(4) of Regulation (EU) 2015/751 of the European Parliament and of the Council.

(7) A person commits an offence by failing to meet any of the duties or violating any of the prohibitions under Article 9 of Regulation (EC) No 260/2012 of the European Parliament and of the Council.

(8) An offence is punishable by a fine of up to:

- (a) CZK 100,000 in the case of an offence under subsection (6) or (7),
- (b) CZK 1,000,000 in the case of an offence under subsection (1)(b) or (c), subsections (2) or (3),
- (c) CZK 2,000,000 in the case of an offence under subsection (1)(d), subsections (4) or (5), or
- (d) CZK 5,000,000 in the case of an offence under subsection (1)(a) or (e).

#### Section 236

##### **Common provisions**

(1) The offences under this Act are considered by:

- (a) Czech Trade Inspection Authority, in the case of offences under Section 234(3), with the exception of offences committed by the persons referred to in Section 5 when carrying out the activities under a licence of the Czech National Bank, and the offences under Section 235(6) and (7),
- (b) The Office for the Protection of Competition, in the case of offences under Section 235(4) and (5),
- (c) The Ministry of Finance, in the case of the offence under Section 231(1)(o),
- (d) the Czech National Bank, in the case of other offences.

(2) The Protection of Competition Act applies to offence proceedings conducted by the Office for the Protection of Competition and the supervision procedure with the necessary modifications.

(3) The Czech National Bank shall, without undue delay, publish its final and enforceable decision on the administrative penalty on its website.

(4) The Czech National Bank publishes the decision pursuant to subsection (3) without providing data identifying the person found guilty of an offence if the publication:

- (a) jeopardises the stability of the financial market,
- (b) jeopardises ongoing criminal proceedings, or
- (c) causes unreasonable injury to the person who has been found guilty of an offence.

(5) The decision under subsection (3) shall be published at least for 5 years. The personal data of a person found guilty of an offence shall be published only for the time strictly necessary in accordance with directly applicable European Union regulation governing the protection of personal data<sup>9)</sup> and the law governing processing of personal data.

## PART EIGHT SUPERVISION AND CONTROL

### Section 237

(1) The Czech National Bank supervises compliance:

- (a) of a payment institution, a payment account information administrator, a small-scale payment service provider, an electronic money institution and a small-scale electronic money issuer as set out in this Act or any other legal regulation governing the procedure in carrying out the activities that these persons are authorised to exercise under this Act,
- (b) of an operator of a payment system with settlement finality with its registered office in the Czech Republic and of a participant in a payment system with settlement finality established by this Act or another legal regulation governing the procedure for the operation of a payment system with settlement finality, and
- (c) of a provider and issuer provided for by this Act, with the exception of the duty under Section 213 or similar provisions of the legal regulations of other Member States governing a payment service contract or electronic money issuance contract, or a directly applicable European Union regulation governing cross-border payments in the European Union<sup>2)</sup>, a directly applicable European Union regulation governing the requirements for credit transfers and direct debits in euro <sup>2)</sup> or a directly applicable European Union regulation governing interchange fees for card-based payment transactions<sup>2)</sup>.

(2) Supervision of compliance with the duties under subsection 1(c) is exercised by the Czech National Bank if the obligations relate to an activity which a provider or issuer with its registered office:

- (a) in the Czech Republic performs in the Czech Republic,
- (b) abroad performs in the Czech Republic through a branch or another permanent presence, or
- (c) in the Czech Republic performs in a different Member State by means other than through a branch or other than through another permanent presence.

(3) Persons subject to the oversight of the Czech National Bank are obliged to provide the Czech National Bank with the required information and explanations in the course of supervision; this applies *mutatis mutandis* an operator of a payment system with settlement finality with its registered office in another Member State when assessing the performance of the conditions of its activities. The Czech National Bank is entitled to request from any person information and explanation necessary to clarify the facts indicating the unauthorised provision of payment services or the unauthorised issuance of electronic money, and such a person is obliged to provide the information and explanation; the provisions of the Code of Administrative Procedure governing the summoning, bringing and examination of witnesses apply *mutatis mutandis*.

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<sup>9)</sup> 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, and repealing Directive 95/46/EC (General Data Protection Regulation).

(4) The Ministry of Finance carries out a price control of compliance with the duty of the provider under Section 213 in accordance with the procedure under the Prices Act.

#### Section 238

(1) In the in the Czech Republic, the competent authority under the directly applicable EU regulation governing cross-border payments in the European Union<sup>2)</sup> is the Czech National Bank.

(2) The competent authority under the directly applicable European Union regulation governing the requirements for credit transfers and direct debits in euro<sup>2)</sup> is the Czech Trade Inspection Authority for the purpose of ensuring the compliance with the duties of the payer and the payee, and the Czech National Bank for the purpose of ensuring compliance with the duties of other persons.

(3) The competent authority under the directly applicable European Union rule governing interchange fees for card-based payment transactions is:

- (a) the Czech National Bank for the purpose of ensuring compliance with the duties of the provider,
- (b) the Czech Trade Inspection Authority for the purpose of ensuring compliance with the duties of the beneficiary,
- (c) the Office for the Protection of Competition for the purpose of ensuring compliance with the duties of the payment card scheme operator and processor with a registered office in the Czech Republic.

#### Section 239

(1) The duty of confidentiality in the exercise of supervision pursuant to this Act is governed *mutatis mutandis* by the provisions of the law governing the activities of banks on confidentiality in the exercise of banking supervision.

(2) The Czech National Bank cooperates with the authorities of other Member States exercising supervision over persons authorised to provide payment services or issue electronic money, with the European Banking Authority, the central banks of other Member States and, where relevant, with the European Central Bank. In particular, the Czech National Bank informs the supervisory authority of the host Member State and the supervisory authorities of the other Member States concerned of the measures it has taken on the basis of the authority's information on the violation of legal regulations by a person subject to supervision by the Czech National Bank.

(3) The Czech National Bank transmits to the authorities of other Member States supervising foreign payment institutions, foreign payment account information administrators or foreign electronic money institutions all relevant information, in particular information that the persons subject to the supervision of these authorities have breached a duty concerning the performance of these activities which these persons are entitled to perform under this Act.

(4) If the supervisory authority of another Member State provides information to the Czech National Bank on the condition that the information may not be further disclosed without its prior consent, the Czech National Bank may transmit this information to another supervisory authority solely for the purposes for which the information was provided. The Czech National Bank provides this information to other authorities or persons only with the explicit consent of the supervisory authority that provided the information and solely for the purposes established by that authority.

(5) The Czech National Bank may refuse the request for cooperation or the transmission of information if:

- (a) such provision could adversely affect the sovereignty or security of the Czech Republic or public order in the Czech Republic, or
- (b) the application concerns the same matter and the same person in respect of whom legal proceedings have been initiated in the Czech Republic or which have been the subject of a final and enforceable judgment.

(6) When refusing an application pursuant to subsection (5), the Czech National Bank informs the requesting authority of the reasons for the refusal.

## Section 240

If there is a dispute settlement process between the Czech National Bank and the supervisory authority of another Member State pursuant to a directly applicable European Union regulation governing the establishment of a European Supervisory Authority (European Banking Authority)<sup>7)</sup> (hereinafter the “European Banking Authority”) concerning the performance of the activity of a payment institution or a foreign payment institution in a host Member State or cooperation between such authorities in the field of supervision, the Czech National Bank shall not make a decision on the settlement of that dispute until the dispute is settled.

## Section 241

### **On-the-spot check**

(1) The Czech National Bank may carry out an on-the-spot check of the person subject to its supervision, its authorised agent or any other person through which that person carries out activities relating to the activities which it is entitled to perform under this Act.

(2) The Czech National Bank may carry out an on-the-spot check in another Member State of a person subject to its supervision, its authorised agent or any other person through which that person carries out activities relating to the activities which it is entitled to perform under this Act if it notifies the supervisory authority of that other Member State. At the request of the Czech National Bank, such on-the-spot check may also be carried out by that supervisory authority of another Member State.

(3) The supervisory authority of another Member State may carry out an on-the-spot check in the Czech Republic of a person subject to its supervision, its authorised agent or any other person through which that person carries out activities relating to the activities which it is entitled to perform under this Act if it notifies the Czech National Bank. At the request of the supervisory authority of another Member State, the Czech National Bank may carry out this on-the-spot check.

(4) If a person is reasonably suspected of unauthorised provision of payment services or unauthorised issuance of electronic money, the Czech National Bank may carry out an on-the-spot check to the extent necessary to establish the facts concerning the activity that gave rise to the suspicion.

## Section 242

### **Remedial measures**

(1) If a person subject to the supervision of the Czech National Bank violates the duty laid down in this Act or other regulation governing the procedure in carrying out the activities that the person may carry out pursuant to this Act, the Czech National Bank may, depending on the seriousness and the consequences of the deficiency identified, oblige the person to:

- (a) provide for a remedy within the prescribed time limit,
- (b) not carry out all or some of the activities which it is authorised to carry out under this Act until it has provided for a remedy,
- (c) have an extraordinary audit conducted at its own expense,
- (d) exchange the auditor,
- (e) exchange its director,
- (f) not carry out the activities which it is authorised to carry out under this Act through an authorised agent,
- (g) not carry out the activities which it is authorised to carry out under this Act through a branch in a host Member State,
- (h) restrict the performance of certain operating activities relating to the activities which it is authorised to carry out under this Act through another person or not to carry out such activities through another person, or
- (i) dispose of the funds which were entrusted to it to execute a payment transaction or against the receipt of which electronic money has been issued only in the manner prescribed,

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<sup>7)</sup> Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, as amended.

(2) A person subject to the supervision of the Czech National Bank on which the Czech National Bank has imposed remedial measures pursuant to subsection (1) informs the Czech National Bank without undue delay of the removal of the deficiency and on the manner it has provided for a remedy.

#### Section 243

### **Remedial measures imposed on a foreign person in the provision of payment services in the Czech Republic**

(1) If a foreign payment institution, a foreign payment account information administrator or a foreign electronic money institution having its registered office in another Member State and providing payment services in the Czech Republic through an authorised agent or branch seriously threaten the interests of users in the Czech Republic and this threat cannot be avoided in accordance with Section 239(3), the Czech National Bank may, in respect of the activities carried out in the Czech Republic through a branch or an authorised agent, oblige this person to:

- (a) provide for a remedy within the prescribed time limit,
- (b) not to carry out all or some of the payment services until it has provided for a remedy,
- (c) not perform such payment services through an authorised agent,
- (d) restrict the performance of certain operating activities through another person or not to carry out such activities through another person, or
- (e) dispose of the funds which were entrusted to it to execute a payment transaction or against the receipt of which electronic money has been issued only in the manner prescribed,

(2) If the Czech National Bank intends to impose the measures referred to in subsection (1), it informs the supervisory authority of the home Member State, the supervisory authorities of the other Member States concerned, the European Banking Authority and the European Commission; if this is not possible, the Czech National Bank informs the said authorities without undue delay after the imposition of this measure. The Czech National Bank communicates at the same time to the said authorities the reasons for imposing the measures referred to in subsection (1).

(3) The measures imposed pursuant to subsection (1) must be commensurate with the nature of the threat, they must not disadvantage users in other Member States and must be directed towards protecting the interests of users in the Czech Republic.

(4) The Czech National Bank repeals the measure referred to in subsection (1) if the conditions for its imposition cease to exist.

(5) A foreign payment institution, a foreign payment account information administrator or a foreign electronic money institution having its registered office in another Member State and on whom the Czech National Bank has imposed a remedial measure pursuant to subsection (1) inform the Czech National Bank without undue delay of the removal of the deficiency and the manner remedy has been provided for.

#### Section 244

### **Withdrawal of a licence**

(1) The Czech National Bank withdraws a licence granted pursuant to this Act if:

- (a) a person that has been granted the licence so requests, or
- (b) a person that has been granted the licence has repeatedly or seriously breached the duty laid down in this Act or in any other legal regulation governing the procedure in carrying out activities that may be carried out on the basis of the licence granted.

(2) The Czech National Bank may withdraw a licence granted pursuant to this Act if:

- (a) a person that has been granted the licence does not meet the conditions required for the granting thereof,
- (b) a payment system with settlement finality does not meet the conditions specified in Section 110(1)(a), (b) or (c),
- (c) a small-scale payment service provider has not started providing payment services within 12 months after the date when the licence was granted,
- (d) the licence has been granted on the basis of false or incomplete information, or as a consequence of another unlawful conduct of the person to whom the licence has been granted,

- (e) an electronic money institution or a small-scale electronic money issuer has not started issuing electronic money or providing electronic money services within 12 months from the date when the licence was issued,
- (f) a payment account information administrator has not started providing a payment account information service within 12 months from the date when the licence was granted,
- (g) a payment institution or a small-scale payment service provider has not provided payment services for more than six months,
- (h) an electronic money institution or a small-scale electronic money issuer has not issued electronic money or provided electronic money payment services for more than six months, or
- (i) a payment account information administrator has not provided the payment account information service for more than 6 months.

(3) The Czech National Bank informs the European Banking Authority of the reasons for the withdrawal of a licence.

#### Section 245

#### **Limiting the scope of a licence**

(1) The Czech National Bank limits the scope of payment services covered by a licence if a person to whom the licence has been granted so requests.

(2) The Czech National Bank may narrow the scope of the payment services covered by a licence if:

- (a) a person to whom the licence has been granted does not meet the conditions for the granting of a licence to provide a payment service, or
- (b) the licence has been granted on the basis of false or incomplete information, or as a consequence of another unlawful conduct of the person to whom the licence has been granted,

(3) Subsections (1) and (2) apply *mutatis mutandis* to the limiting of the scope of a licence for the provision of consumer credit of a small-scale payment service provider or a small-scale electronic money issuer.

#### Section 246

#### **Cancellation of the registration of an authorised agent**

(1) The Czech National Bank cancels the registration of an authorised agent in the list of payment institutions or electronic money institutions following a notification by a payment institution, an electronic money institution or authorised agent.

(2) The Czech National Bank may prohibit a payment institution or electronic money institution to provide payment services through an authorised agent if, in the provision of payment services through the authorised agent, the payment institution or electronic money institution has repeatedly or seriously breached the duty laid down in this Act or another legal regulation governing the procedure in carrying out activities that may be carried out on the basis of the licence granted.

(3) Together with the prohibition under subsection (2), the Czech National Bank cancels the registration of an authorised agent with the relevant payment institution or electronic money institution in the list of payment institutions or electronic money institutions.

#### Section 247

#### **Withdrawal of consent to the provision of payment services through an authorized agent or a branch in the host Member State**

(1) The Czech National Bank withdraws the authorisation to provide payment services in a host Member State through an authorised agent or branch from a provider which has been granted such authorisation if the provider or the authorised agent so requests.

(2) The Czech National Bank may revoke authorisation to provide payment services in a host Member State through an authorised agent or a branch of a person to which such authorisation has been granted if:

- (a) the person to which the authorisation has been granted has, in carrying out the activities which may be carried out under the licence through an authorised agent or a branch, repeatedly or seriously breached



- the duty laid down in this Act or in another legal regulation governing the procedure in carrying out the activities which the person to which the authorisation has been granted may carry out under this Act,
- (b) the person to which the authorisation has been granted no longer meets the conditions for granting such authorisation, or
  - (c) the authorisation has been granted on the basis of false or incomplete information, or as a consequence of another unlawful conduct of the person to whom the authorisation has been granted.

#### Section 248

#### **Receipt of initiatives**

If the Czech National Bank receives an initiative to initiate proceedings *ex officio* on the grounds of a breach of the duty of the provider or issuer provided for by this Act, by analogous provisions of legal regulations of another Member State governing a payment service contract or a contract to issue electronic money, a directly applicable EU regulation governing cross-border payments in the European Union<sup>2)</sup> or a directly applicable European Union regulation governing the requirements for credit transfers and direct debits in euro<sup>2)</sup>, it replies to it within 60 days after the day when the complaint was received, even if the person who filed the complaint did not request it. If this is the case, the Czech National Bank also informs it of the possibility of out-of-court settlement of disputes between users and providers or between holders and issuers under another legal regulation.

### PART NINE

## **COMMON, TRANSITIONAL AND FINAL PROVISIONS**

### Title I

#### **Common provisions**

#### **Lists**

#### Section 249

(1) The Czech National Bank maintains in electronic form the lists of:

- (a) payment institutions,
- (b) small-scale payment service providers,
- (c) electronic money institutions,
- (d) small-scale electronic money issuers,
- (e) payment account information administrators,
- (f) payment systems with settlement finality,
- (g) participants in a foreign payment system with settlement finality which have their registered office in the Czech Republic.

(2) The Czech National Bank publishes the lists referred to in subsection 1 on its website. In the case of changes, the previous data will remain permanently published.

(3) If the Czech National Bank learns of a change in the data entered in the lists referred to in subsection 1, it updates those lists without undue delay.

(4) A registered person may not object against a person that relies on an entry in the list under subsection (1) that there is a discrepancy between the entry and reality.

#### Section 250

(1) When registering legal and natural persons in the lists pursuant to Section 249(1), it is necessary to enter at least the name, the registered office and the identification number of the person, if assigned.

(2) In the lists pursuant to Section 249(1)(a) to (e), the following shall also be entered:

- (a) the date of commencement of the licence,
- (b) the date of lapse of the licence and its reason, and

(c) an overview of the final and enforceable fines and enforceable remedial measures imposed by the Czech National Bank,

(d) the data on the insurance company or third person with who the provider of an indirect payment order service have entered into an insurance contract or have arranged comparable guarantee under Section (17)(1) if this person entered in the list is entitled to provide an indirect payment order service.

(3) In the lists pursuant to Section 249(1)(a) to (d), an entry is also made of the data on the payment services to the provision of which the registered person is authorised. In the lists pursuant to Section 249(1)(b) and (d), an entry is also made on whether the authorisation relates to the provision of consumer credit related to the provision of payment services.

(4) In the lists pursuant to Section 249(1)(a) to (d), an entry is also made for the relevant person of the data on the authorised agents through which the registered person provides payment services.

(5) In the lists pursuant to Section 249(1)(a), (c) and (e), an entry is also made for the relevant person of the data on the authorised agents and branches through which the registered person provides payment services or issues electronic money in the host Member State.

(6) In the list pursuant to Section 249(1)(f), an entry is also made of the data on the operator and the participants in the payment system with settlement finality. In the list pursuant to Section 249(1)(g), a record is also made of the data on an operator of a system of which the registered person is a participant, and on the law governing the obligation between the participants in the system when making the settlement.

#### Section 251

The Czech National Bank shall, without undue delay, inform the European Banking Authority of an entry in the lists pursuant to Section 249(1)(a), (b), (c), (d) or (e), or a change thereof, to the extent determined by a directly applicable European Union regulation implementing Article 15(5) of Directive 2015/2366 of the European Parliament and of the Council.

#### **Notification of payments within a restricted network or via electronic communications**

#### Section 252

(1) A person making payments using the instruments referred to in Section 3(3)(c)(4) shall, without undue delay, notify the Czech National Bank of the manner in which such payments are made if the amount of such payments for the last 12 months first exceeds EUR 1,000,000.

(2) The person that commences the payments referred to in Section 3(3)(e) notifies the Czech National Bank without undue delay of the manner in which such payments are made.

(3) The Czech National Bank, on the basis of the notifications referred to in subsections (1) and (2), publishes on its website a list of descriptions of the activities carried out in accordance with Section 3(3)(c)(4), and Section 3(3)(e).

(4) The Czech National Bank, on the basis of the notifications referred to in subsections (1) and (2), informs the European Banking Authority of the activities carried out in accordance with Section 3(3)(c)(4), and Section 3(3)(e).

#### Section 253

A person that carries out the activities referred to in Section 3 (3)(e) submits to the Czech National Bank, by the end of the sixth month following the end of the preceding accounting period, an auditor's report certifying compliance with the limits pursuant to Section 3(3)(e).

## Section 254

### **Fee for the use of a payment instrument**

(1) The beneficiary is entitled to a fee for using a payment instrument up to the amount corresponding to the direct costs incurred in connection with the use of the payment instrument.

(2) A payee is not entitled to a fee for the use of a payment instrument:

- (a) for which an interchange fee according to a directly applicable European Union regulation governing interchange fees for card-based payment transactions<sup>2)</sup> is set out in Chapter II of this regulation, and for payment services to which a directly applicable European Union rule governing the requirements for credit transfers and direct debits in euro applies, or
- (b) which exceeds the direct costs incurred in connection with the use of that payment instrument.

(3) If a payee or another person offers the payer the exchange of currency before the commencement of a payment transaction through a cash machine or at the point of sale of goods or provision of services, the person offering the service shall, before commencing the payment transaction, inform the payer on the fee and the exchange rate to be used when exchanging the currencies, otherwise, the person is not entitled to fee.

(4) If, for the use of a payment instrument, the payee, provider or another person requests fee or offers a reduction, such a provider or another person inform the user thereof prior to the initiation of the payment transaction, otherwise, the person is not entitled to fee for the use of the payment instrument.

## Section 255

### **Access to payment accounts**

(1) A bank, foreign bank operating in the Czech Republic through a branch and a savings and credit cooperative conclude with a payment institution, electronic money institution, small-scale payment service provider or small-scale electronic money issuer at their request, a payment account contract based on conditions which are objective and proportionate to the nature of the payment account.

(2) If a bank, foreign bank operating in the Czech Republic through a branch or a savings and credit cooperative refuses to enter into the contract pursuant to subsection (1), it notifies without undue delay the Czech National Bank of the reasons for such refusal.

## Section 256

### **Arbitration agreement**

If a payee so requests, the provider and the payee which is not a consumer and which have concluded a payment services contract consisting of transmitting a payment order and processing payment transactions conclude an arbitration agreement for the settlement of disputes arising from a breach of a directly applicable European Union regulation governing interchange fees for card-based payment transactions. The right to seek the conclusion of the arbitration agreement must be notified to the payee in the payment service contract.

## Section 257

### **Treatment of personal information**

The persons authorised to provide payment services and the participants in or the operators of a payment system may process personal data without the consent of the entities concerned by the data if the processing is solely for the purpose of preventing, investigating and detecting payment transaction fraud. In doing so, they act in accordance with directly applicable European Union regulation governing the protection of personal data<sup>9)</sup> and the law governing processing of personal data..

## Section 258

### **Handling of complaints and reclamations**

(1) The provider provides the user with a response to its complaint or reclamation in connection with the provision of payment services within 15 business days after the date of receipt. At the request of a user, the provider provides the response in printed form.

(2) If the provider is prevented from responding to a complaint or reclamation by an obstacle independent of its will at the time under subsection (1), the provider shall, within the period under subsection (1), inform the user of the obstacles preventing the provider from responding in time, and shall reply no later than 35 business days after the receipt of the complaint or reclamation.

#### Section 259

##### **Information on a out-of-court resolution of disputes**

If the provider has a website, it makes gratuitously available on such a website information on the method of out-of-court resolution of disputes between the provider and the user.

#### Section 260

The provider makes available in printed form in its place of business and, if it has a website, also on the website a European Commission document on user rights.

#### Section 261

##### **Credibility**

For the purposes of this Act, a person whose current activity is indicative of likely proper performance of the activities under this Act is considered to be credible.

#### Section 262

##### **Insurance**

If this Act requires the entering into an insurance contract and if the insurance is governed by the Civil Code, the insurer may terminate this insurance pursuant to Section 2805(b) or pursuant to Section 2807 of the Civil Code. An insurer or policyholder may also terminate this insurance with an eight-day notice period within 1 month from the date on which the insurer or policyholder learned of the withdrawal of the licence of the insured person under this Act.

#### Section 263

##### **Authority**

The Czech National Bank issues a regulation pursuant to Section 10(4), Section 11(2), Section 16(5), Section 17(3), Section 18(6), Section 20(4), Section 27(4), Section 28(3), Section 29(4), Section 30(2), Section 33(5), Section 34(2), Section 38(2), Section 43(3), Section 44(2), Section 46(2), Section 48(4), Section 51(4), Section 52(2), Section 55(2), Section 59(4), Section 60(3), Section 61(2), Section 69(4), Section 70(2), Section 74(6), Section 75(3), Section 76(6), Section 78(4), Section 86(4), Section 87(3), Section 88(4), Section 89(3), Section 92(5), Section 93(2), Section 96(2), Section 100(4), Section 101(3), Section 102(2), Section 118(4), Section 119(4), Section 122(5), Section 197(3), Section 221(5) and Section 222(3).

#### Title II

##### **Transitional and final provisions**

#### Chapter 1

##### **Transitional provisions**

#### Section 264

##### **Payment institution licence**

(1) A payment institution may provide payment services on the basis of an authorization granted pursuant to Act No 284/2009 Sb., on payment transactions, as in effect before the effective date of this Act, for a period of 6 months from the effective date of this Act. In doing so, it acts in accordance with Act No 284/2009 Sb., as in effect before the effective date of this Act; this does not affect Sections 275 and 276.

(2) After 6 months from the effective date of this Act, a payment institution licence granted pursuant to Act No 284/2009 Sb., as in effect before the effective date of this Act, is considered a payment institution licence granted pursuant to this Act.

(3) If a payment institution fails to submit to the Czech National Bank within 3 months after the effective date of this Act a proof that it meets the conditions for granting a payment institution licence pursuant to this Act, the Czech National Bank withdraws the payment institution licence from that payment institution. This decision is enforceable not earlier than after the lapse of the period under subsection (1) above.

#### Section 265

##### **Registration of a small-scale payment service provider**

(1) A small-scale payment service provider may provide payment services on the basis of a registration pursuant to Act No 284/2009 Sb., as in effect before the effective date of this Act, for a period of 12 months from the effective date of this Act. In doing so, it acts in accordance with Act No 284/2009 Sb., as in effect before the effective date of this Act; this does not affect Sections 275 and 276.

(2) After 12 months from the effective date of this Act, a registration of a small-scale payment service provider pursuant to Act No 284/2009 Sb., as in effect before the effective date of this Act, is considered a small-scale payment service provider licence granted pursuant to this Act.

(3) If a small-scale payment service provider fails to submit to the Czech National Bank within 9 months after the effective date of this Act a proof that it meets the conditions for granting a small-scale payment service provider licence pursuant to this Act, the Czech National Bank withdraws the small-scale payment service provider licence from that provider. This decision is enforceable not earlier than after the lapse of the period under subsection (1) above.

#### Section 266

##### **Electronic money institution licence**

(1) An electronic money institution may issue electronic money and provide payment services on the basis of an authorization granted pursuant to Act No 284/2009 Sb., as in effect before the effective date of this Act, for a period of 6 months from the effective date of this Act. In doing so, it acts in accordance with Act No 284/2009 Sb., as in effect before the effective date of this Act; this does not affect Sections 275 and 276.

(2) After 6 months from the effective date of this Act, an electronic money institution licence granted pursuant to Act No 284/2009 Sb., as in effect before the effective date of this Act, is considered an electronic money institution licence granted pursuant to this Act.

(3) If an electronic money institution fails to submit to the Czech National Bank within 3 months after the effective date of this Act a proof that it meets the conditions for granting an electronic money institution licence pursuant to this Act, the Czech National Bank withdraws the electronic money institution licence from that electronic money institution. This decision is enforceable not earlier than after the lapse of the period under subsection (1) above.

#### Section 267

##### **Registration of a small-scale electronic money issuer**

(1) A small-scale electronic money issuer may issue electronic money and provide payment services on the basis of a registration pursuant to Act No 284/2009 Sb., as in effect before the effective date of this Act, for a period of 12 months from the effective date of this Act. In doing so, it acts in accordance with Act No 284/2009 Sb., as in effect before the effective date of this Act; this does not affect Sections 275 and 276.

(2) After 12 months from the effective date of this Act, a registration of a small-scale electronic money issuer pursuant to Act No 284/2009 Sb., as in effect before the effective date of this Act, is considered a small-scale electronic money issuer licence granted pursuant to this Act.

(3) If a small-scale electronic money issuer fails to submit to the Czech National Bank within 9 months after the effective date of this Act a proof that it meets the conditions for granting a small-scale electronic

money issuer licence pursuant to this Act, the Czech National Bank withdraws the small-scale electronic money issuer licence from that issuer. This decision is enforceable not earlier than after the lapse of the period under subsection (1) above.

#### Section 268

##### **Provision of payment services through an authorised agent**

The Czech National Bank shall, for the relevant payment institution or electronic money institution, on the list pursuant to Section 249(1)(a) and (c), also enter details of commercial agents who have been registered with the relevant person in the list of payment institutions or electronic money institutions pursuant to Act No 284/2009 Sb., as in effect before the effective date of this Act.

#### Section 269

##### **Provision of payment services in a host Member State through an authorised agent**

After 6 months from the effective date of this Act, a payment institution and electronic money institution are considered holders of authorisation to the provision of payment services in a host Member State through an authorised agent granted under this Act; this authorisation applies to commercial agents that have been notified to the Czech National Bank in connection with their activities in the host Member State pursuant to Act No 284/2009 Sb., as in effect before the effective date of this Act.

#### Section 270

##### **Provision of payment services in a host Member State through a branch**

After 6 months from the effective date of this Act, a payment institution and electronic money institution are considered holders of authorisation to the provision of payment services in a host Member State through a branch granted under this Act; this authorisation applies to branches that have been notified to the Czech National Bank in connection with their activities in the host Member State pursuant to Act No 284/2009 Sb., as in effect before the effective date of this Act.

#### Section 271

##### **Licence to operate a payment system with settlement finality**

A licence to operate a payment system with settlement finality granted pursuant to Act No 284/2009 Sb., as in effect before the effective date of this Act, is considered, as from the effective date of this Act, a licence to operate a payment system with settlement finality granted pursuant to this Act.

#### Section 272

##### **Providers of electronic communications**

(1) A licence or registration under Act No 284/2009 Sb., as in effect before the effective date of this Act, which relates to the execution of payment transactions by an electronic communications service provider, if the payer's consent to executing a payment transaction is given through an electronic communication device is considered a licence related to the provision of payment services pursuant to Section 3(1)(c), (d) and (f) as of the effective date of this Act.

(2) A payment institution that has been granted a licence to execute payment transactions by an electronic communications service provider pursuant to Act No 284/2009 Sb., as in effect before the effective date of this Act, if the payer's consent to the execution of a payment transaction is given through an electronic communications device, maintains the capital adequacy and the minimum amount of capital in relation to these payment transactions pursuant to Act No 284/2009 Sb., as in effect before the effective date of this Act. After a time limit of two years from the effective date of this Act, the payment institution maintains capital adequacy and the minimum amount of capital under this Act.

#### Section 273

A licence or registration under Act No 284/2009 Sb., as in effect before the effective date of this Act, which relates to the issue and administration of payment instruments and devices to receive payment

instruments are considered a licence related to the provision of payment services pursuant to Section 3(1)(e) as of the effective date of this Act.

#### Section 274

##### **Application proceedings**

(1) An application for a payment institution licence pursuant to Act No 284/2009 Sb., as in effect before the date of entry into force of this Act, on which a decision had not been made by the effective date of this Act, is considered an application for a payment institution licence pursuant to this Act; the proceedings concerning this application are further governed by this Act.

(2) An application for a registration in the register of small-scale payment service provider pursuant to Act No 284/2009 Sb., as in effect before the date of entry into force of this Act, on which a decision had not been made by the effective date of this Act, is considered an application for a small-scale payment service provider licence pursuant to this Act; the proceedings concerning this application are further governed by this Act.

(3) An application for an electronic money institution licence pursuant to Act No 284/2009 Sb., as in effect before the date of entry into force of this Act, on which a decision had not been made by the effective date of this Act, is considered an application for an electronic money institution licence pursuant to this Act; the proceedings concerning this application are further governed by this Act.

(4) An application for a registration in the register of small-scale electronic money issuers pursuant to Act No 284/2009 Sb., as in effect before the date of entry into force of this Act, on which a decision had not been made by the effective date of this Act, is considered an application for a small-scale electronic money issuer licence pursuant to this Act; the proceedings concerning this application are further governed by this Act.

(5) An application for a licence to operate a payment system with settlement finality pursuant to Act No 284/2009 Sb., as in effect before the date of entry into force of this Act, on which a decision had not been made by the effective date of this Act, is considered an application for a licence to operate a payment system with settlement finality pursuant to this Act; the proceedings concerning this application are further governed by this Act.

#### Section 275

##### **Payment services contract**

Payment services contracts are governed by this Act from its effective date, even if a payment services contract was concluded before that date, the creation of this contract as well as the rights and duties arising therefrom prior to the effective date of this Act shall be considered in accordance with Act No 284/2009 Sb., as in effect before the effective date of this Act.

#### Section 276

##### **Authorisation of a payment transaction**

A payment transaction that was authorised before the effective date of this Act shall be executed in accordance with Act No 284/2009 Sb., as in effect before the effective date of this Act. However, if, before the effective date of this Act, the repeated execution of several payment transactions is authorised, only payment transactions whose execution started before the effective date of this Act become executed in accordance with Act No 284/2009 Sb., as in effect before the effective date of this Act.

#### Section 277

##### **Standardised terms**

(1) The provisions of Sections 197 and 199 to 202 apply for the first time 9 months after the effective date of the directly applicable European Union regulation implementing Article 3(4) of Directive 2014/92/EU of the European Parliament and of the Council.

(2) The provider provides for the first time the user with information pursuant to Section 201 for the period from the effective date of the secondary regulation pursuant to Section 197(3) until the end of the calendar year in which this secondary regulation becomes effective.

(3) A comparison website operator which started to operate a comparison website prior to the effective date of this Act complies with the notification duty pursuant to Section 202(3) within 10 months after the effective date of a directly applicable European Union regulation implementing Article 3(4) of Directive 2014/92/EU of the European Parliament and of the Council.

(4) The Czech National Bank issues a regulation pursuant to Section 197(3) within 3 months after the effective date of a directly applicable European Union regulation implementing Article 3(4) of Directive 2014/92/EU of the European Parliament and of the Council.

## Section 278

The provisions of Sections 223 and 225 apply for the first time 18 months after the effective date of the directly applicable European Union regulation implementing Article 98 of Directive (EU) 2015/2366 of the European Parliament and of the Council.

## Chapter 2 Final provisions

### Section 279

The following is repealed:

1. Act No 284/2009 Sb., on Payments.
2. Part Three of Act No 156/2010 Sb., amending Act No 21/1992 Sb., on Banks, as amended, and other related acts, including the heading.
3. Part One of Act No 139/2011 Sb., amending Act No 284/2009 Sb., on Payments, as amended, and certain other acts, including the heading.
4. Part Forty-Nine of Act No 420/2011 Sb., on amendments to certain acts in connection with the adoption of the Act on Criminal Liability of Legal Persons and Proceedings against them, including the heading.
5. Part Seven of Act No 37/2012 Sb., amending certain acts in connection with the Reform of Supervision over Financial Market in the European Union, including the heading.
6. Part One of Act No 261/2014 Sb., which amends certain Financial Market Laws, including the heading.
7. Part Eleven of Act No 258/2016 Sb., amending certain Laws in connection with the adoption of the Consumer Credit Act, including the heading.
8. Part One of Act No 452/2016 Sb., amending Act No 284/2009 Sb., on Payments, as amended, and other related Acts, including the heading.
9. Part One Hundred and Ninety-Five of Act No 183/2017 Sb., amending certain Laws in connection with the adoption of the Act on the Liability for Offences and Proceedings related thereto, and the Act on certain Offences, including the heading.
10. Regulation No 140/2011 Sb., on Payment Systems with Settlement Finality.
11. Regulation No 141/2011 Sb., on the Performance of Activities of Payment Institutions, Electronic Money Institutions, Small-scale Payment Service Providers and Small-scale Electronic Money Issuers.
12. Regulation No 142/2011 Sb., on the Submission of Information by Payment Institutions, Electronic Money Institutions, Small-scale Payment Service Providers and Small-scale Electronic Money issuers to the Czech National Bank.
13. Regulation No 31/2014 Sb., amending Regulation No 141/2011 Sb., on the Performance of Activities of Payment Institutions, Electronic Money Institutions, Small-scale Payment Service Providers and Small-scale Electronic Money Issuers.



14. Regulation No 233/2014 Sb., amending Regulation No 141/2011 Sb., on the Performance of Activities of Payment Institutions, Electronic Money Institutions, Small-scale Payment Service Providers and Small-scale Electronic Money Issuers, as amended by Regulation No 31/2014 Sb.
15. Regulation No 382/2016 Sb., amending Regulation No 141/2011 Sb., on the Performance of Activities of Payment Institutions, Electronic Money Institutions, Small-scale Payment Service Providers and Small Electronic Money Issuers, as amended.

Section 280

**Effect**

This Act enters into effect on 13 January 2018.