



**Decree-Law No 91/2018 of 12 November 2018**

In recent years there have been significant changes in the payments market, notably as regards the growing technical complexity and volumes of electronic payments, as well as the emergence of new types of payment services with growing concerns about the risks associated with the use of electronic payments of digital means.

This Decree-Law transposes into the Portuguese legal system Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market (second Payment Services Directive), which revised the European legal framework for payment services. The amendments it introduces seek to address the regulatory challenges posed by the dynamic reality nature of payment services, enabling new means of payment to reach a broader market, which ensure the functioning of vital economic and social activities. Also concerns related to consumer protection and safety in the use of those payment services are fundamental objectives, preserving the consumer's choice in better conditions of security, effectiveness and cost efficiency. The security of electronic payments is fundamental for ensuring the protection of users and the proper promotion of the development of e-commerce on competitive terms.

At the same time, the option remains to systematise the framework governing the provision of payment services and the framework governing the taking up, pursuit and prudential supervision of the business of electronic money institutions, taking into account the convergence of the two, with the aim of facilitating their implementation. The new Legal Framework for Payment Services and Electronic Money is thus approved, broadly relying on the approach used in the framework in place since 2012, but introducing the necessary changes to transpose the second Payment Services Directive. For this purpose, the legal framework governing the taking up of the business of payment institutions and the provision of payment services, approved by Decree-Law No 317/2009 of 30 October 2009, subsequently amended and republished as the Legal Framework for Payment Services and Electronic Money by Decree-Law No 242/2012 of 7 November 2012, is repealed.

This is also an opportunity to introduce some refinements to the aforementioned framework, which result from the need to improve and correct this legislation, taking into account the experience gained with its implementation, as well as to include matters which do not directly result from the transposition of the provisions of the second Payment Services Directive, but are not unrelated to its approach, with their inclusion thus being systematically justified. Measures for the implementation of three European regulations related to payment transactions within the Union are also introduced.

This Decree-Law is organised into eight titles, with Title I and Title VIII covering general matters, namely general and introductory provisions in Title I and ancillary, transitional and final provisions in Title VIII.

Title II deals with the taking up and general conditions of the activity of payment service providers and electronic money issuers, regulating matters relating to the authorisation and registration process, their supervision and the implementation of the so-called Community passport, notably the provision of two new types of payment services, including payment initiation services and account information services, as well as rules on access to payment systems and accounts and also on the management of operational and security risks.

Specifically, this Decree-Law specifies the categories of entities which may legitimately provide payment services and issue electronic money. The conditions for granting and maintaining authorisation for carrying out the activity of payment institutions and electronic money institutions include prudential requirements proportionate to the operational and financial risks incurred in carrying out the activity, based on the same approach used in the framework in place thus far. In the specific case of payment initiation service providers and account information service providers, when exclusively providing those services, it would be disproportionate to impose own funds requirements to the extent that they do not hold client funds. However, meeting their liabilities in relation to their activities should be ensured by imposing the need to hold professional indemnity insurance or a comparable guarantee.

Also, payment institutions and electronic money institutions continue to be prohibited from taking deposits or other repayable funds from users.

With regard to credit granting, payment institutions and electronic money institutions may only grant credit through the opening of credit lines or the issuance of credit cards, where it is strictly related to payment services. The obligations relating to the adoption of measures ensuring the segregation of client funds and own funds are maintained, as well as to the implementation of adequate internal control mechanisms in order to comply with the obligations in relation to money laundering and terrorist financing. It should also be noted that Banco de Portugal was awarded the mandate to carry out prudential and banking conduct supervision of payment institutions and electronic money institutions.

This Decree-Law also provides for a single winding-up regime applicable to all payment institutions and electronic money institutions, with a view to its simplification, by establishing that dissolution of these institutions only occurs by reason of the withdrawal of authorisation by Banco de Portugal. The application of this rule to payment institutions and electronic money institutions, the object of which is not exclusively the provision of payment services and the issuance of electronic money, simplifies their winding-up regime without undermining the core rights of most of the creditors of these undertakings, since winding-up transactions, in the strict sense, continue to comply with the Portuguese insolvency code (*Código da Insolvência e da Recuperação de Empresas*), which guarantees they are treated equally.

In order to enhance the transparency of the operation of payment institutions and electronic money institutions authorised by, or registered with, Banco de Portugal, including its agents, and contribute to a high level of consumer protection, this Decree-Law provides that Banco de Portugal shall make a public register available to ensure easy public access to the list of entities providing payment services and issuing electronic money.

Payment institutions and electronic money institutions having their head office in another Member State, when operating in Portuguese territory through agents, are also required to appoint a central contact point in order to ensure adequate communication and information reporting on compliance with the provisions of this Decree-Law.

It also provides for the possibility of exempting certain institutions, excluding entities wishing to provide new payment initiation, account information or money remittance services, from complying with some of the prudential rules applicable to the taking up and pursuit of the activity of providing payment services, in terms laid down in an executive order from the Minister of Finance and by meeting certain parameters. However, this exemption is without prejudice to compliance by institutions which benefit from it with any provisions on anti-money laundering and countering terrorist financing, as well as any provisions on registration, professional secrecy, the right to bring proceedings before a court and exchange of information. Also, the institutions benefiting from such exemption must have their head office in Portugal and may not benefit from the European 'passporting' rules.

Title III covers, on the one hand, pre-contractual and contractual information obligations, designed to ensure the transparency of conditions and information requirements governing payment services, and, on the other hand, the rules accommodating the rights and obligations to be complied with in the provision and use of payment services. This Decree-Law follows the same provision approach of the existing framework, but there are some aspects which are new in view of the current practice.

Thus, a number of rules are laid down specifically for the operationalisation of payments mediated by new payment initiation and account information service providers, including the rules for access to the payment account and the respective limits, to ensure that payments are made safely without undue obstacles.

For prepaid payment instruments that solely concern individual payment transactions, the maximum storage amount of funds was raised, up to which such instruments may be included in the derogation from the payment service providers' obligations relating to transparency of conditions, as well as to information requirements and the provision of payment services.

In addition, mechanisms are demandable which focus on remuneration practices applicable to the institutions' staff that deal directly with customers in the provision of payment services, or that perform management tasks, in order to guarantee consumers' rights and interests.

The legislative option provided for in the Directive of treating microenterprises as consumers is maintained, allowing those entities to benefit from the same level of protection as consumers, in particular as regards information and rules for the execution of payment transactions. However, this equivalence does not cover microenterprises that agree with their payment service provider that there

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is no right to a refund in case of unauthorised debit transactions, thus allowing them to access the SEPA B2B direct debit scheme. The rules on charging fees are also maintained.

Furthermore, the requirement for strong customer authentication leads to the implementation of adequate security measures to protect the confidentiality and integrity of payment service users' personalised security credentials. Payment services offered via internet or via other at-distance channels, the functioning of which does not depend on where the device used to initiate the payment transaction or the payment instrument used is physically located, should include user authentication with elements that dynamically link the transaction to a specific amount and payee, so that the user is always aware of what is being authorised.

As regards the payer's liability for unauthorised payment transactions, in order to promote the notification of the payment service provider of any theft or loss of a payment instrument and thus to reduce the risk of unauthorised payment transactions, this Decree-Law reduces the maximum amount for which the payer is liable, while also limiting the liability to the available balance or the limit on the credit line linked to the account or payment instrument, unless the payer has acted fraudulently or with gross negligence. In turn, payment service providers are not required to reimburse the payers the amount of the unauthorised payment transaction immediately if they suspect that the payer acted fraudulently and report them to the competent authorities.

Title IV deals with the specific procedures for the issuance, distribution and redemption of electronic money, in line with the framework in force since 2012. These matters are subject to a limited but important set of conduct rules, reflecting the contractual relationship between electronic money issuers and holders.

In turn, as was the case under the previous framework, Title V establishes appropriate procedures by means of which it will be possible to pursue complaints against payment service providers and to ensure that effective, proportionate and dissuasive penalties are imposed. Without prejudice to the right of customers to bring action in the courts, this Decree-Law provides for a complaint mechanism to Banco de Portugal and an alternative dispute resolution mechanism through payment service providers' and electronic money institutions' registering with at least two entities enabling alternative dispute resolution.

Title VI provides for measures for the implementation of three European regulations, namely Regulation (EC) No 924/2009 of the European Parliament and of the Council of 16 September 2009 on cross-border payments in the Community, 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 of the European Parliament and of the Council of 16 September 2009, Regulation (EU) No 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions.

Finally, Title VII governs the legal consequences of committing administrative offences related to the provision of payment services and the issuance of electronic money, including the level of administrative fines, additional penalties and the corresponding procedural rules, as well as the criminalisation of a breach of professional secrecy committed within the scope of this activity.

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The Insurance and Pension Funds Supervisory Authority, Banco de Portugal, the Association of Specialised Credit Institutions, the Competition Authority, the National Consumption Council, the Portuguese Data Protection Authority, the Portuguese Association of Electronic Commerce and Interactive Advertising and the Portugal Fintech and Insurtech Association were heard.

Furthermore, the consultation of the Portuguese Association of Distribution Companies and the Portuguese Association of Users and Consumers of Financial Products and Services was also promoted.

Therefore:

Making use of the legislative authorisation granted by Law No 57/2018 of 21 August 2018, and pursuant to Article 198(1)(a) and (b) of the Constitution, the Government hereby decrees as follows:

#### Article 1

##### **Subject matter and scope**

1 – The Legal Framework for Payment Services and Electronic Money is approved as an Annex to this Decree-Law, which forms an integral part thereof, transposing into the Portuguese legal system 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.

2 – The Legal Framework approved as an Annex to this Decree-Law also implements the following European Union Regulations in the Portuguese legal system:

(a) Regulation (EC) No 924/2009 of the European Parliament and of the Council of 16 September 2009 on cross-border payments in the Community and repealing Regulation (EC) No 2560/2001, as amended by Regulation (EU) No 260/2012;

(b) 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;

(c) Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions.

#### Article 2

##### **Update of references**

1 – References in any legislation in force to the legal framework governing the taking up of the business of payment institutions and the provision of payment services, approved by Decree-Law No 317/2009 of 30 October 2009, and to the Legal Framework for Payment Services and Electronic Money, published as an Annex to Decree-Law No 242/2012 of 7 November 2012, shall be construed as references to the corresponding rules of the Legal Framework for Payment Services and Electronic Money hereby approved as Annex to this Decree-Law.

2 – References made in any legislation in force to Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market shall be construed as references to the corresponding rules of Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015.

Article 3

**Repeal**

1 – The legal framework governing the taking up of the business of payment institutions and the provision of payment services, approved by Decree-Law No 317/2009 of 30 October 2009, subsequently amended and republished as the Legal Framework for Payment Services and Electronic Money by Decree-Law No 242/2012 of 7 November 2012, is hereby repealed.

2 – Decree-Law No 141/2013 of 18 October 2013, laying down Portugal's measures necessary for implementing the provisions of 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, is hereby repealed.

3 – Article 4 of Decree-Law No 18/2007 of 22 January 2007 is hereby repealed.

Article 4

**Entry into force**

This Decree-Law shall enter into force on the day following that of its publication.

Seen and approved in the Council of Ministers on 27 September 2018. – António Luís Santos da Costa – Eurico Jorge Nogueira Leite Brilhante Dias – Mário José Gomes de Freitas Centeno. Enacted on 2 November 2018.

Let it be published.

The President of the Republic, *Marcelo Rebelo de Sousa*. Countersigned on 6 November 2018.

The Prime Minister, *António Luís Santos da Costa*.

ANNEX

**LEGAL FRAMEWORK FOR PAYMENT SERVICES AND ELECTRONIC MONEY**

TITLE I

**General and introductory provisions**

Article 1

**Subject matter**

1 – This Legal Framework governs the taking up of the business of payment institutions and the provision of payment services, as well as the taking up of the business of electronic money institutions and the provision of electronic money issuance services.

2 – This Legal Framework also lays down the measures necessary for implementing the following European Union Regulations in the Portuguese legal system:

(a) Regulation (EC) No 924/2009 of the European Parliament and of the Council of 16 September 2009 on cross-border payments in the Community and repealing Regulation (EC) No 2560/2001, as amended by Regulation (EU) No 260/2012;

(b) 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 of the European Parliament and of the Council of 16 September 2009;

(c) Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions.

Article 2

**Definitions**

For the purposes of this Legal Framework:

(a) ‘acquiring of payment transactions’ means a payment service provided by a payment service provider contracting with a payee to accept and process payment transactions, which results in a transfer of funds to the payee;

(b) ‘agent’ means any natural or legal person acting on behalf of a payment institution or an electronic money institution in providing payment services;

(c) ‘authentication’ means a procedure which allows the payment service provider to verify the identity of a payment service user or the validity of the use of a specific payment instrument, including the use of the user’s personalised security credentials;

(d) ‘strong customer authentication’ means an authentication based on the use of two or more elements categorised as knowledge (something only the user knows), possession (something only the user possesses) and inherence (something the user is) that are independent, in that the breach of one does not compromise the reliability of the others, and is designed in such a way as

to protect the confidentiality of the authentication data;

(e) 'payee' means a natural or legal person who is the intended recipient of funds which have been the subject of a payment transaction;

(f) 'consumer' means a natural person who, in payment service contracts and in contracts with electronic money issuers covered by this Legal Framework, is acting for purposes other than his or her trade, business or profession;

(g) 'payment account' means an account held in the name of one or more payment service users which is used for the execution of payment transactions;

(h) 'digital content' means goods or services which are produced and supplied in digital form, the use or consumption of which is restricted to a technical device, not including in any way the use or consumption of physical goods or services;

(i) 'framework contract' means a payment service provision contract which governs the future execution of individual and successive payment transactions and which may contain the obligation and conditions for setting up a payment account;

(j) 'personalised security credentials' means personalised features provided by the payment service provider to a payment service user for the purposes of authentication;

(k) 'sensitive payment data' means data, including personalised security credentials which can be used to carry out fraud. For the activities of payment initiation service providers and account information service providers, the name of the account owner and the account number do not constitute sensitive payment data;

(l) 'value date' means a reference time used by a payment service provider for the calculation of interest on the funds debited from or credited to a payment account;

(m) 'direct debit' means a payment service for debiting a payer's payment account, where a payment transaction is initiated by the payee on the basis of the consent given by the payer to the payee, to the payee's payment service provider or to the payer's own payment service provider;

(n) 'business day' means a day on which the relevant payment service provider of the payer or the payment service provider of the payee involved in the execution of a payment transaction is open for business as required for the execution of a payment transaction;

(o) 'electronic money distributor' means a natural or legal person distributing or redeeming electronic money on behalf and under the responsibility of an electronic money institution;

(p) 'issuing of payment instruments' means a payment service by a payment service provider contracting to provide a payer with a payment instrument to initiate and process the payer's payment transactions based on that instrument;

(q) 'electronic money issuers' means the entities listed in Article 12;

(r) 'processing entity' means a natural or legal person providing payment transaction processing services;



(s) 'money remittance' means a payment service involving funds received from a payer, without any payment accounts being created in the name of the payer or the payee, for the sole purpose of transferring the corresponding amount to a payee or to another payment service provider acting on behalf of the payee, and/or involving funds received on behalf of the payee for the sole purpose of being made available to the payee;

(t) 'host Member State' means the Member State other than the home Member State in which a payment service provider or an electronic money issuer has a branch, an agent or an electronic money distributor, or provides payment services or issues, distributes or redeems electronic money;

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

(i) The Member State in which the registered office of the payment service provider or the issuer of electronic money is situated; or

(ii) If the payment service provider or the issuer of electronic money has, under its national law, no registered office, the Member State in which its head office is situated;

(v) 'Important operational function' means a function whose defect or failure could seriously impair the continuing compliance of a payment institution or electronic money institution with the authorisation conditions and other obligations under this Legal Framework, its financial performance, or the soundness or the continuity of its payment services;

(w) 'funds' means banknotes and coins, scriptural money or electronic money as defined in subparagraph (ff);

(x) 'own funds' means funds as defined in point 118 of Article 4(1) of Regulation (EU) No 575/2013 where at least 75% of the Tier 1 capital is in the form of Common Equity Tier 1 capital as referred to in Article 50 of that Regulation and Tier 2 is equal to or less than one third of Tier 1 capital;

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

(z) 'unique identifier' means a combination of letters, numbers or symbols specified to the payment service user by the payment service provider and to be provided by the payment service user to identify unambiguously another payment service user or the payment account of that other payment service user for a payment transaction;

(aa) 'payment instrument' means a personalised device or set of procedures agreed between the payment service user and the payment service provider utilised by the payment service user to issue a payment order;

(bb) 'card-based payment instrument' means a payment instrument, including cards, mobile phones, computers or other technological devices containing the appropriate payment

application, which allows the payer to initiate a card-based payment transaction, except credit transfers and direct debits within the meaning of Article 2 of Regulation (EU) No 260/2012 of 14 March 2012;

*(cc)* 'payment brand' means any material or digital name, term, sign, symbol or combination of these elements, capable of identifying under which payment card scheme card-based payment transactions are carried out;

*(dd)* 'means of distance communication' means a method which, without the simultaneous physical presence of the payment service provider and the payment service user, may be used for the conclusion of a payment services contract;

*(ee)* 'micro-enterprise' means an enterprise which, at the time of conclusion of the payment service contract, is an enterprise as defined in Article 1 and Article 2(1) and (3) of the Annex to Commission Recommendation 2003/361/EC of 6 May 2003;

*(ff)* 'electronic money' means electronically, including magnetically, stored monetary value as represented by a claim on the issuer which is issued on receipt of banknotes, coins and scriptural money for the purpose of making payment transactions within the meaning of subparagraph *(ii)*, and which is accepted by a natural or legal person other than the electronic money issuer;

*(gg)* 'payment scheme' means a single set of rules, practices, standards and/or implementation guidelines agreed between payment service providers for the execution of payment transactions across the Union and within Member States, and which is separated from any infrastructure or payment system that supports its operation;

*(hh)* 'co-badging' means the inclusion of two or more payment brands or payment applications of the same payment brand on the same payment instrument;

*(ii)* 'payment transaction' means an act, initiated by the payer or on his behalf or by the payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and the payee;

*(jj)* 'card-based payment transaction' means a service based on the infrastructure and on the business rules of a payment card scheme to make a payment transaction by means of any card, telecommunication, digital or IT device or software if this results in a debit or a credit card transaction. Card-based payment transactions exclude transactions based on other kinds of payment services;

*(kk)* 'remote payment transaction' means a payment transaction initiated via internet or through a device that can be used for distance communication;

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

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

*(nn)* 'account information service provider' means a payment service provider pursuing

business activities as referred to in subparagraph (h) of Article 4;

(oo) 'payment initiation service provider' means a payment service provider pursuing business activities as referred to in subparagraph (g) of Article 4;

(pp) 'payment service provider' means the entities listed in Article 11;

(qq) 'account servicing payment service provider' means a payment service provider providing and maintaining a payment account for a payer;

(rr) 'electronic communications network' means a network as defined in Article 3(dd) of Law No 5/2004 of 10 February 2004;

(ss) 'electronic communications service' means a service as defined in Article 3(ff) of Law No 5/2004 of 10 February 2004;

(tt) 'account information service' means an online service to provide consolidated information on one or more payment accounts held by the payment service user with either another payment service provider or with more than one payment service provider;

(uu) 'payment initiation service' means a service to initiate a payment order at the request of the payment service user with respect to a payment account held at another payment service provider;

(vv) 'payment services' means the activities listed in Article 4;

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

(xx) 'payment card scheme' means a single set of rules, practices, standards and/or implementation guidelines for the execution of card-based payment transactions and which is different from any infrastructure or payment system that supports its operation, and includes any specific decision-making body, organisation or entity accountable for the functioning of the scheme;

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

(zz) 'durable medium' means any instrument which enables the payment service user and electronic money holders to store information addressed personally to that payment service user in a way accessible for future reference for a period of time adequate to the purposes of the information and which allows the unchanged reproduction of the information stored;

(aaa) 'reference exchange rate' means the exchange rate which is used as the basis to calculate any currency exchange and which is made available by the payment service provider or comes from a publicly available source;

*(bbb)* 'reference interest rate' means the interest rate which is used as the basis for calculating any interest to be applied and which comes from a publicly available source which can be verified by both parties to a payment service contract;

*(ccc)* 'interchange fee' means a fee paid for each transaction directly or indirectly (i.e. through a third party) between the issuer and the acquirer involved in a card-based payment transaction. The net compensation or other agreed remuneration is considered to be part of the interchange fee;

*(ddd)* 'credit transfer' means a payment service provided by the payment service provider holding the payer's payment account for crediting a payee's payment account with an amount corresponding to a payment transaction or a series of payment transactions from the payer's payment account, based on an instruction given by the payer;

*(eee)* 'payment service user' means a natural or legal person making use of a payment service in the capacity of payer, payee, or both;

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

### Article 3

#### Scope

1 – This Legal Framework shall apply to the activity of payment institutions having their head office in Portugal and their branches, agents and third parties to whom they have outsourced operational functions, as well as to the provision of payment services in Portugal by legally authorised entities, as provided for in paragraph 3 of this Article.

2 – This Legal Framework shall also apply to the activity of electronic money institutions having their head office in Portugal and their branches, agents, electronic money distributors and third parties to whom they have outsourced operational functions, as well as to the issuance, distribution and redemption of electronic money in Portugal by legally authorised entities.

3 – Subject to the exceptions provided for in Articles 76 and 100, Title III shall apply to:

*(a)* payment transactions in the currency of a Member State where both the payer's payment service provider and the payee's payment service provider are, or the sole payment service provider in the payment transaction is, located in Portugal or where one of the providers is located in Portugal and the other provider is located in another Member State of the Union;

*(b)* payment transactions in a currency that is not the currency of a Member State where both the payer's payment service provider and the payee's payment service provider are, or the sole payment service provider in the payment transaction is, located in Portugal or where one of the providers is located in Portugal and the other provider is located in another Member State of the Union;

*(c)* parts of payment transactions carried out in Portugal in any currency, where one of the payment service providers is located in Portugal and the other provider is located outside the

Union.

#### Article 4

##### **Payment services**

Payment services include the following activities:

- (a) Services enabling cash to be placed on a payment account as well as all the operations required for operating a payment account;
- (b) Services enabling cash withdrawals from a payment account as well as all the operations required for operating a payment account;
- (c) Execution of payment transactions, including transfers of funds on a payment account with the user's payment service provider or with another payment service provider, such as:
  - (i) execution of direct debits, including one-off direct debits;
  - (ii) execution of payment transactions through a payment card or a similar device;
  - (iii) execution of credit transfers, including standing orders;
- (d) Execution of payment transactions where the funds are covered by a credit line for a payment service user, such as:
  - (i) execution of direct debits, including one-off direct debits;
  - (ii) execution of payment transactions through a payment card or a similar device;
  - (iii) execution of credit transfers, including standing orders;
- (e) Issuing of payment instruments or acquiring of payment transactions;
- (f) Money remittance;
- (g) Payment initiation services;
- (h) Account information services.

#### Article 5

##### **Exclusions**

1 – This Legal Framework shall not apply to the following:

- (a) payment transactions made exclusively in cash directly from the payer to the payee, without any intermediary intervention;
- (b) payment transactions from the payer to the payee through a commercial agent authorised via an agreement to negotiate or conclude the sale or purchase of goods or services exclusively on behalf of the payer or exclusively on behalf of the payee;
- (c) professional physical transport of banknotes and coins, including their collection, processing and delivery, as well as recirculation of banknotes and metal coins;
- (d) payment transactions consisting of the non-professional cash collection and delivery

within the framework of a non-profit or charitable activity;

(e) services where cash is provided by the payee to the payer as part of a payment transaction following an explicit request by the payment service user just before the execution of the payment transaction through a payment for the purchase of goods or services;

(f) money exchange services, i.e. cash-to-cash currency exchange operations where the funds are not held on a payment account;

(g) payment transactions based on any of the following documents drawn on the payment service provider with a view to placing funds at the disposal of the payee:

(i) paper cheques governed by the Geneva Convention of 19 March 1931 establishing a uniform law for cheques;

(ii) paper cheques similar to those referred to in subparagraph (i) and governed by the laws of Member States which are not party to the Geneva Convention of 19 March 1931 establishing a uniform law for cheques;

(iii) paper-based drafts in accordance with the Geneva Convention of 7 June 1930 providing a uniform law for bills of exchange and promissory notes;

(iv) paper-based drafts similar to those referred to in subparagraph (iii) and governed by the laws of Member States which are not party to the Geneva Convention of 7 June 1930 providing a uniform law for bills of exchange and promissory notes;

(v) paper-based vouchers;

(vi) paper-based traveller's cheques;

(vii) paper-based postal money orders as defined by the Universal Postal Union;

(h) payment transactions carried out within a payment or securities settlement system between settlement agents, central counterparties, clearing houses or central banks and other participants of the system, and payment service providers, without prejudice to the provisions of Article 68;

(i) payment transactions related to securities asset servicing, including dividends, income or other distributions, or redemption or sale of securities, carried out by persons referred to in subparagraph (h) or by investment firms, credit institutions, collective investment undertakings or asset management companies providing investment services and any other entities authorised to have the custody of financial instruments;

(j) services provided by technical service providers, which support the provision of payment services, without them entering at any time into possession of the funds to be transferred, including processing and storage of data, trust and privacy protection services, data and entity authentication, information technology (IT) and communication network provision, provision and maintenance of terminals and devices used for payment services, with the exclusion of payment initiation services and account information services;

(k) services based on specific payment instruments that can be used only in a limited way, that meet one of the following conditions:

(i) instruments allowing the holder to acquire goods or services only in the premises of the issuer or within a limited network of service providers which are directly connected by a commercial agreement with a professional issuer;

(ii) instruments which can be used only to acquire a very limited range of goods or services; or

(iii) instruments valid only in Portugal provided at the request of an undertaking or a public sector entity and regulated by a national or regional public authority for specific social or tax purposes in order to allow to acquire specific goods or services from suppliers having a commercial agreement with the issuer;

(l) payment transactions performed by a provider of electronic communications networks or services, where the acquired goods or services are provided in addition to electronic communications services for a subscriber to the network or service, provided that the value of any single payment transaction does not exceed €50 and the cumulative value of payment transactions for an individual subscriber does not exceed €300 per month, or where a subscriber pre-funds its account with the provider of the electronic communications network or service, the cumulative value of payment transactions does not exceed €300 per month, and provided that:

(i) the transactions are intended for purchase of digital content and voice-based services, regardless of the device used for the purchase or consumption of the digital content and charged to the related bill; or

(ii) the transactions are performed from or via an electronic device and charged to the related bill within the framework of a charitable activity or for the purchase of tickets;

(m) payment transactions carried out between payment service providers, their agents or branches for their own account;

(n) payment transactions and related services between a parent undertaking and its subsidiary or between subsidiaries of the same parent undertaking, without any intermediary intervention by a payment service provider other than an undertaking belonging to the same group;

(o) cash withdrawal services offered by means of automated teller machines (ATM) by providers, acting on behalf of one or more card issuers, which are not a party to the framework contract with the payment service user withdrawing money from a payment account, on condition that those providers do not provide other payment services listed in Article 4.

2 – In any case, the providers referred to in subparagraph (o) of the foregoing paragraph shall inform the payment service user of the withdrawal charges referred to in Articles 84, 87, 88 and 98, immediately before and after the cash withdrawal transaction.

3 – This Legal Framework shall not apply to the monetary value stored on the instruments referred to in paragraph 1(k) or to the monetary value that is used to make the payment transactions referred to in paragraph 1(l).

## Article 6

### Reporting obligation

1 – Service providers carrying out either of the activities referred to in Article 5(1)(k)(i) and (ii) or carrying out both activities, for which the total value of payment transactions executed over the preceding 12 months exceeds the amount of €1 million, shall send a notification to Banco de Portugal containing a description of the services offered, specifying under which exclusion referred to Article 5(1)(k)(i) and (ii) the activity is considered to be carried out.

2 – On the basis of that notification, Banco de Portugal, within the time limit provided for in Article 23(1), shall take a duly motivated decision on the basis of criteria referred to in Article 5(1)(k) where the activity does not qualify as a limited network, and inform the service provider accordingly.

3 – Service providers carrying out an activity referred to in Article 5(1)(l) shall send a notification to Banco de Portugal containing a description of the services offered and provide Banco de Portugal with an annual audit opinion, testifying that the activity complies with the limits set out in Article 5(1)(l).

4 – Banco de Portugal shall inform the European Banking Authority (EBA) of the services notified pursuant to paragraphs 1 and 3, stating under which exclusion the activity is carried out.

5 – The description of the activity notified under paragraphs 1 and 3 of this Article shall be made publicly available in the registers provided for in Article 35.

6 – Banco de Portugal shall lay down, by means of a Notice, the regulatory provisions necessary for implementing the provisions of paragraphs 1 and 3 of this Article.

## Article 7

### Competent Authority

1 – Banco de Portugal shall be responsible for prudential and conduct supervision within the scope of this Legal Framework. In particular it shall:

(a) grant authorisation for the establishment of payment institutions and electronic money institutions, and withdraw it in the cases provided for by law;

(b) monitor compliance with the provisions of this Legal Framework, without prejudice to the provisions of Article 149;

(c) issue regulatory standards deemed necessary for the implementation of its provisions;

(d) examine the complaints submitted by payment service users and electronic money holders;

(e) initiate administrative offence proceedings and impose the related penalties without prejudice to the provisions of Article 155.

2 – In the exercise of its supervisory powers, Banco de Portugal may in particular:



(a) require payment service providers and electronic money issuers to submit any information it deems necessary to check compliance with the rules of this Legal Framework, specifying the purpose of the request, as appropriate, and the time limit by which the information is to be provided;

(b) carry out on-site inspections of the establishments of payment service providers and electronic money issuers, as well as those of any branches, agents and electronic money distributors, and also to the establishments of third parties to whom important operational functions have been entrusted for the provision of payment services or the issuance of electronic money;

(c) issue recommendations and specific orders to remedy any irregularities detected.

3 – Without prejudice to the powers conferred upon it by Decree-Law No 298/92 of 31 December 1992, approving the Legal Framework of Credit Institutions and Financial Companies (*Regime Geral das Instituições de Crédito e Sociedades Financeiras – RGICSF*), Banco de Portugal shall be responsible for the prudential supervision of payment institutions and electronic money institutions having their head office in Portugal, including their branches, agents and electronic money distributors established abroad, as well as branches located in Portugal of electronic money institutions having their head office outside the Union.

4 – Banco de Portugal shall supervise compliance with the provisions of Title III in respect of payment services in Portugal provided by entities legally authorised to pursue that business, including through agents and branches, except for services provided under the freedom to provide services by entities authorised in other Member States.

5 – Banco de Portugal oversees the compliance with Title IV regarding the issuance, distribution and redemption of electronic money in Portugal by entities legally authorised to pursue that business, including through branches, agents and distributors of electronic money, with the exception of the pursuit of business under the freedom to provide services by entities authorised in other Member States.

6 – In the application of the legislation governing the protection of competition to payment service providers and electronic money issuers and their business associations, as well as payment systems, Articles 87 and 88 of the Legal Framework of Credit Institutions and Financial Companies shall apply *mutatis mutandis*.

7 – The rules on advertising laid down in Article 77-C of the Legal Framework of Credit Institutions and Financial Companies shall apply to payment service providers and electronic money issuers, their branches, agents and electronic money distributors, as well as business associations of providers and issuers, and Banco de Portugal shall be responsible for the exercising of powers granted under Article 77-D of that Legal Framework.

#### Article 8

#### **Decisions of Banco de Portugal**

1 – Judicial challenges against Banco de Portugal's decisions, taken within the scope of this Decree-Law, shall abide, in all aspects not specifically covered by the latter, by the provisions of

the Organic Law of Banco de Portugal.

2 – Regarding the judicial challenges mentioned in the foregoing paragraph as well as the judicial challenges against other decisions taken within the scope of specific legislation governing the activity of payment institutions and electronic money institutions, it is presumed, in the absence of evidence to the contrary, that the suspension of enforcement seriously harms the public interest.

3 – Regarding the decisions referred to in paragraphs 1 and 2 above, from which damages to a third party have resulted, the personal civil liability of their authors can only be enforced if Banco de Portugal claims the repayment from them and only if the severity of their conduct so justifies, save if their conduct constitutes a crime.

#### Article 9

##### **Time limits**

1 – Unless otherwise provided for by a special rule, the time limits established in this Decree-Law are continuous, without prejudice to the provisions of the following paragraph.

2 – The 30-day or one-month periods established in this Decree-Law for the exercising of the competences conferred on Banco de Portugal are interrupted whenever Banco de Portugal requires the parties concerned to provide information deemed necessary for the preparation of the relevant proceeding.

3 – The interruption provided for in the foregoing paragraph cannot under any circumstances exceed a total of 60 days, continuous or non-continuous.

#### Article 10

##### **Duty of professional secrecy on the part of Banco de Portugal and cooperation with other entities**

1 – The duty of professional secrecy provided for in Article 80 of the Legal Framework of Credit Institutions and Financial Companies shall apply, within the scope of this Legal Framework, to all persons performing or who have performed functions within Banco de Portugal, as well as those providing or who have provided services to it, directly or indirectly, on a temporary or permanent basis.

2 – The provisions of the foregoing paragraph shall also be without prejudice to the information exchange procedures laid down in Article 61.

TITLE II

**Taking-up and general conditions of the activity of payment service providers and electronic money issuers**

CHAPTER I

**General rules**

Article 11

**Payment service providers - Principle of exclusiveness**

- 1 – The following entities may provide the payment services referred to in Article 4:
  - (a) Credit institutions having their head office in Portugal and whose corporate purpose comprises the pursuit of this activity, in accordance with the applicable laws and regulations;
  - (b) Payments institutions having their head office in Portugal;
  - (c) Electronic money institutions having their head office in Portugal;
  - (d) Financial companies having their head office in Portugal and whose corporate purpose comprises the pursuit of this activity, in accordance with the applicable laws and regulations;
  - (e) Credit institutions having their head office outside Portugal legally authorised to pursue the activity in Portugal;
  - (f) Electronic money institutions and payment institutions having their head office in another Member State of the European Union, in accordance with this Legal Framework;
  - (g) Branches of electronic money institutions having their head office outside the European Union, in accordance with this Legal Framework;
  - (h) Post office giro institutions which are entitled under national law to provide payment services;
  - (i) The State, autonomous regions and services and bodies under direct and indirect State government when not acting in their capacity as public authorities;
  - (j) The European Central Bank, Banco de Portugal and all other national central banks when not acting in their capacity as monetary authority or in the exercise of public powers.
- 2 – Natural or legal persons exclusively providing the payment service referred to in Article 4(h) shall be treated as payment institutions.
- 3 – The professional provision of payment services referred to in Article 4 by natural or legal persons not included in the foregoing paragraphs shall be prohibited.
- 4 – The entities referred to in paragraph 1(e) and (f) may only provide payment services in Portugal that they are authorised to provide in their home country.
- 5 – The term 'payment institution' shall be used solely by payment institutions which may include it in their company or business name or use it in their activity.
- 6 – Payment institutions having their head office in another Member State shall be subject,

mutatis mutandis, to the provisions of the Legal Framework of Credit Institutions and Financial Companies with regard to the use of company or business name they use in their home Member State, in accordance with Article 46 of the aforementioned Legal Framework.

7 – Article 126 of the Legal Framework of Credit Institutions and Financial Companies shall apply, mutatis mutandis, in case of well-founded suspicions of payment services provision by an unauthorised natural or legal person.

#### Article 12

##### **Electronic Money Issuers – Principle of exclusiveness**

1 – The following entities may issue electronic money:

(a) Credit institutions having their head office in Portugal and whose corporate purpose comprises the pursuit of this activity, in accordance with the applicable laws and regulations;

(b) Electronic money institutions having their head office in Portugal;

(c) Credit institutions having their head office outside Portugal legally authorised to pursue the activity in Portugal;

(d) Electronic money institutions having their head office in another Member State of the European Union, in accordance with this Legal Framework;

(e) Branches of electronic money institutions having their head office outside the European Union, in accordance with this Legal Framework;

(f) The State, autonomous regions and services and bodies under direct and indirect State government when not acting in their capacity as public authorities;

(g) The European Central Bank, Banco de Portugal and all other national central banks when not acting in their capacity as monetary authority or in the exercise of other public powers.

2 – The issuance of electronic money by natural or legal persons not included in the foregoing paragraph shall be prohibited.

3 – The term 'electronic money institution' shall be used solely by electronic money institutions which may include it in their company or business name or use it in their activity.

4 – Electronic money institutions having their head office in another Member State shall be subject, mutatis mutandis, to the provisions of the Legal Framework of Credit Institutions and Financial Companies with regard to the use of a company or business name they use in their home Member State, in accordance with Article 46 of the aforementioned Legal Framework.

5 – Article 126 of the Legal Framework of Credit Institutions and Financial Companies shall apply, mutatis mutandis, in case of well-founded suspicions of issuance of electronic money by an unauthorised natural or legal person.

#### Article 13

##### **Activity of payment institutions**

1 – Payment institutions are legal persons subject to this Legal Framework having as purpose

the provision of one or more payment services.

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

(a) The provision of operational and ancillary services closely related to payment services such as ensuring the execution of payment transactions, foreign exchange services, safekeeping activities, and the storage and processing of data;

(b) The operation of payment systems, without prejudice to Article 68;

(c) Credit granting relating to the payment services referred to in Article 4(d) and (e), in accordance with the conditions laid down in Article 15;

(d) Business activities other than the provision of payment services, in accordance with the legal provisions applicable to such activities; and

(e) Activities included in the statutory purpose of currency exchange offices, in accordance with the legal provisions applicable to those institutions.

3 – Payment accounts held by payment institutions for the provision of payment services may not have other purposes.

4 – Payment institutions shall not take deposits or other repayable funds from the public within the meaning of the Legal Framework of Credit Institutions and Financial Companies.

5 – Funds received by payment institutions from payment service users may only be used for the execution of payment services and shall not constitute acceptance of deposits or other repayable funds within the meaning of the Legal Framework of Credit Institutions and Financial Companies, nor electronic money within the meaning of this Legal Framework.

#### Article 14

#### **Activity of electronic money institutions**

1 – Electronic money institutions are legal persons subject to this Legal Framework having as purpose the issuance of electronic money.

2 – Apart from the issuance of electronic money, electronic money institutions shall be entitled to engage in the following activities:

(a) Provision of the payment services referred to in Article 4;

(b) Credit granting relating to the payment services referred to in Article 4(d) and (e), in accordance with the conditions laid down in Article 15;

(c) The provision of operational and ancillary services closely related to the issuance of electronic money and payment services, such as ensuring the execution of payment transactions, foreign exchange services, safekeeping activities, and the storage and processing of data;

(d) The operation of payment systems, without prejudice to Article 68;

(e) Business activities other than the issuance of electronic money, in accordance with the legal provisions applicable to such activities.

3 – Electronic money institutions shall not take deposits or other repayable funds from the public within the meaning of the Legal Framework of Credit Institutions and Financial Companies.

4 – Funds received by electronic money institutions from electronic money holders shall be exchanged for electronic money without delay and shall not constitute acceptance of deposits or other repayable funds within the meaning of the Legal Framework of Credit Institutions and Financial Companies.

5 – Paragraphs 3 and 5 of the foregoing Article shall apply to funds received by electronic money institutions for the provision of the payment services referred to in Article 4 and which are not linked to the issuance of electronic money.

#### Article 15

##### **Credit granting**

1 – Payment institutions and electronic money institutions may grant credit only where it relates to payment services referred to in Article 4(d) and (e), provided that the following conditions are met:

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

(b) credit granted in connection with the exercise of the right of establishment and the freedom to provide services under Articles 43 and 44 shall be repaid within a maximum period of 12 months, notwithstanding the legal provisions on providing credit by credit cards;

(c) credit may not be granted from the funds received or held for the purpose of executing a payment transaction or received in exchange of electronic money issued;

(d) the payment institution and the electronic money institution shall at all times have own funds suited to the amount of credit granted, in accordance with Banco de Portugal's regulatory requirements and orders.

2 – This Legal Framework shall be without prejudice to the legal provisions applicable to consumer credit.

3 – Payment institutions and electronic money institutions granting credit under this Article shall report to the Central Credit Register, managed by Banco de Portugal, information relating to the transactions they carry out, under the terms and for the purposes laid down in the legislation governing the centralisation of credit liabilities.

#### Article 16

##### **Duty of professional secrecy of payment institutions and electronic money institutions**

The duty of professional secrecy relating to credit institutions provided for in Articles 78 and 79 of the Legal Framework of Credit Institutions and Financial Companies shall apply, *mutatis mutandis*, to members of the management or supervisory bodies of payment institutions and electronic money institutions, their staff, legal representatives, agents and other persons providing services to them, directly or indirectly, on a temporary or permanent basis, including

agents and distributors of electronic money, being such provisions applicable even after their functions or services have ceased.

Article 17

**Breach of professional secrecy**

Without prejudice to other applicable penalties, breach of the duty of professional secrecy is punishable under Article 195 of the Criminal Code (*Código Penal*).

CHAPTER II

**Authorisation and registration of payment institutions and electronic money institutions**

SECTION I

**Authorisation**

Article 18

**Authorisation and general requirements**

1 – The setting-up of payment institutions and electronic money institutions shall be subject to authorisation to be granted by Banco de Portugal, on a case-by-case basis.

2 – Payment institutions and electronic money institutions having their head office in Portugal shall:

(a) take the form of a public limited company (*sociedade anónima*) or limited liability company (*sociedade por quotas*);

(b) have share capital corresponding to the services to be provided, in accordance with Article 49 or Article 55;

(c) have the principal and effective headquarters of the administration located in Portugal and carry out at least part of their principal activity in Portugal;

(d) have management and supervisory bodies composed of members whose reputation and professional qualification, at an individual level or at the level of the bodies as a whole, provide guarantees of sound and prudent management of the institution;

(e) demonstrate that the natural or legal persons who wish, directly or indirectly, to hold a qualifying holding meet conditions to ensure sound and prudent management of the institution;

(f) have robust governance arrangements in place, including a clear organisational structure with well defined, transparent and consistent lines of responsibility;

(g) have effective processes in place to identify, manage, monitor and report the risks the institution is or might be exposed to;

(h) have adequate internal control mechanisms, including sound administrative and accounting procedures, that are comprehensive and proportionate to the nature, scale and complexity of the activities to be carried out;

(i) have adequate internal control mechanisms to comply with the laws and regulations preventing money laundering and terrorist financing;

3 – Extending the range of payment services, among those listed in Article 4, which payment institutions already established propose to provide shall also be subject to prior authorisation to be granted by Banco de Portugal.

#### Article 19

##### **Application procedure**

1 – For authorisation as payment institutions or electronic money institutions, an application shall be submitted to Banco de Portugal pursuant to the following paragraphs.

2 – Without prejudice to paragraph 8, the application for authorisation shall be submitted together with the following:

(a) draft articles of association or draft amendment to the articles of association, including an express reference to payment services, among those listed in Article 4, which the payment institution or the electronic money institution proposes to provide;

(b) programme of operations, including, inter alia, the individual framework for each of the activities with express reference to the payment services, among those listed in Article 4, geographical location, internal organisation, as well as material, technical and human resources to be used and, where appropriate, reference to branches, agents and distributors of electronic money, as well as to third parties to whom operational functions are entrusted;

(c) a business plan including, namely prospective accounts for each of the first three business years, which demonstrates that the applicant is able to employ the appropriate and proportionate systems, resources and procedures to operate soundly;

(d) evidence that the applicant holds the share capital as provided for in Article 49 or Article 55;

(e) the identity, and corresponding evidence, of persons holding in the applicant, directly or indirectly, qualifying holdings within the meaning of point (36) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council, of 26 June 2013, as well as the size of their holdings and evidence of their suitability taking into account the need to ensure the sound and prudent management of a payment institution or electronic money institution;

(f) a description of the measures taken for safeguarding the funds from payment service users and electronic money holders in accordance with Article 52 or Article 58, for the institutions providing the payment services listed in Article 4(a) to (f);

(g) evidence of robust governance arrangements in place, including a clear organisational structure with well-defined, transparent and consistent lines of responsibility, effective processes in place to identify, manage, monitor and report the risks the institution is or might be exposed to, adequate internal control mechanisms in place, including sound administrative and accounting procedures, and such arrangements, processes and mechanisms shall be comprehensive and proportionate to the nature, scale and complexity of the applicant's activities;

(h) a description of the internal control mechanisms established to comply with the laws and regulations preventing money laundering and terrorist financing, including an assessment of the risks associated with the applicant's customer base, products and services provided, distribution



channels used and geographical areas of activity, as well as measures to mitigate such risks;

(i) a description of the applicant's structural organisation, including, where applicable, a description of the intended pursuit of the activity through its branches, agents and distributors of electronic money, and of the off-site and on-site checks that the applicant undertakes to perform on them at least annually, as well as a description of outsourcing arrangements, and of its participation in a national or international payment systems;

(j) evidence of the identity of the members of the management and supervisory bodies and of the persons responsible for the management of the payment institution and electronic money institution and, where relevant, persons responsible for the management of the payment services activities and electronic money issuance activities of the applicant, as well as evidence that they are of good repute and possess appropriate knowledge and experience to perform payment services or to issue, distribute and redeem electronic money;

(k) a description of the procedure in place to monitor, handle and follow up a security incident and security related customer complaints, including an incidents reporting mechanism which takes account of the notification obligations of the institution laid down in Article 71;

(l) a description of the process in place to classify, monitor, track and restrict access to sensitive payment data;

(m) a description of business continuity arrangements including a clear identification of the critical operations, effective contingency plans and a procedure to regularly test and review the adequacy and efficiency of such plans;

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

(o) a security policy document, including a detailed risk assessment in relation to its payment services or issuance of electronic money and a description of security control and mitigation measures taken to adequately protect payment service users and electronic money holders against the risks identified, including fraud and illegal use of sensitive and personal data;

(p) where applicable, the identity of statutory auditors and audit firms as defined in Law No 148/2015 of 9 September 2015;

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

3 – For the purposes of paragraph 2(f), (g), (i) and (k), the applicant shall provide a description of its audit arrangements and the organisational arrangements it has set up with a view to taking all reasonable steps to protect the interests of its users and to ensure continuity and reliability in the performance of payment services and the issuance of electronic money.

4 – The security control and mitigation measures referred to in paragraph 2(o) shall indicate how they ensure a high level of technical security and data protection, including for the software and IT systems used by the applicant or by third parties to which it outsources the whole or part of its operations.

5 – The measures referred to in paragraph 2(o) shall also include the security measures laid down in Article 70.

6 – Entities that apply for authorisation to provide payment initiation services shall be required, as a condition of their authorisation, to hold a professional indemnity insurance, covering the territories in which they offer services, or some other comparable guarantee against liability to ensure that they can cover their liabilities as specified in Articles 114, 132 and 134.

7 – The rules for determining the criteria on how to stipulate the minimum monetary amount of the professional indemnity insurance or other comparable guarantee referred to in the foregoing paragraph shall be laid down in an executive order of the Minister of Finance, after hearing Banco de Portugal and the Portuguese Insurance and Pension Funds Supervisory Authority (*Autoridade de Supervisão de Seguros e Fundos de Pensões*).

8 – Banco de Portugal shall determine, by means of a Notice, the documentation comprising the elements of paragraph 2 which shall be submitted together with the application for request mentioned in paragraph 1.

9 – For the purposes of this Article, the information provided by the applicant institutions shall be true, complete, accurate and up to date and comply with the applicable laws and regulations.

10 – For the purposes of assessing the application for authorisation, Banco de Portugal may promote consultations it deems necessary, in particular with other relevant public authorities.

#### Article 20

### **Suitability and professional qualification of the members of the management and supervisory bodies**

1 – The assessment of the suitability and professional qualification of the members of the management and supervisory bodies of payment institutions and electronic money institutions shall be governed, *mutatis mutandis*, by the provisions regulating members of the management and supervisory bodies under Articles 30 to 32-A, except for Article 31-A, of the Legal Framework of Credit Institutions and Financial Companies.

2 – As regards payment institutions and electronic money institutions simultaneously carrying out the activities referred to in Article 13(2)(d) and Article 14(2)(e), the professional qualification requirements shall only apply to those persons responsible for day-to-day management of the activity of providing payment services and issuing electronic money.

#### Article 21

### **Segregation of activities**

1 – Banco de Portugal may determine, as a condition for granting authorisation, the setting-up of a commercial company whose sole purpose is to provide the payment services listed in Article 4(a) to (g), where the activities other than payment services carried out or to be carried out by the applicant institutions impair or are likely to impair:

(a) the financial soundness of the payment institution; or

(b) the proper performance of the supervisory tasks by Banco de Portugal.

2 – The provisions of the foregoing paragraph shall be applicable, mutatis mutandis, to the authorisation of electronic money institutions. In this case, the commercial company referred to in the foregoing paragraph may have as its sole purpose not only the issuance of electronic money, but also the provision of the payment services listed in Article 4.

3 – This Article shall also apply in case of amendments to the corporate purpose stated in the articles of association of payment institutions and electronic money institutions.

#### Article 22

##### **Account information service providers**

1 – Natural or legal persons providing only the payment service as referred to in Article 4(h) shall be exempt from the application of the procedure and conditions set out in Sections I and II, with the exception of Article 19(2)(a), (b), (c), (g), (i), (j), (k), (l), (m), (o) and (q) and Article 19(6).

2 – Titles III and IV, with the exception of Articles 80, 84 and 91 and, where appropriate, Articles 70 to 72, 104, 107 and 110 shall not apply to the entities referred to in the foregoing paragraph.

3 – Entities that apply for registration to provide account information services shall be required, as a condition of their authorisation, to hold a professional indemnity insurance, covering the territories in which they offer services, or some other comparable guarantee against their liability vis-à-vis the account servicing payment service provider or the payment service user resulting from non-authorised or fraudulent access to or non-authorised or fraudulent use of payment account information.

4 – The rules for determining the criteria on how to stipulate the minimum monetary amount of the professional indemnity insurance or other comparable guarantee referred to in paragraph 3 shall be laid down in an executive order of the Minister of Finance, after hearing Banco de Portugal and the Portuguese Insurance and Pension Funds Supervisory Authority (*Autoridade de Supervisão de Seguros e Fundos de Pensões*).

5 – Without prejudice to other grounds provided for by law, Banco de Portugal may cancel the registration of account information service providers in case of non-compliance with the conditions set out in this Article.

#### Article 23

##### **Decision**

1 – Within three months of receipt of an application or, if the application is incomplete, of receipt of all of the information required for the decision, but in any case within twelve months from the receipt of the initial application, Banco de Portugal shall inform the applicant whether the authorisation is granted or refused, as well as the reasons therefor.

2 – Banco de Portugal shall grant an authorisation if the information and evidence accompanying the application comply with all of the requirements laid down in Article 19 and if, having scrutinised the application, Banco de Portugal's overall assessment is favourable, taking into account the need to ensure sound and prudent management of the institution.

3 – Article 20 of the Legal Framework of Credit Institutions and Financial Companies shall apply, *mutatis mutandis*, to the refusal of authorisation.

#### Article 24

##### **Ongoing compliance with authorisation conditions**

1 – Payment institutions and electronic money institutions shall comply at all times with the conditions governing authorisation for their setting-up as provided for in Title II.

2 – Payment institutions and electronic money institutions shall immediately notify Banco de Portugal of any material changes to the authorisation conditions provided for in the foregoing paragraph.

#### Article 25

##### **Changes to the articles of association and the particulars of the application**

1 – Changes to the articles of association of payment institutions and electronic money institutions are subject to prior authorisation from Banco de Portugal in respect of the following:

- (a) Company or business name;
- (b) Corporate purpose;
- (c) Location of the head office, except where relocation takes place in the same municipality or to a neighbouring municipality;
- (d) Share capital, in cases where it is reduced;
- (e) Creation of categories of shares or changes in the existing categories;
- (f) Structure of the management or supervisory bodies;
- (g) Limitation of the powers of the management or supervisory bodies;
- (h) Winding up.

2 – Without prejudice to Articles 52 and 58 and Chapter III, all other amendments to the articles of association and, in general, changes in the particulars supporting the application referred to in Article 19(2) with regard to payment institutions or electronic money institutions, shall be notified to Banco de Portugal immediately.

#### Article 26

##### **Lapsing of authorisation**

Article 21 of the Legal Framework of Credit Institutions and Financial Companies shall apply to the lapsing of the authorisation granted to payment institutions and electronic money institutions.

#### Article 27

##### **Withdrawal of authorisation**

The authorisation of a payment institution or electronic money institution may be withdrawn if any of the following grounds, as well as others provided for by law, occur:

- (a) The authorisation was obtained by making false statements or any other irregular means, regardless of the applicable sanctions;
- (b) Any of the conditions governing the granting of authorisation for the setting-up under Articles 18 and 19 ceases to be met, or the institution fails to notify Banco de Portugal of any material change in that regard;
- (c) The activity of the institution does not correspond to the authorised statutory purpose;
- (d) The institution ceases or reduces its activity to a negligible level for a period over six months;
- (e) Serious irregularities are committed in the governance, accounting procedures, or internal control of the institution;
- (f) The institution is unable to comply with its commitments, in particular, where it no longer provides security for the assets entrusted to it;
- (g) The institution ceases to comply with prudential own funds requirements, rules on large exposures or liquidity rules;
- (h) The assets of the institution total less than its liabilities, or there are reasonable grounds to consider that this will be the case in the near future;
- (i) The institution seriously or repeatedly fails to comply with the laws and regulations governing its activity, or fails to observe the determinations of Banco de Portugal;
- (j) The institution expressly renounces to the authorisation, except in the case of voluntary winding-up;
- (k) The members of the management and supervisory bodies, as a whole, do not give guarantees of sound and prudent management of the institution;
- (l) The institution commits one of the breaches listed under Article 151;
- (m) The institution seriously fails to comply with the laws and regulations preventing money laundering and terrorist financing;
- (n) The institution constitutes a threat to the stability of the payment system by continuing its payment services business.

#### Article 28

##### **Power of withdrawal of authorisation and its effects**

- 1 – The withdrawal of authorisation granted to payment institutions and electronic money institutions shall be the responsibility of Banco de Portugal.
- 2 – Reasons shall be given for any withdrawal of authorisation and the withdrawal decision must be notified to the institution.
- 3 – Any withdrawal decision shall be notified to the European Banking Authority and to the supervisory authorities of the EU Member States in which the institution has branches or provides services.

4 – Banco de Portugal shall make public the withdrawal of the authorisation on its website.

5 – The withdrawal of authorisation shall have the same effects as a declaration of insolvency and imply the winding-up and liquidation of the institution, except if, in the cases provided for in subparagraphs *(d)* and *(j)* of the foregoing Article, the winding-up and liquidation are waived by Banco de Portugal.

6 – The withdrawal decision shall contain the effective time, which shall be, for all legal purposes, the time when the liquidation proceedings were initiated. Where this is omitted, the decision shall be effective from 12:00.

7 – Following the withdrawal of authorisation, Banco de Portugal shall take the necessary steps to ensure the immediate closure of all the institution's premises.

8 – Where the winding-up and liquidation of the payment institution or the electronic money institution is waived, the institution shall ensure that the necessary amendments to the articles of association in relation to its corporate purpose and company or business name are made, in order to ensure compliance with Articles 11(5) and 12(3), within the time limit specified in the withdrawal decision.

#### Article 29

##### **Winding-up and liquidation**

1 – The winding-up and liquidation of payment institutions and electronic money institutions having their head office in Portugal, including branches established in other Member States, shall be subject, *mutatis mutandis*, to the framework provided for in Chapter II of Decree-Law No 199/2006 of 25 October 2006 on the liquidation of credit institutions and financial companies.

2 – Where an application for insolvency or voluntary insolvency of a payment institution or an electronic money institution is filed, the court shall declare that it has no jurisdiction to do so on the basis of Article 5(1) of Decree-Law No 199/2006 of 25 October 2006.

#### Article 30

##### **Merger, splitting and voluntary winding-up**

Articles 35 and 35-A of the Legal Framework of Credit Institutions and Financial Companies shall apply *mutatis mutandis* to the merger, splitting and voluntary winding-up of payment institutions and electronic money institutions.

#### SECTION II

##### **Agents, distributors of electronic money and third parties with operational functions**

#### Article 31

##### **Agents**

1 – Payment institutions and electronic money institutions may provide payment services through agents, assuming full responsibility for all acts performed by them.

2 – Where they intend to provide payment services through agents, payment institutions and electronic money institutions having their head office in Portugal shall be required to communicate the following information to Banco de Portugal in advance:

(a) the name and address of the agent;

(b) a description of the internal control mechanisms that will be used by the agent in order to comply with the laws and regulations preventing money laundering and terrorist financing;

(c) the identity of persons responsible for the management of the agent to be used in the provision of payment services and, for agents other than payment service providers, evidence that they are of good repute and possess appropriate knowledge and experience;

(d) the identification of the payment services to be provided through the agent;

(e) for agents of electronic money institutions, information on whether they distribute and redeem electronic money.

3 – Before registering the agent, Banco de Portugal shall take the necessary steps to verify the information provided to it, if doubts arise as regards its correctness.

4 – Within two months of complete receipt of the information referred to in paragraph 2, Banco de Portugal shall enter the agent in the special register, in accordance with Articles 34, 35 and 36, and shall notify the institution thereof.

5 – Upon entry in the register, the agent may commence providing payment services.

6 – Banco de Portugal shall refuse to enter the agent in the register if, after the expiry of the period laid down in paragraph 4, it considers that the accuracy of the information provided pursuant to paragraph 2 has not been sufficiently proven, and shall inform the institution without delay.

7 – Changes to the information referred to in paragraph 2 shall be subject to prior notification.

8 – Payment institutions and electronic money institutions shall ensure that agents acting on their behalf inform payment service users of this fact.

9 – The provision of payment services in another Member State by engaging an agent shall be subject to the procedures set out in Article 43.

#### Article 32

#### **Distribution and redemption of electronic money by agents and distributors of electronic money institutions**

1 – Electronic money institutions are allowed to distribute and redeem electronic money through distributors of electronic money.

2 – Agents that electronic money institutions use to provide payment services pursuant to the foregoing paragraph may also distribute and redeem electronic money on behalf and under the responsibility of the institutions.

3 – The distributors of electronic money and agents referred to in the foregoing paragraphs

shall not issue electronic money.

4 – Where they intend to distribute and redeem electronic money through distributors of electronic money, electronic money institutions shall be required to communicate the information under Article 31(2)(a) to (c) to Banco de Portugal in advance in relation to the distributors of electronic money.

5 – Article 31(2) to (9) shall apply *mutatis mutandis* to distributors of electronic money.

6 – Article 43 shall apply in case an electronic money institution having its head office in Portugal intends to distribute or redeem electronic money in another Member State through the persons referred to in paragraph 1.

### Article 33

#### **Third parties with operational functions**

1 – Payment institutions and electronic money institutions may outsource operational functions of payment services and the issuance of electronic money, assuming full responsibility for all acts performed by third parties.

2 – Banco de Portugal shall be informed in advance of the intention to outsource operational functions of payment services and issuance of electronic money, including a description of the functions to be outsourced.

3 – Where institutions rely on third parties for the performance of operational functions, those institutions take reasonable steps to ensure that the requirements of this Legal Framework are complied with.

4 – Where important operational functions, including IT systems, are outsourced, payment institutions and electronic money institutions shall safeguard the quality of internal control and ensure that Banco de Portugal is able to check compliance with all applicable legal provisions.

5 – The outsourcing of important operational functions must meet the following conditions:

(a) senior management responsibility shall not be delegated to third parties;

(b) the relationship and obligations of the institution towards its payment service users and electronic money holders under this Legal Framework shall not be altered;

(c) the institution shall be responsible for complying with the provisions laid down in this Legal Framework; and

(d) the institution shall continue to be obliged to respect the conditions for authorisation.

6 – Institutions shall communicate to Banco de Portugal without undue delay any change regarding the outsourcing of operational functions.



### SECTION III

#### **Registration**

##### Article 34

#### **Registration requirement**

1 – Payment institutions and electronic money institutions shall not commence their activity without being subject to a special registration with Banco de Portugal.

2 – Articles 65 to 71 of the Legal Framework of Credit Institutions and Financial Companies shall apply mutatis mutandis to the registration of payment institutions and electronic money institutions having their head office in Portugal and their branches, agents and distributors of electronic money.

##### Article 35

#### **Public register**

1 – Banco de Portugal shall be responsible for establishing a public register which contain the following:

(a) authorised payment institutions and their agents;

(b) authorised electronic money institutions and their agents and distributors;

(c) the payment services included in the authorisation of payment institutions and electronic money institutions;

(d) the account information service providers, exclusively providing this type of service, and their agents;

(e) the branches of payment institutions and electronic money institutions having their head office in Portugal and providing services in another European Union Member State;

(f) service providers referred to in Article 6(1) or (3), including a description of the notified activity;

(g) the liquidation of payment institutions and electronic money institutions having their head office in Portugal and the identity of the pre-court administrators, liquidators and members of the winding-up committee.

2 – Authorised payment institutions and electronic money institutions shall be registered in a separate list of persons exclusively providing account information services and institutions benefiting from the exemption pursuant to Article 37.

3 – The withdrawal of any authorisation pursuant to Article 27, cancelling any annotation to the registration pursuant to Article 22 and withdrawal of any exemption pursuant to Article 37 shall be entered in the public register.

4 – The particulars described in the foregoing paragraphs shall be publicly available and permanently updated on Banco de Portugal's website.

5 – Banco de Portugal shall inform the European Banking Authority of the information entered in the public register referred to in paragraphs 1(a) to (f), 2 and 3 of this Article.

6 – Banco de Portugal shall notify the European Banking Authority without delay of the reasons for the withdrawal of any authorisation pursuant to Article 27, for the cancellation of any annotation to the registration pursuant to Article 22 and for the withdrawal of any exemption pursuant to Article 37.

7 – The provisions of this Article shall be subject to the delegated act of the European Commission adopting the regulatory and implementing technical standards pursuant to Article 15(4) and (5) of Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015.

#### Article 36

##### **Registration refusal**

1 – In addition to other reasons provided for by law, registration shall be refused in the following cases:

- (a) When it is clear that the fact to be registered is not supported by the documents presented;
- (b) When it is demonstrated that the fact reported in the document is already registered or is not subject to registration;
- (c) When any legally required authorisation is missing;
- (d) When the nullity of the fact is clear;
- (e) When it is demonstrated that any of the requirements for the necessary authorisation for the setting-up of the payment institution or electronic money institution or for the pursuit of the activity of payment service provision or issuance, distribution and redemption of electronic money is not met.

2 – Any application for registration submitted by natural or legal persons exclusively providing the payment service referred to in Article 4(h) shall be refused in the following cases:

- (a) when the application is submitted without any of the elements referred to in Article 19(2)(a), (b), (c), (g), (i), (j), (k), (l), (m), (o) and (q);
- (b) when proof of the subscription of the professional indemnity insurance laid down in Article 22 is missing.

#### SECTION IV

##### **Exemption**

#### Article 37

##### **Applicability conditions**

1 – The terms and conditions of the exemption from the application of all or part of the requirements and procedures for the necessary authorisation of payment institutions, with the exception of Articles 7, 8, 10, 35 and 61, shall be laid down in an executive order of the Minister

of Finance, after hearing Banco de Portugal.

2 – The exemption provided for in the foregoing paragraph shall apply only to legal persons having their head office in Portugal and wishing to provide the payment services listed in Article 4(a) to (e).

3 – The executive order of the Minister of Finance referred to in paragraph 1 shall comply with the following parameters:

(a) the monthly average of the preceding 12 months' total value of payment transactions executed by the legal person, including any agent for which it assumes full responsibility, may not exceed €3 million; and

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

4 – Where the legal person has not obtained an authorisation in accordance with Article 18 yet, the requirement laid down in subparagraph (a) of the foregoing paragraph shall be assessed by reference to the total amount of payment transactions provided for in its business plan. Banco de Portugal may require any adjustments to the plan that it deems necessary.

5 – Legal persons benefiting from the exemption referred to in paragraph 1 shall be treated as payment institutions for the purposes of the application of this Legal Framework, but may not pursue an activity in another Member State under the right of establishment or the freedom to provide services, and Chapter IV, Section I and Chapter VII, Section II of this Title shall not apply to them.

6 – The exemption referred to in paragraph 1 shall not, in any circumstances, exclude compliance with the laws and regulations preventing money laundering and terrorist financing.

7 – Legal persons benefiting from the exemption under paragraph 1 shall immediately notify Banco de Portugal of any change in their situation which is relevant to the conditions specified in this Article.

8 – Without prejudice to the withdrawal of authorisation under Article 27, Banco de Portugal may revoke the exemption referred to in paragraph 1 if the conditions underlying the granting decision are no longer met.

9 – Banco de Portugal shall establish, by means of a Notice, measures to be applicable in case the conditions provided for in this Article are no longer met.

10 – In any event, where the conditions set out in this Article are no longer met, authorisation shall be sought within a maximum period of 30 calendar days.

11 – Banco de Portugal shall publish, on its website, a report on the application of the exemption referred to in paragraph 1 of this Article covering, inter alia, the number of applications for exemption received, exemptions granted, and the requirements and procedures for application exemption, by the end of the month following the first year of the publication of this Legal Framework and thereafter in the corresponding month of the subsequent years.

CHAPTER III

**Qualifying holdings**

Article 38

**Communication of qualifying holdings**

1 – Any natural or legal person who plans to acquire or to further increase, directly or indirectly, a qualifying holding within the meaning of point (36) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, in a payment institution or electronic money institution, as a result of which the proportion of the capital or of the voting rights held would reach or exceed 20%, 30% or 50%, or so that the payment institution or electronic money institution would become its subsidiary, shall inform Banco de Portugal in writing of its intention in advance and provide it with the relevant information referred to in Article 102(4) of the Legal Framework of Credit Institutions and Financial Companies.

2 – Any natural or legal person who has taken a decision to dispose, directly or indirectly, of a qualifying holding, or to reduce its qualifying holding so that the proportion of the capital or of the voting rights held would fall below 20%, 30% or 50%, or so that the payment institution or electronic money institution would cease to be its subsidiary, shall inform Banco de Portugal in writing of its intention in advance.

3 – The conclusion of any acts whereby proposals to acquire, increase, dispose of or reduce a qualifying holding are materialised, subject to prior notification pursuant to paragraphs 1 and 2, shall be communicated to Banco de Portugal within 15 days of their occurrence.

4 – If the communication under this Article is not accompanied by all the required data and information, Banco de Portugal shall inform the proposed acquirer in writing of the missing data or information.

Article 39

**Assessment of the proposal to acquire or increase a qualifying holding**

1 – Banco de Portugal may oppose the proposed acquisition or increase of a qualifying holding on the basis of Article 103(1) and (2) of the Legal Framework of Credit Institutions and Financial Companies, *mutatis mutandis*.

2 – Banco de Portugal may, at any time, request additional data and information from the proposed acquirer and make the inquiries deemed necessary.

3 – Banco de Portugal shall inform the proposed acquirer of its decision within 60 business days of receipt of the communication under Article 38(1) and (2) or the date of receipt of the additional information requested under the foregoing paragraph, but in any case within 120 business days from the submission of the initial request.

4 – The request for additional data or information made by Banco de Portugal suspends the assessment period, for the time between the date of the request for information and the receipt of a response by the proposed acquirer.

5 – If Banco de Portugal decides to oppose the proposal, it:

(a) shall inform the proposed acquirer, in writing, of its decision and of the reasons therefor, within two business days of that decision and prior to the expiry of the period mentioned in paragraph 3;

(b) may make accessible to the public the reasons for the decision, on its own initiative or upon request of the proposed acquirer.

6 – Without prejudice to the applicable penalties, Articles 105 and 106 of the Legal Framework of Credit Institutions and Financial Companies shall apply, *mutatis mutandis*, to the suspension of voting rights in the participated institution or any entity which, directly or indirectly, holds voting rights in the participated institution, as well as to the suspension of voting rights exercised by the participated institution in other institutions with which it is in a direct or indirect control relationship.

7 – This Article shall apply, *mutatis mutandis*, to natural and legal persons who have not complied with the prior notification requirement laid down in the foregoing Article.

#### Article 40

#### **Reduction of qualifying holdings in electronic money institutions**

Where, as a result of the notification under Article 38(3), there is a reduction of a qualifying holding in an electronic money institution to a threshold below 10% of the capital or the voting rights of that electronic money institution, Banco de Portugal shall communicate to its holder, within 30 business days, whether it considers the resulting shareholding as a qualifying holding.

#### Article 41

#### **Notification by electronic money institutions**

1 – On becoming aware of any changes falling under the provisions of Article 38, electronic money institutions shall promptly inform Banco de Portugal thereof.

2 – In April of each year, electronic money institutions shall also inform Banco de Portugal of the identity of their qualifying shareholders and of the size of their holdings.

#### Article 42

#### **Ex officio declaration**

1 – Banco de Portugal may, at any time and irrespective of the enforcement of other measures provided for by law, declare any holding in the capital or in the voting rights of a payment institution or electronic money institution as having a qualifying nature, whenever it comes to its knowledge that relevant actions or facts have occurred in relation to such holdings, whose communication to Banco de Portugal has been omitted or incorrectly made by the respective holder.

2 – Banco de Portugal may also, at any time, declare any holding in the capital or in the voting rights of a payment institution or electronic money institution as having a qualifying nature, whenever actions or facts liable to change the influence exercised by the respective holder on the

management of that institution come to its knowledge.

3 – The appraisal mentioned in the foregoing paragraph may be carried out on the initiative of the persons concerned. In this case, the decision of Banco de Portugal shall be taken within 30 days of receipt of the request.

#### CHAPTER IV

### **Right of establishment and freedom to provide services for payment institutions and electronic money institutions**

#### SECTION I

### **Activity in another Member State of payment institutions and electronic money institutions having their head office in Portugal**

#### Article 43

#### **General requirements**

1 – Any payment institution or electronic money institution having its head office in Portugal wishing to provide services for the first time in another Member State, in particular through the establishment of a branch, engaging an agent or distributor of electronic money, or the freedom to provide services, shall communicate the following information to Banco de Portugal in advance:

(a) the Member State in which it intends to establish a branch, engage an agent or distributor of electronic money or, in general, provide payment or electronic money issuance services;

(b) the name, the address of the institution and the financial agent identifier;

(c) where the institution intends to make use of a branch, the information referred to in Article 19(2)(b) and (g) with regard to the payment service or electronic money issuance business in the Member State it proposes for the establishment;

(d) where the institution intends to make use of an agent, the information referred to in Article 31;

(e) where the institution intends to make use of a distributor of electronic money, the information referred to in Article 32;

(f) the organisational structure of the branch, agent or distributor of electronic money when they are not natural persons, and their likely address in the host Member State;

(g) the identity of those responsible for the management of the branch, agent or distributor of electronic money when they are not natural persons;

(h) evidence that the persons responsible for the management of the branch are of good repute and possess appropriate knowledge and experience;

(i) type of payment service to be provided in the territory of the host Member State;

(j) where the institution intends to outsource operational functions of payment services or electronic money issuance to other entities in the host Member State, it shall comply with Article 33.

2 – Within one month of receipt of all of the information referred to in paragraph 1, Banco de Portugal shall send it to the competent authorities of the host Member State.

3 – Payment institutions and electronic money institutions shall ensure that branches, agents and distributors of electronic money acting on their behalf inform payment service users of this fact.

4 – Any change in the data under paragraph 1(b) to (j) shall be communicated in writing by the payment institutions and electronic money institutions to Banco de Portugal without delay, including new agents, branches, distributors of electronic money or third parties to which operational functions have been outsourced in the host Member States in which they operate, and Article 44 shall apply.

5 – The payment institutions and electronic money institutions shall notify Banco de Portugal of the date from which they commence their activities through the branch, agent or distributor of electronic money in the host Member State concerned, and Banco de Portugal shall inform the competent authorities of the host Member State accordingly.

6 – In order to monitor the requirements laid down in paragraph 1, Banco de Portugal may carry out on-site inspections in the host Member State and may delegate such inspections in accordance with Article 62(2).

#### Article 44

##### **Assessment by Banco de Portugal**

1 – Within three months of receipt of the information referred to in Article 43(1), Banco de Portugal shall take into account the opinion issued by the competent authorities of the host Member State and communicate its decision to register the branch, agent or distributor of electronic money to those authorities and to the institution.

2 – Where the competent authorities of the host Member State inform Banco de Portugal of any reasonable grounds for concern in connection with the intended establishment of a branch, engagement of an agent or distributor of electronic money, as well as the pursuing of the activity under the freedom to provide services, with regard to money laundering or terrorist financing within the meaning of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015, Banco de Portugal may refuse to register the branch, agent or distributor of electronic money, or cancel the registration if it has already been carried out.

3 – Where Banco de Portugal does not agree with the assessment of the competent authorities of the host Member State, it shall provide the latter with the reasons for its decision.

#### SECTION II

##### **Activity in Portugal of payment institutions and electronic money institutions having their head office in another Member State**

#### Article 45

##### **Requirements for the establishment and freedom to provide services in Portugal**

1 – Any payment institutions and electronic money institutions authorised in another

Member State of the European Union which do not benefit, respectively, from the derogation provided for in Article 32 of Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 and from the derogation provided for in Article 9 of Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009, may provide services in Portugal through the establishment of branches, by engaging an agent or distributor of electronic money, or under the freedom to provide services, provided that such services are covered by the authorisation.

2 – Within one month of receipt of the information provided for in Article 43(1)(a) to (g) and (i) from the competent authorities of the home Member State, Banco de Portugal shall assess that information and provide the competent authorities of the home Member State with relevant information in connection with the intended provision of services by the institution.

3 – For the purposes of the foregoing paragraph, Banco de Portugal shall inform the competent authorities of the home Member State in particular of any reasonable grounds for concern in connection with the intended establishment of a branch, engagement of an agent or distributor of electronic money, as well as the pursuing of the activity under the freedom to provide services, with regard to money laundering or terrorist financing within the meaning of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015.

4 – Any institutions authorised in another Member State may commence their activity in Portugal as soon as the competent authority of the home Member State notifies them of their decision to register the branch, agent or distributor of electronic money, as well as to pursue their activity under the freedom to provide services.

5 – Branches, agents or distributors of electronic money of the institutions referred to in paragraph 1 shall inform their customers about the institution on whose behalf they operate.

6 – In the pursuit of their activity in Portugal, the aforementioned institutions shall be subject to the provisions laid down in the interests of the general good.

## CHAPTER V

### **Subsidiaries and branches in and from third countries**

#### Article 46

#### **Subsidiaries and branches in third countries**

Articles 42 and 42-A of the Legal Framework of Credit Institutions and Financial Companies shall apply, *mutatis mutandis*, to the establishment of branches and setting-up of subsidiaries of payment institutions and electronic money institutions in non-EU countries respectively.

#### Article 47

#### **Branches from third countries**

Articles 45 and 57 to 59 of the Legal Framework of Credit Institutions and Financial Companies shall apply, *mutatis mutandis*, to the establishment in Portugal of branches of authorised electronic money institutions from non-EU countries.



CHAPTER VI

**Prudential rules**

SECTION I

**Payment institutions**

Article 48

**General principle**

The payment institutions shall invest their available funds in such a way as to ensure appropriate levels of liquidity and solvency at all times.

Article 49

**Share capital**

At the time of authorisation, payment institutions shall hold a share capital, comprised of one or more of the items referred to in Article 26(1)(a) to (e) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, as follows:

(a) where the payment institution provides only the payment service as referred to in Article 4(f), its capital shall at no time be less than €20,000;

(b) where the payment institution provides the payment service as referred to in Article 4(g), its capital shall at no time be less than €50,000;

(c) where the payment institution provides any of the payment services as referred to in Article 4(a) to (e), its capital shall at no time be less than €125,000.

Article 50

**Own funds**

1 – The payment institutions' own funds shall not fall below the amounts of share capital as referred to in the foregoing Article or the amount of own funds as calculated in accordance with the following Article, whichever is the higher.

2 – The rules on the composition of own funds of payment institutions shall be those laid down by means of a Notice of Banco de Portugal.

3 – Should the own funds fall below the level set under paragraph 1, Banco de Portugal may, where the circumstances justify it, grant the payment institution concerned a limited period of time to remedy the situation.

4 – Where the payment institution belongs to the same group as another payment institution, credit institution, investment firm, asset management company or insurance undertaking, the multiple use of elements eligible for own funds is not permitted.

5 – The multiple use of elements eligible for own funds is also not permitted in case of payment institutions carrying out activities other than providing payment services.

6 – Where a payment institution carries out activities other than providing the payment services listed in Article 4, which may also be subject to own funds requirements, it shall also comply with such requirements.

#### Article 51

##### **Own funds requirements**

1 – The own funds of payment institutions, except those offering only services as referred to in Article 4(g) or (h), or both, shall at all times be equal to or greater than the amount resulting from the application of one of the three methods described in the Annex to this Legal Framework, which forms an integral part thereof.

2 – For the purposes of the foregoing paragraph, Banco de Portugal shall be responsible for laying down the method to be applied by each payment institution.

3 – Based on an evaluation of the risk-management processes, risk loss data and internal control mechanisms, Banco de Portugal may require or permit respectively the payment institution to hold an amount of own funds which is up to 20% higher or lower than the amount which would result from the application of the method chosen under the foregoing paragraph.

4 – Notwithstanding the foregoing paragraphs and Articles 49 and 50, Banco de Portugal may adopt the procedures set out in Article 7 to ensure that payment institutions shall allocate a sufficient level of own funds to the operation of their payment services business, in particular where the activities referred to in Article 13(2) impair or are likely to impair the financial soundness of the payment institution.

#### Article 52

##### **Funds' safeguarding requirements**

1 – The payment institutions shall safeguard all funds which have been received from the payment service users or through another payment service provider for the execution of payment transactions, in accordance with either of the following procedures:

(a) Safeguarding that the funds:

(i) shall not be commingled at any time with the funds of any natural or legal person other than payment service users on whose behalf the funds are held; and

(ii) shall be deposited in a separate account in a credit institution or invested in secure, liquid low-risk assets, where they are still held by the payment institution and not yet delivered to the payee or transferred to another payment service provider by the end of the business day following the day when the funds have been received; and

(iii) shall be insulated in the interest of the payment service users against the claims of other creditors of the payment institution, in particular in the event of the institution's liquidation;

(b) Safeguarding that the funds shall be covered by an insurance policy or some other comparable guarantee from an insurance company or a credit institution, which does not belong

to the same group as the payment institution itself, for an amount equivalent to that which would have been segregated in the absence of the insurance policy or other comparable guarantee, payable in the event that the payment institution is unable to meet its financial obligations.

2 – For the purposes of paragraph (a)(iii) of the foregoing paragraph, in the event of liquidation of the payment institution, the amounts delivered by payment service users may not be seized and included in the insolvent estate subject to liquidation, and their holders shall have the right to claim their separation or repayment.

3 – If a payment institution receives funds where a portion of those funds is used for future payment transactions, with the remaining amount to be used for non-payment services, that portion of the funds to be used for future payment transactions shall also be subject to the requirements of paragraph 1.

4 – Where the portion referred to in the foregoing paragraph is variable or not known in advance, the payment institution shall ensure compliance with the safeguarding requirements on the basis of a representative portion assumed to be used for payment services, provided such a representative portion can be reasonably estimated on the basis of historical data.

5 – Banco de Portugal shall assess the appropriateness of the estimates made and the procedures implemented by the payment institution in compliance with this Article, and may determine any changes or adjustments it deems necessary.

6 – Banco de Portugal shall establish, by means of a Notice, all other technical rules and procedures necessary for the application of this Article, including what secure, liquid, low-risk assets are defined as for the purposes of paragraph 1(a)(ii), as well as the essential terms and conditions of the insurance policy or comparable guarantee and the terms and procedures for its execution, for the purposes of paragraph 1(b).

#### Article 53

##### **Financial reporting and statutory audit**

1 – For supervisory purposes, payment institutions shall provide Banco de Portugal, on terms to be established by means of an Instruction, with separate accounting information reports for the payment services listed in Article 4 and the activities referred to in Article 13(2).

2 – The reports referred to in the foregoing paragraph shall be subject to an auditor's report to be prepared by the statutory auditors or an audit firm.

3 – The obligation to report to Banco de Portugal under Article 121 of the Legal Framework of Credit Institutions and Financial Companies shall apply to statutory auditors or audit firms providing services to a payment institution, as well as external auditors who, by legal requirement, provide audit services to a payment institution.

4 – Banco de Portugal may require the carrying out of special audits by independent entities appointed by it, at the expense of the audited payment institution.

## SECTION II

### **Electronic money institutions**

#### Article 54

##### **General principle**

The electronic money institutions shall invest their available funds in such a way as to ensure appropriate levels of liquidity and solvency at all times.

#### Article 55

##### **Share capital**

At the time of authorisation and at all times, electronic money institutions shall hold a share capital no less than €350,000, comprised of one or more of the items referred to in Article 26(1)(a) to (e) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013.

#### Article 56

##### **Own funds**

1 – The electronic money institutions' own funds shall not fall below the amounts of share capital required under the foregoing Article or the amount resulting from the application of the following Article, whichever is the higher.

2 – The rules on the composition of own funds of electronic money institutions shall be those laid down by means of a Notice of Banco de Portugal.

3 – Should the own funds fall below the level set under paragraph 1, Banco de Portugal may, where the circumstances justify it, grant the institution concerned a limited period of time to remedy the situation.

4 – Where the electronic money institution belongs to the same group as another electronic money institution, credit institution, payment institution, financial company or insurance undertaking, the multiple use of elements eligible for own funds is not permitted.

5 – The multiple use of elements eligible for own funds is also not permitted in case of electronic money institutions carrying out activities other than issuing electronic money or providing payment services listed in Article 4.

6 – Where an electronic money institution carries out activities other than issuing electronic money or providing the payment services listed in Article 4, which may also be subject to own funds requirements, the electronic money institution shall also comply with such requirements.

#### Article 57

##### **Own funds requirements**

1 – The own funds of electronic money institutions shall at all times be equal to or greater

than the amount resulting from the sum of the requirements listed in the following paragraphs.

2 – For the activity of issuing electronic money, the own funds of electronic money institutions shall amount to at least 2% of the average amount of electronic money in circulation.

3 – For payment service activities referred to in Article 4 not linked to the issuance of electronic money, the own funds of electronic money institutions shall be those resulting from the application of one of the three methods described in the Annex to this Legal Framework, which forms an integral part thereof, and Article 51(2) and (4) shall apply.

4 – Based on an evaluation of the risk-management processes, risk loss data and internal control mechanisms, Banco de Portugal may require or permit respectively the electronic money institution to hold an amount of own funds which is up to 20% higher or lower than the amount which would result from the application of paragraph 2.

5 – Notwithstanding the foregoing paragraphs and Articles 55 and 56, Banco de Portugal may adopt the procedures set out in Article 7 to ensure that electronic money institutions shall allocate a sufficient level of own funds to the operation of their electronic money issuance business, in particular where the activities referred to in Article 14(2) impair or are likely to impair the financial soundness of the institutions.

#### Article 58

##### **Safeguarding requirements**

1 – The electronic money institutions shall safeguard the funds which have been received in exchange for electronic money, in order to ensure appropriate levels of liquidity and solvency at all times, and Article 52 shall apply *mutatis mutandis*, without prejudice to paragraphs 3 to 7 of this Article.

2 – Article 52 shall apply to the provision of payment services referred to in Article 4 and not linked to electronic money issuance.

3 – Funds received in the form of payment by payment instrument do not need to be safeguarded until they are credited to the electronic money institution's payment account or are otherwise made available to the electronic money institution in accordance with the execution time requirements laid down in this Legal Framework. In any event, the institutions shall safeguard such funds by no later than five business days after the issuance of electronic money.

4 – For the purposes of applying the procedures provided for in Article 52(1)(a)(ii) with regard to funds which have been received in exchange for electronic money, secure, low-risk assets are items falling into one of the categories set out in Table 1 of Article 336 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on the capital adequacy of investment firms and credit institutions, for which the specific risk capital charge is no higher than 1.6%, but excluding other qualifying items as defined in point 15 of that Annex.

5 – 'Secure, low-risk assets' are also units in undertakings for collective investment in transferable securities (UCITS) which invest solely in assets as specified in the foregoing paragraph.

6 – In exceptional circumstances and with adequate justification, Banco de Portugal may, based on an evaluation of security, maturity, value or other risk element of the assets as specified

in paragraphs 4 and 5, determine which of those assets do not meet the security and low-risk requirements.

7 – Banco de Portugal may determine which of the procedures referred to in Article 52(1) should be used by electronic money institutions to safeguard the funds received.

8 – Electronic money institutions shall inform, in advance, Banco de Portugal of any relevant change that they intend to adopt regarding the safeguarding of funds that have been received in exchange for electronic money.

#### Article 59

### **Financial reporting and statutory audit**

The rules on financial reporting and statutory audit provided for in Article 53 shall apply to electronic money institutions, *mutatis mutandis*.

#### CHAPTER VII

### **Supervision**

#### SECTION I

### **Supervisory procedures**

#### Article 60

### **Supervisory procedures**

1 – Banco de Portugal shall ensure compliance with this Title, exercising the powers set out in Article 7 and adopting the measures specifically provided for in other provisions, which are proportionate, adequate and responsive to the risks to which the institutions are exposed.

2 – In any of the circumstances referred to in Article 21, Banco de Portugal may at any time determine that the institution subject to its supervision shall set up a commercial company whose sole purpose is to provide the payment services listed in Article 4 or, in the case of electronic money institutions, the provision of these services and the issuance of electronic money within the time limit set for that purpose.

3 – On a subsidiary basis, the powers and discretions conferred on Banco de Portugal by the Legal Framework of Credit Institutions and Financial Companies, *mutatis mutandis*, in Articles 116-C, 120, 126, 127 and 128, shall also be applicable to the supervision of payment institutions and electronic money institutions or the pursuit of the activity of payment service provision or issuance, distribution and redemption of electronic money.

#### Article 61

### **Exchange of information**

1 – As the supervisor responsible for the purposes of this Legal Framework, Banco de Portugal shall cooperate with the supervisory authorities of the other Member States and, where appropriate, with the European Central Bank and the national central banks of the Member States, the European Banking Authority and other relevant competent authorities designated under

Union or domestic law applicable to payment service providers and electronic money institutions.

2 – In addition, Banco de Portugal exchanges information with the following entities:

(a) the competent authorities of other Member States responsible for the authorisation and supervision of payment institutions and electronic money institutions;

(b) the European Central Bank and the national central banks of Member States, in their capacity as monetary and oversight authorities, and, where appropriate, other public authorities responsible for overseeing payment and settlement systems;

(c) Other relevant authorities designated under domestic or Community legislation applicable to payment service providers and electronic money institutions, such as those applicable to the protection of natural persons with regard to the processing of personal data and to money laundering and terrorist financing;

(d) The European Banking Authority, in its capacity of contributing to the consistent and coherent functioning of supervising mechanisms as referred to in Article 1(5)(a) of Regulation (EU) No 1093/2010.

3 – The provisions under Articles 81 and 82 of the Legal Framework of Credit Institutions and Financial Companies on cooperation with other entities shall also be applicable, *mutatis mutandis*.

## SECTION II

### **Supervision of institutions exercising the right of establishment and freedom to provide services**

#### Article 62

##### **Supervision of institutions authorised in Portugal**

1 – When conducting its prudential supervisory tasks, Banco de Portugal shall cooperate with the competent authorities of the host Member States and exchange all essential and relevant information with them, in particular in the case of infringements or suspected infringements by an agent, a distributor of electronic money, a branch or an entity to which operational functions have been outsourced, and it shall communicate, upon request, all relevant information and, on its own initiative, all essential information.

2 – Banco de Portugal may carry out on-site inspections in the territory of the host Member State or delegate such tasks to the competent authorities of that Member State, in either case after such entities have been informed.

3 – The provisions of this Article shall be subject to the terms of the delegated act of the European Commission adopting the regulatory technical standards pursuant to Article 29(6) of Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015.

#### Article 63

##### **Supervision of institutions authorised in other Member States**

1 – Without prejudice to this Title, payment institutions and electronic money institutions authorised in other Member States and providing services in Portugal shall not be subject to prudential supervision by Banco de Portugal, provided they are subject to prudential supervision by the competent authorities of their home countries.

2 – Banco de Portugal shall be responsible for collaborating with the competent authorities of the home Member States in relation to the supervision of branches, agents, distributors of electronic money and third parties with operational functions that provide services in Portugal under the responsibility of the institutions mentioned in the foregoing paragraph.

3 – Banco de Portugal may require payment institutions and electronic money institutions that have branches, agents or distributors of electronic money within Portuguese territory to report to it periodically on the activities carried out in Portugal.

4 – The reports referred to in the foregoing paragraph may be required for information or statistical purposes and, as far as the branches, agents and distributors of electronic money conduct their activities under the right of establishment, to supervise compliance with Titles III and IV.

5 – Banco de Portugal shall exchange all essential and relevant information with the competent authorities of the Member States, in particular in the case of infringements or suspected infringements by a branch, an agent or a distributor of electronic money.

6 – For the purposes of the foregoing paragraph, Banco de Portugal shall communicate, upon



request, all relevant information and, on their own initiative, all essential information, including on the compliance of the institution with the conditions under Article 18(2)(c).

7 – In order to carry out their prudential supervisory tasks, the competent authorities of the home Member States, having informed Banco de Portugal thereof, may carry out on-site inspections in Portuguese territory.

8 – At the request of the competent authorities of the home Member States, the inspections referred to in the foregoing paragraph may be delegated to Banco de Portugal.

9 – Should Banco de Portugal be informed that the authorisation for a payment institution or electronic money institution having a branch or providing services within Portuguese territory through agents, distributors or under the freedom to provide services has been withdrawn or has lapsed in its home country, it shall take the appropriate measures to prevent the institution concerned from initiating new operations and to safeguard the interests of the users of payment services and electronic money.

10 – This Article, including the reporting detail and frequency under paragraph 3, shall be subject to the terms of the delegated act of the European Commission adopting the regulatory technical standards pursuant to Article 29(6) of Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015.

11 – The foregoing paragraphs shall be without prejudice to the obligations of Banco de Portugal and the other competent Portuguese authorities, pursuant to Law No 83/2017 of 18 August 2017 in respect of the supervision and monitoring of compliance with the rules laid down in that Law.

#### Article 64

##### **Central contact point**

1 – The payment institutions and electronic money institutions operating in Portugal through agents or distributors of electronic money under the right of establishment shall appoint a central contact point in Portugal whenever the requirements of the delegated act of the European Commission adopting the regulatory technical standards pursuant to Article 29(5) of Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 are met.

2 – The central contact point in Portugal shall ensure adequate communication and information reporting on compliance with Titles III and IV, without prejudice to any legal or regulatory provisions on anti-money laundering and countering terrorist financing, and facilitate supervision by Banco de Portugal and the competent authorities of the home Member State, including by providing Banco de Portugal and the competent authorities of the home Member State with the documents and information requested.

#### Article 65

##### **Measures in case of non-compliance, including precautionary measures**

1 – Where Banco de Portugal ascertains that a payment institution or electronic money institution having branches, agents or distributors of electronic money in Portugal does not comply

with Titles II to IV, it shall inform the competent authority of the home Member State without delay.

2 – In emergency situations, where immediate action is necessary to address a serious threat to the collective interests of the payment service users or electronic money holders in Portugal, Banco de Portugal may take precautionary measures in parallel to the cross-border cooperation between competent authorities and until any measures are adopted by the competent authorities of the home Member State as set out in Article 63,.

3 – Any precautionary measures under paragraph 2 shall be appropriate and proportionate to their purpose to protect against a serious threat to the collective interests of the payment service users and electronic money holders in Portugal, and they shall not result in a preference for payment service users of the payment institution in Portugal over payment service users of the payment institution in other Member States.

4 – Precautionary measures shall be temporary and shall be terminated when the serious threats identified are addressed, including in cooperation with the home Member State's competent authorities or with the European Banking Authority as provided for in Article 67(1).

5 – Where compatible with the emergency situation, Banco de Portugal shall inform the competent authorities of the home Member State and those of any other Member State where the institution operates, the Commission and the European Banking Authority, in advance and without delay, of the precautionary measures taken under paragraph 2 and of their reasoning.

6 – Whenever the information referred to in paragraph 1 is submitted to Banco de Portugal, in relation to branches or agents of payment institutions and agents or distributors of electronic money institutions authorised in Portugal operating in other Member States, Banco de Portugal, after having evaluated the information received, shall, without delay, take all appropriate measures to ensure that the institution concerned puts an end to its irregular situation, and it shall communicate those measures without delay to the competent authority of the host Member State and to the competent authorities of any other Member State where the institution operates.

#### Article 66

#### **Communication to the institution concerned**

Without prejudice to the obligations relating to the monitoring of money laundering and terrorist financing and to Article 22(1) of Regulation (EU) No 2015/847, Banco de Portugal shall notify the payment institution or electronic money institution concerned of any measure taken involving penalties or restrictions on the exercise of the freedom to provide services or the freedom of establishment.

#### Article 67

#### **Settlement of disagreements between competent authorities of different Member States**

1 – Where Banco de Portugal considers that, in a particular matter, cooperation with competent authorities of another Member State referred to in Chapter IV, Article 61, and Section II of Chapter VII, all of Title II of this Legal Framework does not comply with the relevant conditions set out in those provisions, it may refer the matter to the European Banking Authority and request

its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010.

2 – Any decisions to be taken by Banco de Portugal, whether concerning matters referred to the European Banking Authority using the assistance facility referred to in paragraph 1, or matters raised by the European Banking Authority, on its own initiative, shall be deferred pending resolution under Article 19 of Regulation (EU) No 1093/2010.

## CHAPTER VIII

### Access to payment systems and accounts

#### Article 68

##### Access to payment systems

1 – The rules on access of authorised or registered payment service providers that are legal persons to payment systems shall be objective, non-discriminatory and proportionate and they shall not inhibit access more than is necessary to safeguard against specific risks such as settlement risk, operational risk and business risk and to protect the financial and operational stability of the payment system.

2 – The provisions of the foregoing paragraph shall not lead to the imposition on payment service providers, on payment service users or on other payment systems any:

(a) restriction on effective participation in other payment systems;

(b) discrimination between authorised payment service providers or between registered payment service providers in relation to the rights, obligations or entitlements of participants; or

(c) restriction on the basis of institutional status.

3 – The foregoing paragraphs shall not apply to:

(a) payment systems designated under Decree-Law No 221/2000 of 9 September 2000;

(b) payment systems composed exclusively of payment service providers belonging to a group.

4 – Banco de Portugal, under the powers conferred upon it by its Organic Law, shall be responsible for ensuring the application of this Article, without prejudice to the responsibilities conferred on the Competition Authority.

5 – For the purposes of paragraph 3(a) of this Article, where a participant in a designated system allows an authorised or registered payment service provider that is not a participant in the system to pass transfer orders through the system that participant shall, when requested, allow other authorised or registered payment service providers to execute transfer orders through that system, in line with paragraphs 1 and 2.

6 – For the purposes of the foregoing paragraph, any rejection shall be duly substantiated and communicated to the payment service provider by the participant.

Article 69

**Access to accounts maintained with a credit institution**

1 – The credit institutions shall ensure that payment institutions and electronic money institutions have access to the payment services referred to in Article 4, on an objective, non-discriminatory and proportionate basis that is appropriate to allow the requesting institutions to provide payment services in an unhindered and efficient manner.

2 – For the purposes of paragraph 1, any rejection of access to payment account services shall require substantiation, which shall be notified to Banco de Portugal by the credit institution.

CHAPTER IX

**Rules on the management of operational and security risks**

Article 70

**Management of operational and security risks**

1 – The payment service providers shall establish a framework with appropriate mitigation measures and control mechanisms to manage the operational and security risks, relating to the payment services they provide.

2 – As part of the framework referred to in the foregoing paragraph, payment service providers shall establish and maintain effective incident management procedures, including for the detection and classification of major operational and security incidents.

3 – The payment service providers shall provide to Banco de Portugal on an annual basis, or at shorter intervals as determined by it, an updated and comprehensive assessment of the operational and security risks relating to the payment services they provide and on the adequacy of the mitigation measures and control mechanisms implemented in response to those risks.

4 – Banco de Portugal shall establish regulatory standards with regard to the establishment, implementation and monitoring of the security measures mentioned in this Article.

Article 71

**Incident reporting**

1 – In case of a major operational and security incident, payment service providers having their head office in Portugal shall:

(a) notify Banco de Portugal without delay, without prejudice to any other notifications required under any domestic or European legislation applicable to payment service providers and electronic money issuers, such as those applicable to the protection of natural persons with regard to the processing of personal data; and

(b) Where the incident has or may have an impact on the financial interests of its payment service users, inform, without delay, its payment service users of the incident and of all measures that they can take to mitigate the adverse effects of the incident.

2 – Banco de Portugal shall lay down the rules governing the classification to be made by

payment service providers of major incidents referred to in paragraph 1(a) of this Article, and the content, format, including standardised reporting templates, and the procedures for payment service providers to report such incidents.

3 – Upon receipt of the notification referred to in paragraph 1(a) of this Article, Banco de Portugal shall:

(a) provide the relevant details of the incident to the European Banking Authority and the European Central Bank without delay; and

(b) notify the relevant national authorities after assessing the relevance of the incident to them.

4 – Banco de Portugal cooperates with the European Banking Authority and the European Central Bank in assessing the relevance of the incident to other relevant authorities of other Member States and of the Union, including in particular the notifications received by the European Central Bank regarding other relevant matters.

5 – On the basis of the notifications referred to in this Article, Banco de Portugal shall, where appropriate, take all of the necessary measures to protect the immediate safety of the financial system.

#### Article 72

#### **Provision of statistical data to Banco de Portugal**

1 – Payment service providers shall provide statistical data on fraud relating to the different means of payment to Banco de Portugal, with the details and frequency set by it.

2 – Banco de Portugal shall provide the European Banking Authority and the European Central Bank with such data in aggregated form.

#### CHAPTER X

#### **Common provisions**

#### Article 73

#### **Records and archive**

1 – Payment service providers and electronic money issuers shall arrange for records to be kept of all activities, services and operations undertaken by them that allow verification of their compliance with all obligations to which they are subject, in accordance with the applicable rules under this Legal Framework.

2 – Without prejudice to other legal and regulatory texts, the records and documents referred to in this Article shall be kept for a minimum period of five years and in a durable medium that prevents them from being changed and that allows for future reference and the unchanged reproduction of the information stored.

3 – Payment service providers and electronic money issuers shall record and store all communications with payment service users and electronic money holders through electronic

media for the purposes of concluding agreements, and they must be kept for a minimum period of five years, subject to other applicable legal provisions.

4 – Banco de Portugal may require access to communications referred to in paragraph 3 from payment service providers and electronic money issuers.

5 – In situations where, under legally established terms and conditions, payment service providers and electronic money issuers have recordings of telephone conversations held with payment service users and electronic money holders for the purposes of concluding agreements, Banco de Portugal may require such recordings.

#### Article 74

### **Duties of refrain from carrying out operations, registration and reporting of operations with entities having their head office in offshore jurisdictions**

The duties to refrain from carrying out operations, registration and reporting of operations with entities having their head office in offshore jurisdictions provided for in Article 118-A of the Legal Framework of Credit Institutions and Financial Companies for credit institutions shall apply to payment institutions and electronic money institutions.

#### TITLE III

### **Provision and use of payment services**

#### CHAPTER I

### **Remuneration policy**

#### Article 75

### **Remuneration policy**

1 – Payment service providers shall put in place a specific remuneration and assessment policy for:

(a) natural persons in direct contact with payment service users when offering payment services;

(b) natural persons that are directly or indirectly involved in the management and supervision of the persons referred to in the foregoing paragraph.

2 – The remuneration and assessment policy for the persons referred to in the foregoing paragraph shall not jeopardise their ability to act in the best interest of their payment service users. In particular, they shall ensure that any inducement through remuneration, or sales targets or otherwise do not provide an incentive to said persons to promote their own interests or those of the payment service providers to the detriment of payment service users.

## CHAPTER II

### **Transparency of conditions and information requirements for payment services**

#### SECTION I

#### **General rules**

##### Article 76

##### **Scope**

1 – This Chapter applies to single payment transactions, framework contracts and payment transactions covered by them.

2 – The provisions of this Chapter apply to microenterprises in the same way as to consumers.

3 – The parties may agree that this Chapter shall not apply in whole or in part when the payment service user is not a consumer.

4 – Articles 84(1)(b), 91(b)(v) and 95(a) shall not apply to payment transactions in a currency other than the currency of a Member State.

5 – Articles 84(1)(b), 91(b)(v) and (e)(vii), and Article 95(a) shall not apply to parts of payment transactions carried out in Portugal, where one of the payment service providers is located in Portugal and the other provider is located outside the Union.

6 – This chapter shall be without prejudice to the provisions of Decree-Law No 133/2009 of 2 June 2009, and other legislation regarding conditions for granting credit to consumers, insofar as it contains provisions not provided for in this Chapter.

##### Article 77

#### **Other provisions on pre-contractual information**

1 – The provisions of this Title shall be without prejudice to other provisions containing additional requirements on pre-contractual information.

2 – In situations covered by Decree-Law No 95/2006 of 29 May 2006, establishing the legal framework governing distance contracts for financial services concluded with consumers, Articles 78, 83, 84, 90 and 91 of this Legal Framework shall prevail over Articles 9, 11(1), 13, 14 (except subparagraphs (c) to (h)), 15 (except subparagraphs 1(a), (b) and (c), and paragraph 2), and 16 (except subparagraph (a)) of that Decree-Law.

##### Article 78

#### **Language and transparency of information**

Information to be provided by the payment service provider to the payment service user under this Legal Framework shall:

(a) be transmitted in Portuguese, unless otherwise agreed between the parties;

(b) be given in easily understandable words and in clear and comprehensible form; and

(c) allow easy reading by an average visual acuity reader, where it is provided on paper or on another durable medium.

#### Article 79

##### **Charges for information**

1 – The payment service provider shall not charge the payment service user for providing information under this Chapter.

2 – However, the payment service provider and the payment service user may agree on charges for additional or more frequent information, or transmission by means of communication other than those specified in the framework contract, provided at the payment service user's request.

3 – In the cases provided for in paragraph 2, such charges shall be reasonable and in line with the payment service provider's actual costs.

#### Article 80

##### **Burden of proof on information requirements**

The burden of proof lies with the payment service provider to prove that it has complied with the information requirements set out in this Title.

#### Article 81

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

In cases of payment instruments which, according to the relevant framework contract, concern only individual payment transactions that do not exceed €30 or that either have a spending limit of €150 or store funds that do not exceed €150 at any time, or which, in case of prepaid payment instruments, store funds which do not exceed €250 at any time:

(a) by way of derogation from Articles 90, 91 and 95, the payment service provider shall be required to provide the payer only with information on the main characteristics of the payment service, including the way in which the payment instrument can be used, liability, charges levied and other material information needed to take an informed decision as well as an indication of where any other information and conditions specified in Article 91 are made available in an easily accessible manner;

(b) it may be agreed that, by way of derogation from Article 93, the payment service provider is not required to propose changes to the conditions of the framework contract in the same way as provided for in Article 93(1);

(c) it may be agreed that, by way of derogation from Articles 96 and 97, after the execution of a payment transaction:

(i) the payment service provider provides or makes available only a reference enabling the payment service user to identify the payment transaction, the amount of the payment transaction, any charges and/or, in the case of several payment transactions of the same



kind made to the same payee, a single reference to identify the set of such payment transactions, its total amount and charges;

(ii) the payment service provider is not required to provide or make available information referred to in the foregoing point if the payment instrument is used anonymously or if the payment service provider is not otherwise technically in a position to provide it. However, in any event the payment service provider shall provide the payer with a possibility to verify the amount of funds stored.

## SECTION II

### Single payment transactions

#### Article 82

##### Scope

- 1 – This Section applies to single payment transactions not covered by a framework contract.
- 2 – Where a payment order for a single payment transaction is transmitted by a payment instrument covered by a framework contract, the payment service provider shall not be obliged to provide or make available information which is already given or will be given to the payment service user on the basis of a framework contract with another payment service provider.

#### Article 83

##### Pre-contractual general information on single payment transactions

- 1 – Before the payment service user is bound by a single payment service contract or offer, the payment service provider shall communicate to the payment service user the information and conditions specified in Article 84.
- 2 – The payment service provider shall inform the payment service user that, at the payment service user's request, such information and conditions shall be made available on paper or on another durable medium, and the payment service provider shall make it available upon express request.
- 3 – If the single payment service contract has been concluded at the request of the payment service user using a means of distance communication which does not enable the payment service provider to comply with paragraphs 1 and 2, the payment service provider shall fulfil its obligations under that paragraph immediately after the execution of the payment transaction.
- 4 – The obligations under paragraphs 1 and 2 of this Article may also be discharged by supplying a copy of the draft single payment service contract or the draft payment order including the information and conditions specified in Article 84.

#### Article 84

##### Information and conditions on single payment transactions

- 1 – Payment service providers shall provide or make available to the payment service user the following information:

(a) a specification of the information or unique identifier to be provided by the payment service user in order for a payment order to be properly initiated or executed;

(b) the maximum execution time applicable to the payment service provision;

(c) all charges payable by the payment service user to the payment service provider and, where applicable, a breakdown of those charges;

(d) where applicable, the actual or reference exchange rate to be applied to the payment transaction.

2 – Payment initiation service providers shall, prior to initiation of a payment order, provide the payer with, or make available to the payer, the following clear and comprehensive information:

(a) the company or business name of the payment initiation service provider, the geographical address of its head office and, where applicable, the geographical address of its agent or branch established in Portugal, and any other contact details, including electronic mail address, relevant for communication with the payment initiation service provider; and

(b) the contact details of the competent authority.

3 – Where applicable, any other relevant information and conditions specified in Article 91 shall be made available to the payment service user in an easily accessible manner.

#### Article 85

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

Where a payment order is initiated through a payment initiation service provider, the payment initiation service provider shall, immediately after initiation, make available all information and conditions specified in Article 84, as well as the following data to the payer and, where applicable, the payee:

(a) confirmation of the successful initiation of the payment order with the payer's account servicing payment service provider;

(b) a reference enabling the payer and the payee to identify the payment transaction and any information transferred with the payment transaction, and, where appropriate, the payee to identify the payer;

(c) the amount of the payment transaction;

(d) where applicable, the amount of any charges payable to the payment initiation service provider for the transaction, and where applicable a breakdown of the amounts of such charges.

#### Article 86

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

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

Article 87

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

Immediately after receipt of the payment order, the payer's payment service provider shall provide the payer with or make available to the payer, in the same way as provided for in Articles 78 and 83(2), all of the following data with regard to its services:

- (a) a reference enabling the payer to identify the payment transaction and, where appropriate, information relating to the payee;
- (b) the amount of the payment transaction in the currency used in the payment order;
- (c) the amount of any charges for the payment transaction payable by the payer and, where applicable, a breakdown of the amounts of such charges;
- (d) where applicable, the exchange rate used in the payment transaction by the payer's payment service provider or a reference thereto, when different from the rate provided in accordance with Article 84(1)(d), and the amount of the payment transaction after that currency conversion; and
- (e) the date of receipt of the payment order.

Article 88

**Information for the payee after execution of the payment order**

Immediately after the execution of the payment transaction, the payee's payment service provider shall provide to or make available to the payee, in the same way as provided for in Articles 78 and 83(2), all of the following data with regard to its own services:

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

SECTION III

**Framework contracts**

Article 89

**Scope**

This Section applies to payment transactions covered by a framework contract.

Article 90

**General pre-contractual information**

1 – The payment service provider shall provide the payment service user with the information and conditions specified in Article 91 in good time and before the payment service user is bound by a framework contract or offer.

2 – Such communication shall be given on paper or on another durable medium.

3 – If the framework contract has been concluded at the request of the payment service user using a means of distance communication which does not enable the payment service provider to comply with paragraphs 1 and 2, the payment service provider shall fulfil the obligations provided thereunder immediately after conclusion of the framework contract.

4 – The obligations under paragraphs 1 and 2 may also be complied with by providing a copy of the draft framework contract including the information and conditions specified in Article 91.

Article 91

**Information and conditions**

The following information shall be provided to the payment service user:

(a) on the payment service provider:

(i) the company or business name of the payment service provider, the geographical address of its head office and, where applicable, the geographical address of its agent or branch established in Portugal, and any other contact details, including electronic mail address, relevant for communication with the payment service provider; and

(ii) the particulars of the relevant supervisory authorities and of the register provided for in Article 34 or of any other relevant public register of authorisation of the payment service provider and the registration number or equivalent means of identification in that register;

(b) on use of the payment service:

(i) a description of the main characteristics of the payment service to be provided;

(ii) a specification of the information or unique identifier that has to be provided by the payment service user in order for a payment order to be properly initiated or executed;

(iii) the form of and procedure for giving consent to initiate a payment order or execute a payment transaction and withdrawal of such consent in accordance with Articles 103 and 121;

(iv) a reference to the time of receipt of a payment order in accordance with Article 119 and the cut-off time, if any, established by the payment service provider;

(v) the maximum execution time for the payment services to be provided; and

(vi) whether there is a possibility to agree on spending limits for the use of the payment

instrument in accordance with Article 108(1);

(vii) in the case of co-badged, card-based payment instruments, the payment service user's rights under Article 8 of Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions;

(c) on charges, interest and exchange rates:

(i) all charges payable by the payment service user to the payment service provider including those connected to the manner in and frequency with which information under this Legal Framework is provided or made available and, where applicable, the breakdown of the amounts of such charges;

(ii) where applicable, the interest and exchange rates to be applied or, if reference interest and exchange rates are to be used, the method of calculating the actual interest, and the relevant date and index or base for determining such reference interest or exchange rate; and

(iii) if agreed, the immediate application of changes in reference interest or exchange rate and information requirements relating to the changes in accordance with Article 93(5), (6) and (7);

(d) on communication:

(i) where applicable, the means of communication, including the technical requirements for the payment service user's equipment and software, agreed between the parties for the transmission of information or notifications under this Legal Framework;

(ii) the manner in, and frequency with which, information under this Legal Framework is to be provided or made available;

(iii) the language or languages in which the framework contract will be concluded and in which communications are performed during this contractual relationship; and

(iv) the payment service user's right to receive the contractual terms of the framework contract and information and conditions in accordance with Article 92;

(e) on safeguards and corrective measures:

(i) where applicable, a description of the steps that the payment service user is to take in order to keep safe a payment instrument and how to notify the payment service provider for the purposes of Article 110(1)(b);

(ii) the secure procedure for notification of the payment service user by the payment service provider in the event of suspected or actual fraud or threats to the security of payment instruments and their personalised security credentials;

(iii) if agreed, the conditions under which the payment service provider reserves the right to block a payment instrument in accordance with Article 108;

(iv) the liability of the payer in accordance with Article 115, including information on the relevant amount;

- (v) how and within what period of time the payment service user is to notify the payment service provider of any unauthorised or incorrectly initiated or executed payment transaction in accordance with Article 112 as well as the payment service provider's liability for unauthorised payment transactions in accordance with Article 114;
  - (vi) the liability of the payment service provider for the initiation or execution of payment transactions in accordance with Articles 130, 131 and 132; and
  - (vii) the conditions for refund in accordance with Articles 117 and 118;
- (f) on changes to, and termination of, the framework contract:
- (i) if agreed, information that the payment service user will be deemed to have accepted changes in the conditions in accordance with Article 93, unless the payment service user notifies the payment service provider before the date of their proposed date of entry into force that they are not accepted;
  - (ii) the duration of the framework contract; and
  - (iii) the right of the payment service user to terminate the framework contract and any agreements relating to termination in accordance with Articles 93(4) and 94;
- (g) on redress:
- (i) any contractual clause on the law applicable to the framework contract and the competent courts; and
  - (ii) the alternative dispute resolution procedures available to the payment service user in accordance with Articles 142 to 144.

#### Article 92

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

At any time during the contractual relationship the payment service user shall have a right to receive, on request, the contractual terms of the framework contract as well as the information and conditions specified in Article 91 on paper or on another durable medium.

#### Article 93

### **Changes in conditions**

1 – Any changes in the framework contract or in the information and conditions specified in Article 91 shall be proposed by the payment service provider in the same way as provided for in Articles 78 and 90(2) and no later than two months before their proposed date of application.

2 – The payment service user can either accept or reject the changes before the date of their proposed date of entry into force.

3 – Where applicable in accordance with Article 91(f)(i), the payment service provider shall inform the payment service user that it is to be deemed to have accepted those changes if it does not notify the payment service provider before the proposed date of their entry into force that they are not accepted.

4 – The payment service provider shall also inform the payment service user that, in the event that the payment service user rejects those changes, the payment service user has the right to terminate the framework contract free of charge and with immediate effect at any time before the proposed application date.

5 – Changes in the interest or exchange rates may be applied immediately and without notice, provided that such a right is agreed upon in the framework contract and that the changes are based on the reference interest or exchange rates agreed on in accordance with Article 91(c)(ii) and (iii).

6 – The payment service user shall be informed of any change in the interest rate at the earliest opportunity in the same way as provided for in Articles 78 and 90(2), unless the parties have agreed on a specific frequency or manner in which the information is to be provided or made available.

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

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

#### Article 94

#### **Termination**

1 – The payment service user may terminate the framework contract at any time, unless the parties have agreed on a period of prior notice, which shall not exceed one month.

2 – Where the payment service user is a consumer or microenterprise, termination of the framework contract is always free of charge for the user.

3 – Apart from the cases provided for in the foregoing paragraph, termination of the framework contract shall be free of charge for the payment service user except where the contract has been in force for less than six months, in which case the charges for termination shall be appropriate and in line with costs.

4 – If agreed in the framework contract, the payment service provider may terminate a framework contract concluded for an indefinite period by giving at least two months' notice in the same way as provided for in Articles 78 and 90(2).

5 – In the case of changes to the framework contract or the information and conditions specified in Article 91, the payment service user shall have the right to terminate the framework contract immediately and free of charge before the proposed application date.

6 – Charges for payment services levied on a regular basis shall be payable by the payment service user only proportionally up to the date of termination of the contract under the foregoing paragraphs, and if such charges are paid in advance, they shall be reimbursed proportionally in relation to the period not elapsed.

Article 95

**Information before execution of individual payment transactions**

In the case of an individual payment transaction under a framework contract initiated by the payer, a payment service provider shall, at the payer's request for this specific payment transaction, provide explicit information on all of the following:

- (a) the maximum execution time for the individual payment transaction;
- (b) the charges payable by the payer and, where applicable, a breakdown of the amounts of such charges.

Article 96

**Information for the payer on individual payment transactions**

1 – After the amount of an individual payment transaction is debited from the payer's account or, where the payer does not use a payment account, after receipt of the payment order, the payer's payment service provider shall provide the payer, without undue delay and in the same way as laid down in Articles 78 and 90(2), with all of the following information:

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

2 – A framework contract may include a condition that the payer may require the information referred to in the foregoing paragraph to be provided or made available periodically, at least once a month and in an agreed manner which allows the payer to store and reproduce information unchanged.

3 – A framework contract shall include a condition that, at the express request of the payment service user, the payment service provider is required to provide the information referred to in paragraph 1 free of charge on paper or another durable medium once a month.

Article 97

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

1 – After the execution of an individual payment transaction, the payee's payment service provider shall provide the payee without undue delay in the same way as laid down in Articles 78 and 90(2) with all of the following information:



(a) a reference enabling the payee to identify the payment transaction and the payer, and any information transferred with the payment transaction;

(b) the amount of the payment transaction in the currency in which the payee's payment account is credited;

(c) the amount of any charges for the payment transaction and, where applicable, a breakdown of the amounts of such charges, or the interest payable by the payee;

(d) where applicable, the exchange rate used in the payment transaction by the payee's payment service provider, and the amount of the payment transaction before that currency conversion;

(e) the credit value date.

2 – A framework contract may include a condition that the payer may require the information referred to in the foregoing paragraph to be provided or made available periodically, at least once a month and in an agreed manner which allows the payee to store and reproduce information unchanged.

3 – A framework contract shall include a condition that, at express request of the payment service user, the payment service provider is required to provide the information referred to in paragraph 1 free of charge on paper or another durable medium once a month.

#### SECTION IV

#### **Common provisions**

##### Article 98

#### **Currency and currency conversion**

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

2 – Where a currency conversion service is offered prior to the initiation of the payment transaction at an ATM, at the point of sale or by the payee, the party offering the currency conversion service to the payer shall disclose to the payer the following information

(a) – all the charges that the payer must bear;

(b) – the exchange rate to be applied for converting the payment transaction.

##### Article 99

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

1 – Where, for the use of a given payment instrument, the payee is allowed to request a charge or offer a reduction, the payee shall inform the payer thereof prior to the initiation of the payment transaction.

2 – Where, for the use of a given payment instrument, the payment service provider or another party involved in the transaction is allowed to request a charge, it shall inform the payment service user thereof prior to the initiation of the payment transaction.

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

### CHAPTER III

#### **Rights and obligations in relation to the provision and use of payment services**

#### SECTION I

#### **Common provisions**

#### Article 100

#### **Scope**

1 – The provisions of this Chapter apply to microenterprises in the same way as to consumers, except Article 117(7).

2 – Where the payment service user is not a consumer, the payment service user and the payment service provider may refrain from applying in whole or in part Articles 101(2), 103(6) and (7), 113, 115, 117, 118, 121, 130, 131 and 132, as well as to agree on time limits that are different from those laid down in Article 112.

3 – Articles 122 to 127 shall not apply to payment transactions made in a currency other than the currency of a Member State.

4 – Articles 101(1) and (7), 117, 118, 122, 124(1) and (2), 130, 131 and 134 shall not apply to parts of payment transactions carried out in Portugal where one of the payment service providers is located in Portugal and the other provider is located outside the Union.

5 – This chapter shall be without prejudice to the provisions of Decree-Law No 133/2009 of 2 June 2009 on credit agreements for consumers, and other legislation regarding conditions for granting credit to consumers, insofar as it contains provisions not provided for in this Chapter.

#### Article 101

#### **Charges applicable**

1 – The payer and the payee may only be required to pay the charges invoiced by their payment service providers.

2 – The payment service provider shall not charge the payment service user for fulfilment of its information obligations or corrective and preventive measures under this Chapter.

3 – Notwithstanding the foregoing paragraph, the payment service provider and the payment service user may agree on charges in the following situations:

(a) notification of justified refusal to execute a payment order under Article 120(2);

(b) revocation of a payment order, under Article 121(5) to (7);

(c) recovery of funds under Article 129(5).

4 – In the cases provided for in the foregoing paragraph, such charges shall be appropriate

and in line with the payment service provider's actual costs.

5 – Without prejudice to the provisions of Decree-Law No 3/2010 of 5 January 2010, the payment service provider, for a given payment instrument, shall not prevent the payee from:

(a) – steering the payer towards its use;

(b) – offering a reduction for its use; or

(c) – requiring a charge for its use, except where the payee requires the payer to use a specific payment instrument or where there is a legal provision limiting this right in order to encourage competition or promote the use of efficient payment instruments.

6 – Any charges applied pursuant to paragraph 5(c) shall not exceed the direct costs borne by the payee for the use of the specific payment instrument.

7 – In any case, the payee may not charge for the use of payment instruments for which interexchange rates are regulated under Chapter II of Regulation (EU) No 2015/751 of the European Parliament and of the Council of 29 April 2015, and for the payment services to which Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 applies.

#### Article 102

##### **Derogation for low-value payment instruments and electronic money**

1 – In the case of payment instruments which, according to the framework contract, solely concern individual payment transactions not exceeding €30, which have a spending limit of €150, or store funds which do not exceed €150 at any time, or which, in case of prepaid payment instruments, store funds which do not exceed €250 at any time, payment service providers may agree with their payment service users that:

(a) Articles 110(1)(b), 111(1)(c) and (d), and 115(7) and (8) do not apply if the payment instrument does not allow its blocking or prevention of its further use;

(b) Articles 113, 114 and 115(1) to (4), (7) and (8) do not apply if the payment instrument is used anonymously or the payment service provider is not in a position for other reasons which are intrinsic to the payment instrument to prove that a payment transaction was authorised;

(c) by way of derogation from Article 120(2) to (4), the payment service provider is not required to notify the payment service user of the refusal of a payment order, if the non-execution is apparent from the context;

(d) by way of derogation from Article 121, the payer may not revoke the payment order after transmitting the payment order or giving consent to execute the payment transaction to the payee;

(e) by way of derogation from Articles 124 and 125, other execution periods apply.

2 – Articles 114 and 115 shall apply also to electronic money as defined in Article 2(ff), except where the payer's payment service provider does not have the ability to block the payment account on which the electronic money is stored or the payment instrument which stores funds

that do not exceed €250 at any time.

## SECTION II

### Authorisation of payment transactions

#### Article 103

##### Consent and withdrawal of consent

1 – A payment transaction or a series of payment transactions shall be considered authorised if the payer has given consent to their execution.

2 – Consent must be given prior to the execution of the transaction, unless it is agreed between the payer and the respective payment service provider that consent may be given at a later time.

3 – Consent must be given in the form agreed between the payer and the respective payment service provider.

4 – The payer's consent to execute a payment transaction may also be given via the payee or the payment initiation service provider.

5 – In the absence of consent pursuant to the foregoing paragraphs, a payment transaction shall be considered to be unauthorised.

6 – Consent may be withdrawn by the payer at any time, but no later than at the moment of irrevocability in accordance with Article 121.

7 – Consent to execute a series of payment transactions may also be withdrawn, in which case any future payment transaction shall be considered to be unauthorised.

8 – The procedure for giving and withdrawing consent shall be agreed between the payer and the relevant payment service provider(s).

#### Article 104

##### Authentication

1 – Payment service providers shall apply strong customer authentication where the payer:

(a) accesses its payment account online;

(b) initiates an electronic payment transaction;

(c) carries out any action through a remote channel which may imply a risk of payment fraud or other abuses.

2 – With regard to the initiation of electronic payment transactions as referred to in paragraph 1(b), in case of electronic remote payment transactions, payment service providers shall apply strong customer authentication that includes elements which dynamically link the transaction to a specific amount and a specific payee.

3 – With regard to paragraph 1, payment service providers shall adopt adequate security measures to protect the confidentiality and integrity of payment service users' personalised

security credentials.

4 – Paragraphs 2 and 3 shall also apply where payments are initiated through a payment initiation service provider.

5 – Paragraphs 1 and 3 shall also apply when the information is requested through an account information service provider.

6 – The account servicing payment service provider shall allow the payment initiation service provider and the account information service provider to rely on the authentication procedures provided by the account servicing payment service provider to the payment service user in accordance with paragraphs 1 and 3 and, where the payment initiation service provider is involved, in accordance with paragraphs 1, 2 and 3.

7 – The provisions of this Article shall be subject to the terms of the delegated act of the European Commission adopting the regulatory technical standards pursuant to Article 98(1) of Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015.

8 – Among other means of strong authentication, the means of electronic authentication provided by the Portuguese State provided for in Laws Nos 7/2007 of 5 February 2007 and 37/2014 of 26 June 2014, as amended and republished by Law No 32/2017 of 1 June 2017.

#### Article 105

##### **Confirmation of availability of funds**

1 – An account servicing payment service provider shall, upon the request of a payment service provider issuing card-based payment instruments, immediately confirm whether an amount necessary for the execution of a card-based payment transaction is available on the payment account of the payer, provided that all of the following conditions are met:

(a) the payment account of the payer is accessible online at the time of the request;

(b) the payer has given explicit consent to the account servicing payment service provider to respond to requests from a specific payment service provider to confirm that the amount corresponding to a certain card-based payment transaction is available on the payer's payment account;

(c) the consent referred to in subparagraph (b) has been given before the first request for confirmation is made.

2 – The payment service provider issuing card-based payment instruments may request the confirmation referred to in paragraph 1 where all of the following conditions are met:

(a) the payer has given explicit consent to the payment service provider issuing card-based payment instruments to request the confirmation referred to in paragraph 1;

(b) the payer has initiated the card-based payment transaction for the amount in question using a card-based payment instrument issued by the payment service provider;

(c) the payment service provider issuing card based payment instruments authenticates itself to the account servicing payment service provider before each confirmation request, and securely communicates with the account servicing payment service provider in accordance with paragraph

6;

(d) in accordance with the legislation on the protection of personal data, the confirmation referred to in paragraph 1:

(i) shall consist only in a simple 'yes' or 'no' answer and not in a statement of the account balance; and

(ii) shall not be stored or used for purposes other than for the execution of the card-based payment transaction.

3 – The confirmation referred to in paragraph 1 shall not allow for the account servicing payment service provider to block funds for the execution of the payment transaction on the payer's payment account.

4 – The payer may request the account servicing payment service provider to communicate to the payer the identification of the payment service provider issuing card-based payment instruments and the answer provided.

5 – This Article does not apply to payment transactions initiated through card-based payment instruments on which electronic money, as defined in this Legal Framework, is stored.

6 – Authentication and communication between the payment service provider issuing card-based payment instruments and the account servicing payment service provider, referred to in paragraph 2(c), shall be subject to the terms of the delegated act of the European Commission adopting the regulatory technical standards pursuant to Article 98(1) of Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015.

#### Article 106

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

1 – Where the payment account is accessible online, the payer shall have the right to make use of a payment initiation service provider to obtain the provision of payment initiation services.

2 – When the payer gives its explicit consent for a payment to be executed in accordance with Article 103, the account servicing payment service provider shall perform the actions specified in paragraph 4 of this Article in order to ensure the payer's right to use the payment initiation service.

3 – The payment initiation service provider shall:

(a) not hold at any time the payer's funds in connection with the provision of the payment initiation service;

(b) ensure that the personalised security credentials of the payment service user are not, with the exception of the user and the issuer of the personalised security credentials, accessible to third parties and that they are transmitted by the payment initiation service provider through safe and efficient channels;

(c) ensure that any other information about the payment service user, obtained when providing payment initiation services, is only provided to the payee and only with the payment service user's explicit consent;

(d) every time a payment is initiated, identify itself towards the account servicing payment service provider of the payer and communicate with the account servicing payment service provider, the payer and the payee in a secure way, in accordance with paragraph 6;

(e) not store sensitive payment data of the payment service user;

(f) not request from the payment service user any data other than those necessary to provide the payment initiation service;

(g) not use, access or store any data for purposes other than for the provision of the payment initiation service as explicitly requested by the payer;

(h) not modify the amount, the payee or any other feature of the transaction.

4 – The account servicing payment service provider shall:

(a) communicate securely with payment initiation service providers in accordance with paragraph 6;

(b) immediately after receipt of the payment order from a payment initiation service provider, make available all information on the initiation of the payment transaction and all information accessible to the account servicing payment service provider regarding the execution of the payment transaction to the payment initiation service provider;

(c) treat payment orders transmitted through the services of a payment initiation service provider without any discrimination other than for objective reasons, in particular in terms of timing, priority or charges vis-à-vis payment orders transmitted directly by the payer.

5 – The provision of payment initiation services shall not be dependent on the existence of a contractual relationship between the payment initiation service providers and the account servicing payment service providers.

6 – The identification and communication between the payment initiation service provider and the account servicing payment service provider referred to in paragraphs 3(d) and 4(a) shall be subject to the terms of the delegated act of the European Commission adopting the regulatory technical standards pursuant to Article 98(1) of Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015.

#### Article 107

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

1 – Where the payment account is accessible online, the payment service user shall have the right to make use of an account information service provider to obtain account information payment services.

2 – The account information service provider shall:

(a) provide services only where based on the payment service user's explicit consent;

(b) ensure that the personalised security credentials of the payment service user are not, with

the exception of the user and the issuer of the personalised security credentials, accessible to third parties and that they are transmitted by the payment initiation service provider through safe and efficient channels;

(c) for each communication session, identify itself towards the account servicing payment service provider(s) of the payment service user and securely communicate with the account servicing payment service provider(s) and the payment service user, in accordance with paragraph 5;

(d) access only the information from designated payment accounts and associated payment transactions;

(e) not request sensitive payment data linked to the payment accounts;

(f) not use, access or store any data for purposes other than for performing the account information service explicitly requested by the payment service user, in accordance with data protection rules.

3 – The account servicing payment service provider shall:

(a) communicate securely with the account information service providers in accordance with paragraph 5;

(b) treat data requests transmitted through the services of an account information service provider without any discrimination for other than objective reasons.

4 – The provision of account information services shall not be dependent on the existence of a contractual relationship between the account information service providers and the account servicing payment service providers.

5 – The identification and communication between the account information service provider and the account servicing payment service provider referred to in paragraphs 2(c) and 3(a) shall be subject to the terms of the delegated act of the European Commission adopting the regulatory technical standards pursuant to Article 98(1) of Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015.

#### Article 108

##### **Limits on use of the payment instrument**

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

2 – When expressly provided for in the framework contract, the payment service provider may reserve the right to block the payment instrument for objectively justified reasons relating to:

(a) the security of the payment instrument;

(b) the suspicion of unauthorised or fraudulent use of the payment instrument; or

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



3 – In the cases provided for in the foregoing paragraph, the payment service provider shall inform the payer of the blocking of the payment instrument and the reasons for it in an agreed manner, where possible, before the payment instrument is blocked or at the latest immediately thereafter, unless providing such information would compromise objectively justified security reasons or is prohibited by other relevant legal provisions.

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

#### Article 109

##### **Limits on the access to payment accounts by payment service providers**

1 – An account servicing payment service provider may deny an account information service provider or a payment initiation service provider access to a payment account for objectively justified and duly evidenced reasons relating to unauthorised or fraudulent access to the payment account by that service provider, including the unauthorised or fraudulent initiation of a payment transaction.

2 – In the cases referred to in the foregoing paragraph, the account servicing payment service provider shall inform the payer that access to the payment account is denied and the reasons therefor in the form agreed.

3 – The information referred to in the foregoing paragraph shall, where possible, be given to the payer before access is denied or at the latest immediately thereafter, unless providing such information would compromise objectively justified security reasons or is prohibited by other relevant legal provisions.

4 – The account servicing payment service provider shall allow access to the payment account once the reasons for denying access under paragraph 1 no longer exist.

5 – In the cases referred to in paragraph 1, the account servicing payment service provider shall immediately report the incident relating to the account information service provider or the payment initiation service provider to Banco de Portugal, without prejudice to the powers conferred to the judicial authorities.

6 – The information referred to in the foregoing paragraph shall include the relevant details of the incident and the reasons for the denial of access, in order to allow Banco de Portugal to assess the case and, if necessary, to take appropriate measures.

#### Article 110

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

1 – The payment service user entitled to use a payment instrument shall:

(a) use the payment instrument in accordance with the terms governing the issue and use of the payment instrument, which must be objective, non-discriminatory and proportionate; and

(b) notify the payment service provider, or the entity specified by the latter, without undue delay on becoming aware of the loss, theft, misappropriation or unauthorised use of the payment instrument.

2 – For the purposes of subparagraph (a) of the foregoing paragraph, the payment service user shall, in particular, as soon as in receipt of a payment instrument, take all reasonable steps to keep its personalised security credentials safe.

#### Article 111

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

1 - The payment service provider issuing a payment instrument shall:

(a) make sure that the payment instrument's personalised security credentials are only accessible to the payment service user that is entitled to use the payment instrument, without prejudice to the obligations on the payment service user set out in Article 69;

(b) refrain from sending an unsolicited payment instrument, except where an instrument of this type already given to the payment service user is to be replaced;

(c) ensure that appropriate means are available at all times to enable the payment service user to make a notification pursuant to Article 110(1)(b) or to request unblocking pursuant to Article 108(4);

(d) on request, provide to the payment service user with the means to prove, for 18 months after notification pursuant to Article 110(1)(b), that the payment service user made such notification or requested the unblocking pursuant to Article 108(4);

(e) prevent all use of the payment instrument once notification pursuant to Article 110(1)(b) has been made.

2 – The payment service provider shall ensure that the notification referred to in paragraph 1(c) is made free of charge, charging, if at all, only replacement costs directly attributed to the payment instrument.

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

#### Article 112

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

1 – The payment service user shall obtain rectification from the payment service provider as regards an unauthorised or incorrectly executed payment transaction giving rise to a claim, including that under Articles 130 and 131, only if the payment service user notifies the payment service provider without undue delay on becoming aware of any such transaction and no later than 13 months after the debit date.

2 – The maximum time limit for notification laid down in the foregoing paragraph shall not apply where the payment service provider has failed to provide or make available the required information on the payment transaction concerned in accordance with Title III, Chapter II.

3 – Where a payment initiation service provider is involved, the payment service user shall obtain rectification from the account servicing payment service provider pursuant to paragraphs 1 and 2 of this Article, without prejudice to Articles 114(5) to (9), 130 and 132.

## Article 113

### **Evidence on authentication and execution of payment transaction**

1 – Where a payment service user denies having authorised an executed payment transaction or claims that the payment transaction was not correctly executed, it is for the payment service provider to prove that the payment transaction was authenticated, accurately recorded, entered in the accounts and not affected by a technical breakdown or some other deficiency of the service provided by the payment service provider.

2 – If the payment transaction is initiated through a payment initiation service provider, the burden shall be on the payment initiation service provider to prove that within its sphere of competence, the payment transaction was authenticated, accurately recorded and not affected by a technical breakdown or other deficiency linked to the payment service provided.

3 – Where a payment service user denies having authorised an executed payment transaction, the use of a payment instrument recorded by the payment service provider, including the payment initiation service provider as appropriate, shall in itself not necessarily be sufficient to prove either that the payment transaction was authorised by the payer or that the payer acted fraudulently or failed with intent or gross negligence to fulfil one or more of the obligations under Article 110.

4 – In the cases referred to in the foregoing paragraph, the payment service provider, including, where appropriate, the payment initiation service provider, shall provide supporting evidence to prove fraud, intent or gross negligence on part of the payment service user.

## Article 114

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

1 – Without prejudice to Article 112, the payer's payment service provider shall refund the payer the amount of the unauthorised payment transaction immediately, and in any event no later than by the end of the following business day, after noting or being notified of the transaction.

2 – The payer's payment service provider is not required to refund within the time limit provided for in the foregoing paragraph where the payment service provider has reasonable grounds for suspecting that the payer has acted fraudulently and communicates those grounds to the judicial authorities pursuant to criminal law and criminal procedure, in writing and within the time limit indicated in the foregoing paragraph.

3 – Where there is a refund to the payer, the payment service provider shall also ensure that the credit value date for the payer's payment account shall be no later than the date the amount had been debited in the account.

4 – In the case provided for in the foregoing paragraph, the payer's payment service provider, where applicable, shall restore the debited payment account to the state in which it would have been had the unauthorised payment transaction not taken place.

5 – Where the payment transaction is initiated through a payment initiation service provider, the account servicing payment service provider shall refund the payer the amount of the

unauthorised payment transaction immediately, and in any event no later than by the end of the following business day, after noting or being notified of the transaction.

6 – The account servicing payment service provider is not required to refund within the time limit provided for in the foregoing paragraph where the payment initiation service provider has informed the payment service provider that it has reasonable grounds for suspecting that the payer has acted fraudulently and that it has communicated those grounds to the judicial authorities pursuant to criminal law and criminal procedure, in writing and within the time limit indicated in the foregoing paragraph..

7 – Where there is a refund to the payer, the account servicing payment service provider, where applicable, shall restore the debited payment account to the state in which it would have been had the unauthorised payment transaction not taken place.

8 – If the payment initiation service provider is liable for the unauthorised payment transaction, it shall immediately compensate the account servicing payment service provider at its request for the losses incurred or sums paid as a result of the refund to the payer, including the amount of the unauthorised payment transaction.

9 – In the cases where Article 113(2) applies, the burden shall be on the payment initiation service provider to prove that, within its sphere of competence, the payment transaction was authenticated, accurately recorded and not affected by a technical breakdown or other deficiency linked to the payment service provided.

10 – Where the payment service provider shall not immediately refund the payer, and no reasonable motives have been found constituting valid grounds for suspecting fraud, or where such suspicion has not been communicated to the judicial authorities pursuant to criminal law and criminal procedure in writing, the payer shall be entitled to arrears interest due from the date on which the payment service user has denied having authorised the executed payment transaction, until the effective date of refund, calculated on the basis of the legal rate, set under the Portuguese Civil Code, plus ten percentage points, without prejudice to the right to any further compensation.

#### Article 115

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

1 – By way of derogation from Article 114, the payer may be obliged to bear the losses relating to any unauthorised payment transactions resulting from the use of a lost or stolen payment instrument or from the misappropriation of a payment instrument within the limit of the available balance or the limit on the credit line linked to the account or payment instrument, up to a maximum of €50.

2 – Paragraph 1 of this Article shall not apply if:

(a) the loss, theft or misappropriation of a payment instrument was not detectable to the payer prior to a payment; or

(b) the loss was caused by acts or lack of action of an employee, agent or branch of a payment service provider or of an entity to which its activities were outsourced.

3 – The payer shall bear all of the losses relating to any unauthorised payment transactions if they were incurred by the payer acting fraudulently or due to wilful non-compliance with one or more of the obligations provided for in Article 110, in which case the limits referred to in paragraph 1 shall not apply.

4 – In case of gross negligence, the payer shall bear all losses relating to any unauthorised payment transactions up to the limit of the available balance or the limit on the credit line linked to the account or payment instrument, even when these exceed €50.

5 – Where the payer's payment service provider does not require strong customer authentication, the payer shall not bear any losses relating to the unauthorised payment transactions, unless the payer has acted fraudulently.

6 – Where the payee or the payment service provider of the payee fails to accept strong customer authentication, it shall refund the financial damage caused to the payer's payment service provider.

7 – The payer shall not bear any financial consequences resulting from use of the lost, stolen or misappropriated payment instrument after notification in accordance with Article 110(1)(b), except where the payer has acted fraudulently.

8 – If the payment service provider does not provide appropriate means for the notification at all times of a lost, stolen or misappropriated payment instrument, as required under Article 111(1)(c), the payer shall not be liable for the financial consequences resulting from use of that payment instrument, except where the payer has acted fraudulently.

#### Article 116

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

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

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

#### Article 117

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

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

(a) the authorisation did not specify the exact amount of the payment transaction when the authorisation was made; and

(b) the amount of the payment transaction exceeded the amount the payer could reasonably have expected taking into account the previous spending pattern, the conditions in the framework contract and relevant circumstances of the case.

2 – For the purposes of paragraph 1(b), the payer shall not rely on currency exchange reasons in cases where the reference exchange rate agreed with its payment service provider in accordance with Articles 84(1)(d) and 91(c)(ii) has been applied.

3 – At the payment service provider's request, the payer shall bear the burden of proving that the conditions provided for in paragraph 1 are met.

4 – The refund referred to in paragraph 1 shall consist of the full amount of the executed payment transaction, and the credit value date for the payer's payment account shall be no later than the date the amount was debited.

5 – It may be agreed in a framework contract between the payer and the payment service provider that the payer has no right to a refund under paragraph 1 where:

(a) the payer has given consent to execute the payment transaction directly to the payment service provider; and

(b) information on the future payment transaction was provided or made available in an agreed manner to the payer at least four weeks before the due date by the payment service provider or by the payee.

6 – Without prejudice to paragraphs 1 and 5, the payer shall also have an unconditional right to a refund in relation to direct debit transactions referred to in Article 1 of Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012, within the time limits laid down in Article 118, and in compliance with paragraph 4.

7 – In cases where the payer is a microenterprise, it may be agreed in a framework contract between the payer and the payment service provider that, under a direct debit payment scheme which does not allow a refund, as laid down in Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012, paragraphs 1 and 6 shall not apply.

#### Article 118

##### **Request for refunds for payment transactions initiated by or through a payee**

1 – The payer may request the refund of an authorised payment transaction initiated by or through a payee under Article 117 for a period of eight weeks from the date on which the funds were debited.

2 – Within ten business days of receiving a request for a refund, the payment service provider shall either refund the payer of the full amount of the payment transaction or provide a justification for refusing the refund and indicate the entities to which the payer may submit a complaint in accordance with Articles 143 and 144, if the payer does not accept the reasons provided.

3 – In the situation referred to in Article 117(6), the payment service provider may not refuse the refund under the foregoing paragraph.

SECTION III

**Execution of payment transactions**

SUBSECTION I

**Payment orders and amounts transferred**

Article 119

**Receipt of payment orders**

1 – The time of receipt shall be when the payment order is received by the payer's payment service provider.

2 – The payer's payment account shall not be debited before receipt of the payment order.

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

4 – The payment service provider may establish a cut-off time near the end of a business day beyond which any payment order received shall be deemed to have been received on the following business day.

5 – The payment service user issuing the payment order and the respective payment service provider may agree that the order has been received:

(a) on a specific day;

(b) at the end of a certain period; or

(c) on the day on which the payer has put funds at the payment service provider's disposal.

6 – If the day agreed under the foregoing paragraph is not a business day for the payment service provider, the payment order received shall be deemed to have been received on the following business day.

Article 120

**Refusal of payment orders**

1 – Where all of the conditions set out in the payer's framework contract are met, the payer's account servicing payment service provider shall not refuse to execute an authorised payment order irrespective of whether the payment order is initiated by a payer, including through a payment initiation service provider, or by or through a payee, unless otherwise provided.

2 – The refusal to execute a payment order or to initiate a payment transaction, and, if possible, the reasons for it and the procedure for correcting any factual mistakes that led to the refusal shall be notified by the payment service provider to the payment service user, unless otherwise provided.

3 – The payment service provider shall provide or make available the notification in an agreed manner at the earliest opportunity, and in any case, within the periods specified in Article 124.

4 – The framework contract may expressly provide that the payment service provider may charge a reasonable fee for such a refusal if the refusal is objectively justified.

5 – For the purposes of Articles 124, 130 and 131, a payment order for which execution has been refused shall be deemed not to have been received.

#### Article 121

##### **Irrevocability of a payment order**

1 – Except as provided for in the following paragraphs, the payment service user shall not revoke a payment order once it has been received by the payer's payment service provider.

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

3 – However, in the case of a direct debit and without prejudice to refund rights the payer may revoke the payment order at the latest by the end of the business day preceding the day agreed for debiting the funds.

4 – In the case referred to in Article 119(5) and (6) the payment service user may revoke a payment order at the latest by the end of the business day preceding the agreed day.

5 – After the time limits laid down in paragraphs 1 to 4, the payment order may be revoked only if agreed between the payment service user and the relevant payment service providers.

6 – In the case of the payment transactions referred to in paragraphs 2 and 3, in addition to the agreement referred to in paragraph 5, the payee's agreement shall also be required.

7 – In the situations referred to in paragraph 5 and in the foregoing paragraph, and upon express condition contained in the framework contract, the relevant payment service provider may charge for revocation.

#### Article 122

##### **Amounts transferred and amounts received**

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

2 – However, the payee and the payment service provider may agree that the relevant payment service provider deduct its charges from the amount transferred before crediting it to the payee.

3 – In the case provided for in the foregoing paragraph, the full amount of the payment transaction and charges shall be separated in the information given to the payee.

4 – If any charges other than those agreed under paragraph 2 are deducted from the amount transferred:



(a) the payment service provider of the payer shall ensure that the payee receives the full amount of the payment transaction initiated by the payer;

(b) where the payment transaction is initiated by or through the payee, the payment service provider of the payee shall ensure that the full amount of the payment transaction is received by the payee.

## SUBSECTION II

### **Execution time and value date**

#### Article 123

##### **Scope**

- 1 – This Subsection applies to payment transactions in euro.
- 2 – This Subsection applies to payment transactions not referred to in the foregoing paragraph, unless otherwise agreed between the payment service user and the respective payment service provider. However, the parties may not refrain from applying Article 128.
- 3 – Where the payment service user and the respective payment service provider agree on a longer period than that set in Article 124, for intra-Union payment transactions, that period shall not exceed 4 four business days following the time of receipt as referred to in Article 119.

#### Article 124

##### **Payment transactions to a payment account**

- 1 – The payer's payment service provider shall ensure that after the time of receipt of the payment order as referred to in Article 119, the amount of the transaction will be credited to the payee's payment service provider's account by the end of the following business day.
- 2 – The time limit referred to in the foregoing paragraph may be extended by a further business day for paper-issued payment transactions.
- 3 – The payment service provider of the payee shall value date and make available the amount of the payment transaction to the payee's payment account after receiving the funds in accordance with Article 128.
- 4 – The payee's payment service provider shall transmit a payment order initiated by or through the payee to the payer's payment service provider within the time limits agreed between the payee and the respective payment service provider, enabling settlement, as far as direct debit is concerned, on the agreed execution date.

#### Article 125

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

Where the payee does not have a payment account with the payment service provider, the funds shall be made available to the payee by the payment service provider who receives the funds for the payee within the time limit laid down in Article 124.

Article 126

**Cash placed on a payment account**

- 1 – Where a consumer places cash on a payment account with that payment service provider in the currency of that payment account, the payment service provider shall ensure that the amount is made available and value dated immediately after receipt of the funds.
- 2 – Where the payment service user is not a consumer, the amount shall be made available and value dated at the latest on the following business day after receipt of the funds.
- 3 – For the purposes of paragraphs 1 and 2, funds relating to cash deposits made at ATMs, safes or other means of collecting values, which have no ability to immediately check or verify the amount and authenticity of the values, shall be deemed to be received on the business day following the time of deposit.
- 4 – Prior to cash deposits made at ATMs, safes or other means of collecting values, which have no ability to immediately check or verify the amount and authenticity of the values, the payment service provider shall have a duty to notify the payment service user of the deadline for the amount to be made available, taking into account the provisions of the foregoing paragraph.
- 5 – Failure to provide the notification referred to in the foregoing paragraph shall result in the depositing of the value date determined solely in accordance with paragraphs 1 and 2.

Article 127

**Domestic transfers between payment accounts with the same payment service provider**

For domestic transfers between accounts with the same payment service provider, in the absence of any provision to the contrary, the funds shall be credited to the payee's account on the same day, and the value date and the availability date shall be the time of credit.

Article 128

**Value date and availability of funds**

- 1 – The credit value date for the payee's payment account shall be no later than the business day on which the amount of the payment transaction is credited to the payee's payment service provider's account.
- 2 – The payment service provider of the payee shall ensure that the amount of the payment transaction is at the payee's disposal immediately after that amount is credited to the payee's payment service provider's account where, on the part of the payee's payment service provider, there is no currency conversion or if there is a currency conversion, this is between the euro and a Member State currency or between two Member State currencies.
- 3 – The obligation laid down in the foregoing paragraph shall also apply to payments within one payment service provider.
- 4 – The debit value date for the payer's payment account shall be no earlier than the time at which the amount of the payment transaction is debited to that payment account.

### SUBSECTION III

#### **Liability**

#### Article 129

##### **Incorrect unique identifiers**

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

2 – If the unique identifier provided by the payment service user is incorrect, the payment service provider shall not be liable under Articles 130 and 131 for non-execution or defective execution of the payment transaction.

3 – However, the payer's payment service provider shall make reasonable efforts to recover the funds involved in the payment transaction with the collaboration of the payee's payment service provider, which shall communicate all relevant information to the payer's payment service provider.

4 – In the event that the recovery of funds under the foregoing paragraph is not possible, the payer's payment service provider shall provide to the payer, upon written request, all information available to the payer's payment service provider and relevant to the payer in order for the payer to file an appropriate legal claim.

5 – If agreed in the framework contract, the payment service provider may charge the payment service user for recovery.

6 – Notwithstanding the fact that the payment service user may provide information in addition to that specified in Article 84(1)(a) or Article 91(b)(ii), the payment service provider shall be liable only for the execution of payment transactions in accordance with the unique identifier provided by the payment service user.

#### Article 130

##### **Payment service providers' liability for non-execution, defective or late execution of payment transactions issued by the payer**

1 – Where a payment order is issued directly by the payer, the payer's payment service provider shall, without prejudice to Articles 112, 129(2), (3) and (4), and 135, be liable to the payer for correct execution of the payment transaction.

2 – If the payer's payment service provider can prove to the payer and, where relevant, to the payee's payment service provider that the payee's payment service provider received the amount of the payment transaction in accordance with Article 124(1) and (2), the payee's payment service provider shall be liable to the payee for the correct execution of the payment transaction.

3 – Where the payer's payment service provider is liable under paragraph 1, it shall, without undue delay, refund to the payer the amount of the non-executed or defective payment transaction, and, where applicable, restore the debited payment account to the state in which it

would have been had the defective payment transaction not taken place.

4 – The credit value date for the payer’s payment account referred to in the foregoing paragraph shall be no later than the date on which the amount was debited.

5 – Where the payee’s payment service provider is liable under paragraph 2, it shall immediately place the amount of the payment transaction at the payee’s disposal and, where applicable, credit the corresponding amount to the payee’s payment account.

6 – The credit value date for the payee’s payment account referred to in the foregoing paragraph shall be no later than the date on which the amount would have been value dated, had the transaction been correctly executed in accordance with Article 128.

7 – In the case of a non-executed or defectively executed payment transaction, the payer’s payment service provider shall, regardless of liability under paragraphs 1 and 2, on request, make immediate efforts to trace the payment transaction and notify the payer of the outcome, and the payer may not be charged for this service.

8 – Where a payment transaction is executed late, the payee’s payment service provider shall ensure, upon the request of the payer’s payment service provider acting on behalf of the payer, that the credit value date for the payee’s payment account is no later than the date the amount would have been value dated had the transaction been correctly executed.

9 – Without prejudice to the liability under this Article, payment service providers shall be liable to their payment service users for any charges for which they are responsible, and for any interest to which the payment service users are subject as a consequence of non-execution or defective, including late, execution of the payment transaction.

#### Article 131

#### **Payment service providers’ liability for non-execution, defective or late execution of payment transactions issued by or through the payee**

1 – Where a payment order is issued by or through the payee, the payee’s payment service provider shall, without prejudice to Articles 112, 129(2), (3) and (4), and 135, be liable to the payee for correct transmission of the payment order to the payment service provider of the payer in accordance with Article 124(4).

2 – Where the payee’s payment service provider is liable under the foregoing paragraph, it shall immediately re-transmit the payment order in question to the payment service provider of the payer.

3 – In the case of a late transmission of the payment order, the credit shall be value dated on the payee’s payment account no later than the date the amount would have been value dated had the transaction been correctly executed.

4 – The payment service provider of the payee shall also, without prejudice to Article 112, 129(2), (3) and (4) and 135, be liable to the payee for handling the payment transaction in accordance with its obligations under Article 128, and the payee’s payment service provider shall ensure that the amount of the payment transaction is at the payee’s disposal immediately after that amount is credited to the payee’s payment service provider’s account.

5 – In the case provided for under the foregoing paragraph, the credit value date for the payee's payment account shall be no later than the date on which the amount would have been value dated, had the transaction been correctly executed in accordance with Article 128.

6 – In the case of a non-executed or defectively executed payment transaction for which the payee's payment service provider is not liable under the paragraphs 1, 2, 4, and 5, the payer's payment service provider shall be liable to the payer.

7 – Where the payer's payment service provider is liable under the foregoing paragraph, it shall, without undue delay and where applicable, refund to the payer the amount of the non-executed or defective payment transaction, and restore the debited payment account to the state in which it would have been had the defective payment transaction not taken place.

8 – The credit value date for the payer's payment account referred to in the foregoing paragraph shall be no later than the date on which the amount was debited.

9 – Paragraphs 7 and 8 shall not apply if the payer's payment service provider can prove that the payee's payment service provider has received the amount of the payment transaction, even if its execution is merely delayed.

10 – In the cases provided for in the foregoing paragraph, the payee's payment service provider shall value date the amount on the payee's payment account no later than the date the amount would have been value dated had it been executed correctly.

11 – In the case of a non-executed or defectively executed payment transaction, the payee's payment service provider shall, regardless of liability under the foregoing paragraphs, on request, make immediate efforts to trace the payment transaction and notify the payee of the outcome, and the payee may not be charged for this service.

12 – Without prejudice to the liability under this Article, payment service providers shall be liable to their users for any charges for which they are responsible, and for any interest to which the payment service users are subject as a consequence of non-execution or defective, including late, execution of the payment transaction.

#### Article 132

#### **Liability in the case of payment initiation services for non-execution, defective or late execution of payment transactions**

1 – Where a payment order is initiated by the payer through a payment initiation service provider, the account servicing payment service provider shall, without prejudice to Articles 112 and 129(2), (3) and (4), refund to the payer the amount of the non-executed or defective payment transaction and, where applicable, restore the debited payment account to the state in which it would have been had the defective payment transaction not taken place.

2 – The burden shall be on the payment initiation service provider to prove that the payment order was received by the payer's account servicing payment service provider in accordance with Article 119 and that within its sphere of competence the payment transaction was authenticated, accurately recorded and not affected by a technical breakdown or other deficiency linked to the non-execution, defective or late execution of the transaction.

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

Article 133

**Additional compensation**

Articles 129 to 132 shall be without prejudice to the right to any further compensation under the law applicable to the contract concluded between the payment service user and the payment service provider.

Article 134

**Right of recourse**

1 – Where the liability of a payment service provider under Articles 114, 130, 131 and 132 is attributable to another payment service provider or to an intermediary, that payment service provider or intermediary shall compensate the first payment service provider for any losses incurred or sums paid under Articles 114, 130, 131 and 132.

2 – For the purposes of the foregoing paragraph, that shall include compensation where any of the payment service providers fail to use strong customer authentication.

3 – Further compensation may be determined in accordance with agreements between payment service providers, between intermediaries and between payment service providers and intermediaries, as well as pursuant to the law applicable to the agreement concluded between them.

Article 135

**Force majeure**

No liability shall arise under Articles 103 to 134 in cases of abnormal and unforeseeable circumstances beyond the control of the party pleading for the application of those circumstances, the consequences of which would have been unavoidable despite all efforts to the contrary, or where a payment service provider is bound by other legal obligations, including those related to the prevention of money laundering and terrorist financing.

SUBSECTION IV

**Data protection**

Article 136

**Personal data protection**

1 – Without prejudice to other legitimate reasons for data processing provided for by law, the processing of personal data by payment systems and payment service providers shall be permitted when necessary to safeguard the prevention, investigation and detection of payment

fraud.

2 – The processing of personal data referred to in the foregoing paragraph shall be carried out in accordance with national and European legislation on the protection of personal data.

3 – Payment service providers shall only access, process and retain personal data necessary for the provision of their payment services with the explicit consent of the payment service user to which such data relate.

#### TITLE IV

### **Issuance and redeemability of electronic money**

#### Article 137

#### **Remuneration policy**

Title III, Chapter I, shall apply mutatis mutandis to electronic money issuers.

#### Article 138

#### **Issuance**

Electronic money shall be issued at par value on the receipt of funds.

#### Article 139

#### **Redeemability**

1 – Upon request by the electronic money holder, electronic money issuers redeem, at any moment and at par value, the monetary value of the electronic money held.

2 – The contract between the electronic money issuer and the electronic money holder shall clearly and prominently state the conditions of redemption, including any fees relating thereto, and the electronic money holder shall be informed of those conditions before being bound by any contract or offer.

3 – Redemption may be subject to a fee only if stated in the contract in accordance with paragraph 2 and only in any of the following cases:

(a) where redemption is requested before the termination of the contract;

(b) where the contract provides for a termination date and the electronic money holder terminates the contract before that date; or

(c) where redemption is requested more than one year after the date of termination of the contract.

4 – The fee referred to in the foregoing paragraph shall be proportionate and commensurate with the actual costs incurred by the electronic money issuer.

5 – Where redemption is requested before the termination of the contract, the electronic money holder may request redemption of the electronic money held in whole or in part.

6 – Where redemption is requested by the electronic money holder on or up to one year

after the date of the termination of the contract:

(a) the total monetary value of the electronic money held shall be redeemed; or

(b) where the electronic money institution carries out one or more of the activities listed in Article 14(2)(e) and it is unknown in advance what proportion of funds is to be used as electronic money, all funds requested by the electronic money holder shall be redeemed.

7 – Notwithstanding paragraphs 3 to 6, redemption rights of a person, other than a consumer, who accepts electronic money as payment shall be subject to the contractual agreement between the electronic money issuers and that person.

Article 140

#### **Prohibition of interest**

The payment of interest or any other benefit related to the length of time during which an electronic money holder holds the electronic money shall be prohibited.

Article 141

#### **Changes in conditions and termination of contract between the electronic money issuer and the electronic money holder**

Articles 93 and 94 shall apply mutatis mutandis to the contract between the electronic money issuer and the electronic money holder, without prejudice to the provisions on conditions of redemption and low-value payment instruments and electronic money.

TITLE V

#### **Complaint and alternative dispute resolution procedure**

Article 142

##### **Complaints submitted to payment service providers and electronic money issuers**

1 – Payment service providers and electronic money issuers shall put in place adequate and effective procedures for handling the complaints directly addressed to them by payment service users and electronic money holders regarding rights and obligations arising under Titles III and IV.

2 – Payment service providers and electronic money issuers shall reply to the payment service users' and electronic money holders' complaints directly submitted to them on paper or, if agreed, on another durable medium, and within 15 business days from the date of receipt of the complaint.

3 – In exceptional situations where, for reasons beyond their control, it is not possible to reply to the complaint within the time limit referred to in the foregoing paragraph, payment service providers and electronic money issuers shall inform payment service users and electronic money holders about the reasons for the delay in answering the complaint and specifying the deadline for sending the final reply.

4 – In the case referred to in the foregoing paragraph, payment service providers and electronic money issuers shall send the final reply to payment service users and electronic money



holders within 35 business days of the date of receipt of the complaint.

5 – The notifications under the foregoing paragraphs shall be made in Portuguese, except when the parties agree to use another language.

6 – Payment service providers and electronic money issuers shall be required to provide Banco de Portugal with regular information on the complaints received under this Article, according to the terms, frequency and form of communication laid down in a regulation to be issued by Banco de Portugal.

7 – This Article shall be without prejudice to the application of Decree-Law No 156/2005 of 15 September 2005, establishing the Portuguese Complaints Book (*Livro de Reclamações*).

#### Article 143

##### **Complaints submitted to Banco de Portugal**

1 – Without prejudice to access to the competent judicial procedures, payment service users and electronic money holders, or their representative associations, as well as other stakeholders, may submit complaints to the Bank of Portugal directly on the grounds of non-compliance with the rules under Titles III and IV by payment service providers and electronic money issuers.

2 – In its reply, Banco de Portugal shall inform the complainants of the existence of alternative dispute resolution procedures.

3 – The framework applicable to credit institutions' customer complaints under Article 77-A of the Legal Framework of Credit Institutions and Financial Companies shall apply *mutatis mutandis* to the complaints provided for herein.

#### Article 144

##### **Provision of alternative dispute resolution procedures**

1 – Without prejudice to payment service users and electronic money holders having access to the competent judicial procedures, payment service providers and electronic money issuers shall provide their payment service users and electronic money holders with access to effective and adequate alternative dispute resolution procedures for cases of a value equal to or less than the jurisdiction threshold applicable to the courts of first instance, with respect to the rights and obligations set forth in Titles III and IV of this Legal Framework.

2 – Such provision referred to in the foregoing paragraph shall be effective upon payment service providers and electronic money issuers joining at least two entities enabling alternative dispute resolution pursuant to Laws Nos 63/2011 of 14 December 2011, 144/2015 of 8 September 2015, and 29/2013 of 19 April 2013.

3 – Payment service providers should also ensure that resolution of cross-border disputes shall be forwarded to a signatory of the membership protocol for the FIN-NET cooperation network for alternative cross-border dispute resolution in the financial sector, and one of the entities referred to in the foregoing paragraph may be chosen for such purpose.

4 – Payment service providers and electronic money issuers shall notify Banco de Portugal of the chosen entities under paragraph 2 within 15 days of such choice.

5 – Payment service providers and electronic money issuers shall inform the payment service users and electronic money holders about the entities they have chosen under the foregoing paragraphs, and how additional information on the alternative dispute resolution procedures and the access conditions may be obtained.

6 – The information referred to in the foregoing paragraph shall be mentioned in a clear, comprehensive and easily accessible way on the website of the payment service providers or electronic money issuers, where one exists, at the branches, and in the general terms and conditions of the contract between the payment service provider and the payment service user.

7 – This Article shall not apply to payment service providers and electronic money issuers listed in Article 11(1)(i) and (k) and Article 12(f) and (g) respectively.

#### Article 145

##### **Obligation to inform consumers of their rights**

1 – Banco de Portugal shall make available on its website a leaflet prepared by the European Commission on the rights of consumers in the use of payment services.

2 – Payment service providers shall ensure that this leaflet is made available, free of charge and easily accessible, on their websites, if existing, and on paper at their customer assistance points, as well as at their branches, agents and entities to which their activities are outsourced if they contact payment service users.

3 – In respect of persons with disabilities, the provisions of this Article shall be applied using appropriate alternative means, allowing the information to be made available in an accessible format.

#### TITLE VI

##### **Measures for the implementation of Regulation (EC) No 924/2009 of the European Parliament and of the Council of 16 September 2009, Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 and Regulation (EU) No 2015/751 of the European Parliament and of the Council of 29 April 2015**

#### Article 146

##### **Complaints submitted to payment service providers**

Payment service providers shall, pursuant to the rights and obligations arising from Regulation (EC) No 924/2009 of the European Parliament and of the Council of 16 September 2009, Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012, and Regulation (EU) No 2015/751 of the European Parliament and of the Council of 29 April 2015, provide their payment service users with appropriate mechanisms for handling complaints directly submitted to them, in accordance with Article 142 of this Legal Framework.

#### Article 147

##### **Complaints submitted to Banco de Portugal**

Without prejudice to access to the appropriate judicial procedures, payment service users or

their representative associations, as well as other stakeholders, may submit complaints to Banco de Portugal directly on the grounds of non-compliance with Regulation (EC) No 924/2009 of the European Parliament and of the Council of 16 September 2009, Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 and Regulation (EU) No 2015/751 of the European Parliament and of the Council of 29 April 2015, pursuant to Article 143 of this Legal Framework.

#### Article 148

### **Provision of alternative dispute resolution procedures**

Payment service providers shall, pursuant to the rights and obligations arising from Regulation (EC) No 924/2009 of the European Parliament and of the Council of 16 September 2009, Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012, and Regulation (EU) No 2015/751 of the European Parliament and of the Council of 29 April 2015, provide their payment service users with access to effective and adequate alternative dispute resolution procedures for cases of a value equal to or less than the jurisdiction threshold applicable to the courts of first instance, pursuant to Article 144 of this Legal Framework.

#### Article 149

### **Supervision**

1 – Banco de Portugal shall be responsible for supervising compliance with the obligations laid down in Regulation (EC) No 924/2009 of the European Parliament and of the Council of 16 September 2009, Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 and Regulation (EU) No 2015/751 of the European Parliament and of the Council of 29 April 2015, and for that purpose it may exercise the powers set out in Article 7(2) in relation to payment service providers, payment systems, processing entities and payment schemes.

2 – The respective sectoral regulatory authority or, in other sectors of activity, the Portuguese Economic and Food Safety Authority (*Autoridade de Segurança Alimentar e Económica*) shall be responsible for supervising compliance with the second paragraph of Article 8(6) and Article 10(4) of Regulation (EU) No 2015/751 of the European Parliament and of the Council of 29 April 2015.

## TITLE VII

### **Administrative offence framework**

#### CHAPTER I

### **Administrative offences**

#### Article 150

### **Offences**

1 – Depending on whether the administrative fines are applied to a legal or to a natural person, the following administrative offences are punishable by a fine of €3,000 to €1,500,000 or

of €1,000 to €500,000:

(a) violation of the duty to report information or submit an annual audit opinion to the competent authorities by the payment providers pursuant to Article 6(1) and (3);

(b) violation of rules on the use of company and business names set forth in Articles 11(5) and (6) and 12(3) and (4);

(c) the provision of payment services through agents without complying with Article 31(2);

(d) the distribution and redemption of electronic money through agents and distributors in accordance with Article 32(1) and (2) without complying with paragraph 4 of that Article;

(e) failure to comply with the conditions laid down in Article 33 as regards the outsourcing of important operational functions;

(f) exercise of activity without observing the rules of registration with Banco de Portugal;

(g) failure by institutions' branches, agents or distributors of electronic money authorised in another Member State of the European Union to comply with the obligation to provide information provided for in Article 45(5);

(h) violation of the rules governing the subscription or paying up of the share capital, regarding the time limit, amount and form of representation;

(i) failure to set-up a commercial company whose sole purpose is to provide the payment services or, in the case of electronic money institutions, the provision of these services and the issuance of electronic money, when determined by Banco de Portugal, within the time limit set for that purpose;

(j) failure to comply with the obligation to keep records and files, and make them available to Banco de Portugal, under the terms provided for in this Legal Framework;

(k) violation of the rules on the registration of the operations provided for in Article 74;

(l) violation of the rules on changes in conditions provided for in Article 93(5), (7) and (8) and termination of framework contracts as provided for in Article 94(1) and (4);

(m) payments made in currencies other than those agreed between the parties;

(n) failure to comply with the obligation to allow access to the payment account, where required, under this Legal Framework;

(o) failure to comply with the obligation to unlock or replace a payment instrument, where required, under this Legal Framework;

(p) failure to release funds from a payment account, where required, under this Legal Framework;

(q) refusal to execute payment orders in breach of Article 120(1);

(r) violation of rules on complaint procedures and alternative dispute resolution under this Legal Framework;

(s) failure to comply with the accounting rules and procedures set out in the law or by Banco

de Portugal, when this does not seriously jeopardise the awareness of the financial and balance sheet situation of the entity in question;

(t) failure to comply with the prudential ratios or limits set out in the law by the Minister of Finance or by Banco de Portugal in the exercise of their powers;

(u) failure to comply with the execution periods, value dates and dates of availability of funds provided for in this Legal Framework;

(v) failure to provide Banco de Portugal with the information and communications within the established time limits, and the provision of incomplete information;

(w) failure to issue the compulsory publications within the prescribed periods;

(x) violation of rules and duties of conduct provided for in this Decree-Law or in additional legal texts that refer to its penalty framework, and non-compliance with specific instructions issued by Banco de Portugal for the purposes of ensuring that the said rules and duties are enforced;

(y) violation of the provisions of this Decree-Law and of the specific legislation, including EU legislation, governing the activity of payments institutions and electronic money institutions, not provided for in the foregoing subparagraphs and in Article 151, as well as of regulations issued by Banco de Portugal, in compliance with or for the execution of the aforementioned provisions.

2 – Violation of the obligations provided for in Article 15(3) regarding the legislation regulating the centralisation of credit liabilities is punishable under Article 9 of Decree-Law No 204/2008 of 14 October 2008.

3 – Violation of the obligation to provide information on additional charges or reductions, as well as the exchange rate to be applied for the purpose of converting the payment transaction provided for in this Decree-Law, when such obligation lies with the payee or third party other than the service provider, is punishable pursuant to Article 21 of Decree-Law No 57/2008 of 26 March 2008.

4 – Violation by the payee of the second subparagraph of Article 8(6) and Article 10(4) of Regulation (EU) No 2015/751 of the European Parliament and of the Council, of 29 April 2015, is punishable pursuant to Article 21 of Decree-Law No 57/2008 of 26 March 2008.

#### Article 151

#### **Particularly serious offences**

Depending on whether the administrative fines are applied to a legal or to a natural person, the following offences are punishable by a fine of €10,000 to €5,000,000 or of €4,000 to €5,000,000:

(a) unauthorised carrying out, by any natural or legal person, of the activity of providing payment services or issuing electronic money;

(b) exercise by payment institutions or by electronic money institutions of activities not included in their statutory purpose, as well as the provision of payment services not included in their authorisation;

- (c) the use of funds from payment service users for purposes other than the execution of payment services;
- (d) failure to comply with the obligation laid down in Articles 13(3) and 14(5) in respect of payment accounts held by payment institutions and electronic money institutions;
- (e) violation of the obligation provided for in Article 14(4) to exchange any funds received for electronic money without delay;
- (f) violation of rules on credit granting as provided for in Articles 15(1) and (2) and Article 74;
- (g) failure to implement governance systems, in breach of Article 18(2);
- (h) allowing one or more persons not complying with Articles 30 and 31 of the Legal Framework of Credit Institutions and Financial Companies to become or remain a member of the management and supervisory bodies, in breach of Article 20(1) of this Legal Framework;
- (i) violation of the obligations related to the termination of the term of office provided for in Article 30-C(3) and (6) of the Legal Framework of Credit Institutions and Financial Companies, in breach of Article 20(1) of this Legal Framework;
- (j) failure to duly report to Banco de Portugal, pursuant to Article 32(1) of the Legal Framework of Credit Institutions and Financial Companies, in breach of Article 20(1) of this Legal Framework;
- (k) failure to implement the measures referred to in Article 32(5) of the Legal Framework of Credit Institutions and Financial Companies, in breach of Article 20(1) of this Legal Framework;
- (l) introduction in the articles of association of any changes, when not preceded by an authorisation of Banco de Portugal, as provided for in this Legal Framework;
- (m) the issuance of electronic money through agents and distributors referred to in Article 32(1) and (2), in breach of Article 32(3);
- (n) failure to duly communicate to the competent authorities the acquisition, disposal and ownership of qualifying holdings within the time limits provided for in the Legal Framework;
- (o) practice by owners of qualifying holdings of acts which seriously hinder or obstruct the sound and prudent management of the entity in question;
- (p) failure to comply with the prudential rules provided for in Articles 49, 50 (without prejudice to paragraph 3) and 51 (without prejudice to paragraph 3), 55, 56 (without prejudice to paragraph 3), and 57 (without prejudice to paragraph 4), where this may result in serious harm to the financial equilibrium of the entity concerned;
- (q) failure to comply with the fund safeguarding requirements, as provided for in this Legal Framework;
- (r) fraudulent accounting and absence of organised accounting, as well as the non-observance of other applicable accounting standards laid down by law or by Banco de Portugal, when this non-observance seriously jeopardises awareness of the financial situation and net worth of the entity in question;

(s) the provision of accounting information to Banco de Portugal in breach of rules provided for in Articles 53 and 59;

(t) failure to comply with the rules on the management of operational and security risks provided for in Article 70, as well as failure to report operational or security incidents to Banco de Portugal, pursuant to Article 71(1);

(u) violation of rules on information and reporting requirements provided for in Articles 5(2), 24(2), 25(2), 31(7), 33(6), 37(7), 43(4), 78, 81, 83 to 88, 90 to 93, 95 to 99, 108(3), 109(2), (3), (5) and (6), 120(2) and (3), 122(3), 130(7), 131(11) and 139(2);

(v) violation of rules on charging provided for in Articles 79, 94(2), (3), (5) and (6), 101, 120(4), 121(7), 122(1), 129(5), 130(7), 131(11) and 139(3) and (4);

(w) execution of payment transactions not authorised by the payer, due to absence or withdrawal of consent to execute them;

(x) violation of the authentication procedures provided for in Article 104;

(y) violation of rules on the confirmation of availability of funds, as provided for in Article 105(1), (2, except subparagraph (d)), (3), (4) and (6);

(z) violation of rules on access to the payment account in the case of initiation of payment services, as provided for Article 106(2), (3, except subparagraphs (e) and (g)), (4) and (6);

(aa) violation of rules on access to and use of payment account information in the case of account information services, as provided for in Article 107 (2, except subparagraphs (e) and (f)), (3) and (5);

(bb) the blocking of funds in the payer's payment account, in breach of the rules provided for in this Legal Framework;

(cc) failure to comply with the obligations in relation to payment instruments provided for in Article 111;

(dd) failure to comply with refund obligations, including amounts due under Articles 114(1), (4), (5) and (7), 117(1) and (6), 118(2) and (3), 130(3) and (5), 131(7), 132(1) and 139(1), (5) and (6);

(ee) violation of rules determining the amounts to be borne by the payer for unauthorised payment transactions, as provided for in Article 115(1), (7) and (8);

(ff) failure to comply with obligations in relation to amounts transferred and received provided for in Article 122(4);

(gg) violation of the obligation to issue electronic money at par value on the receipt of funds;

(hh) the payment of interest or any other benefit related to the length of time during which an electronic money holder holds the electronic money;

(ii) unlawful non-compliance with specific instructions of Banco de Portugal, issued under the terms of the law for the specific case in question, as well as the practice of acts subject by law to prior approval by Banco de Portugal, when the latter has expressed its opposition;

(jj) providing Banco de Portugal with false information, or with incomplete information, which may lead to erroneous conclusions with the same or similar effect that false information on the same matter would have caused;

(kk) fraudulent paying up of the share capital;

(ll) refusal to carry out or obstruction of inspections by Banco de Portugal;

(mm) non-observance of a prohibition to exercise voting rights;

(nn) performance of any positions or functions in a payment institution or electronic money institution, violating legal prohibitions or against the express opposition of Banco de Portugal;

(oo) wilful mismanagement by members of corporate bodies;

(pp) violation of rules on charging pursuant to Articles 3 and 4(1) and (3) of Regulation (EC) No 924/2009 of the European Parliament and of the Council of 16 September 2009, as amended by Article 17 of Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012;

(qq) violation of rules on charging pursuant to Article 5(8) of Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012;

(rr) violation of rules on charging of interchange fees pursuant to Articles 3, 4 and 5 of Regulation (EU) No 2015/751 of the European Parliament and of the Council of 29 April 2015;

(ss) the establishment of rules or provisions with equivalent effect in licensing agreements, rules on card payment schemes or agreements entered into between card acquirers and payees in breach of business rules laid down in Articles 6 and 8 (except second paragraph of paragraph 6), 10 (except paragraph 4) and 11 in Chapter III of Regulation (EU) No 2015/751 of the European Parliament and of the Council of 29 April 2015;

(tt) the adoption or application of business rules restricting interoperability with other processing entities within the Union pursuant to Article 7(5) of Regulation (EU) No 2015/751 of the European Parliament and of the Council of 29 April 2015;

(uu) violation of rules on separation of payment card schemes and processing entities pursuant to Article 7(1) of Regulation (EU) No 2015/751 of the European Parliament and of the Council of 29 April 2015.

#### Article 152

#### **Additional penalties**

1 – In addition to the administrative fines provided for in Articles 150 and 151, the following additional penalties may be applied to offenders:

(a) publication of the final decision;

(b) seizure and loss of the object of the offence, including the proceeds thereof, in compliance with Articles 22 to 26 of Decree-Law No 433/82 of 27 October 1982;

(c) suspension from exercising voting rights conferred on shareholders in any payment



institutions or electronic money institutions for a period from one year to ten years;

(d) prohibition from being member of the management or auditing boards as well as from holding corporate, managerial and supervisory posts in credit institutions, financial companies, payment institutions and electronic money institutions, for a period from six months to three years, in the cases provided for in Article 150, or from one year to ten years, in the cases provided for in Article 151;

(e) prohibition, in whole or in part, for a period of up to three years from exercising the activity of providing payment services or issuing electronic money services.

2 – The publication referred to in subparagraph (a) shall be at the offender's expense, in whole or in part, using suitable media in compliance with general legal system protection purposes, in a national, regional or local newspaper, as appropriate.

Article 153

#### **Aggravated administrative fine**

Without prejudice to the provisions of Article 152(1)(b), if twice the amount of the benefit derived from the breach by the offender, where that benefit can be determined, exceeds the maximum limit of the applicable administrative fine, the said limit shall be increased up to that amount.

Article 154

#### **Attempted offences and negligence**

1 – Attempted offences and negligence shall be punishable.

2 – In the event of an attempt, the applicable administrative fine shall be that laid down for the committed offence, with due mitigation.

3 – In the event of negligence, the upper limit of the administrative fine set out for the offence shall be reduced by half.

CHAPTER II

#### **Procedural provisions**

Article 155

#### **Responsibilities**

1 – Banco de Portugal shall be responsible for verifying the administrative offences provided for in Article 150(1) and (2) and 151, as well as for the corresponding proceedings and enforcement of the applicable penalties.

2 – The final decision on the administrative offence proceedings shall be issued by the Board of Directors of Banco de Portugal, without prejudice to the possibility for delegation by law.

3 – In the course of the inquiry or investigation procedure, Banco de Portugal may request

from the police or any other public services or authorities whatever cooperation or help it deems necessary for the achievement of the proceedings' purpose.

4 – The sectoral regulatory authority or, in other sectors of activity, the Portuguese Economic and Food Safety Authority (*Autoridade de Segurança Alimentar e Económica*) shall be responsible for verifying the administrative offences provided for in Article 150(3) and (4), as well as for the corresponding proceedings and enforcement of the applicable penalties, with the final decision on the administrative offence proceedings being the responsibility of the Inspector General, without prejudice to the possibility for delegation by law.

#### Article 156

#### **Disclosure of the decision**

1 – After the time limit for filing judicial challenges has passed, the decision convicting the offender for the administrative offences referred to in Articles 150(1) and (2) and 151 may be published on the website of Banco de Portugal in full or as a summary including, at least, the identification of the natural or legal person sentenced and information on the type and nature of the offence, even if a judicial challenge has been filed, in which case this fact shall be expressly mentioned.

2 – In the cases referred to in the foregoing paragraph, the disclosure of the judicial decision that confirms, amends or repeals a conviction handed down by Banco de Portugal or by a court of first instance shall be mandatory pursuant to the foregoing paragraph.

3 – Disclosure shall not take place if it would seriously jeopardise the stability of the financial markets or would cause, insofar as can be determined, disproportionate damage to the legal entities or natural persons concerned considering the seriousness of the breach.

4 – Where the circumstances referred to in the foregoing paragraph are likely to cease within a reasonable period of time, publication of the decision may be postponed for such a period of time.

5 – Without prejudice to the possible application of a shorter period as laid down in personal data protection laws, information published under the foregoing paragraphs shall remain on Banco de Portugal's website for a period of five years after their publication or from the moment the decision becomes final or *res judicata*, depending on the situation, and cannot be indexed by search engines.

6 – Judicial decisions relating to the crime of unauthorised acceptance of deposits and other repayable funds shall be disclosed by Banco de Portugal under the terms of the Legal Framework of Credit Institutions and Financial Companies, irrespective of the moment at which they become *res judicata*.

CHAPTER III

**Subsidiary law**

Article 157

**Subsidiary application**

1 – Title XI of the Legal Framework of Credit Institutions and Financial Companies, approved by Decree-Law No 298/92 of 31 December 1992, shall apply mutatis mutandis to all that is not provided for in the foregoing Articles.

2 – With regard to administrative offences provided for in Article 150(3) and (4), and in all that is not provided for in the foregoing Articles, the provisions of Decree-Law No 57/2008 of 26 March 2008, and, on a subsidiary basis, the provisions of Decree-Law No 433/82 of 27 October 1982, shall apply.

TITLE VIII

**Supplementary, transitional and final provisions**

Article 158

**Direct debits**

This Legal Framework shall not affect the validity of the existing debit authorisations on account at the date of its entry into force, and these shall be deemed the payer's express consent for the execution of direct debits.

Article 159

**Agreements in force**

This Legal Framework shall be without prejudice to the validity of the contracts in force relating to payment services regulated therein, and therefore the provisions which are more favourable to payment service users shall apply.

Article 160

**Adjustment of payment and electronic money institutions to authorisation requirements**

1 – Payment institutions and electronic money institutions which have been granted authorisation and have taken up activities before 13 January 2018 shall submit all relevant information to Banco de Portugal, so it can assess compliance with the requirements laid down in Article 19(2)(k), (l), (m), (n) and (o) of this Legal Framework within 90 days of its entry into force, otherwise authorisation shall be withdrawn.

2 – Article 23 shall apply mutatis mutandis to the procedure provided for in the foregoing paragraph, and the applicant institutions may continue to carry out the activities included in their authorisation until Banco de Portugal notifies them of the final decision.

3 – Together with the particulars specified in paragraph 1, institutions shall submit to Banco

de Portugal a statement of compliance with all other requirements set out in Article 19(2) or any amendments thereto, including those relating to the suitability of the members of the corporate bodies who are in office.

4 – Banco de Portugal may grant an additional period of not more than 90 days for compliance with the requirements referred to in paragraphs 1 and 3.

5 – Banco de Portugal may set the procedures necessary for implementing this Article.

6 – Without prejudice to paragraph 1, payment institutions which have been granted authorisation to provide the payment services referred to in Article 4(g) of the legal framework governing the taking up of the business of payment institutions and the provision of payment services, approved by Decree-Law No 317/2009 of 30 October 2009, subsequently amended and republished as the Legal Framework for Payment Services and Electronic Money by Decree-Law No 242/2012 of 7 November 2012, shall be entitled to provide the payment services listed in Article 4(c).

7 – The payment institutions identified in the foregoing paragraph shall demonstrate compliance with the share capital and own funds requirements set out in Articles 49(c) and 51 by 13 January 2020.

#### Article 161

##### **Transitional rules for the provision of payment initiation and account information services**

1 – Legal persons that have performed in Portugal, before 12 January 2016, activities of payment initiation service providers and account information service providers within the meaning of this Legal Framework may continue to perform the same activities after the entry into force of this Legal Framework during the transitional period referred to in Article 160(1), without prejudice to Article 162.

2 – Without prejudice to the foregoing paragraph, the account servicing payment service providers shall not block or obstruct the use of payment initiation and account information services for the accounts that they are servicing until the regulatory technical standards referred to in Article 162 apply.

#### Article 162

##### **Beginning of the application of the security measures**

The application of the security measures referred to in Articles 104, 105, 106 and 107 shall begin 18 months after the date of entry into force of the regulatory technical standards, pursuant to Article 98(1) of Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015.

## ANNEX

(referred to in Articles 51 and 57)

**Calculation of own funds**

1 – The calculation of own funds requirements referred to in Articles 51 and 57 of the Legal Framework for Payment Services and Electronic Money shall be carried out in accordance with one of the methods described in this Annex.

**A. Fixed overheads method**

The payment institution's own funds shall amount to at least 10% of its fixed overheads of the preceding year. Banco de Portugal may adjust that requirement in the event of a material change in a payment institution's business since the preceding year. Where a payment institution has not completed a full year's business at the date of the calculation, the requirement shall be that its own funds amount to at least 10% of the corresponding fixed overheads as projected in its business plan, unless an adjustment to that plan is required by the competent authorities.

**B. Payment volume method**

The payment institution's own funds shall amount to at least the sum of the following elements multiplied by the scaling factor  $k$  defined in paragraph 2, where payment volume (PV) represents one twelfth of the total amount of payment transactions executed by the payment institution in the preceding year:

- (a) 4.0% of the slice of PV up to €5 million; plus
- (b) 2.5% of the slice of PV above €5 million up to €10 million; plus
- (c) 1% of the slice of PV above €10 million up to €100 million; plus
- (d) 0.5% of the slice of PV above €100 million up to €250 million; plus
- (e) 0.25% of the slice of PV above €250 million.

**C. Relevant indicator method**

The payment institution's own funds shall amount to at least the relevant indicator defined in subparagraph (a), multiplied by the multiplication factor defined in subparagraph (b) and by the scaling factor  $k$  defined in paragraph 2.

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

- (i) interest income;
- (ii) interest expenses;
- (iii) commissions and fees received; and
- (iv) other operating income.

Each element shall be included in the sum with its positive or negative sign. Income from extraordinary or irregular items shall not be used in the calculation of the relevant indicator.

Expenditure on the outsourcing of services rendered by third parties may reduce the relevant indicator if the expenditure is incurred from an undertaking subject to supervision under this Legal Framework. The relevant indicator is calculated on the basis of the 12-monthly observation at the end of the previous financial year. The relevant indicator shall be calculated over the previous financial year. Nevertheless own funds calculated according to Method C shall not fall below 80% of the average of the previous three financial years for the relevant indicator. When audited figures are not available, business estimates may be used.

The multiplication factor shall be:

- (i) 10% of the slice of the relevant indicator up to €2.5 million;
- (ii) 8% of the slice of the relevant indicator from €2.5 million up to 5 million;
- (iii) 6% of the slice of the relevant indicator from €5 million up to €25 million;
- (iv) 3% of the slice of the relevant indicator from €25 million up to €50 million;
- (v) 1.5% of the slice of the relevant indicator above €50 million.

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

- (a) 0.5 where the payment institution provides only the payment service as referred to Article 4(f) of the Legal Framework for Payment Services and Electronic Money;
- (b) 1 where the payment institution provides any of the payment services as referred to in Article 4(a) to (e) of the Legal Framework for Payment Services and Electronic Money.

2 – Banco de Portugal may, based on an evaluation of the risk-management processes, risk loss data base and internal control mechanisms of the payment institution, require the payment institution to hold an amount of own funds which is up to 20% higher than the amount which would result from the application of the method chosen in accordance with paragraph 1, or permit the payment institution to hold an amount of own funds which is up to 20% lower than the amount which would result from the application of the method chosen in accordance with paragraph 1.