PAYMENT SERVICES

Law of 10 November 2009 on payment services, on the activity of electronic money institution and settlement finality in payment and securities settlement systems and

- **transposing Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market, amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC, as well as 2006/48/EC and repealing Directive 97/5/EC**
- **amending:**
  - **the Law of 5 April 1993 on the financial sector, as amended;**
  - **the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended;**
  - **the Law of 18 December 2006 on financial services provided at distance;**
  - **the Law of 15 December 2000 on postal services and financial postal services, as amended;**
  - **the Law of 13 July 2007 on markets in financial instruments;**
  - **the Law of 20 December 2002 relating to undertakings for collective investment, as amended;**
  - **the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended;**
  - **the Law of 23 December 1998 concerning the monetary status and the Banque centrale du Luxembourg, as amended;**
  - **the Law of 6 December 1991 on the insurance sector, as amended;**
- **repealing Title VII of the Law of 15 August 2000 on electronic commerce, as amended.**

(Mém. A 2009, No 215)

as amended by:

- the Law of 28 April 2011
  - transposing Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management;
  - transposing for credit institutions Directive 2009/49/EC of the European Parliament and of the Council of 18 June 2009 amending Council Directives 78/660/EEC and 83/349/EEC as regards certain disclosure requirements for medium-sized companies and the obligation to draw up consolidated accounts;
  - completing the transposition of Directive 2009/14/EC of the European Parliament and of the Council of 11 March 2009 amending Directive 94/19/EC on deposit-guarantee schemes and the payout delay;
  - amending the Law of 5 April 1993 on the financial sector, as amended;
  - amending the Law of 17 June 1992 relating to the accounts of credit institutions, as amended;
  - amending the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier");
  - amending the Law of 31 May 1999 governing the domiciliation of companies;
  - amending the Law of 13 July 2007 on markets in financial instruments, as amended;

- amending the Law of 11 January 2008 on transparency requirements in relation to issuers of securities;
- amending the Law of 10 November 2009 on payment services

(Mém. A 2011, No 81)

- the Law of 20 May 2011
  - transposing:
    - Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC;
    - Directive 2009/44/EC of the European Parliament and of the Council of 6 May 2009 amending Directive 98/26/EC on settlement finality in payment and securities settlement systems and Directive 2002/47/EC on the financial collateral arrangements as regards linked systems and credit claims;
  - amending:
    - the Law of 10 November 2009 on payment services, on the activity of electronic money institutions and settlement finality in payment and securities settlement systems;
    - the Law of 5 August 2005 on financial collateral arrangements;
    - the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended;
    - the Law of 5 April 1993 on the financial sector, as amended;
    - the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"*)*, as amended

(Mém. A 2011, No 104)

- by the Law of 21 December 2012 transposing Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) and amending:
  1. the Law of 6 December 1991 on the insurance sector, as amended;
  2. the Law of 5 April 1993 on the financial sector, as amended;
  3. the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended;
  4. the Law of 22 March 2004 on securitisation, as amended;
  5. the Law of 15 June 2004 relating to the Investment company in risk capital (SICAR), as amended;
  6. the Law of 10 July 2005 on prospectuses for securities, as amended;
  7. the Law of 13 July 2005 on institutions for occupational retirement provision in the form of pension savings companies with variable capital (SEPCAVs) and pension savings associations (ASSEPs), as amended
  8. the Law of 9 May 2006 on market abuse, as amended;
  9. the Law of 13 February 2007 relating to specialised investment funds, as amended;
  10. the Law of 13 July 2007 on markets in financial instruments, as amended;
  11. the Law of 11 January 2008 on transparency requirements for issuers of securities, as amended;
  12. the Law of 10 November 2009 on payment services, as amended;
  13. the Law of 17 December 2010 relating to undertakings for collective investment

(Mém. A 2012, No 275)

- by the Law of 15 March 2016 on OTC derivatives, central counterparties and trade repositories and transposing:
  Directive 2013/14/EU of the European Parliament and of the Council of 21 May 2013 amending Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision, Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) and Directive 2011/61/EU on Alternative Investment Funds Managers in respect of over-reliance on credit ratings; and
  implementing:

1. 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;
2. Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories; and
3. Regulation (EU) No 462/2013 of the European Parliament and of the Council of 21 May 2013 amending Regulation (EC) No 1060/2009 on credit rating agencies; and

amending:

1. the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended;
2. the Law of 13 July 2005 on institutions for occupational retirement provision in the form of pension savings companies with variable capital (SEPCAVs) and pension savings associations (ASSEPs), as amended;
3. the Law of 10 November 2009 on payment services, as amended;
4. the Law of 17 December 2010 relating to undertakings for collective investment, as amended;
5. the Law of 28 October 2011 implementing Regulation (EC) No 1060/2009 of 16 September 2009; and
6. the Law of 12 July 2013 on alternative investment fund managers, as amended.

(Mém. A 2016, No 39)

- by the Law of 27 May 2016
amending, with the view of reforming the legal publication regime regarding companies and associations,

  - the Law of 19 December 2002 on the trade and companies register and the accounting practices and annual accounts of undertakings, as amended;
  - the Law of 10 August 1915 on commercial companies, as amended;
  - the Law of 21 April 1928 on non-profit organisations, as amended;
  - the Grand-ducal Decree of 24 May 1935 supplementing the legislation on suspension of payments, on composition with creditors to prevent bankruptcy by establishing a controlled management regime, as amended;
  - the Grand-ducal Decree of 17 September 1945 revising the Law of 27 March 1900 on the organisation of agricultural associations, as amended;
  - the Law of 24 March 1989 relating to Banque et Caisse d'Epargne de l'Etat, Luxembourg, as amended;
  - the Law of 25 March 1991 on economic interest groupings, as amended;
  - the Law of 25 March 1991 on diverse implementing measures of Council Regulation (EEC) No 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG), as amended;
  - the Law of 17 June 1992 relating to the annual and consolidated accounts of credit institutions, as amended;
  - the Law of 8 December 1994 relating to: - the annual and consolidated accounts of insurance and reinsurance undertakings governed by the laws of Luxembourg - the obligations in relation to the drawing-up and publication of accounting documents of branches of insurance undertakings governed by foreign laws, as amended;
  - the Law of 31 May 1999 governing the domiciliation of companies, as amended;
  - the Law of 22 March 2004 on securitisation, as amended;
  - the Law of 15 June 2004 relating to the Investment company in risk capital (SICAR), as amended;
  - the Law of 13 July 2005 on institutions for occupational retirement provision in the form of a SEPCAV and an ASSEP, as amended;
  - the Law of 13 February 2007 relating to specialised investment funds, as amended;
  - the Law of 10 November 2009 on payment services, as amended;
  - the Law of 17 December 2010 relating to undertakings for collective investment, as amended;
  - the Law of 7 December 2015 on the insurance sector;
  - the Law of 18 December 2015 on the failure of credit institutions and certain investment firms

(Mém. A 2016, No 94)

- by the Law of 13 February 2018
  1. transposing the provisions on the professional obligations and the powers of the supervisory authorities as regards the fight against money laundering and terrorist financing of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC;

  2. implementing Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006;

  3. amending:

     (a) the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended;

     (b) the Law of 10 November 2009 on payment services, as amended;

     (c) the Law of 9 December 1976 on the organisation of the profession of notary, as amended;

     (d) the Law of 4 December 1990 on the organisation of bailiffs, as amended;

     (e) the Law of 10 August 1991 on the legal profession, as amended;

     (f) the Law of 5 April 1993 on the financial sector, as amended;

     (g) the Law of 10 June 1999 on the organisation of the accounting profession, as amended;

     (h) the Law of 21 December 2012 relating to the Family Office activity;

     (i) the Law of 7 December 2015 on the insurance sector, as amended;

     (j) the Law of 23 July 2016 concerning the audit profession.

  (Mém. A 2018, No 131)

- by the Law of 27 February 2018 implementing Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions, and amending:
  1. the Law of 5 April 1993 on the financial sector, as amended;
  2. the Law of 23 December 1998 establishing a financial sector supervisory commission (“Commission de surveillance du secteur financier”), as amended;
  3. the Law of 5 August 2005 on financial collateral arrangements, as amended;
  4. the Law of 11 January 2008 on transparency requirements for issuers, as amended;
  5. the Law of 10 November 2009 on payment services, as amended;
  6. the Law of 17 December 2010 relating to undertakings for collective investment, as amended;
  7. the Law of 12 July 2013 on alternative investment fund managers, as amended;
  8. the Law of 7 December 2015 on the insurance sector, as amended;
  9. the Law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended, and
  10. the Law of 23 December 2016 on market abuse

  (Mém. A 2018, No 150)

- by the Law of 20 July 2018

  1° transposing Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC; and
  2° amending the Law of 10 November 2009 on payment services, as amended

  (Mém. A 2018, No 612)

- by the Law of 8 April 2019 on the measures to be taken in relation to the financial sector in the event of the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and amending:
  1° the Law of 5 April 1993 on the financial sector, as amended;
  2° the Law of 10 November 2009 on payment services, as amended;
  3° the Law of 17 December 2010 relating to undertakings for collective investment, as amended;
  4° the Law of 12 July 2013 on alternative investment fund managers, as amended;
  5° the Law of 7 December 2015 on the insurance sector, as amended; and
  6° the Law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended

(Mém. A 2019, No 237)

TITLE I: DEFINITIONS AND SCOPE

Article 1 – Definitions

Unless otherwise prescribed, for the purposes of this Law:

"1) "agent" means a natural or legal person which acts on behalf of a payment institution or an electronic money institution in providing payment services and, according to the terms, conditions and limits set forth in the present Law, on behalf of an electronic money institution in distributing and redeeming electronic money;"[1]

(Law of 20 July 2018)
"1a) "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;"

"2) "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;"[2]

(Law of 20 July 2018)
"2a) "strong customer authentication" means an authentication based on the use of two or more elements categorised as knowledge, i.e. something only the user knows, possession, i.e. something only the user possesses, and inherence, i.e 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;"

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

(Law of 20 July 2018)
"3a) "co-badging" means the inclusion of two or more payment brands or payment applications of the same payment brand on the same payment instrument;"

4) "CSSF" means the Commission de surveillance du secteur financier;

5) "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;

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

(Law of 20 July 2018)
"6a) "digital content" means goods or services which are produced and supplied in digital form, the use or consumption of which is restricted to a technical device and which do not include in any way the use or consumption of physical goods or services;"

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

8) "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;

9) "Directive 95/46/EC" means Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;

10) "Directive 98/26/EC" means Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems;

(...)[3]

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[1] Law of 20 May 2011
[2] Law of 20 July 2018
[3] Law of 20 May 2011

(Law of 20 July 2018)

"11) "Directive 2002/21/EC" means Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services;"

12) "Directive 2005/60/EC" means Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing;

13) "Directive 2006/48/EC" means Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast);

(Law of 20 May 2011)

"13a) "Directive 2006/49/EC" means Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (recast);"

14) "Directive 2007/64/EC" means Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market, amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC, as well as 2006/48/EC and repealing Directive 97/5/EC;

(Law of 20 May 2011)

"14a) "Directive 2009/44/EC" means Directive 2009/44/EC of the European Parliament and of the Council of 6 May 2009 amending Directive 98/26/EC on settlement finality in payment and securities settlement systems and Directive 2002/47/EC on financial collateral arrangements as regards linked systems and credit claims;

14b) "Directive 2009/110/EC" means Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC;"

(Law of 20 July 2018)

"14c) "Directive 2013/34/EU" means Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC;"

(Law of 20 July 2018)

"14d) "Directive 2013/36/EU" means Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC;"

(Law of 20 July 2018)

"14e) "Directive (EU) 2015/2366" means Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market and amending Directives 2002/65/EC, 2009/110/EC, 2013/36/EU and Regulation (EU) No 1093/2010 and repealing Directive 2007/64/EC;"

(Law of 20 July 2018)

"14f) "Directive (EU) 2015/849" means Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC;"

(Law of 20 July 2018)

"14g) "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;"

(Law of 20 July 2018)

"14h) "personalised security credentials" means personalised features provided by the payment service provider to a payment service user for the purposes of authentication;"

15) "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 payer's consent given to the payee, to the payee's payment service provider or to the payer's own payment service provider;

(Law of 20 May 2011)

"15a) "electronic money issuer" means one of the following entities or persons:

"(i) credit institutions as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013, including branches thereof within the meaning of point (17) of Article 4(1) of that regulation where such branches are located in the European Union, whether the head offices of those branches are located within the European Union or, in accordance with Article 47 of Directive 2013/36/EU, outside the European Union;"[4]

(ii) electronic money institutions as defined in point (1) of Article 2 of Directive 2009/110/EC including, in accordance with Article 8 of Directive 2009/110/EC and national law, branches thereof, where such branches are located within the European Union and their registered office is located in a third country;

(iii) post office giro institutions which are entitled under national law to issue electronic money;

In Luxembourg, this refers to the *Entreprise des Postes et Télécommunications*;

(iv) the European Central Bank and national central banks when not acting in their capacity as monetary authority or other public authorities;

(v) Member States or their regional or local authorities when acting in their capacity as public authorities;

(vi) legal persons benefiting from the waiver under Article 48-1;"

(Law of 20 July 2018)

"15b) "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;"

16) "parent undertaking" means an undertaking which owns the following rights:

(i) it has a majority of shareholders' or members' voting rights of another undertaking, or

(ii) it has the right to appoint or dismiss a majority of the members of an undertaking's administrative, management or supervisory body and is at the same time a shareholder or member in that undertaking, or

(iii) it has the right to exercise a dominant influence over an undertaking of which it is a shareholder or member, pursuant to a contract entered into with that undertaking or to a provision of the articles of association, where the law governing that undertaking allows being subject to such contracts or provisions, or

(iv) it is a shareholder or member in an undertaking and, by virtue of an agreement entered into with other shareholders or members in that undertaking, has sole control of a majority of its shareholders' or members' voting rights; or

(v) it may exercise or actually exercises a dominant influence over another undertaking, or

(vi) it is placed under management on a unified basis with another undertaking;

(Law of 20 May 2011)

"17) "electronic money institution" means a legal person that has been granted authorisation by the competent authorities of a Member State under Title II of Directive 2009/110/EC to issue electronic money. In Luxembourg, this refers to any legal person that has been granted authorisation to issue electronic money pursuant to Title II, Chapter 2, Section 1 or Article 24-16 of the present Law;"

18) "payment institution" means a legal person that has been granted authorisation in accordance with "Article 11 of Directive (EU) 2015/2366"[5] to provide and execute payment services throughout the European Union. In Luxembourg, this covers legal persons that have been granted authorisation in accordance with Article 7 of this Law to provide and execute payment services. In Luxembourg, this also includes persons that have been granted authorisation to provide and execute payment services in accordance with Article 22 of this Law;

19) "Member State" means a Member State of the European Union. The States that are contracting parties to the European Economic Area Agreement other than the Member States of the European

[4] Law of 20 July 2018
[5] Law of 20 July 2018

Union, within the limits set forth by this agreement and related acts are considered as equivalent to Member States of the European Union.

(Law of 20 May 2011)

"20) "host Member State" means

(i) as regards payment service providers:

the Member State other than the home Member State in which a payment service provider has an agent or a branch or provides payment services;

(ii) as regards electronic money institutions:

the Member State other than the home Member State in which an electronic money institution has a branch or an agent or issues, distributes or redeems electronic money or provides payment services;"

21) "home Member State" means one of the following Member States:

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

(ii) if the payment service provider has, under its national law, no registered office, the Member State in which its central administration is situated;

22) "subsidiary" means a subsidiary undertaking in respect of which rights are owned as set out in Article 1, point (16). Subsidiaries of subsidiary undertakings are also considered subsidiaries of the undertaking that is their original parent;

23) "funds" means banknotes and coins, scriptural money "or"[6] electronic money as defined in Article 1, point (29) (ii);

(Law of 20 July 2018)

"23a) "own funds" means funds as defined in point (118) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, hereinafter referred to as "Regulation (EU) No 575/2013", where at least three quarters 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;"

"24) "group" means a group of undertakings which are linked to each other by a relationship referred to in Article 22(1), (2) or (7) of Directive 2013/34/EU or undertakings as defined in Articles 4 to 7 of Commission Delegated Regulation (EU) No 241/2014 of 7 January 2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for Own Funds requirements for institutions, hereinafter referred to as "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;"[7]

25) "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 the other payment service user and/or his payment account for a payment transaction;

26) "payment instrument" means a personalised device(s) or set of procedures agreed between the payment service user and the payment service provider and "used"[8] in order to initiate a payment order;

27) "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;

28) "close links" means a situation in which two or more natural or legal persons are linked by:

(i) participation, which means the ownership, direct or by way of control, of 20% or more of the capital or voting rights of an undertaking, or

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[6] Law of 20 July 2018
[7] Law of 20 July 2018
[8] Law of 20 July 2018

(ii) control, which means the relationship between a parent undertaking and a subsidiary in the cases referred to in Article 1, point (16), the relationship between undertakings linked by the fact of being placed under a single management or a similar relationship between natural and legal persons and an undertaking. All subsidiaries of subsidiary undertakings shall also be considered subsidiaries of the undertaking that is their original parent;

A situation in which two or more natural or legal persons are constantly linked to one and the same person by a control relationship shall also be regarded as constituting a close link between such persons.

(Law of 20 July 2018)

"28a) "payment brand" means any material or digital name, term, sign, symbol or combination of them, capable of denoting under which payment card scheme card-based payment transactions are carried out;"

(Law of 20 May 2011)

"29) "electronic money" means a monetary value represented by a claim on the issuer, which is:

(i) electronically, including magnetically, stored, and

(ii) issued on receipt of funds for the purpose of making payment transactions, and

(iii) accepted by a natural or legal person other than the electronic money issuer;"

30) "means of distance communication" means a "method"[9] 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;

(Law of 20 May 2011)

"30a) "average outstanding electronic money" means the average total amount of financial liabilities related to electronic money in issue at the end of each calendar day over the preceding six calendar months, calculated on the first calendar day of each calendar month and applied for that calendar month;"

31) "payment transaction" means an act, initiated by the payer or "on his behalf or"[10] by the payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and the payee;

(Law of 20 July 2018)

"31a) "remote payment transaction" means a payment transaction initiated via internet or through a device that can be used for distance communication;"

32) "payment order" means any instruction by a payer or payee to his payment service provider requesting the execution of a payment transaction;

33) "holding" means the ownership of rights in the capital of an undertaking, materialised by securities or not, which, by creating a lasting link with the latter, are meant to contribute to the activity of the undertaking, or the direct or indirect ownership of 20% or more of the voting rights or capital of an undertaking;

"34) "qualifying holding" means a holding in an undertaking as defined in point (36) of Article 4(1) of Regulation (EU) No 575/2013;"[11]

35) "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;

36) "third country" means a State other than a Member State;

37) "payment service provider" means one of the following entities or persons:

(Law of 20 May 2011)

""(i) credit institutions as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013, including branches thereof within the meaning of point (17) of Article 4(1) of that regulation where such branches are located in the European Union, whether the head offices of those

[9] Law of 20 July 2018
[10] Law of 20 July 2018
[11] Law of 20 July 2018

branches are located within the European Union or, in accordance with Article 47 of Directive 2013/36/EU, outside the European Union;"[12]

(ii) electronic money institutions within the meaning of point (1) of Article 2 of Directive 2009/110/EC", including, in accordance with Article 8 of that directive and with Article 24-16 of this Law, branches thereof, where such branches are located within the European Union and their head offices are located outside the European Union, in as far as the payment services provided by those branches are linked to the issuance of electronic money"[13];"

(iii) post office giro institutions which are entitled under national law to provide payment services; in Luxembourg this is the *Entreprise des Postes et Télécommunications*;

(iv) payment institutions (…)[14];

(v) the European Central Bank and the national central banks when not acting in their capacity as monetary authority or other public authorities;

(vi) Member States or their regional or local authorities when not acting in their capacity as public authorities;

(vii) the natural or legal persons benefiting from the derogation under Article 48;

(Law of 20 July 2018)
"(viii) the natural and legal persons referred to in Article 48-1a;"

(Law of 20 July 2018)
"37a) "electronic communications service" means a service as defined in point (27) of Article 2 of the Law of 27 February 2011 on electronic communications networks and services, as amended;"

(Law of 20 July 2018)
"37b) "account servicing payment service provider" means a payment service provider providing and maintaining a payment account for a payer;"

(Law of 20 July 2018)
"37c) "payment initiation service provider" means a payment service provider pursuing business activities as referred to in point (7) of the Annex;"

(Law of 20 July 2018)
"37d) "account information service provider" means a payment service provider pursuing business activities as referred to in point (8) of the Annex;"

(Law of 20 July 2018)
"37e) "electronic communications network" means a network as defined in point (24) of Article 2 of the Law of 27 February 2011 on electronic communication networks and services, as amended;"

"38) "payment service" means any business activity performed on a professional basis, set out in the Annex;"[15]

(Law of 20 July 2018)
"38a) "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;"

(Law of 20 July 2018)
"38b) "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;"

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

40) "durable medium" means any instrument which enables the payment service user to store information addressed personally to him in a way accessible for future reference for a period of

[12] Law of 20 July 2018
[13] Law of 20 July 2018
[14] Law of 20 July 2018
[15] Law of 20 July 2018

time adequate to the purposes of the information and which allows the unchanged reproduction of the information stored;

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

42) "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;

43) "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;

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

45) "*Tribunal*" means the Luxembourg district court sitting in commercial matters (*Tribunal d'arrondissement de Luxembourg*);

46) "payment service user" means a natural or legal person making use of a payment service in the capacity of either payer or payee, or both;

(Law of 20 July 2018)

"47) "credit transfer" means a payment service for crediting a payee's payment account with a payment transaction or a series of payment transactions from a payer's payment account by the payment service provider which holds the payer's payment account, based on an instruction given by the payer."

Article 2 – Scope

(1) "With the exception of Chapters 2 and 4 of Title II"[16], Titles I to IV shall apply to payment services provided by a payment service provider located in Luxembourg.

(1a)[17] "Titles III and IV shall apply to payment transactions in the currency of a Member State where:"[18]

- both the payer's and the payee's payment service provider are located in Luxembourg;
- the payer's payment service provider is located in Luxembourg and the payee's payment service provider is located in another Member State;
- the payee's payment service provider is located in Luxembourg and the payer's payment service provider is located in another Member State;
- there is only one payment service provider located in Luxembourg involved in the payment transaction.

(Law of 20 July 2018)

"(1b) Where a payment transaction is carried out in a currency that is not the currency of a Member State, Title III, except for letter (b) of Article 66(1), letter (e) of Article 71(2) and letter (a) of Article 75, and Title IV, except for Articles 94 to 98, shall apply in respect to those parts of the payments transaction which are carried out in Luxembourg, where:

1. both the payer's and the payee's payment service provider are located in Luxembourg;
2. the payer's payment service provider is located in Luxembourg and the payee's payment service provider is located in another Member State;
3. the payee's payment service provider is located in Luxembourg and the payer's payment service provider is located in another Member State;
4. there is only one payment service provider located in Luxembourg involved in the payment transaction.

[16] Law of 20 May 2011
[17] Law of 20 July 2018
[18] Law of 20 July 2018

(1c) Where only one of the payment service providers is located in Luxembourg and the other is located in a third country, Title III, except for letter (b) of Article 66(1), letter (e) of Article 71(2), letter (f) of Article 71(5) and letter (a) of Article 75, and Title IV, except for Article 79(2) and (4), Articles 89, 90 and 94, Article 96(1) and Articles 101 and 103, shall apply to payment transactions in all currencies, in respect to those parts of the payments transaction which are carried out in Luxembourg."

(Law of 20 May 2011)

"(2) With the exception of Chapter 4, Title II shall apply to payment service providers (…)[19] established in Luxembourg.

(2a) Chapter 4 of Title II shall apply to electronic money issuers established in Luxembourg.

(2b) Chapters 2, 3 and 4 of Title II shall not apply to the monetary value which is:

– stored on instruments excluded pursuant to Article 3, point (k), or

– used to execute payment transactions excluded pursuant to Article 3, point (l)."

(…)[20]

(4) Title V applies to payment systems and securities settlement systems designated by the Banque centrale du Luxembourg as payment systems and securities settlement systems and notified to the "European Securities and Markets Authority"[21] by the Minister responsible for the financial sector.

Title V also applies to payment systems and securities settlement systems notified by the Banque centrale du Luxembourg to the European Commission before the entry into force of this Law and in accordance with Article 34-3 of the Law of 5 April 1993 on the financial sector, as amended.

(Law of 8 April 2019)

"Title V shall not apply to third-country payment systems and securities settlement systems, without prejudice to Article 112(3), the second subparagraph of Article 113(1), the fourth subparagraph of Article 113(3), and Article 114."

(Law of 20 May 2011)

"(5) Payment service providers are not authorised to derogate, to the detriment of payment service users, from the provisions of this Law except where explicitly provided for therein.

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

(6) Electronic money issuers are not authorised to derogate, to the detriment of electronic money holders, from the provisions of this Law except where explicitly provided for therein."

Article 3 – Negative scope

With the exception of Chapter 2 of Title II, Titles I to IV 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"[22] to negotiate or conclude the sale or purchase of goods or services on behalf of "only"[23] the payer or "only"[24] the payee;

(c) professional physical transport of banknotes and coins, including their collection, processing and delivery;

(d) payment transactions consisting of the non-professional cash collection and delivery within the framework of a non-profit or charitable activity;

[19] Law of 20 July 2018
[20] Law of 20 July 2018
[21] Law of 21 December 2012
[22] Law of 20 July 2018
[23] Law of 20 July 2018
[24] Law of 20 July 2018

(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) (…)[25] cash-to-cash "currency exchange"[26] 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 in accordance with the Geneva Convention of 19 March 1931 providing a uniform law for cheques;

ii) paper cheques similar to those referred to in point (i) and governed by the laws of Member States which are not party to the Geneva Convention of 19 March 1931 providing 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 point (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; or

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 and/or central banks and other participants of the system, and payment service providers, without prejudice to Article 57;

(i) payment transactions related to securities asset servicing, including dividends, income or other distributions, or redemption or sale, carried out by persons referred to in point (h) or by investment firms, credit institutions, collective investment undertakings or asset management companies providing investment services and any other entities allowed 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"[27];

"(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 under direct commercial agreement with a professional issuer;
ii) instruments which can be used only to acquire a very limited range of goods or services;
iii) instruments valid only in a single Member State provided at the request of an undertaking or a public sector entity and regulated by a national or regional public authority for specific social or tax purposes to acquire specific goods or services from suppliers having a commercial agreement with the issuer;"[28]

"(l) payment transactions by a provider of electronic communications networks or services provided in addition to electronic communications services for a subscriber to the network or service:

i) 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

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[25] Law of 20 July 2018
[26] Law of 20 July 2018
[27] Law of 20 July 2018
[28] Law of 20 July 2018

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

provided that the value of any single payment transaction referred to in points (i) and (ii) does not exceed EUR 50 and the cumulative value of payment transactions for an individual subscriber does not exceed EUR 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 EUR 300 per month;"[29]

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

(n) payment transactions "and related services"[30] 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 ATM by providers,"[31] acting on behalf of one or more card issuers, which are not a party to the framework contract with the customer withdrawing money from a payment account, on condition that those providers do not conduct other payment services as listed in the Annex. "Nevertheless the customer shall be provided with the information on any withdrawal charges referred to in Articles 61, 66, 67 and 68 before carrying out the withdrawal as well as on receipt of the cash at the end of the transaction after withdrawal."[32]

(Law of 20 July 2018)

"Article 3-1 – Notification obligation for some service providers

(1) Service providers carrying out either of the activities referred to in points (i) and (ii) of letter (k) of Article 3 or carrying out both activities, for which the total value of payment transactions executed over the preceding 12 months exceeds the amount of EUR 1 million, shall send a notification to the CSSF containing a description of the services offered, specifying under which exclusion referred to in point (k)(i) and (ii) of Article 3 the activity is considered to be carried out.

On the basis of that notification, the CSSF shall take a duly motivated decision on the basis of criteria referred to in letter (k) of Article 3 where the activity does not qualify as a limited network within the meaning of that article, and inform the service provider accordingly.

(2) Service providers carrying out an activity referred to in letter (l) of Article 3 shall send a notification to the CSSF and provide the CSSF an annual audit opinion, testifying that the activity complies with the limits set out in letter (l) of Article 3.

(3) The CSSF shall inform the European Banking Authority, hereinafter referred to as the "EBA", of the services notified pursuant to paragraphs 1 and 2, stating under which exclusion the activity is carried out.

(4) The description of the activity notified under paragraphs 1 and 2 shall be made publicly available by the CSSF in the registers provided for in Article 36."

Article 4 – Prohibition to persons other than payment service providers to provide payment services

No person other than a payment service provider shall be allowed to provide payment services. This prohibition does not apply to activities expressly excluded from the scope of this Law.

(Law of 20 May 2011)

"Article 4-1 – Prohibition to persons other than electronic money issuers to issue electronic money

No person other than an electronic money issuer shall be allowed issuing electronic money."

[29] Law of 20 July 2018
[30] Law of 20 July 2018
[31] Law of 20 July 2018
[32] Law of 20 July 2018

"TITLE II: PAYMENT SERVICE PROVIDERS AND ELECTRONIC MONEY ISSUERS"[33]

CHAPTER 1: PAYMENT INSTITUTIONS

Section 1: Authorisation of payment institutions for which Luxembourg is the home Member State

Article 5 – Scope

This section applies to all payment institutions for which Luxembourg is the home Member State.

Article 6 – Authorisation requirement

With the exception of payment service providers referred to in Article 1, point (37) (i) to (iii) and (v) to (vii), no person under Luxembourg law may provide payment services as a payment institution without holding a written authorisation by the Minister responsible for the CSSF.

Article 7 – Authorisation procedure

(1) The authorisation is granted upon written application by the Minister responsible for the CSSF and after investigation by the CSSF on the conditions required under this section.

The application for authorisation shall be accompanied by the information and the evidences listed in Article 8.

The authorisation shall be granted if the information and evidence accompanying the application comply with all the requirements under this section and if the overall assessment of the Minister responsible for the CSSF is favourable.

Before granting an authorisation, the Minister responsible for the CSSF may, if necessary, consult the Banque centrale du Luxembourg or other appropriate public authorities.

(2) The authorisation shall specify which payment services the payment service institution is authorised to provide.

(3) An authorisation is required prior to a change of the type of services provided.

(4) The authorisation shall be granted for an unlimited period of time.

(5) The decision taken on an application for authorisation must be supported by a statement of the reasons on which it is based and must be notified to the applicant within three months of receipt of the application or, should the latter be incomplete, within three months of receipt of the information required for the decision. A decision shall, in any case, be taken within 12 months of the receipt of the application, otherwise the absence of a decision implies a refusal. The decision may be referred to the *Tribunal administratif* (AdministrativeTribunal) which deals with the substance of the case. The case shall be filed within one month, or else shall be time-barred.

Article 8 – Authorisation request

"(1)"[34] The authorisation request referred to in Article 7(1) shall be accompanied by the following information:

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

(b) a business plan including a forecast budget calculation for the first three financial years which demonstrates that the applicant is able to employ the appropriate and proportionate systems, resources and procedures to operate soundly;

(c) evidence that the payment institution holds initial capital laid down in Article 15;

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[33] Law of 20 May 2011
[34] Law of 20 July 2018

(d) for the payment institutions referred to in Article 14(1), a description of the measures taken for safeguarding payment service users' funds in accordance with Article 14;

(e) a description of the applicant's internal governance and internal control mechanisms, including administrative, risk management and accounting procedures, which demonstrates that these internal governance arrangements, control mechanisms and procedures are proportionate, appropriate, sound and adequate;

(f) a description of the internal control mechanisms which the applicant has established in order to comply with the obligations under the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended, and "Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006;"[35]

(g) a description of the applicant's structural organisation, including, where applicable, a description of the intended use of agents and branches and "of the off-site and on-site checks that the applicant undertakes to perform on them at least annually, as well as"[36] a description of outsourcing arrangements, and of its participation in a national or international payment system;

(h) the identity of shareholders or members, whether legal or natural persons, holding directly or indirectly qualifying holdings in the institution to be authorised, 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;

(i) the identity of members of the administrative bodies and persons responsible for the management of the payment institution to be authorised and, where relevant, persons responsible for the management of the payment services activities of the payment institution, as well as evidence that they are of good repute and possess appropriate knowledge and experience to perform payment services;

(j) where appropriate, the identity of the *réviseurs d'entreprises agrées* (approved statutory auditors);

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

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

(Law of 20 July 2018)

"(m) 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 payment institution laid down in Article 105-2;

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

(o) 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;

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

(q) a security policy document, including a detailed risk assessment in relation to its payment services and a description of security control and mitigation measures taken to adequately protect payment service users against the risks identified, including fraud and illegal use of sensitive and personal data."

"For the purposes of letters (d), (e), (g) and (m) of the first subparagraph"[37], 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 quality in the performance of payment services.

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[35] Law of 20 July 2018
[36] Law of 20 July 2018
[37] Law of 20 July 2018

(Law of 20 July 2018)

"The security control and mitigation measures referred to in letter (q) of the first subparagraph 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 the undertakings to which it outsources the whole or part of its operations. Those measures shall include the security measures laid down in Article 105-1(1)."

(Law of 20 July 2018)

"(2) Authorisation to provide payment services as referred to in point (7) of the Annex is conditional on prior holding of a professional indemnity insurance, covering the territories in which these services will be offered, or some other comparable guarantee against liability to ensure that the applicant can cover its liabilities as specified in Articles 87, 101, 101-1 and 103.

(3) Where a payment institution provides in addition the payment services referred to in point (8) of the Annex, its authorisation is further conditional on prior holding of a professional indemnity insurance covering the territories in which these services will be offered, or some other comparable guarantee against the applicant's 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."

Article 9 – Legal form

(1) Authorisation can only be granted to a legal person for which Luxembourg is the home Member State.

(2) Any change in the legal form and the denomination shall be communicated in advance to the CSSF.

Article 10 – Activities

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

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

(b) the operation of payment systems, without prejudice to Article 57;

(c) business activities other than the provision of payment services, having regard to applicable "EU"[38] and Luxembourg law.

(2) When payment institutions engage in the provision of one or more of the payment services, they may only hold payment accounts used exclusively for payment transactions. Any funds received by payment institutions from payment service users with a view to the provision of payment services shall not constitute a deposit or other repayable funds within the meaning of Article 2(3) of the Law of 5 April 1993 on the financial sector, as amended, or electronic money within the meaning of Article 1, point (29), of the present Law.

(3) Payment institutions may only grant credits related to payment services referred to "in the Annex, points (4) or (5),"[39] of this Law if all of the following conditions are met:

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

(b) the credit granted in connection with a payment and executed in accordance with "Article 23(1)"[40] of this Law shall be repaid within a short period which shall in no case exceed twelve months;

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

[38] Law of 21 December 2012
[39] Law of 20 July 2018
[40] Law of 20 July 2018

(d) the own funds of the payment institution shall at all times and to the satisfaction of the CSSF be appropriate in view of the overall amount of credit granted.

(4) Payment institutions are prohibited to conduct the business of taking deposits or other repayable funds within the meaning of Article 2(3) of the Law of 5 April 1993 on the financial sector, as amended.

(5) The present Law is without prejudice to "the provisions of Book 2, Title 2, Chapter 4, of the Consumer Code relating to consumer credit agreements."[41]

Article 11 – Central administration and infrastructure

(1) Authorisation is subject to the production of evidence of the existence in Luxembourg of the central administration and the registered office of the institution to be authorised. "The payment institution shall provide at least part of its payment services business in Luxembourg."[42]

(2) Taking into account the need to ensure the sound and prudent management of a payment institution, payment institutions shall dispose for the performance of payment services, of a robust internal governance arrangement, which includes a clear organisational structure with well defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks they are or might be exposed to, and adequate internal control mechanisms, including sound administrative and accounting procedures, as well as control and security arrangements for information processing systems.

The arrangement, processes and mechanisms shall be comprehensive and proportionate to the nature, scale and complexity of the payment services provided by the payment institution.

(3) Where a payment institution provides one or more payment services "referred to in points (1) to (7) of the Annex"[43] and, at the same time, is engaged in other business activities, the CSSF may require the establishment of a separate entity for the payment services business, where the non-payment services activities of the payment institution impair or are likely to impair either the financial soundness of the payment institution or the ability of the CSSF to control the payment institution's compliance with the obligations laid down by this Law.

(4) Each payment institution intending to outsource operational functions of payment services shall inform the CSSF in advance.

Outsourcing of important operational functions", including IT systems,"[44] shall not be undertaken in a way such as to materially impair the quality of the payment institutions' internal control, and the ability of the CSSF to monitor "and retrace"[45] the payment institutions' compliance with all obligations laid down in this Law.

For the purposes of the previous subparagraph, an operational function shall be regarded as important if a partial or total defect or failure in its performance would materially impair the continuing compliance of a payment institution with the requirements of its authorisation requested under this Law, or its financial performance, or the soundness or the continuity of its payment services.

In case payment institutions outsource important operational functions, they have to comply with the following conditions:

(a) the outsourcing must not result in a delegation by the senior management of the payment institution of its responsibilities;

(b) neither the relationship of the payment institution with its payment service users, nor the obligations of the payment institution towards its payment service users under this Law shall be altered;

(c) the conditions with which the payment institution has to comply in order to be authorised and to remain so in accordance with this chapter shall not be undermined; and

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[41] Law of 20 July 2018
[42] Law of 20 July 2018
[43] Law of 20 July 2018
[44] Law of 20 July 2018
[45] Law of 20 July 2018

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

(Law of 20 July 2018)

"The payment institution shall communicate to the CSSF without undue delay any change regarding the use of entities to which activities are outsourced."

(5) When a payment institution intends to provide payment services through one or more agents, it shall notify in advance the CSSF thereof and comply with the obligations under Article 18.

(6) Any change to the structural organisation of the payment institution, including, where applicable, the intended use of agents and branches or outsourcing arrangements shall first be notified to the CSSF. Without prejudice to Article 22, the CSSF may object to a proposed change of the organisational structure if this change impairs the CSSF's ability to control compliance by the payment institution with all the obligations arising from this Law.

The payment institution shall also inform in advance the CSSF of any intended participation in a national or international payment system.

Article 12 – Shareholders

(1) Authorisation shall be subject to communication to the CSSF of the identity of the shareholders or members, whether direct or indirect, whether natural or legal persons, that have qualifying holdings in the institution to be authorised and of the amounts of those holdings, in accordance with Article 8, point (h).

Authorisation shall be refused if, taking into account the need to ensure the sound and prudent management of the payment institution, the suitability of those shareholders or members is not satisfactory.

(2) Where close links exist between the payment institution to be authorised and other natural or legal persons, the authorisation shall only be granted if those links do not prevent the CSSF from effectively exercising its supervisory functions.

(3) Authorisation shall only be granted if the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the payment institution has close links or if difficulties related to the application of these provisions do not prevent the CSSF from effective exercise of its supervisory functions.

"(4) Any natural or legal person who has taken a decision to acquire or to further increase, directly or indirectly, a qualifying holding within the meaning of point (34) of Article 1 in a payment institution, as a result of which the proportion of the capital or of the voting rights held would reach or exceed 20 per cent, 30 per cent or 50 per cent, or so that the payment institution would become its subsidiary, shall inform the CSSF in writing of its intention in advance.

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 per cent, 30 per cent or 50 per cent, or so that the payment institution would cease to be its subsidiary, shall inform the CSSF in writing of its intention in advance.

The proposed acquirer of a qualifying holding shall supply to the CSSF information indicating the size of the intended holding. The CSSF shall make publicly available a list specifying the information that is necessary to carry out the assessment of the notification and that must be provided to it at the time of notification."[46]

"(5) Where the influence exercised by a proposed acquirer, as referred to in the third subparagraph of paragraph 4 is likely to operate to the detriment of the prudent and sound management of the payment institution, the CSSF shall express its opposition or take other appropriate measures to bring that situation to an end.

For the purposes of the first subparagraph, the CSSF may:

1. use its power of injunction as referred to in Article 38;
2. suspend the exercise of the voting rights attached to shares or units held by shareholders or members concerned; or

[46] Law of 20 July 2018

3. impose a fine, in accordance with the arrangements laid down in Article 46(1), on the persons responsible for the administration or management of the payment institution concerned, who act such as to jeopardise the sound and prudent management of the payment institution.

If a holding is acquired despite the opposition of the CSSF, the latter may suspend the exercise of the corresponding voting rights or request the nullity or annulment of the votes cast.

The CSSF may take similar measures against natural or legal persons who fail to comply with the obligation to provide prior information, as laid down in this article.

Any decision taken by the CSSF pursuant to this paragraph may be referred to the *Tribunal administratif* (Administrative Tribunal), which deals with the merits of the case. The case may be filed within one month, or else shall be time-barred."[47]

(…)[48]

(7) Payment institutions shall notify the CSSF on becoming aware of any qualifying acquisitions or disposals in their capital.

Article 13 – Professional standing and experience

(1) The authorisation is subject to the condition that the members of the administrative, management and supervisory bodies and the shareholders or members referred to in the previous article, produce evidence of their professional standing. Where a payment institution undertakes non-payment services in accordance with Article 10(1), point (c), the professional standing of the persons responsible for the management of the payment services activities of the payment institution shall also be assessed.

Such standing shall be assessed on the basis of police records and of any evidence tending to show that the persons concerned are of good standing and are offering a guarantee of irreproachable conduct.

(2) The persons responsible for the management of payment institutions which do not undertake business activities other than the provision of payment services in accordance with Article 10(1), point (c), shall be competent to effectively direct the business. These persons shall possess an adequate professional experience by having previously exercised similar activities at a high level of responsibility and autonomy.

Where payment institutions undertake business activities other than the provision of payment services in accordance with Article 10(1), point (c), the professional experience of the persons responsible for the management of the payment services activities of the payment institution shall also be assessed. These persons shall be competent to effectively direct the business of the payment services activities.

(3) Any change in the persons as referred to in paragraphs 1 and 2 shall be communicated in advance to the CSSF. The CSSF may request any information as may be necessary regarding the persons who may be required to fulfil the legal requirements with respect to professional standing and experience. The CSSF shall refuse the proposed change if these persons show insufficient professional standing and, where applicable, insufficient experience or where there are objective and demonstrable grounds for believing that the proposed change would pose a threat to the sound and prudent management of the payment institution. The decision of the CSSF may be referred to the *Tribunal administratif* (Administrative Tribunal) which deals with the substance of the case. The case shall be filed within one month, or else shall be time-barred.

Article 14 – Safeguarding requirements of funds

(1) A payment institution which "provides payment services as referred to in points (1) to (6) of the Annex"[49] shall safeguard "all funds"[50] which have been received from the payment service users

[47] Law of 20 July 2018
[48] Law of 20 July 2018
[49] Law of 20 July 2018
[50] Law of 20 July 2018

or through another payment service provider for the execution of payment transactions, in either of the following ways:

(a) they shall not be commingled at any time with the funds of any person other than payment service users on whose behalf the funds are held and, where they are still held by the payment institution and not yet delivered to the payee or transferred to another payment service provider by the end of the business day following the day when the funds have been received, they shall be deposited in a separate account in a credit institution or invested in secure, liquid low-risk assets as defined by the CSSF. The funds thus segregated shall not form part of the payment institution's own assets and shall be insulated, in the interests of the payment service users, against the claims of other creditors of the payment institution. In case of insolvency, bankruptcy or in any other situation of equal ranking, the funds are not part of the mass of the payment institution's assets. The assets held in securities accounts or in cash accounts in the name of the payment institutions with a (..)[51] depositary and identified by the depositary as assets of clients of these payment institutions, can neither, with the consequence of nullification, be used as a guarantee by the payment institution to cover its obligations or those of third parties, nor be seized whether by creditors of the payment institution or creditors of their clients;

or:

(b) these 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 the amount which would have been segregated in the absence of the insurance policy or other comparable guarantee, payable in the event that the payment institution is unable to meet its financial obligations.

(2) Where a payment institution is required to safeguard funds under paragraph 1 and a portion of those funds is to be used for future payment transactions with the remaining amount to be used for non-payment services, that portion of the funds to be used for future payment transactions shall also be subject to the requirements under paragraph 1. Where that portion is variable or is unknown in advance, the CSSF may allow payment institutions to apply this paragraph on the basis of a representative portion of the funds assumed to be used for payment services provided such a representative portion can be reasonably estimated on the basis of historical data to the satisfaction of the CSSF.

(…)[52]

(4) A payment institution intending to change its method for the purposes of paragraph 1, shall "first inform the CSSF thereof"[53].

Article 15 – Initial capital

(1) Where a payment institution only provides the payment service listed in point (6) of the Annex, authorisation is conditional on the production of evidence showing the existence of an initial capital of not less than EUR 20,000.

(2) Authorisation shall be conditional on the production of evidence showing the existence of an initial capital of not less than EUR 50,000 where a payment institution provides the payment service listed in point (7) of the Annex.

(3) Authorisation shall be conditional on the production of evidence showing the existence of an initial capital of not less than EUR 125,000 where a payment institution provides the payment services listed in points (1) to (5) of the Annex.

"(4) The initial capital as referred to in paragraphs 1 to 3 shall consist of one or more of the items referred to in Article 26(1)(a) to (e) of Regulation (EU) No 575/2013."[54]

(5) Notwithstanding the requirements of this article, the CSSF is entitled to take steps described under Article 31(4) to ensure sufficient capital for payment services, in particular where the non-payment

[51] Law of 15 March 2016
[52] Law of 20 July 2018
[53] Law of 20 July 2018
[54] Law of 20 July 2018

services activities of the payment institution impair or are likely to impair the financial soundness of the payment institution.

Article 16 – Own funds

(1) A payment institution's own funds may not fall below the amount of initial capital required under Articles 15 and 17, whichever the higher.

In the event that an institution's own funds fall below that amount, the CSSF may, if the circumstances so warrant, fix a time-limit within which the payment institution must either regularise its situation or cease carrying on its business.

(2) (…)[55]

The CSSF sets the detailed modalities for the calculation of own funds.

(3) The multiple use of elements eligible for the calculation of own funds is prohibited where the payment institution belongs to the same group as another payment institution, credit institution, investment firm, asset management company or insurance company.

This prohibition shall also apply to every payment institution carrying out activities other than the provision of payment services in accordance with Article 10(1), point (c).

The CSSF is empowered to lay down the necessary measures to be taken by the payment institutions in order to prevent the multiple use of elements eligible for the calculation of own funds.

(4) The CSSF may choose, in individual cases, not to apply Article 17 to a payment institution which is a subsidiary of a Luxembourg credit institution, if the subsidiary is included in the consolidated supervision of this credit institution. Moreover, all of the conditions "laid down in Article 7 of Regulation (EU) No 575/2013"[56] shall be satisfied, in order to ensure the adequate distribution of the own funds among the parent undertaking and its subsidiary.

(…)[57]

(5) Notwithstanding the requirements of paragraphs 1 to 3, the CSSF is entitled to take the steps described under Article 31(4) to ensure sufficient capital for payment services, in particular where the non-payment services activities of the payment institution impair or are likely to impair the financial soundness of the payment institution.

Article 17 – Calculation of own funds

(1) Notwithstanding the initial capital requirements set out in Article 15, payment institutions", except those offering only services as referred to in points (7) or (8), or both, of the Annex"[58] shall hold, at all times, own funds calculated in accordance with one of the following three methods:

Method A

The payment institution's own funds shall amount to at least 10% of its fixed overheads of the preceding year. The CSSF may adjust this 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 CSSF.

Method B

The payment institution's own funds shall amount to at least the sum of the following elements multiplied by the scaling factor k defined in paragraph 2, where payment volume (PV) represents one twelfth of the total amount of payment transactions executed by the payment institution in the preceding year:

(a) 4.0% of the slice of PV up to EUR 5 million

[55] Law of 20 July 2018
[56] Law of 20 July 2018
[57] Law of 20 July 2018
[58] Law of 20 July 2018

plus

(b) 2.5% of the slice of PV above EUR 5 million up to EUR 10 million

plus

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

plus

(d) 0.5% of the slice of PV above EUR 100 million up to EUR 250 million

plus

(e) 0.25% of the slice of PV above EUR 250 million.

Method C

The payment institution's own funds shall amount to at least the relevant indicator defined in point (a), multiplied by the multiplication factor defined in point (b) and by the scaling factor k defined in paragraph 2.

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

– interest income,

– interest expenses,

– commissions and fees received, and

– other operating income.

Each element shall be included in the sum with its positive or negative sign. Income from extraordinary or irregular items may 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 chapter. The relevant indicator is calculated on the basis of the twelve-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.

(b) The multiplication factor shall be:

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

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

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

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

(v) 1.5% of the slice of the relevant indicator above EUR 50 million.

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

(a) 0.5 where the payment institution provides only the payment service listed in point (6) of the Annex;

(…)[59]

(c) 1.0 where the payment institution provides any of the payment services listed in points (1) to (5) of the Annex.

(3) The CSSF 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.

[59] Law of 20 July 2018

(4) The CSSF specifies the modalities of the calculation methods referred to in the previous paragraphs.

(5) The payment institution intending to change its calculation method shall "first inform the CSSF thereof"[60].

(6) Notwithstanding the requirements of this article, the CSSF is entitled to take steps described under Article 31(4) to ensure sufficient capital for payment services, in particular where the non-payment services activities of the payment institution impair or are likely to impair the financial soundness of the payment institution.

Article 18 – Use of agents

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

(a) the name and address of the agent;

(b) a description of the internal control mechanisms that will be used by agents in order to comply with the obligations in relation to the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended", information to be updated without delay in the event of material changes to the particulars communicated at the initial notification"[61]; (…)[62]

(c) the identity of the persons responsible for the management and, if appropriate, the identity of the members of the administrative body of the agent to be used in the provision of payment services and", for agents other than payment service providers,"[63] evidence of their professional standing and experience;

(Law of 20 July 2018)

"(d) the payment services of the payment institution for which the agent is mandated;

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

"(2) Within 2 months of receipt of the information referred to in paragraph 1, the CSSF shall communicate to the payment institution whether the agent has been entered in the register provided for in Article 36. Upon entry in the register, the agent may commence providing payment services."[64]

(3) Before listing the agent in the register, the CSSF "shall"[65], if it considers that the information provided is incorrect, take further action to verify the information.

(4) If, after taking action to verify the information, the CSSF is not satisfied that the information provided to it pursuant to paragraph 1 is correct, it shall refuse to list the agent in the register provided for in Article 36 "and shall inform the payment institution without undue delay"[66].

(5) If the payment institution wishes to provide payment services in another Member State by engaging an agent "or establishing a branch"[67] it shall follow the procedures set out in Article 23. (…)[68]

(6) The CSSF may refuse to register the agent, or may withdraw the registration provided for in Article 36 if already made, if it is informed by the competent authorities of the host Member State that they have reasonable grounds to suspect that, in connection with the intended engagement of the agent, money laundering or terrorist financing within the meaning of "Directive (EU) 2015/849"[69] is taking place or has taken place, or that the engagement of such agent could increase the risk of money laundering or terrorist financing.

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[60] Law of 20 July 2018
[61] Law of 20 July 2018
[62] Law of 20 July 2018
[63] Law of 20 July 2018
[64] Law of 20 July 2018
[65] Law of 20 July 2018
[66] Law of 20 July 2018
[67] Law of 20 July 2018
[68] Law of 20 July 2018
[69] Law of 20 July 2018

(7) Payment institutions shall ensure that agents acting on their behalf inform payment service users of this fact.

(Law of 20 July 2018)

"(8) The payment institution shall communicate to the CSSF without undue delay any change regarding the use of agents, including additional agents, in accordance with the procedure provided for in paragraphs 2 to 4."

Article 19 – Accounting and statutory audit

(1) Payment institutions shall draw up their annual accounts and, if appropriate, their consolidated accounts in accordance with the Law of 19 December 2002 concerning the trade and companies register, as well as the accounting and annual accounts of companies, as amended, "the Law of 10 August 1915 on commercial companies, as amended,"[70] and Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards.

(2) Unless exempted under the Law of 19 December 2002 concerning the trade and companies register, as well as the accounting and annual accounts of companies, as amended, "or under the Law of 10 August 1915 on commercial companies, as amended,"[71] the authorisation shall be conditional on the payment institution having its annual accounts "and, where applicable, its consolidated accounts"[72] audited by one or more *réviseurs d'entreprises agréés* (approved statutory auditors). The appointment of such *réviseurs d'entreprises agréés* (approved statutory auditors) is done by the body responsible for the administration of the payment institution.

(3) In order to allow the CSSF to effectively exercise its supervisory functions, the payment institutions which undertake business activities other than the provision of payment services in accordance with Article 10(1), point (c), shall provide to the CSSF separate accounting information for payment services and activities listed in Article 10(1), points (a) and (b). This information shall be contained in an audit report set up by a *réviseur d'entreprises agréé* (approved statutory auditor). The appointment of such *réviseur d'entreprises agréé* (approved statutory auditor) is done by the body responsible for the administration of the payment institution.

(4) Any change in the *réviseurs d'entreprises agréés* (approved statutory auditors) shall be authorised in advance by the CSSF, in accordance with Article 13(3).

Article 20 – Withdrawal of authorisation

(1) The authorisation "may be"[73] withdrawn where a payment institution:

(a) does not make use of the authorisation within 12 months, expressly renounces the authorisation or has ceased to engage in business "for more than 6 months"[74];

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

(c) no longer meets the conditions for granting the authorisation "or fails to inform the CSSF on major developments in this respect"[75];

(d) would constitute a threat to the stability of "or the trust in"[76] the payment system by continuing its payment services business; or

(e) is no longer able to fulfil its obligations towards its creditors.

(2) Reasons shall be given for any withdrawal of an authorisation and those concerned shall be informed accordingly.

[70] Law of 21 December 2012
[71] Law of 21 December 2012
[72] Law of 21 December 2012
[73] Law of 20 July 2018
[74] Law of 20 July 2018
[75] Law of 20 July 2018
[76] Law of 20 July 2018

(3) The withdrawal of an authorisation shall be made public", including in the registers referred to in Article 36"[77].

(4) The decision of the CSSF may be referred to the *Tribunal administratif* (Administrative Tribunal) which deals with the substance of the case. The case shall be filed within one month, or else shall be time-barred.

Section 2: Establishment of branches, use of agents and the provision of services in Luxembourg by payment institutions incorporated under foreign law

Article 21 – Payment institutions for which the home Member State is a Member State other than Luxembourg

(1) Payment institutions for which the home Member State is a Member State other than Luxembourg, may provide payment services in Luxembourg, either through the establishment of a branch or through the engagement of an agent or the provision of services, provided that their activities are covered by their authorisation.

(Law of 20 July 2018)

"When the CSSF receives the information referred to in Article 28(2) of Directive (EU) 2015/2366 from the competent authorities of the home Member State, it shall assess that information within 1 month of receipt of the information. The CSSF shall provide the competent authorities of the home Member State with relevant information in connection with the intended provision of payment services by the relevant payment institution through the establishment of a branch, the use of an agent or the freedom to provide services."

(2) If the CSSF suspects that, in connection with the intended establishment of the branch or engagement of the agent, money laundering or terrorist financing within the meaning of "Directive (EU) 2015/849"[78] is taking place or has taken place, or that the establishment of such branch or engagement of such agent could increase the risk of money laundering or terrorist financing, they shall (…)[79] inform the competent authorities of the home Member State "of any reasonable grounds for concern"[80].

Article 22 – Payment institutions having their registered office in a third country

(1) Payment institutions incorporated in third countries wishing to establish a branch in Luxembourg are subject to the same authorisation rules as payment institutions for which Luxembourg is the home Member State.

(2) For the purposes of application of the preceding paragraph, compliance by the foreign institution with the required conditions for authorisation shall be assessed.

(3) The authorisation for an activity which implies that the applicant will hold the funds of the payment services users can only be granted to branches of companies incorporated abroad, if these companies hold own capital which is separate to that of their members. The branch must also have at its permanent disposal endowment capital or a capital base which is equivalent to that required by a Luxembourg person exercising the same activity.

(4) The professional standing and experience requirement is extended to the persons responsible for the branch. The branch shall also, instead of the condition relating to the central administration, produce evidence of an adequate administrative infrastructure in Luxembourg.

[77] Law of 20 July 2018
[78] Law of 20 July 2018
[79] Law of 20 July 2018
[80] Law of 20 July 2018

Section 3: Establishment of branches, use of agents and the provision of services in another Member State by payment institutions for which Luxembourg is the home Member State

"Article 23 – Establishment of branches, use of agents and freedom to provide services in another Member State

(1) A payment institution whose home Member State is Luxembourg wishing to provide payment services for the first time on the territory of another Member State through the establishment of a branch or the use of an agent, or by way of free provision of services, shall communicate the following information to the CSSF:

(a) its name, address and its authorisation number;
(b) the Member State(s) on the territory of which it intends to operate;
(c) the payment service(s) to be provided;
(d) where the payment institution intends to make use of an agent, the information referred to in Article 18(1);
(e) where the payment institution intends to make use of a branch, the information referred to in letters (b) and (e) of Article 8(1) with regard to the payment service business in the host Member State, a description of the organisational structure of the branch and the identity of those responsible for the management of the branch.

The payment institution which intends to outsource operational functions of payment services to other entities in the host Member State shall inform the CSSF in advance.

(2) Within 1 month of receipt of the information referred to in paragraph 1 the CSSF shall send it to the competent authority of the host Member State.

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

If the assessment of the CSSF in particular in light of the information received from the competent authorities of the host Member State in accordance with the second subparagraph of Article 28(2) of Directive (EU) 2015/2366, is not favourable, the CSSF shall refuse to register the agent or branch or shall withdraw the registration if already made. Where the CSSF 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.

(4) Upon entry in the register referred to in Article 36, the agent or branch may commence its activities in the relevant host Member State.

The payment institution shall notify to the CSSF the date from which it commences its activities through the agent or branch in the relevant host Member State. The CSSF shall inform the competent authorities of the host Member State accordingly.

(5) The payment institution shall communicate to the CSSF without undue delay any relevant change regarding the information communicated in accordance with paragraph 1, including additional agents, branches or entities to which activities are outsourced in the host Member States in which it operates. The procedure provided for under paragraphs 2 and 3 shall apply."[81]

"Article 24 – Reasons and communication of the measures taken by the CSSF

Any measure taken by the CSSF pursuant to Article 15(5), 16(5), 17(6), 23, 31(4) and (5), 34, 35-1, 38 or 46 involving penalties or restrictions on the freedom to establish branches, to use agents or to provide services shall be properly justified and communicated to the payment institution concerned."[82]

[81] Law of 20 July 2018
[82] Law of 20 July 2018

(Law of 20 May 2011)

"CHAPTER 2: ELECTRONIC MONEY INSTITUTIONS

Section 1: Authorisation of electronic money institutions incorporated under Luxembourg law

Article 24-1 – Scope

This section applies to electronic money institutions incorporated under Luxembourg law.

Article 24-2 – Authorisation requirement

With the exception of electronic money issuers referred to in Article 1, point (15a) (i) and (iii) to (vi), no person under Luxembourg law may issue electronic money without holding a written authorisation by the Minister responsible for the CSSF.

Article 24-3 Authorisation procedure

(1) The authorisation is granted upon written application by the Minister responsible for the CSSF and after investigation by the CSSF on the conditions required under this section.

The application for authorisation shall be accompanied by the information and the evidences listed in Article 24-4.

An authorisation shall be granted if the information and evidence accompanying the application comply with all the requirements under this section and if the overall assessment of the Minister responsible for the CSSF is favourable.

Before granting an authorisation, the Minister responsible for the CSSF may, if necessary, consult the Banque centrale du Luxembourg or other appropriate public authorities.

(2) The authorisation shall be granted for an unlimited period of time.

(3) The decision taken on an application for authorisation must be supported by a statement of the reasons on which it is based and must be notified to the applicant within three months of receipt of the application or, should the latter be incomplete, within three months of receipt of the information required for the decision. A decision shall, in any case, be taken within 12 months of the receipt of the application, otherwise the absence of a decision implies a refusal. The decision may be referred to the *Tribunal administratif* (Administrative Tribunal) which deals with the substance of the case. The case shall be filed within one month, or else shall be time-barred.

Article 24-4 Authorisation request

The authorisation request referred to in Article 24-3(1) shall be accompanied by the following information:

(a) a programme of operations, setting out in particular the transactions envisaged, including the payment services envisaged;

(b) a business plan including a forecast budget calculation for the first three financial years which demonstrates that the applicant is able to employ the appropriate and proportionate systems, resources and procedures to operate soundly;

(c) evidence that the electronic money institution holds initial capital laid down in Article 24-11;

(d) a description of the measures taken for safeguarding funds that have been received in exchange for electronic money in accordance with Article 24-10;

(e) a description of the applicant's internal governance and internal control mechanisms, including administrative, risk management and accounting procedures, which demonstrates that these internal governance arrangements, control mechanisms and procedures are proportionate, appropriate, sound and adequate;

(f) a description of the internal control mechanisms which the applicant has established in order to comply with the obligations under the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended, and under "Regulation (EU) 2015/847, a

description of the internal control mechanisms which the applicant has established in order to comply with those obligations"[83];

(g) a description of the applicant's structural organisation, including, where applicable, a description of the intended use of intermediaries distributing and redeeming electronic money for own account, of agents and branches and "of the off-site and on-site checks that the applicant undertakes to perform on them at least annually, as well as"[84] a description of outsourcing arrangements, and of its participation in a national or international payment system;

(h) the identity of shareholders or members, whether legal or natural persons, holding directly or indirectly qualifying holdings in the institution to be authorised, the size of their holdings and evidence of their suitability taking into account the need to ensure the sound and prudent management of an electronic money institution;

(i) the identity of members of the administrative bodies and persons responsible for the management of the electronic money institution to be authorised and, where relevant, persons responsible for the management of the electronic money issue activity as well as evidence that they are of good repute and possess appropriate professional knowledge and experience to perform electronic money issues;

(j) where appropriate, the identity of the *réviseurs d'entreprises agréés* (approved statutory auditors);

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

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

(Law of 20 July 2018)

"(m) 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 electronic money institution laid down in Article 105-2;

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

(o) 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;

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

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

"For the purposes of letters (d), (e), (g) and (m) of the first subparagraph"[85], 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 electronic money holders and its users of payment services and to ensure continuity and quality in the performance of its activity of electronic money issue and its provision of payment services.

(Law of 20 July 2018)

"The security control and mitigation measures referred to in letter (q) of the first subparagraph 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 the undertakings to which it outsources the whole or part of its operations. Those measures shall include the security measures laid down in Article 105-1(1)."

[83] Law of 20 July 2018
[84] Law of 20 July 2018
[85] Law of 20 July 2018

Article 24-5 – Legal form

(1) Authorisation may only be granted to a legal person incorporated under Luxembourg law which is established in the form of a public-law institution, a *société anonyme* [public limited company], a *société en commandite par actions* [limited partnership with a share capital] or a *société coopérative* [cooperative society].

(2) Any change in the legal form and the denomination shall be communicated in advance to the CSSF.

Article 24-6 – Activities

(1) In addition to issuing electronic money, electronic money institutions shall be entitled to engage in any of the following activities:

(a) the provision of payment services listed in the Annex;

(b) the granting of credit related to payment services referred to in "points (4) or (5) of the Annex"[86], where the conditions laid down in Article 10(3) and (5) are met;

(c) the provision of operational services and closely related ancillary services in respect of the issuing of electronic money or of the provision of payment services referred to in point (a);

(d) the management of payment systems, without prejudice to Article 57;

(e) business activities other than issuance of electronic money, having regard to the applicable "EU"[87] and Luxembourg law.

Credit referred to in point (b) shall not be granted from the funds received in exchange of electronic money and held in accordance with Article 24-10(1).

(2) Electronic money institutions are prohibited to take deposits or other repayable funds from the public within the meaning of Article 2(3) of the Law of 5 April 1993 on the financial sector, as amended.

(3) Electronic money institutions shall exchange any funds received from electronic money holders for electronic money without delay. Such funds shall not constitute a deposit or other repayable funds received from the public within the meaning of Article 2(3) of the Law of 5 April 1993 on the financial sector, as amended.

(4) When electronic money institutions engage in the provision, in accordance with paragraph 1, point (a), of one or more of the payment services not linked to the activity of electronic money issue, they may only hold payment accounts used exclusively for payment transactions. Any funds received by electronic money institutions from payment service users with a view to the provision of payment services which are not related to the activity of electronic money issue shall not constitute a deposit or other repayable funds within the meaning of Article 2(3) of the Law of 5 April 1993 on the financial sector, as amended, or electronic money within the meaning of Article 1, point (29), of this Law.

(5) Electronic money institutions which provide one or several payment service(s) not related to the activity of electronic money issue, in accordance with paragraph 1, point (a), are prohibited to carry out, in the framework of this payment service provision, the activity of taking deposits or other repayable funds within the meaning of Article 2(3) of the Law of 5 April 1993 on the financial sector, as amended.

Article 24-7 – Central administration and infrastructure

(1) Authorisation is subject to the production of evidence of the existence in Luxembourg of the central administration and the registered office of the institution to be authorised. "The electronic money institution shall provide at least part of its activity of issuing electronic money in Luxembourg."[88]

(2) Taking into account the need to ensure the sound and prudent management of an electronic money institution, electronic money institutions shall dispose, for the performance of electronic money issue and of payment services, of a robust internal governance arrangement, which includes a clear organisational structure with well defined, transparent and consistent lines of responsibility,

[86] Law of 20 July 2018
[87] Law of 21 December 2012
[88] Law of 20 July 2018

effective processes to identify, manage, monitor and report the risks they are or might be exposed to, and adequate internal control mechanisms, including sound administrative and accounting procedures, as well as control and security arrangements for information processing systems.

The arrangements, processes and mechanisms shall be comprehensive and proportionate to the nature, scale and complexity of the activities of the electronic money institution.

(3) Where an electronic money institution is engaged in business activities other than the issue of electronic money and the provision of payment services "referred to in points (1) to (7) of the Annex"[89], the CSSF may require the establishment of a separate entity for the activities related to the electronic money issue and payment service provision, where the activities other than electronic money issue and payment service provision impair or are likely to impair either the financial soundness of the electronic money institution or the ability of the CSSF to control the electronic money institution's compliance with the obligations laid down by this Law.

(4) Each electronic money institution intending to outsource operational functions related to the issue of electronic money or the provision of payment services shall inform the CSSF in advance.

Outsourcing of important operational functions", including IT systems"[90] shall not be undertaken in a way such as to materially impair the quality of electronic money institutions' internal control, and the ability of the CSSF to monitor "and retrace"[91] electronic money institutions' compliance with all obligations laid down in this Law.

For the purposes of the previous subparagraph, an operational function shall be regarded as important if a partial or total defect or failure in its performance would materially impair the continuing compliance of an electronic money institution with the requirements of its authorisation requested under this Law, or its financial performance, or the soundness or the continuity of its activity of electronic money issue or payment service provision.

In case electronic money institutions outsource important operational functions, they have to comply with the following conditions:

a) the outsourcing must not result in a delegation by the senior management of the electronic money institution of its responsibilities;

b) neither the relationship of the electronic money institution with its electronic money holders and payment service users, nor the obligations of the electronic money institution towards its electronic money holders and payment service users under this Law shall be altered;

c) the conditions with which the electronic money institution has to comply in order to be authorised and to remain so in accordance with this chapter shall not be undermined; and

d) none of the other conditions subject to which the electronic money institution's authorisation was granted shall be removed or modified.

(Law of 20 July 2018)

"The electronic money institution shall communicate to the CSSF without undue delay any change regarding the use of entities to which activities are outsourced."

(5) Electronic money institutions may distribute and redeem electronic money through natural or legal persons acting on their behalf. Article 24-17 shall apply where the electronic money institution wishes to distribute electronic money in another Member State by engaging such a natural or legal person.

Notwithstanding the previous subparagraph, electronic money institutions are not authorised to issue electronic money through natural or legal persons acting on their behalf.

For the purpose of applying Chapter 2 of Title II, "intermediaries" shall mean the natural or legal persons distributing and redeeming electronic money on behalf of the electronic money institution.

(6) When an electronic money institution intends to provide payment services through one or more agents, it shall notify in advance the CSSF thereof.

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[89] Law of 20 July 2018
[90] Law of 20 July 2018
[91] Law of 20 July 2018

Electronic money institutions shall be authorised to provide payment services through agents only if the requirements listed in Article 18 are complied with.

The electronic money institutions which provide payment services through agents may also use these agents to distribute and redeem electronic money.

Article 24-17 shall apply where the electronic money institution wishes to provide payment services and distribute and redeem electronic money in another Member State through agents.

(7) Any change to the structural organisation of the electronic money institution, including, where applicable, the intended use of intermediaries, agents and branches or outsourcing arrangements shall first be notified to the CSSF. Without prejudice to Article 24-16, the CSSF may object to a proposed change of the organisational structure if this change impairs the CSSF's ability to control compliance by the electronic money institution with all the obligations arising from this Law.

The payment institution shall also inform in advance the CSSF of any intended participation in a national or international payment system.

Article 24-8 – Shareholders

(1) Authorisation shall be subject to communication to the CSSF of the identity of the shareholders or members, whether direct or indirect, whether natural or legal persons, that have qualifying holdings in the institution to be authorised and of the amounts of those holdings, in accordance with Article 24-4, point (h).

Authorisation shall be refused if, taking into account the need to ensure the sound and prudent management of the electronic money institution, the suitability of those shareholders or members is not satisfactory.

(2) Where close links exist between the electronic money institution to be authorised and other natural or legal persons, the authorisation shall only be granted if those links do not prevent the CSSF from effectively exercising its supervisory functions.

(3) Authorisation shall only be granted if the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the electronic money institution has close links or if difficulties related to the application of these provisions do not prevent the CSSF from effective exercise of its supervisory functions.

(4) Any natural or legal person who has taken a decision to acquire or dispose of, directly or indirectly, a qualifying holding within the meaning of Article 1, point (34), in an electronic money institution "for which Luxembourg is the home Member State"[92], or to further increase or reduce, directly or indirectly, its qualifying holding so that the proportion of the capital or of the voting rights held by it would reach, exceed or fall below 20%, 30% or 50%, or so that the electronic money institution would become or cease to be its subsidiary, shall first inform the CSSF in writing of their intention and communicate to the CSSF the contemplated amount of this holding and any relevant information referred to in paragraph 5.

(5) The CSSF shall make publicly available a list specifying the information that is necessary to carry out the assessment of the notification and that must be provided to it at the time of notification. The information required shall be proportionate and adapted to the nature of the proposed acquirer and the proposed acquisition.

(6) The CSSF shall have a maximum of three months from the date of the notification laid down in paragraph 4 to oppose such undertaking if, in view of the need to ensure sound and prudent management of the electronic money institution, the CSSF is not satisfied as to the suitability of the person referred to in paragraph 4.

In case there is no opposition, the CSSF may fix a maximum period for the implementation of the undertaking as described in paragraph 4.

(7) Electronic payment institutions shall notify the CSSF on becoming aware of any qualifying acquisitions or disposals in their capital that cause holdings to exceed or fall below one of the thresholds referred to in paragraph 4.

[92] Law of 20 July 2018

They shall also, at least once a year, inform the CSSF of the names of shareholders and members possessing qualifying holdings and the sizes of such holdings as shown, for example, by the information communicated at the annual general meetings of shareholders and members or received in accordance with the provisions applicable to companies whose transferable securities are admitted to trading on a regulated market.

(8) In case the influence exercised by the persons referred to in the first subparagraph of paragraph 1 is likely to be prejudicial to the sound and prudent management of the electronic money institution, the CSSF shall take appropriate measures to put an end to that situation. The CSSF may use its power of injunction or suspension or impose a fine on the persons responsible for the administration or management of the electronic money institution concerned, who act such as to jeopardise the sound and prudent management of the electronic money institution, "in accordance with the provisions under Article 46(1)"[93].

Where a holding is acquired despite the opposition of the CSSF, the latter may suspend the exercise of the relevant voting rights or ask for the nullity of the votes cast or the possibility of their annulment without prejudice to any other sanctions to be adopted.

The CSSF may take similar measures against natural or legal persons who fail to comply with the obligation to provide prior information, as laid down in this article.

The decision to impose a fine may be referred to the *Tribunal administratif* (Administrative Tribunal) which deals with the substance of the case. The case shall be filed within one month.

(9) The obligations laid down in paragraphs 4 and 7 shall not apply to electronic money institutions which carry out one or several activities referred to in Article 24-6(1), point (e).

Article 24-9 – Professional standing and experience

(1) The authorisation is subject to the condition that the members of the administrative, management and supervisory bodies and the shareholders or members referred to in the previous article, produce evidence of their professional standing. Where an electronic money institution undertakes, in accordance with Article 24-6(1), point (e), business activities other than the issue of electronic money, the professional standing of the persons responsible for the management of the electronic money issue activities of the electronic money institution shall also be assessed.

Such standing shall be assessed on the basis of police records and of any evidence tending to show that the persons concerned are of good repute and are offering a guarantee of irreproachable conduct.

(2) The persons responsible for the management of an electronic money institution, which does not undertake business activities other than the issue of electronic money in accordance with Article 24-6(1), point (e), shall be competent to effectively direct the business. These persons shall possess an adequate professional experience by having previously exercised similar activities at a high level of responsibility and autonomy.

Where an electronic money institution undertakes, in accordance with Article 24-6(1), point (e), business activities other than the issue of electronic money, the professional experience of the persons responsible for the management of the electronic money issue activities of the electronic money institution shall also be assessed. These persons shall be competent to effectively direct the business of the electronic money issue activities.

(3) Any change in the persons as referred to in paragraphs 1 and 2 shall be communicated in advance to the CSSF. The CSSF may request any information as may be necessary regarding the persons who may be required to fulfil the legal requirements with respect to professional standing and experience. The CSSF shall refuse the proposed change if these persons show insufficient professional standing and, where applicable, insufficient professional experience or where there are objective and demonstrable grounds for believing that the proposed change would pose a threat to the sound and prudent management of the electronic money institution. The decision of the CSSF may be referred to the *Tribunal administratif* (Administrative Tribunal) which deals with the substance of the case. The case shall be filed within one month, or else shall be time-barred.

[93] Law of 20 July 2018

Article 24-10 – Safeguarding requirements for funds

(1) Electronic money institutions shall safeguard the funds that have been received in exchange for electronic money issued according to one of the following two methods:

(a) they shall not be commingled at any time with the funds of any person other than electronic money holders (on whose behalf the funds are held) and shall be deposited in a separate account in a credit institution or invested in secure, low-risk assets. The funds thus segregated shall not form part of the electronic money institution's own assets and shall be deducted, in the interest of the electronic money holders, against the claims of other creditors of the electronic money institution. In case of insolvency, bankruptcy or in any other situation of equal ranking, the funds are not part of the mass of the electronic money institution's assets. The assets held in securities accounts or in cash accounts in the name of the electronic money institutions with a (…)[94] depositary and identified by the depositary as assets of holders of electronic money issued by these electronic money institutions, can neither, with the consequence of nullification, be used as a guarantee by the electronic money institution to cover its obligations or those of third parties, nor be seized whether by creditors of the electronic money institution or creditors of holders of electronic money issued by these electronic money institutions;

or:

(b) these 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 electronic money institution itself, for an amount equivalent to the amount which would have been segregated in the absence of the insurance policy or other comparable guarantee, payable in the event that the electronic money institution is unable to meet its financial obligations.

Funds received in the form of payment by payment instrument need not 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 the present Law, where applicable. In any event, such funds shall be safeguarded by no later than five business days, as defined in Article 1, point (27), after the issuance of electronic money.

(2) Where an electronic money institution is required to safeguard funds it received in exchange for electronic money that has been issued in accordance with paragraph 1 and a portion of those funds was received in exchange for monetary value that has been issued to be used for future payment transactions with the remaining amount of the monetary value issued in exchange for received funds to be used for non-payment services, that portion of the funds received in exchange for monetary value that has been issued to be used for future payment transaction shall also be subject to the requirements under paragraph 1. Where that portion is variable or is unknown in advance, the CSSF may allow electronic money institutions to apply this paragraph on the basis of a representative portion of the funds assumed to be used for payment services provided such a representative portion can be reasonably estimated on the basis of historical data to the satisfaction of the CSSF.

(3) An electronic money institution intending to change its method for the purposes of paragraphs 1 and (2), shall first inform the CSSF thereof.

(4) For the purposes of paragraph 1, secure, low-risk assets are asset items falling into one of the categories set out in Table 1 of point (14) of Annex I to Directive 2006/49/EC 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.

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

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

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[94] Law of 15 March 2016

(5) Article 14 shall apply to electronic money institutions for the activities referred to in Article 24-6(1), point (a), that are not linked to the activity of issuing electronic money.

(6) For the purposes of paragraphs 1, 2 and 5, the CSSF may determine which method shall be used by the electronic money institutions to safeguard funds.

Article 24-11 – Initial capital

(1) Authorisation of an electronic money institution is conditional on the production of evidence showing the existence of an initial capital of not less than EUR 350,000.

"(2) The initial capital as referred to in paragraph 1 shall consist of one or more of the items referred to in Article 26(1)(a) to (e) of Regulation (EU) No 575/2013."[95]

(3) Notwithstanding the requirements of this article, the CSSF is entitled to take steps described under Article 31(4) to ensure sufficient capital for the activities related to electronic money issue and payment service provision, in particular where the activities other than those related to electronic money issue and payment service provision of the electronic money institution impair or are likely to impair the financial soundness of the electronic money institution.

Article 24-12 – Own funds

(1) An electronic money institution's own funds may not fall below the amount of initial capital required under paragraphs 3 and 6 of this article or under Article 24-11.

In the event that an institution's own funds fall below that amount, the CSSF may, if the circumstances so warrant, fix a time-limit within which the electronic money institution must either regularise its situation or cease carrying on its business.

(2) (…)[96]

The CSSF sets the detailed modalities for the calculation of own funds.

(3) In regard to the activities referred to in Article 24-6(1), point (a), "except for those as referred to in points (7) or (8), or both, of the Annex,"[97] that are not linked to the issuance of electronic money, the own funds requirements of an electronic money institution shall be calculated in accordance with one of the three methods set out in Article 17(1) and (2). The appropriate calculation method shall be determined by the CSSF.

In regard to the activity of issuing electronic money, the own funds requirements of an electronic money institution shall be calculated in accordance with Method D as set out in paragraph 4 of this article.

Electronic money institutions shall at all times hold own funds that are at least equal to the sum of the requirements referred to in the first and second subparagraphs.

(4) Method D: The own funds of an electronic money institution for the activity of issuing electronic money shall amount to at least 2% of the average outstanding electronic money.

(5) Where an electronic money institution carries out any of the activities referred to in Article 24-6(1), point (a), "except for those as referred to in points (7) or (8), or both, of the Annex,"[98] that are not linked to the issuance of electronic money or any of the activities referred to in Article 24-6(1), points (b) to (e), and the amount of outstanding electronic money is unknown in advance, the CSSF shall allow the electronic money institution to calculate its own funds requirements on the basis of a representative portion assumed to be used for the issuance of electronic money, provided such a representative portion can be reasonably estimated on the basis of historical data and to the satisfaction of the CSSF.

Where an electronic money institution has not completed a sufficient period of business, its own funds requirements shall be calculated on the basis of projected outstanding electronic money

[95] Law of 20 July 2018
[96] Law of 20 July 2018
[97] Law of 20 July 2018
[98] Law of 20 July 2018

evidenced by its business plan subject to any adjustment to that plan having been required by the CSSF.

(6) On the basis of an evaluation of the risk-management processes, of the risk loss databases and internal control mechanisms of the electronic money institution, the CSSF may require the electronic money 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 relevant method in accordance with paragraph 3, or permit the electronic money 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 relevant method in accordance with paragraph 3.

(7) The multiple use of elements eligible for the calculation of own funds is prohibited where the electronic money institution belongs to the same group as another electronic money institution, payment institution, credit institution, investment firm, asset management company or insurance or reinsurance undertaking.

This prohibition shall also apply to every electronic money institution carrying out activities other than the issuance of electronic money.

The CSSF is empowered to lay down the necessary measures to be taken by the electronic money institutions in order to prevent the multiple use of elements eligible for the calculation of own funds.

(8) The CSSF may choose, in individual cases, not to apply paragraphs 3 and 4 to an electronic money institution which is a subsidiary of a Luxembourg credit institution, if the subsidiary is included in the consolidated supervision of this credit institution. Moreover, all of the (…)[99] conditions "laid down in Article 7 of Regulation (EU) No 575/2013"[100] shall be satisfied, in order to ensure the adequate distribution of the own funds among the parent undertaking and its subsidiary.

(…)[101]

(9) Notwithstanding the requirements of this article, the CSSF is entitled to take the steps described under Article 31(4) to ensure sufficient capital for the activities related to electronic money issue and payment service provision, in particular where the activities other than those related to electronic money issue and payment service provision of the electronic money institution impair or are likely to impair the financial soundness of the electronic money institution.

Article 24-13 – Accounting and statutory audit

(1) Electronic money institutions shall draw up their annual accounts and, if appropriate, their consolidated accounts in accordance with the Law of 19 December 2002 concerning the trade and companies register, as well as the accounting and annual accounts of companies, as amended, "the Law of 10 August 1915 on commercial companies, as amended,"[102] and Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards.

(2) Unless exempted under the Law of 19 December 2002 concerning the trade and companies register, as well as the accounting and annual accounts of companies, as amended, "or under the Law of 10 August 1915 on commercial companies, as amended,"[103] the authorisation shall be conditional on the electronic money institution having its annual accounts "and, where applicable, its consolidated accounts"[104] audited by one or more *réviseurs d'entreprises agréés* (approved statutory auditors). The appointment of such *réviseurs d'entreprises agréés* (approved statutory auditors) is done by the body responsible for the administration of the electronic money institution.

(3) In order to allow the CSSF to effectively exercise its supervisory functions, the electronic money institutions which undertake, in accordance with Article 24-6(1), point (e), business activities other than issuance of electronic money, shall provide to the CSSF separate accounting information for the activity related to issuance of electronic money and the activities listed in Article 24-6(1), points (a) to (d). This information shall be contained in an audit report by a *réviseur d'entreprises agréé* (approved statutory auditor). The appointment of such *réviseur d'entreprises agréé* (approved

[99] Law of 20 July 2018
[100] Law of 20 July 2018
[101] Law of 20 July 2018
[102] Law of 21 December 2012
[103] Law of 21 December 2012
[104] Law of 21 December 2012

statutory auditor) is done by the body responsible for the administration of the electronic money institution.

(4) Any change in the *réviseurs d'entreprises agréés* (approved statutory auditors) shall be authorised in advance by the CSSF, in accordance with Article 24-9(3).

Article 24-14 – Withdrawal of authorisation

(1) The authorisation "may be"[105] withdrawn where an electronic money institution:

(a) does not make use of the authorisation within 12 months, expressly renounces the authorisation or has ceased to engage in business "for more than 6 months"[106];

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

(c) no longer fulfils the conditions for granting the authorisation "or fails to inform the CSSF on major developments in this respect"[107];

(d) would constitute a threat to the stability of "or the trust in"[108] the payment system by continuing its business of issuance of electronic money; or

(e) is no longer able to fulfil its obligations towards its creditors.

(2) Reasons shall be given for any withdrawal of an authorisation and those concerned shall be informed accordingly.

(3) The withdrawal of an authorisation shall be made public", including in the registers referred to in Article 36"[109].

(4) The decision of the CSSF may be referred to the *Tribunal administratif* (Administrative Tribunal) which deals with the substance of the case. The case shall be filed within one month, or else shall be time-barred.

Section 2: Establishment of branches, use of intermediaries or agents and the provision of services in Luxembourg by electronic money institutions incorporated under foreign law

Article 24-15 – Electronic money institutions for which the home Member State is a Member State other than Luxembourg

(1) Electronic money institutions for which the home Member State is a Member State other than Luxembourg, may issue electronic money or provide payment services in Luxembourg, either through the establishment of a branch or through the provision of services.

In addition, these electronic money institutions may:
- distribute and redeem electronic money in Luxembourg through natural or legal persons which act on their behalf, provided that the CSSF is informed in advance by the competent authorities of the home Member State of the electronic money institution in accordance with Article 3(4) of Directive 2009/110/EC; or
- provide payment services referred to in Article 24-6(1), point (a), in Luxembourg through agents provided that the conditions in "Article 19 of Directive (EU) 2015/2366"[110] are met.

(Law of 20 July 2018)

"When the CSSF receives the information referred to in Article 28(2) of Directive (EU) 2015/2366 from the competent authorities of the home Member State, it shall assess that information within 1 month of receipt of the information. The CSSF shall provide the competent authorities of the home Member State with relevant information in connection with the intended issuance of electronic money or provision of payment services by the relevant electronic money institution through the establishment of a branch, the use of an agent or the freedom to provide services."

[105] Law of 20 July 2018
[106] Law of 20 July 2018
[107] Law of 20 July 2018
[108] Law of 20 July 2018
[109] Law of 20 July 2018
[110] Law of 20 July 2018

(2) If the CSSF suspects that, in connection with the intended establishment of the branch or engagement of the agent, money laundering or terrorist financing within the meaning of "Directive (EU) 2015/849"[111] is taking place or has taken place, or that the establishment of such branch or engagement of such agent could increase the risk of money laundering or terrorist financing, it shall (…)[112] inform the competent authorities of the home Member State of the electronic money institution "of any reasonable grounds for concern"[113].

Article 24-16 – Electronic money institutions having their registered office in a third country

(1) Electronic money institutions incorporated in third countries wishing to establish a branch in Luxembourg, are subject to the same authorisation rules as the electronic money institutions incorporated under Luxembourg law.

(2) For the purposes of application of the preceding paragraph, compliance by the foreign institution with the required conditions for authorisation shall be assessed.

(3) The authorisation for an activity which implies that the applicant will hold the funds of the electronic money holders or the payment services users can be granted to branches of companies incorporated abroad, only if these companies hold own capital which is separate to that of their members. The branch must also have at its permanent disposal endowment capital or a capital base which is equivalent to that required by a Luxembourg person exercising the same activity.

(4) The professional standing and experience requirement is extended to the persons responsible for the branch.

The branch shall also, instead of the condition relating to the central administration, produce evidence of an adequate administrative infrastructure in Luxembourg.

Section 3: Establishment of branches, use of intermediaries or agents and the provision of services in another Member State by electronic money institutions incorporated under Luxembourg law

"Article 24-17 – Establishment of branches, use of agents and freedom to provide services in another Member State

(1) An electronic money institution whose home Member State is Luxembourg wishing to carry out the activity of issuing electronic money or to provide payment services for the first time on the territory of another Member State through the establishment of a branch or the use of an agent, or by way of free provision of services, shall communicate the following information to the CSSF:

(a) its name, address and its authorisation number;
(b) the Member State(s) on the territory of which it intends to operate;
(c) the type of transactions envisaged, as well as the payment service(s) to be provided, where applicable;
(d) where the electronic money institution intends to make use of an agent, the information referred to in Article 18(1);
(e) where the electronic money institution intends to make use of a branch, the information referred to in letters (b) and (e) of the first subparagraph of Article 24-4 with regard to the activity of issuing electronic money or the payment service business in the host Member State, a description of the organisational structure of the branch and the identity of those responsible for the management of the branch.

The electronic money institution which intends to outsource operational functions of payment services to other entities in the host Member State shall inform the CSSF in advance.

(2) Within 1 month of receipt of the information referred to in paragraph 1 the CSSF shall send it to the competent authority of the host Member State.

[111] Law of 20 July 2018
[112] Law of 20 July 2018
[113] Law of 20 July 2018

(3) Within 3 months of receipt of the information referred to in paragraph 1 the CSSF shall communicate its decision to the competent authorities of the host Member State and to the electronic money institution.

If the assessment of the CSSF in particular in light of the information received from the competent authorities of the host Member State in accordance with the second subparagraph of Article 28(2) of Directive (EU) 2015/2366, is not favourable, the CSSF shall refuse to register the agent or branch or shall withdraw the registration if already made. Where the CSSF 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.

(4) Upon entry in the register referred to in Article 36, the agent or branch may commence its activities in the relevant host Member State.

The electronic money institution shall notify to the CSSF the date from which it commences its activities through the agent or branch in the relevant host Member State. The CSSF shall inform the competent authorities of the host Member State accordingly.

(5) The electronic money institution shall communicate to the CSSF without undue delay any relevant change regarding the information communicated in accordance with paragraph 1, including additional agents, branches or entities to which activities are outsourced in the host Member States in which it operates. The procedure provided for under paragraphs 2 and 3 shall apply."[114]

"Article 24-18 – Reasons and communication of the measures taken by the CSSF

Any measure taken by the CSSF pursuant to Article 24-11(3), 24(5), 24-12(9), 24-17, 31(4) and (5), 34, 35-1, 38 or 46 involving penalties or restrictions on the freedom to establish branches, to use agents or to provide services shall be properly justified and communicated to the electronic money institution concerned."[115] "

(...)[116]

(Law of 20 May 2011)

"CHAPTER 3: COMMON PROVISIONS TO PAYMENT INSTITUTIONS AND ELECTRONIC MONEY INSTITUTIONS

Section 1: Operating conditions for payment institutions and electronic money institutions set up in Luxembourg

Article 25 – Scope

(1) Articles 26 and 27 apply to payment institutions and electronic money institutions incorporated in Luxembourg, including their branches and agents set up in Luxembourg or abroad.

(2) Articles 28 to 30 apply to payment institutions and electronic money institutions authorised in Luxembourg, including their branches and agents set up in Luxembourg or abroad, as well as to the Luxembourg branches of payment institutions and electronic money institutions for which the home Member State is a Member State other than Luxembourg, and to agents set up in Luxembourg to which payment institutions and electronic money institutions, for which the home Member State is a Member State other than Luxembourg, turn.

Article 26 – Responsibility

(1) Where payment institutions and electronic money institutions delegate to third parties the performance of operational functions, they shall take reasonable steps to ensure that the requirements of this Law are complied with.

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[114] Law of 20 July 2018
[115] Law of 20 July 2018
[116] Law of 20 May 2011

(2) Payment institutions and electronic money institutions shall remain fully liable for any acts of their employees, any intermediary or agent they turn to, branch or entity to which activities are outsourced.

Article 27 – Record-keeping

Without prejudice "to longer deadlines resulting from, where appropriate,"[117] the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended, payment institutions and electronic money institutions shall, in accordance with the time limits laid down in the Commercial Code (*Code de commerce*), keep all appropriate records in order to enable the CSSF to monitor compliance with the requirements under this Law.

Article 28 – Professional obligations concerning the fight against money laundering and terrorist financing

Payment institutions and electronic money institutions are subject to the (…)[118] professional obligations defined by "Title I of"[119] the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended, "and by its implementing measures."[120]

(…)[121]

Payment institutions and electronic money institutions also have to respect the rules set up by "Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006, hereinafter referred to as "Regulation (EU) 2015/847"."[122]

Article 29 – Cooperation requirements with the authorities

Payment institutions and electronic money institutions shall respond to and cooperate as comprehensively as possible with respect to any legal request received by law-enforcement authorities, issued in the exercise of their duties.

Article 30 – Professional secrecy requirement

"(1) Payment institutions and electronic money institutions as well as the members of the administrative, management and supervisory bodies, directors, employees and the other persons working for payment institutions and electronic money institutions shall maintain secrecy of the information entrusted to them in the context of their professional activity or their mandate. Disclosure of such information shall be punishable by the sanctions laid down in Article 458 of the Penal Code.

The first subparagraph shall also apply to payment institutions and electronic money institutions which were authorised pursuant to this Law and which are subject to insolvency proceedings and to all the people who are designated, employed or appointed to any function in the framework of such proceedings as well as to the persons working for these payment institutions and electronic money institutions."[123]

(2) The professional secrecy requirement "shall not exist"[124] where the disclosure of information is authorised or required by legislation, even if it predates this Law.

(Law of 27 February 2018)

"(2a) The obligation of secrecy does not exist towards the persons established in Luxembourg who are subject to the prudential supervision of the CSSF, of the European Central Bank or the Commissariat aux Assurances and who are subject to secrecy which is criminally sanctioned insofar as the communication of information to these persons is carried out through a service contract.

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[117] Law of 13 February 2018
[118] Law of 13 February 2018
[119] Law of 13 February 2018
[120] Law of 13 February 2018
[121] Law of 13 February 2018
[122] Law of 13 February 2018
[123] Law of 27 February 2018
[124] Law of 27 February 2018

In cases not falling under the first subparagraph, the obligation of secrecy does not exist towards the entities which are in charge of the outsourced service provision as well as the employees and other persons working for these entities insofar as the client has accepted, in accordance with the law or with the arrangements for information agreed on by the parties, the outsourcing of the outsourced services, the type of information transmitted in the context of the outsourcing and the country of establishment of the entities that provide outsourced services. The persons who have access to the information referred to in paragraph 1 shall be subject by the law to a professional secrecy obligation or be bound by a confidentiality agreement."

"(3) The obligation of secrecy does not exist towards national, European and foreign authorities responsible for the prudential supervision of the financial sector, provided that they act within their legal competence for the purpose of this supervision and that the provided information is covered by the professional secrecy obligation of the receiving supervisory authority. The transmission of necessary information to a foreign authority in the context of prudential supervision shall be done via the parent undertaking or the shareholder or member subject to this same supervision. However, the transmission of necessary information to the European Central Bank, the European Securities and Markets Authority, the European Banking Authority or the European Insurance and Occupational Pensions Authority for the purpose of the prudential supervision may be carried out directly to the institution or the above-mentioned EU agency where the laws and regulations applicable in Luxembourg authorise them to request that information directly from the person established in Luxembourg.

(4) The obligation of secrecy does not exist towards the shareholders or members, whose quality is a condition for the authorisation of the relevant payment institution or electronic money institution, insofar as the information communicated to these shareholders or members is strictly necessary for the assessment of consolidated risks or the calculation of consolidated prudential ratios or the sound and prudent management of the payment institution or electronic money institution.

The payment institution or electronic money institution belonging to a financial group shall guarantee their internal control bodies of the group access, where necessary, to information concerning specific business relationships, insofar as this information is necessary to the overall management of legal and reputational risks related to money laundering or terrorist financing under Luxembourg law."[125]

(…)[126]

(6) The obligation of secrecy does not affect entities belonging to a financial conglomerate regarding information that these entities may exchange among each other "or provide to the European Supervisory Authorities, where necessary, through the Joint Committee of European Supervisory Authorities in accordance with Article 35 of Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010 and Regulation (EU) No 1095/2010 respectively,"[127] insofar as the information is necessary for the exercise of supplementary supervision as referred to in Chapter 3b of Part III of the Law of 5 April 1993 on the financial sector, as amended.

(7) Subject to the rules applicable in penal matters, once any information of the kind referred to in paragraph 1 has been disclosed, it may not be used for any purposes other than those for which its disclosure is permitted by law.

(8) No person bound by the obligation of secrecy referred to in paragraph 1 who lawfully discloses any information covered by that obligation shall, by reason of that disclosure alone, incur any criminal responsibility or civil liability.

(9) For payment institutions which undertake, in accordance with Article 10(1), point (c), activities other than the provision of payment services, the obligation of secrecy laid down in this article only applies to their payment services activities including activities listed in Article 10(1), points (a) and (b).

(10) For electronic money institutions which undertake, in accordance with Article 24-6(1), point (e), business activities other than the issuance of electronic money, the obligation of secrecy laid down in this article only applies to their activities related to issuance of electronic money and their payment services activities including activities listed in Article 24-6(1), points (a) to (d).

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[125] Law of 27 February 2018
[126] Law of 27 February 2018
[127] Law of 27 February 2018

(Law of 27 February 2018)

"(11) The violation of the obligation of professional secrecy shall remain punishable even when the function, mandate, employment or exercise of the profession ended."

(Law of 27 February 2018)

"(12) This article shall be without prejudice to the Law of 2 August 2002 on the protection of individuals with regard to the processing of personal data, as amended."

Section 2: Supervision of payment institutions and electronic money institutions

Sub-section 1: Competent authorities

Article 31 – Competent authorities

(1) The Minister responsible for the CSSF is the competent authority for the granting of authorisations to payment institutions and electronic money institutions. The CSSF is the competent authority for the supervision of payment institutions and electronic money institutions.

(2) The supervision undertaken by the CSSF over payment institutions shall not imply that the CSSF is required to supervise business activities of the payment institutions other than the provision of payment services listed in the Annex and the activities listed in Article 10(1), point (a).

Without prejudice to the preceding subparagraph, the CSSF may require payment institutions which manage payment systems in accordance with Article 10(1), point (b), or which provide business activities other than the provision of payment services in accordance with Article 10(1), point (c), to provide any information which is relevant for the exercise of its supervisory mission.

(2a) The supervision undertaken by the CSSF over electronic money institutions shall not imply that the CSSF is required to supervise business activities of the electronic money institutions other than the issuance of electronic money, other than the provision of payment services listed in Article 24-6(1), point (a), and other than the activities referred to in Article 24-6(1), points (b) and (c).

Without prejudice to the preceding subparagraph, the CSSF may require electronic money institutions which manage payment systems in accordance with Article 24-6(1), point (d), or which provide business activities other than the issuance of electronic money in accordance with Article 24-6(1), point (e), to provide any information which is relevant for the exercise of its supervisory mission.

(3) The CSSF shall exercise its powers of prudential supervision exclusively in the public interest. Where the public interest so warrants, it may publish its decisions.

(4) For the purposes of application of the present Law, the CSSF shall be given all supervisory and investigatory powers for the exercise of its functions.

The powers of the CSSF include the right to:

– require from payment institutions and electronic money institutions, their branches, agents or entities to which activities are outsourced, any information which is relevant for the exercise of its tasks "specifying the purpose of the request, as appropriate, and the time limit by which the information is to be provided"[128];

– inspect books, accounts, registers or other deeds and documents of payment institutions and electronic money institutions, their branches, agents or entities to which activities are outsourced;

– carry out on-site inspections of payment institutions and electronic money institutions, their branches, agents or entities to which activities are outsourced;

– order the cessation of any practice contrary to the provisions of the present Law;

– request the freezing and/or sequestration of assets with the President of the *Tribunal d'arrondissement* (District Court) of Luxembourg deciding on request;

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– impose temporary prohibition of professional activities with respect to payment institutions and electronic money institutions, as well as members of the administrative, executive or management bodies, employees and agents of these persons;

– require the *réviseurs d'entreprises agréés* (approved statutory auditors) of payment institutions and electronic money institutions to provide information;

– adopt any type of measure necessary to ensure that payment institutions and electronic money institutions continue to comply with the requirements of the present Law;

– refer information to the State prosecutor for criminal prosecution;

– require the *réviseurs d'entreprises agréés* (approved statutory auditors) or experts to carry out on-site verifications or investigations of payment institutions and electronic money institutions, their branches, agents or entities to which activities are outsourced;

– issue recommendations, guidelines and, if applicable, binding administrative provisions;

– request the withdrawal of the authorisation in cases referred to in Article 20 and 24-14;

– verify the permanent compliance with the conditions for exemption laid down in Articles 48 and 48-1.

(5) For the purposes of application of this Law, the CSSF shall undertake compliance checks which are proportionate, adequate and responsive to the risks to which payment institutions and electronic money institutions are exposed.

Article 32 – Professional secrecy of the CSSF

(1) All persons who work or have worked for the CSSF, as well as any *réviseurs d'entreprises agréés* (approved statutory auditors) or experts instructed by the CSSF, are bound by the obligation of professional secrecy referred to in Article 16 of the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended. This secrecy implies that no confidential information which they may receive in the course of their duties may be divulged to any person or authority whatsoever, except in summary or collective form, such that individual payment institutions or individual electronic money institutions cannot be identified, without prejudice to cases covered by criminal law.

(2) In the exchange of information in accordance with Article 33, professional secrecy shall be strictly applied to ensure the protection of the rights of individuals and businesses.

(3) Where a payment institution or an electronic money institution is undergoing a financial reconstruction or liquidation procedure, the CSSF, as well as the *réviseurs d'entreprises agréés* (approved statutory auditors) or experts instructed by the CSSF, may divulge confidential information which does not concern third parties in civil or commercial proceedings under the condition that it is necessary for carrying out those proceedings.

(4) The receipt, exchange and transmission of confidential information by the CSSF pursuant to this Law are subject to the conditions laid down in this article.

(5) Communication of information by the CSSF authorised under the present Law is subject to the following conditions:

– the information transmitted to public authorities of a Member State or of a third country responsible for the authorisation or supervision of payment institutions, electronic money institutions, credit institutions, investment firms, insurance undertakings or reinsurance undertakings are necessary for the purpose of performing the supervisory task of the receiving authorities;

– the information communicated by the CSSF must be covered by the professional secrecy of the authorities referred to in the first indent, other authorities, bodies and persons receiving it and the professional secrecy imposed on those authorities, bodies and persons must provide safeguards at least equivalent to those inherent in the professional secrecy incumbent on the CSSF;

– the authorities referred to in the first indent, other authorities, bodies and persons receiving information from the CSSF, must use this information only for the purposes for which it has been communicated to them and must be in a position to ensure that no other use is made thereof;

– the authorities referred to in the first indent, other authorities, bodies and persons of a third country receiving information from the CSSF afford the same right to information to the CSSF;

– information received from the authorities referred to in the first indent, other authorities, bodies or persons may be disclosed only with the express consent of those competent authorities, bodies and persons and, as the case may be, solely for the purposes for which those competent authorities, bodies and persons have given their consent, except in duly justified circumstances.

(6) Without prejudice to cases covered by criminal law, the CSSF may use confidential information received pursuant to the present Law only for the exercise of functions within the scope of the present Law, for the imposition of a sanction or in the context of administrative or judicial proceedings specifically related to the exercise of those functions.

However, the CSSF may use the information received for other purposes where the authority, body or person having transmitted the information consents thereto.

Article 33 – Cooperation and exchange of information of the CSSF

(1) The CSSF shall cooperate with the public authorities of the different Member States responsible for the authorisation and supervision of payment institutions or electronic money institutions, and, where appropriate, with "the EBA,"[129] the European Central Bank, the Banque centrale du Luxembourg and national central banks of other Member States in their capacity as monetary and oversight authorities of payment or securities settlement systems whenever necessary for the purpose of carrying out their respective duties.

(2) The CSSF may exchange with:

(a) the public authorities of a Member State or of a third country responsible for the authorisation or supervision of payment institutions, electronic money institutions, credit institutions, investment firms, insurance undertakings or reinsurance undertakings;

(b) the European Central Bank, the Banque centrale du Luxembourg and the national central banks of Member States and of third countries, in their capacity as monetary and oversight authorities of payment or securities settlement systems, and, where appropriate, other public authorities responsible for the oversight of payment or securities settlement systems.

(c) the competition authorities in the Member States, other relevant authorities designated under "Directive (EU) 2015/2366 or Directive (EU) 2015/849"[130];

(d) the persons responsible for the statutory audits of the accounts of payment institutions and electronic money institutions and, where appropriate, persons responsible for the statutory audit of the consolidated accounts which include the accounts of the payment institutions or electronic money institutions;

(e) the authorities responsible for the supervision of those persons responsible for the statutory audits of the accounts of payment institutions and electronic money institutions and, where appropriate, of those persons responsible for the statutory audit of the consolidated accounts which include the accounts of the payment institutions or electronic money institutions;

(f) the bodies involved in the liquidation, bankruptcy or similar procedures concerning payment institutions, electronic money institutions, credit institutions, PFS, insurance undertakings or reinsurance undertakings;

(g) the authorities responsible for the supervision of the bodies involved in the liquidation, bankruptcy or similar procedures concerning payment institutions, electronic money institutions, credit institutions, PFS, insurance undertakings or reinsurance undertakings;

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"h) the EBA, in its capacity of contributing to the consistent and coherent functioning of supervising mechanisms as referred to in letter (a) of Article 1(5) of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and

[129] Law of 20 July 2018
[130] Law of 20 July 2018

repealing Commission Decision 2009/78/EC, hereinafter referred to as "Regulation (EU) No 1093/2010"."

information which is relevant to the exercise of their duties.

(Law of 20 July 2018)

"Article 33-1 – Settlement of disagreements between the CSSF and the competent authorities of another Member State

(1) Where the CSSF considers that, in a particular matter, cross-border cooperation with competent authorities of another Member State referred to in Article 26, 28, 29, 30 or 31 of Directive (EU) 2015/2366 does not comply with the relevant conditions set out in those provisions, it may refer the matter to the EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010.

(2) Where the EBA has been requested to assist pursuant to Article 27 of Directive (EU) 2015/2366, the CSSF shall defer its decision pending resolution under Article 19 of Regulation (EU) No 1093/2010."

Sub-section 2: Supervision of payment institutions and electronic money institutions providing payment services or issuing electronic money abroad

Article 34 – Supervision of payment institutions and electronic money institutions providing payment services or issuing electronic money in several Member States

(1) Supervision by the CSSF, in its capacity as home Member State, of a payment institution or an electronic money institution for which the home Member State is Luxembourg, also covers the activities carried out by the payment institution or the electronic money institution in a different Member State, either through the establishment of a branch or through the engagement of an agent for the provision of services.

(2) The supervision of a payment institution or an electronic money institution for which the home Member State is a Member State other than Luxembourg, including the supervision of the payment services provided or the activities related to issuance of electronic money carried out in Luxembourg in accordance with Articles 21 or 24-15, shall be the responsibility of the competent authorities of the home Member State, without prejudice to those provisions of this Law providing for the responsibility of the CSSF in its capacity as competent authority of the host Member State.

(3) Where a payment institution or an electronic money institution for which the home Member State is Luxembourg engages agents situated in another Member State, holds branches situated in another Member State or outsources activities to entities situated in another Member State, the CSSF, in its capacity as competent authority of the home Member State shall cooperate with the competent authorities in the host Member State in order to be able to carry out the controls and take the necessary steps provided for in Article 31 in respect of the agent, branch or entity to which activities are outsourced.

(4) Where a payment institution or electronic money institution for which the home Member State is a Member State other than Luxembourg engages agents situated in Luxembourg, has branches situated in Luxembourg or outsources activities to entities situated in Luxembourg, the CSSF, in its capacity as competent authority of the host Member State shall cooperate with the competent authorities in the home Member State in order to enable them to carry out the controls and take the necessary steps provided for "in Article 23 of Directive (EU) 2015/2366"[131] in respect of the agent, branch or entity to which activities are outsourced.

(5) As far as the cooperation provided in paragraph 3 is concerned, the CSSF, in its capacity as competent authority of the home Member State may, after informing the competent authority of the host Member State, carry out itself or through the intermediary of persons it appoints for that purpose an on-site inspection within the territory of the host Member State.

The CSSF is also entitled to request the competent authority of the host Member State to undertake such an on-site inspection.

[131] Law of 20 July 2018

(6) As far as the cooperation laid down in paragraph 4 is concerned, the competent authority of the home Member State may, after informing the CSSF, carry out itself or through the intermediary of persons it appoints for that purpose an on-site inspection in Luxembourg.

The competent authority of the home Member State may also request the CSSF to carry out such on-site inspection. Where the CSSF responds to such request, it may carry out the on-site inspection itself or appoint to this end at the expense of the relevant institution, a *réviseur d'entreprises agréé* (approved statutory auditor) or expert.

(Law of 20 July 2018)

"(6a) The CSSF, in its capacity as competent authority of the host Member State, may require that payment institutions and electronic money institutions for which the home Member State is a Member State other than Luxembourg and which have agents or branches on Luxembourg territory shall report to the CSSF periodically on the activities carried out in Luxembourg.

Such reports shall be required for information or statistical purposes and, as far as the agents and branches conduct payment service business under the right of establishment, to monitor compliance with Titles III and IV of this Law. Such agents and branches shall be subject to professional secrecy requirements referred to in Article 32."

(7) Where a payment institution or electronic money institution for which the home Member State is Luxembourg engages agents situated in another Member State, holds branches situated in another Member State or outsources activities to entities situated in another Member State, the CSSF, in its capacity as competent authority of the home Member State shall exchange with the competent authorities in the host Member State all essential or relevant information, in particular where an offence has taken place or is suspected to have taken place by an agent, branch or entity. "In that regard, the CSSF shall communicate, upon request, all relevant information and, on its own initiative, all information essential to the supervision performed by the competent authorities of the host Member State of such agents or branches. The same applies where an infringement or suspected infringement occurs in the context of the exercise of the freedom to provide services."[132]

(8) Where a payment institution or electronic money institution for which the home Member State is a Member State other than Luxembourg engages agents situated in Luxembourg, holds branches in Luxembourg or outsources activities to entities situated in Luxembourg, the CSSF, in its capacity as competent authority of the host Member State, shall exchange with the competent authorities in the home Member State all essential or relevant information, in particular where an offence has taken place or is suspected to have taken place by an agent, branch or entity. In this regard, the CSSF shall communicate, upon request, all relevant information and, on its own initiative, all information essential to the supervision performed by the competent authorities of the home Member State of such payment institution or electronic money institution. "The same applies where an infringement or suspected infringement occurs in the context of the exercise of the freedom to provide services."[133]

"(9) Payment institutions and electronic money institutions operating in Luxembourg through agents, the head office of which is situated in another Member State, shall appoint a central contact point in Luxembourg. The contact point shall ensure adequate communication and information reporting on compliance with Titles III and IV, without prejudice to the provisions of the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended. It shall provide the CSSF and the competent authorities of the home Member State with documents and information on request in order to facilitate supervision."[134]

Article 35 – Supervision of payment institutions and electronic money institutions providing payment services or issuing electronic money in third countries

Supervision by the CSSF of a payment institution or electronic money institution or electronic money institution for which the home Member State is Luxembourg, also covers the activities carried out by this payment institution or electronic money institution in a third country, either through the establishment of a branch or through the engagement of an agent as well as through the provision of services.

[132] Law of 20 July 2018
[133] Law of 20 July 2018
[134] Law of 20 July 2018

(Law of 20 July 2018)

"Article 35-1 – Precautionary measures

(1) Where the CSSF, in its capacity as competent authority of the host Member State, ascertains that a payment institution or electronic money institution having one or more agents or branches in Luxembourg does not comply with Title II of Directive (EU) 2015/2366 and Titles III and IV of this Law, it shall inform the competent authority of the home Member State thereof without delay.

(2) The CSSF may, in emergency situations, where immediate action is necessary to address a serious threat to the collective interests of the payment service users or the electronic money holders in Luxembourg, take precautionary measures, in parallel to the cross-border cooperation between competent authorities and pending measures by the competent authorities of the home Member State as set out in Article 29 of Directive (EU) 2015/2366.

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

Any precautionary measures under the first subparagraph shall be appropriate and proportionate to their purpose to protect against a serious threat to the collective interests of the payment service users or the electronic money holders in Luxembourg. They shall not result in a preference for payment service users or electronic money holders in Luxembourg over payment service users or electronic money holders of the payment institution or electronic money institution in other Member States.

Any precautionary measures under the first subparagraph shall be temporary and shall be terminated when the serious threats identified are addressed, including with the assistance of or in cooperation with the home Member State's competent authorities or with the EBA, in accordance with Article 27(1) of Directive (EU) 2015/2366 and Article 33-1 of this Law.

(3) Where the CSSF acts as competent authority of the home Member State, it shall, without undue delay, after having evaluated the information received by the competent authority of the host Member State pursuant to the second subparagraph of Article 30(1) of Directive (EU) 2015/2366, take all appropriate measures to ensure that the payment institution or the electronic money institution concerned puts an end to its irregular situation.

The CSSF shall communicate those measures without delay to the competent authority of the host Member State and to the competent authorities of any other Member State concerned."

Sub-section 3: Instruments of supervision

Article 36 – Registration "in Luxembourg"[135] and protection of the title

(1) The CSSF holds the public register of payment institutions and electronic money institutions authorised in Luxembourg, including their agents and branches "if they provide payment services or issue electronic money in a Member State other than Luxembourg"[136], as well as natural or legal persons, including their agents (…)[137] in Luxembourg, which benefit from an exemption in accordance with Article 48 or 48-1. To this end, the competent Minister issues the CSSF a copy of the decisions for authorisation, withdrawal and the granting of a waiver. "In addition, the CSSF shall keep the public register of natural and legal persons referred to in Article 48-1a, including their agents."[138]

These registers shall identify the payment services for which the payment institution or electronic money institution is authorised or for which the person benefiting from an exemption in accordance with Article "48, 48-1 or 48-1a"[139] has been registered. Authorised payment institutions and authorised electronic money institutions shall be listed in the registers separately from natural and legal persons that have been registered in accordance with Article "48, 48-1 or 48-1a"[140].

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[135] Law of 20 July 2018
[136] Law of 20 July 2018
[137] Law of 20 July 2018
[138] Law of 20 July 2018
[139] Law of 20 July 2018
[140] Law of 20 July 2018

These registers are open to "public"[141] consultation, accessible on the CSSF's website and updated regularly "without delay"[142]. They are published in the Mémorial (Luxembourg Official Journal) at least at every year-end.

(2) No person shall put their listing in a public register and supervision by the CSSF to a commercial use.

(Law of 20 July 2018)

"(3) The CSSF shall enter in the public registers any withdrawal of authorisation of a payment institution or electronic money institution and any withdrawal of a natural or legal person benefiting from the exemption under Article 48, 48-1 or 48-1a.

The CSSF shall notify the EBA of the reasons for the withdrawal of any authorisation and of any exemption pursuant to Article 48, 48-1 or 48-1a.

(4) The CSSF shall, without delay, notify the EBA of the information entered in its public registers in accordance with paragraph 1.

The CSSF shall be responsible for the accuracy of the information specified in the first subparagraph and for keeping that information up-to-date."

Article 37 – Relationship between the CSSF and the *réviseurs d'entreprises agréés* (approved statutory auditors)

(1) Every payment institution and every electronic money institution authorised in Luxembourg which must have its accounts audited by a *réviseur d'entreprises agréé* (approved statutory auditor), must spontaneously communicate to the CSSF the reports […][143] and written comments issued by the *réviseur d'entreprises agréé* (approved statutory auditor) in the framework of its control of the annual accounting documents.

(2) The CSSF may request a *réviseur d'entreprises agréé* (approved statutory auditor) to carry out an inspection of one or several specific aspects of the workings and payment services activities of payment institutions or of the workings and electronic money issue and payment services activities of an electronic money institution. This inspection shall be carried out at the expense of the relevant payment institution or electronic money institution.

(Law of 21 December 2012)

"(3) The CSSF may set rules regarding the scope of the mandate for the audit of the annual accounting documents and separate accounting information provided for in Articles 19(2) and (3) and 24-13(2) and (3) and regarding the content of the reports and written comments of the *réviseur d'entreprises agréé* (approved statutory auditor) as referred to in paragraph 1 of this article, without prejudice to the legal provisions governing the content of the statutory auditor's report."

(4) The *réviseur d'entreprises agréé* (approved statutory auditor) is required to notify the CSSF without delay of any fact or decision of which he becomes aware during the course of his audit of the annual accounting documents of a payment institution or an electronic money institution or another statutory mission, where this fact or decision:

- relates to the payment institution or electronic money institution, and
- is such as to:
  - constitute a material infringement of the provisions of the present Law, or
  - affect the continuous functioning of the payment institution or electronic money institution, or
  - entail the refusal of the certification of accounts or the expression of reservations thereon.

The *réviseur d'entreprises agréé* (approved statutory auditor) is also required, in the course of carrying out his mission laid down in the previous subparagraph for a payment institution or an electronic money institution, to notify the CSSF without delay of any fact or decision relating to that payment institution or electronic money institution which complies with the criteria listed in the

[141] Law of 20 July 2018
[142] Law of 20 July 2018
[143] Law of 21 December 2012

previous subparagraph, of which he becomes aware during the course of his audit or other statutory mission for a different company with close links to this payment institution or electronic money institution.

(5) The disclosure in good faith to the CSSF, by a *réviseur d'entreprises agréé* (approved statutory auditor) of any fact or decision referred to in paragraph 4 shall not constitute an infringement of the obligation of professional secrecy nor of any restriction on disclosure of information imposed by contract and shall not involve such *réviseur d'entreprises agréé* (approved statutory auditor) in liability of any kind.

Article 38 – Power of injunction and suspension of the CSSF

(1) Where a payment institution or electronic money institution, including its agents, for which the home Member State is Luxembourg does not comply with the legal, regulatory or statutory provisions governing the payment services activity and the activities referred to in Article 10(1), point (a), or governing the activity of issuance of electronic money and the activities referred to in Article 24-6(1), points (a) to (c), or where its management or financial situation does not offer sufficient guarantees to honour its commitments, the CSSF shall, by way of registered letter, order this payment institution or electronic money institution or, where appropriate, its agent to remedy the situation found to exist or to cease any practice contrary to the legal, regulatory or statutory provisions governing the payment activity and the activities referred to in Article 10(1), point (a), or governing the activity of issuance of electronic money and the activities referred to in Article 24-6(1), points (a) to (c), within such period as it may prescribe.

(2) In application of the previous paragraph, if the situation has not been remedied by the end of the period prescribed by the CSSF, the CSSF may:

(a) suspend the members of the administrative, executive or management bodies or any other persons who, by their actions, negligence or lack of prudence brought about the situation found to exist or whose continued exercise of functions may prejudice the implementation of recovery or reorganisation measures;

(b) suspend the exercise of voting rights attached to shares or units held by shareholders or members whose influence is likely to operate to the detriment of the prudent and sound management of the payment institution, electronic money institution or agent;

(c) suspend the pursuit of payment service business by the payment institution or the agent or, if the situation found to exist concerns a particular area of payment services or activity referred to in Article 10(1), point (a), the pursuit of such payment service or such activity.

(d) suspend the pursuit of issuance of electronic money or payment service business by the electronic money institution or the agent or, if the situation found to exist concerns a particular area of payment services or activity referred to in Article 24-6(1), point (a) to (c), the pursuit of such payment service or such activity.

(3) Decisions adopted by the CSSF pursuant to the preceding paragraph shall take effect *vis-à-vis* the relevant payment institution, electronic money institution or agent from the date on which they are notified by registered letter or served by a process-server.

(4) Where, on account of a suspension ordered pursuant to paragraph 2, an administrative, executive or management body no longer has the minimum number of members prescribed by law or by the articles of association, the CSSF shall fix, by registered letter, the period within which the payment institution, electronic money institution or agent concerned has to provide for the replacement of the suspended persons.

(5) If, by the end of that period, the suspended persons have not been replaced, they shall be provisionally replaced by persons appointed by the President of the Luxembourg *Tribunal d'arrondissement* (District Court) ruling at the request of the CSSF, after the payment institution, electronic money institution or agent in question has been duly heard or called upon. The persons thus appointed shall have the same powers as the persons whom they replace. Their mandate may not exceed the duration of the suspension of the latter persons. Their fees shall be taxed by the judge appointing them and shall, together with all other expenses occasioned in pursuance of this article, be borne by the payment institution, electronic money institution or agent in question.

(6) The CSSF may disclose to the public any measure taken pursuant to paragraphs 1 and 2, unless such disclosure would cause disproportionate damage to the parties involved.

Section 3: Insolvency proceedings

Article 39 – Applicable law

Unless otherwise stipulated by the present Law, payment institutions and electronic money institutions authorised in Luxembourg are subject to the procedures relating to controlled management schemes and bankruptcy in accordance with Book III of the Commercial Code (*Code de commerce*) and the provisions of the Grand-ducal Regulation of 24 May 1935 supplementing the legislation relating to suspensions of payments, court-approved compositions and arrangements with creditors aimed at preventing bankruptcy and bankruptcy following on from the setting-up of a controlled management scheme.

Sub-section 1: Controlled management schemes

Article 40 – The setting-up of a controlled management scheme for payment institutions authorised in Luxembourg and which do not undertake business activities other than the provision of payment services in accordance with Article 10(1), point (c), and for electronic money institutions authorised in Luxembourg and which do not undertake business activities other than the issuance of electronic money and other payment service provisions in accordance with Article 24-6(1)

(1) Only the CSSF, the payment institution or the electronic money institution can apply to the *Tribunal* to request a controlled management scheme.

(2) The reasoned application, duly supported by documentary evidence, shall be lodged with the court registry.

(3) Where the application is made by the payment institution or electronic money institution, it shall, under penalty of inadmissibility of the application, inform the CSSF prior to bringing the matter before the *Tribunal*. The court registry certifies the day and time when the application is lodged and immediately informs the CSSF thereof.

(4) Where the application is made by the CSSF, it shall serve it on the payment institution or electronic money institution by means of service of a process-server. The record of service by process-server is exempt from stamp duty and registration fees and from the formality of registration.

(5) The lodgement of the application by the payment institution or electronic money institution, or, where it is brought by the CSSF, the service thereof shall automatically bring about, in favour of the payment institution or electronic money institution and pending a final decision on the application, a suspension of all payments by that payment institution or electronic money institution and a prohibition, under penalty of nullification, of all acts other than precautionary measures unless authorised by the CSSF or by any contrary legal provision.

(6) Payments, transactions and other acts, including those relating to the furnishing by a payment institution or electronic money institution of collateral and the realisation of such collateral, shall be valid and enforceable as against third parties, as against the payment institution, electronic money institution and as against the receivers, provided that such payments, transactions and acts were effected prior to the *Tribunal*'s decision to appoint a judge or were effected without the beneficiary being aware of such appointment.

(7) The *Tribunal* shall adjudicate speedily on the application, at a hearing in open court taking place on a date and at a time previously communicated to the parties. If the *Tribunal* receives observations from the CSSF, and if it considers that it has sufficient information, it shall give its ruling forthwith in open court without hearing the CSSF and the payment institution or electronic money institution. If the CSSF has not submitted observations and the *Tribunal* considers it necessary, it shall call upon the CSSF and the payment institution or electronic money institution, through the court registry, to appear before it no later than three days after lodgement of the application. It shall hear them in the *Chambre du conseil* and shall deliver its ruling in open court. The judgment shall state the time at which it was delivered.

(8) The court registry shall forthwith inform the CSSF and the Banque centrale du Luxembourg of the essential content of the judgment.

It shall notify the judgment to the CSSF, to the Banque centrale du Luxembourg and to the payment institution or electronic money institution by registered post.

(9) No application may be brought by any of the parties or by any third party to set aside the judgment on the grounds of its having been given in default or in the absence of any party, even where it is

delivered without any hearing of the parties or any of them. It shall be immediately enforceable on the authority of the original thereof, prior to registration and without the furnishing of any security, notwithstanding any appeal.

(10) The CSSF and the payment institution or electronic money institution may appeal against the judgment within fifteen days from notification thereof in accordance with paragraph 8, by notice of appeal lodged with the court registry. Any such appeal shall be determined as a matter of urgency by one of the chambers of the *Cour Supérieure de Justice* (High Court of Justice) dealing with civil and commercial matters. The parties to the appeal shall not be required to appear through counsel. The parties shall be called upon, by the court registry of the *Cour Supérieure de Justice* (High Court of Justice), to appear before it within a period not exceeding eight days. The parties shall be heard in the *Chambre du conseil*. The *Cour Supérieure de Justice* (High Court of Justice) shall adjudicate on the application, at a hearing in open court taking place on a date and at a time previously communicated to the parties.

This decision shall not be appealable in cassation (*pourvoi en cassation*).

(11) Where any party fails to appear, no application may be brought to set aside the appellate judgment.

(12) The *Tribunal* may limit the scope of transactions which are subject to such authorisation. The receiver can submit for deliberation by the bodies of the payment institution or electronic money institution any proposal which they deem expedient.

(13) Any dispute arising between the bodies of the payment institution or electronic money institution and the receivers shall be determined by the *Tribunal* upon application by one of the parties. The parties shall be heard in *Chambre du conseil*. The decision of the *Tribunal* is final.

(14) The CSSF shall automatically act as receiver until the delivery of the first-instance judgment on the application laid down in paragraph 2.

(15) Upon request by the CSSF, the payment institution, electronic money institution or the receivers, the *Tribunal* may alter the detailed terms of any first-instance judgment delivered pursuant to this article.

(16) Any deeds or documents which may enlighten the *Tribunal* in its consideration of the application may be produced or lodged without needing first to be endorsed with an official stamp and without needing to undergo the formality of registration. Orders, judgments and decisions given in proceedings for controlled management schemes shall be exempt from stamp duties and registration fees.

Article 41 – The effects of a controlled management scheme for payment institutions authorised in Luxembourg and which undertake business activities other than the provision of payment services in accordance with Article 10(1), point (c), and for electronic money institutions authorised in Luxembourg and which undertake business activities other than the issuance of electronic money and other payment service provisions in accordance with Article 24-6(1)

(1) Payments, transactions and other acts, including those relating to the furnishing by a payment institution or electronic money institution of collateral and the realisation of such collateral, shall be valid and enforceable as against third parties, as against the payment institution, electronic money institution and as against the receivers, provided that such payments, transactions and acts were effected prior to the *Tribunal*'s decision to appoint a judge or were effected without the beneficiary being aware of such appointment.

(2) The court registry immediately informs the CSSF of the day and time when the application was lodged and it shall call upon the CSSF and the payment institution or electronic money institution to appear before it no later than three days after lodgement of the application. It shall hear them in *Chambre du conseil* and shall deliver its ruling in open court.

The judgment shall state the time at which it was delivered.

The court registry shall forthwith inform the CSSF and the Banque centrale du Luxembourg of the essential content of the judgment deciding on the controlled management scheme. It shall notify the judgment to the CSSF, to the Banque centrale du Luxembourg and to the payment institution or electronic money institution by registered post.

Sub-section 2: Voluntary liquidation and bankruptcy

Article 42 – Voluntary liquidation

(1) A payment institution or electronic money institution authorised in Luxembourg may place itself in voluntary liquidation only after notifying the CSSF of its intention to do so, at least one month before the calling of the general meeting which shall decide on such winding-up. The notice calling such meeting shall contain the agenda and shall be given by means of announcements "lodged with the trade and companies register and published"[144] twice, on dates at least eight days apart and no later than eight days before the meeting, in the "Recueil électronique des sociétés et associations (electronic digest of companies and associations)"[145] and in at least two Luxembourg newspapers and one foreign newspaper having a sufficiently large circulation; the failure to comply with these provisions shall render such notice null and void.

(2) A voluntary winding-up decision shall not preclude the CSSF or the State prosecutor from applying to the *Tribunal* for an order declaring applicable the procedure for bankruptcy as provided for in Articles 43 and 44.

Article 43 – The procedure for bankruptcy of payment institutions authorised in Luxembourg and which do not undertake business activities other than the provision of payment services in accordance with Article 10(1), point (c), and of electronic money institutions authorised in Luxembourg and which do not undertake business activities other than the issuance of electronic money and other payment service provisions in accordance with Article 24-6(1)

(1) Without prejudice to the petition for bankruptcy by the payment institution or electronic money institution, only the CSSF or the State prosecutor, the CSSF having been duly heard, can ask the *Tribunal* to pronounce the bankruptcy of the payment institution or electronic money institution.

(2) The *Tribunal* shall adjudicate speedily on the application, at a hearing in open court taking place on a date and at a time previously communicated to the parties. The *Tribunal* shall call upon the payment institution or electronic money institution, the CSSF and the State prosecutor, through the court registry. It shall hear them in *Chambre du conseil* and shall deliver its ruling in open court. The judgment shall state the time at which it was delivered.

(3) The court registry shall forthwith inform the CSSF and the Banque centrale du Luxembourg of the essential content of the judgment. It shall notify the judgment to the CSSF, to the Banque centrale du Luxembourg and to the payment institution or electronic money institution by registered post.

(4) Payments, transactions and other acts, including those relating to the furnishing by a payment institution or electronic money institution of collateral and the realisation of such collateral granted by a payment institution or electronic money institution, shall be valid and enforceable as against third parties and as against the receivers, provided that such payments, transactions and acts were effected prior to the delivery of the judgment or were effected without knowledge of the bankruptcy.

(5) No application may be brought by any of the parties or by any third party to set aside the judgment declaring the bankruptcy. It shall be immediately enforceable on the authority of the original thereof, prior to registration and without the furnishing of any security, notwithstanding any appeal.

(6) Only the CSSF, the State prosecutor and the payment institution or electronic money institution can appeal by notice of appeal lodged with the court registry. The time limit for an appeal is 15 days from the notification of the judgment in accordance with paragraph 3. Any such appeal shall be determined as a matter of urgency by one of the chambers of the *Cour Supérieure de Justice* (High Court of Justice) dealing with civil and commercial matters. The parties to the appeal shall not be required to appear through counsel. The parties shall be called upon, by the court registry of the *Cour Supérieure de Justice* (High Court of Justice), to appear before it within a period not exceeding eight days. The parties shall be heard in the *Chambre du conseil*. The *Cour Supérieure de Justice* (High Court of Justice) shall adjudicate on the application, at a hearing in open court taking place on a date and at a time previously communicated to the parties.

(7) Where any party fails to appear, no application may be brought to set aside the appellate judgment.

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[144] Law of 27 May 2016
[145] Law of 27 May 2016

Article 44 – The procedure for bankruptcy of payment institutions authorised in Luxembourg and which undertake business activities other than the provision of payment services in accordance with Article 10(1), point (c), and of electronic money institutions authorised in Luxembourg and which undertake business activities other than the issuance of electronic money and other payment service provisions in accordance with Article 24-6(1)

(1) Payments, transactions and other acts, including those relating to the furnishing by a payment institution or electronic money institution of collateral and the realisation of such collateral granted by a payment institution or electronic money institution, shall be valid and enforceable as against third parties and as against the receivers, provided that such payments, transactions and acts were effected prior to the delivery of the judgment or were effected without knowledge of the bankruptcy.

(2) The court registry of the *Tribunal* immediately informs the CSSF of the lodging of the admission and of any decision on bankruptcy and it shall call upon the payment institution or electronic money institution, the CSSF and the State prosecutor to appear before it. It shall hear them in the *Chambre du conseil* and shall deliver its ruling in open court. The judgment shall state the time at which it was delivered.

The court registry of the *Tribunal* shall forthwith inform the CSSF and the Banque centrale du Luxembourg of the essential content of the judgment deciding on the bankruptcy. It shall notify the judgment to the CSSF, to the Banque centrale du Luxembourg and to the payment institution or electronic money institution by registered post.

Article 45 – Withdrawal of authorisation of a payment institution or electronic money institution

(1) In case of bankruptcy of a payment institution or electronic money institution, its authorisation shall be withdrawn. If the authorisation is withdrawn, the CSSF shall inform the competent authorities of the States in which the payment institution or electronic money institution has branches or engages agents of such withdrawal.

(2) The withdrawal of authorisation provided for in the preceding paragraph shall not prevent the receiver(s) from carrying on some of the payment institution's or electronic money institution's activities insofar as that is necessary or appropriate for the purposes of bankruptcy. Such activities shall be carried on with the consent and under the control of the CSSF.

Section 4: Sanctions

Article 46 – Administrative fines

(1) An administrative fine of between EUR 125 and EUR 12,500 may be imposed by the CSSF on persons responsible for the administration or management of payment institutions and electronic money institutions authorised in Luxembourg and persons responsible for the administration or management of agents of these payment institutions and electronic money institutions in the event that:

- as regards payment institutions, they do not comply with the legal, regulatory or statutory provisions governing the payment activity and the activities referred to in Article 10(1), point (a);
- as regards electronic money institutions, they do not comply with the legal, regulatory or statutory provisions governing the activity of issuance of electronic money and the activities referred to in Article 24-6(1), points (a) to (c);
- they refuse to provide accounting documents or other requested information;
- they have provided documentation or other information that proves to be incomplete, incorrect or false;
- they hinder the performance of the powers of supervision and inspection of the CSSF;
- they contravene the rules governing publication of balance sheets and accounts;
- they fail to act in response to injunctions of the CSSF;
- they act such as to jeopardise the sound and prudent management of the payment institution or electronic money institution concerned.

(2) An administrative fine of between EUR 125 and EUR 12,500 may be imposed by the CSSF on persons responsible for the management of branches and agents set up in Luxembourg by payment institutions or electronic money institutions for which the home Member State is a Member State other than Luxembourg, natural persons benefiting from a waiver under Article 48 and persons responsible for the administration or the management of legal persons, including their

branches and their agents, benefiting from a waiver under Article 48 or Article 48-1 in case they do not comply with the provisions under Title II, Chapter 4, and Titles III and IV of this Law.

(3) The CSSF may disclose to the public the administrative fines issued pursuant to this article, unless such disclosure would cause disproportionate damage to the parties involved.

(4) The decision to impose a fine may be referred to the *Tribunal administratif* (Administrative Tribunal) which deals with the substance of the case. The case shall be filed within one month.

Article 47 – Criminal sanctions

(1) Those who violated or attempted to violate the provisions of Articles 4, 6, 7(3), 22(1), 4-1, 24-2 and 24-16(1) respectively shall incur a term of imprisonment of between eight days and five years and a fine of between EUR 5,000 and EUR 125,000, or only one of these sanctions.

(2) A fine between EUR 1,250 and EUR 125,000 shall be imposed on those persons who knowingly contravene the provisions of Articles 13(3) and 24-9(3).

(3) Members of the administrative, executive or management bodies of payment institutions and electronic money institutions, including of their agents, shall incur a term of imprisonment of between eight days and five years and a fine of between EUR 5,000 and EUR 125,000, or only one of these sanctions where they

– carried out acts of disposal, administration or management notwithstanding their suspension pursuant to Article 38(2), point (a);

– carried out acts of disposal, administration or management notwithstanding the suspension of activities of the institution pursuant to Article 38(2), point (c) or (d).

(4) This article shall be without prejudice to the sanctions laid down in the Penal Code or other specific laws.

Section 5: Exemptions

Article 48 – Conditions for exemptions relating to payment institutions

(1) "The Minister responsible for the CSSF may, after investigation by the CSSF of the conditions required under this paragraph, exempt, on the basis of a written request, natural or legal persons providing the payment services as referred to in points (1) to (6) of the Annex from the application of all or part of the procedure and conditions set out in Section 1 of Chapter 1 and in Article 27, with the exception of Article 31(2) and (4), and Articles 32, 33 and 36, where the following two conditions are fulfilled:"[146]

(a) "the monthly average of the preceding 12 months' total value of payment transactions executed"[147] by the person concerned, including any agent for which it assumes full responsibility, does not exceed EUR 3 million (…)[148]. That requirement shall be assessed on the projected total amount of payment transactions in its business plan, unless an adjustment to that plan is required by the CSSF; and

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

(2) The Minister responsible for the CSSF may provide for persons registered in accordance with paragraph 1 to engage only in some of the activities listed in Article 10.

(3) Any person registered in accordance with paragraph 1 shall be required to actually carry on its business in Luxembourg and to have its central administration or place of residence in Luxembourg.

(4) The persons referred to in paragraph 1 shall be treated as payment institutions, save that "Article 23 shall not apply to them"[149].

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[146] Law of 20 July 2018
[147] Law of 20 July 2018
[148] Law of 20 July 2018
[149] Law of 20 July 2018

(5) The persons referred to in paragraph 1 shall notify the CSSF of any change in their situation which is relevant to the conditions specified in that paragraph.

Where the conditions set out in paragraphs 1, 2 "or"[150] 3 are no longer fulfilled, the persons concerned shall seek authorisation within 30 calendar days in accordance with the procedure laid down in Article 7.

(6) The persons referred to in paragraph 1 shall provide the CSSF with a report on their activities, in particular on the total amount of payment transactions executed, on a yearly basis.

Article 48-1 – Conditions for exemptions relating to electronic money institutions

(1) "The Minister responsible for the CSSF may, after investigation by the CSSF on the conditions required under this paragraph, exempt, on the basis of a written request, legal persons from the application of all or part of the procedure and conditions set out in Section 1 of Chapter 2 and in Article 27, with the exception of Article 31(2) and (4), and Articles 32, 33 and 36, where the following two conditions are fulfilled:"[151]

(a) the total business activities generate an average outstanding electronic money that does not exceed EUR 5 million; and

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

Where an electronic money institution carries out any of the activities referred to in Article 24-6(1), point (a), that are not linked to the issuance of electronic money or any of the activities referred to in Article 24-6(1), points (b) to (e), and the amount of outstanding electronic money is unknown in advance, the CSSF shall allow the electronic money institution to apply point (a) above on the basis of a representative portion assumed to be used for the issuance of electronic money, provided such a representative portion can be reasonably estimated on the basis of historical data and to the satisfaction of the CSSF. Where an electronic money institution has not completed a sufficiently long period of business, that requirement shall be assessed on the basis of projected outstanding electronic money evidenced by its business plan subject to any adjustment to that plan having been required by the CSSF.

A legal person registered in accordance with this paragraph may provide payment services not related to electronic money issued in accordance with this article only if conditions set out in Article 48 are met.

(2) Any legal person registered in accordance with paragraph 1 shall be required to actually carry on its business in Luxembourg and to have its central administration and registered office in Luxembourg.

(3) Any legal person registered in accordance with paragraph 1 shall be treated as an electronic money institution. However, "Article 24-17 shall not apply"[152] to it.

(4) The Minister responsible for the CSSF may authorise legal persons registered in accordance with paragraph (1) to engage only in some of the activities listed in Article 24-6(1).

(5) The legal persons referred to in paragraph 1 shall:

(a) notify the CSSF of any change in their situation which is relevant to the conditions specified in paragraph 1; and

(b) provide the CSSF, at its request, with an annual report on their activities, in particular, on the average outstanding electronic money.

(6) Where the conditions set out in paragraphs 1, 2 "or"[153] 4 are no longer met, the legal persons concerned shall seek authorisation within 30 calendar days in accordance with the procedure laid down in Article 24-3. The persons that have not sought authorisation within that period shall be prohibited, in accordance with Article 4-1, from issuing electronic money."

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[150] Law of 20 July 2018
[151] Law of 20 July 2018
[152] Law of 20 July 2018
[153] Law of 20 July 2018

(Law of 20 July 2018)

"Article 48-1a - Specific provisions applicable to certain account information service providers

(1) Natural or legal persons providing only the payment services as referred to in point (8) of the Annex shall be registered in the register provided for in Article 36. They shall send to the CSSF a registration request, together with the information laid down in letters (a), (b), (e), (g), (i), (k) to (o) and (q) of Article 8(1).

(2) The registration is conditional on the persons referred to in paragraph 1 already holding a professional indemnity insurance covering the territories in which the services will be offered, or some other comparable guarantee against the applicant's 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.

(3) The persons referred to in paragraph 1 are subject to the provisions of Articles 21 to 24, 31 to 35-1, 38, 46, 47, 60-1, 66, 71, 81-3, 83 and 105-1 to 105-3, for the purposes of which they shall be treated as payment institutions."

(Law of 20 May 2011)

"CHAPTER 4: COMMON PROVISIONS TO ELECTRONIC MONEY ISSUERS

Article 48-2 – Issuance and redeemability of electronic money

(1) Electronic money issuers are required to issue electronic money at par value on the receipt of funds.

(2) Electronic money issuers are required to redeem, upon request by the electronic money holder, the monetary value of the electronic money held at any moment and at par value.

(3) 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.

(4) Redemption may be subject to a fee only if stated in the contract in accordance with paragraph 3 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.

Any such fee 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 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 24-6(1), point (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 4, 5 and 6, redemption rights of a person, other than a consumer, who accepts electronic money shall be subject to the contractual agreement between the electronic money issuer and that person.

Article 48-3 – Prohibition of interest

Electronic money issuers are prohibited from granting interest or any other benefit related to the length of time during which an electronic money holder holds the electronic money.

Article 48-4 – Competent authority

The CSSF ensures compliance with this chapter by electronic money issuers referred to in Article 1, point (15a) (i) to (iii), and authorised in Luxembourg, by persons benefiting from the waiver under Article 48-1 as well as by Luxembourg branches of electronic money issuers where the home Member State is a Member State other than Luxembourg."

(...)[154]

CHAPTER "5"[155]: COMMON PROVISIONS TO ALL PAYMENT SERVICE PROVIDERS

Article 57 – 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 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.

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

(a) restrictive rules on effective participation in other payment systems;

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

(c) restrictions on the basis of institutional status.

(2) Paragraph 1 shall not apply to:

(a) payment systems referred to in Article 108;

(b) payment systems composed exclusively of payment service providers belonging to a group (…)[156].

(…)[157]

(Law of 20 July 2018)

"For the purposes of letter (a), 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, give the same opportunity in an objective, proportionate and non-discriminatory manner to other authorised or registered payment service providers in line with paragraph 1. The participant shall provide the requesting payment service provider with full reasons for any rejection."

(Law of 20 July 2018)

"Article 57-1 – Access by payment institutions to accounts maintained with a credit institution

Credit institutions shall give to payment institutions access to their payment accounts services on an objective, non-discriminatory and proportionate basis.

The access referred to in the first subparagraph shall be sufficiently extensive as to allow payment institutions to provide payment services in an unhindered and efficient manner.

Where a credit institution rejects the access referred to in this article, it shall provide the CSSF with duly motivated reasons for this rejection."

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[154] Law of 20 May 2011
[155] Law of 20 May 2011
[156] Law of 20 July 2018
[157] Law of 20 July 2018

Article 58 – Competent authorities

(1) The CSSF ensures compliance with Titles III and IV by payment service providers referred to in Article 1, point (37) (i) to (iv), and authorised in Luxembourg, by persons benefiting from the waiver under Article 48 as well as by Luxembourg branches of payment service providers where the home Member State is a Member State other than Luxembourg and by agents set up in Luxembourg which these payment service providers engage.

(2) The CSSF also ensures compliance with the rules set up by Regulation (EC) No 924/2009 of the European Parliament and the Council of 16 September 2009 on cross-border payments in the Community and repealing Regulation (EC) No 2560/2001“ “and”[158] the provisions laid down in 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”[159]“, hereinafter referred to as “Regulation (EU) No 260/2012” ”[160] as regards wire transfers by the service providers referred to in Article 1, point (37) (i) to (iv), and authorised in Luxembourg, by persons benefiting from the waiver under Article 48 as well as by Luxembourg branches of payment service providers where the home Member State is a Member State other than Luxembourg and by agents set up in Luxembourg which these payment institutions engage.

(Law of 20 July 2018)

“(2a) The CSSF shall also ensure compliance with Articles 60-1, 66, 71, 81-3, 83 and 105-1 to 105-3 by the payment service providers referred to in Article 1(37)(viii), as well as by Luxembourg branches of such payment service providers whose home Member State is a Member State other than Luxembourg and by agents established in Luxembourg which these payment service providers use.”

(3) The competition council [*Conseil de la concurrence*] is the authority responsible for ensuring compliance with the competition rules laid down in Article 57.

The Banque centrale du Luxembourg shall immediately inform the competition inspectorate [*Inspection de la concurrence*] of any potential infringement of the competition rules laid down in Article 57 which it observes while carrying out its mission defined in Article 2(5) of the Law of 23 December 1998 concerning the monetary status and the Banque centrale du Luxembourg, as amended.

By way of derogation from Article 33 of the Law of 23 December 1998 concerning the monetary status and the Banque centrale du Luxembourg, as amended, the Banque centrale du Luxembourg is authorised to transmit to the competition inspectorate [*Inspection de la concurrence*] any information, including confidential information, which the latter requires in the carrying on of its mission.

(Law of 13 February 2018)

“CHAPTER 6: PROVISIONS COMMON TO PAYMENT SERVICE PROVIDERS AND ELECTRONIC MONEY ISSUERS REGARDING INFORMATION ACCOMPANYING TRANSFERS OF FUNDS

Article 58-1 – Definitions

For the purposes of this chapter, the following definitions shall apply:

1. “European Supervisory Authorities” means the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority;
2. “payee” means a payee within the meaning of point (4) of Article 3 of Regulation (EU) 2015/847;
3. “payer” means a payer within the meaning of point (3) of Article 3 of Regulation (EU) 2015/847;
4. “unique transaction identifier” means a unique transaction identifier within the meaning of point (11) of Article 3 of Regulation (EU) 2015/847;
5. “payment service provider” means a payment service provider within the meaning of point (5) of Article 3 of Regulation (EU) 2015/847;

[158] Law of 13 February 2018
[159] Law of 15 March 2016
[160] Law of 13 February 2018

6. “transfer of funds” means a transfer of funds within the meaning of point (9) of Article 3 of Regulation (EU) 2015/847.

Article 58-2 – Competent authority

The CSSF shall ensure that the payment service providers authorised or registered in Luxembourg, the Luxembourg branches of payment service providers whose home Member State is a Member State other than Luxembourg and the agents established in Luxembourg to which these payment service providers have recourse, which provide transfer of funds services, comply with the provisions of Regulation (EU) 2015/847 and shall take the necessary measures to ensure compliance according to the terms and within the limits of this chapter and the above-mentioned regulation.

Article 58-3 – Conditions for derogation

Pursuant to Article 2(5) of Regulation (EU) 2015/847, Regulation (EU) 2015/847 shall not apply to transfers of funds carried out in Luxembourg to a payee’s payment account permitting payment exclusively for the provision of goods or services where all of the following conditions are met:

1. the payment service provider of the payee is subject to Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC;
2. the payment service provider of the payee is able to trace back, through the payee, by means of a unique transaction identifier, the transfer of funds from the person who has an agreement with the payee for the provision of goods or services;
3. the amount of the transfer of funds does not exceed EUR 1,000.

Article 58-4 – Record retention

Pursuant to Article 16(2) of Regulation (EU) 2015/847, the entities referred to in Article 58-2 may retain the personal data for further five years where this retention is necessary for the efficient implementation of internal measures for the prevention or detection of money laundering or terrorist financing.

Article 58-5 – Powers of the CSSF

(1) For the purposes of applying Regulation (EU) 2015/847, the CSSF has all the powers of supervision and investigation which are necessary to exercise its functions within the limits set in this chapter and in the above-mentioned regulation.

The powers of the CSSF referred to in the first subparagraph include the right to:

1. have access to any document in any form whatsoever, and to receive or take a copy of it;
2. request information from any person and, if necessary, to summon and question any entity referred to in Article 58-2 with a view to obtaining information;
3. carry out on-site inspections or investigations, including the seizing of any document, electronic file or other things that seem useful to ascertaining the truth, at the entities referred to in Article 58-2;
4. require existing telephone recordings, electronic communications or data traffic records held by the entities referred to in Article 58-2;
5. order the entities referred to in Article 58-2 to cease any practice that is contrary to the provisions referred to in Article 58-6(1) and (2) and to desist from repetition of that conduct within such period as it may prescribe;
6. request the freezing or sequestration of assets with the President of the *Tribunal d’arrondissement de et à Luxembourg* (Luxembourg District Court) deciding on request;
7. impose temporary prohibition of professional activity for a period not exceeding five years with respect to entities referred to in Article 58-2 and subject to its prudential supervision, as well as members of the management body, employees and tied agents linked to these persons;
8. require *réviseurs d'entreprises* (statutory auditors) and *réviseurs d’entreprises agréés* (approved statutory auditors) of the entities referred to in Article 58-2 to provide information;
9. require *réviseurs d'entreprises* (statutory auditors), *réviseurs d’entreprises agréés* (approved statutory auditors) or experts to carry out on-site verifications at or investigations of the entities referred to in Article 58-2. These verifications and investigations are carried out at the expense of the entity concerned;

10. refer information to the State Prosecutor for criminal prosecution.

(2) Where it issues the injunction provided for in point (5) of paragraph 1, the CSSF may impose a coercive fine upon the entity concerned by this measure in order to compel this entity to act upon the injunction. The amount of this coercive fine, on the grounds of an observed failure to perform, may not be greater than EUR 1,250 per day, with the understanding that the total amount imposed due to an observed failure to perform may not exceed EUR 25,000.

(3) If, by the end of the period prescribed by the CSSF pursuant to point (5) of paragraph 1, the situation in question has not been remedied, the CSSF may:

1. suspend the members of the management body or any other persons who, by their actions, negligence or lack of prudence, have brought about the situation found to exist or the continued exercise of whose functions may prejudice the implementation of recovery or reorganisation measures;
2. suspend the exercise of voting rights attached to shares or units held by shareholders or members whose influence is likely to operate to the detriment of the prudent and sound management of the entity or who are held responsible for the practice that is contrary to the provisions referred to in Article 58-6(1) and (2);
3. suspend the pursuit of that entity's business or, if the situation found to exist concerns a particular area of business, the pursuit of the latter.

Article 58-6 – Administrative sanctions and other administrative measures

(1) In the event of infringement of the provisions of Article 4, 5, 6, 7, 8(2), 9, 10, 11, 12(2), 13, 14, 15, 16 or 21(2) of Regulation (EU) 2015/847, the CSSF may impose administrative fines as provided for in Article 46 on the entities referred to in Article 58-2 as well as on members of their management bodies, their effective directors or the persons responsible for the infringement.

(2) By way of derogation from paragraph 1, the CSSF may impose administrative sanctions and other administrative measures provided for in Article 8-4(2) and (3) of the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended, on the entities referred to in Article 58-2 as well as on the members of their management bodies, their effective directors or the persons responsible for the breach, in the event of:

1. repeated or systematic failure to include the required information on the payer or the payee, in breach of Article 4, 5 or 6 of Regulation (EU) 2015/847;
2. repeated, systematic or serious failure to retain records, in breach of Article 16 of Regulation (EU) 2015/847;
3. failure to implement effective risk-based procedures, in breach of Article 8 or 12 of Regulation (EU) 2015/847;
4. serious failure to comply with Article 11 or 12 of Regulation (EU) 2015/847.

(3) The CSSF may impose an administrative fine of between EUR 250 and EUR 250,000 on those who obstruct application of its investigatory and supervisory powers laid down in Article 58-5, who do not follow-up on its injunctions issued pursuant to point (5) of Article 58-5 or who have knowingly given it documents or other information requested based on point (2) of Article 58-5 that prove to be incomplete, incorrect or false.

(4) When determining the type of administrative sanctions or administrative measures and the amount of administrative pecuniary sanctions, the CSSF shall take into account all relevant circumstances, including, where appropriate:

1. the gravity and duration of the infringement;
2. the degree of responsibility of the natural or legal person held responsible for the infringement;
3. the financial situation of the natural or legal person held responsible for the infringement, as indicated for example by the total turnover of the legal person held responsible or the annual income of the natural person held responsible;
4. the benefit derived from the infringement by the natural or legal person held responsible, insofar as it can be determined;
5. the losses for third parties caused by the infringement, insofar as they can be determined;
6. the level of cooperation of the natural or legal person held responsible for the infringement with the CSSF;
7. the previous infringements by the natural or legal person held responsible.

(5) The costs incurred for the forced recovery of the fines shall be borne by the entities on which these fines have been imposed.

Article 58-7 – Right to appeal

Any decision made pursuant to this chapter may be referred to the *Tribunal administratif* (Administrative Tribunal), which deals with the merits of the case. The case may be filed within one month as from the notification of the decision, or else shall be time-barred.

Article 58-8 – Publication of decisions

The CSSF shall publish the decisions made pursuant to this chapter in accordance with Article 8-6 of the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended.

Article 58-9 – Notification to the European Supervisory Authorities

(1) The CSSF shall notify the European Supervisory Authorities of all administrative sanctions and other administrative measures imposed on the entities referred to in Article 58-2 pursuant to Article 58-6, including of any remedy in relation thereto and the outcome thereof.

(2) The CSSF shall check the existence of a relevant conviction in the criminal record of the person concerned. Any exchange of information for those purposes shall be carried out in accordance with the Law of 29 March 2013 on the organisation of the criminal record.

Article 58-10 – Reporting of infringements to the CSSF

(1) The CSSF shall establish effective mechanisms to encourage the reporting to the CSSF of infringements of Regulation (EU) 2015/847.

(2) The mechanisms referred to in paragraph 1 shall include at least:

1. specific procedures for the receipt of reports on infringements and their follow-up;
2. appropriate protection for employees or persons in a comparable position, of entities referred to in Article 58-2 who report infringements committed within the entity;
3. appropriate protection for the accused person;
4. protection of personal data concerning both the person who reports the infringements and the natural person who is allegedly responsible for the infringement, in compliance with the provisions of the Law of 2 August 2002 on the protection of individuals with regard to the processing of personal data, as amended;
5. clear rules that ensure that confidentiality is guaranteed in all cases in relation to the person who reports the infringements referred to in paragraph 1, unless disclosure is required by or pursuant to a law."

TITLE III: TRANSPARENCY OF CONDITIONS AND INFORMATION REQUIREMENTS FOR PAYMENT SERVICES

CHAPTER 1: GENERAL RULES

Article 59 – Scope

(1) The present title shall apply to single payment transactions, framework contracts and payment transactions covered by them. The parties may agree that it shall not apply in whole or in part when the payment service user is not a consumer.

(2) The present Law is without prejudice to "the provisions of Book 2, Title 2, Chapter 4, of the Consumer Code relating to consumer credit agreements."[161]

(3) The provisions of the present title are applicable without prejudice to "the provisions of European Union law"[162] containing additional requirements on prior information.

However, where the provisions of the Law of 18 December 2006 on financial services provided at distance are also applicable, the information requirements set out in Article 3(1) of said law, with

[161] Law of 20 July 2018
[162] Law of 20 July 2018

the exception of points (2) (c) to (g), (3) (a), (d) and (e), and (4) (b) of that paragraph 1 shall be replaced by Articles 65, 66, 70 and 71 of the present Law.

Article 60 – Information charges

(1) The payment service provider shall not charge the payment service user for providing information under the present title.

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

(3) Where the payment service provider may impose charges for information in accordance with paragraph 2, they shall be "reasonable"[163] and in line with the payment service provider's actual costs.

(Law of 20 July 2018)

"Article 60-1 – The 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 61 – Currency and currency conversion

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

(2) Where a currency conversion service is offered prior to the initiation of the payment transaction and where that currency conversion service is offered "at an ATM,"[164] at the point of sale or by the payee, the party offering the currency conversion service to the payer shall disclose to the payer all charges as well as the exchange rate to be used for converting the payment transaction.

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

Article 62 – Information on additional charges or reductions

(1) Where, for the use of a given payment instrument, the payee offers 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, a payment service provider or "another party involved in the transaction"[165] requests a charge, he shall inform the payment service user thereof prior to the initiation of the payment transaction.

(Law of 20 July 2018)

"(3) The payer shall only be obliged to pay for the charges referred to in paragraph 2 if their full amount was made known prior to the initiation of the payment transaction."

Article 63 – Derogation from information requirements for low-value payment instruments and electronic money

(1) In cases of payment instruments which, according to the "relevant"[166] framework contract, concern only individual payment transactions not exceeding a unit value of EUR 30 or which either have a spending limit of EUR 150 or store funds that do not exceed EUR 150 at any time:

(a) by way of derogation from Articles 70, 71 and 75, the payment service provider shall 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 71 are made available in an easily accessible manner;

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[163] Law of 20 July 2018
[164] Law of 20 July 2018
[165] Law of 20 July 2018
[166] Law of 20 July 2018

(b) it may be agreed that, by way of derogation from Article 73, the payment service provider shall not be required to propose changes in the conditions of the framework contract in the same way as provided for in Article 70(1);

(c) it may be agreed that, by way of derogation from Articles 76 and 77, after the execution of a payment transaction:

(i) the payment service provider shall provide or make 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, information on the total amount and charges for those payment transactions;

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

(2) For national payment transactions, the amounts referred to in paragraph 1 are doubled. For prepaid payment instruments, the amounts referred to in paragraph 1 are EUR 500.

CHAPTER 2: SINGLE PAYMENT TRANSACTIONS

Article 64 – Scope

(1) This chapter shall apply to single payment transactions not covered by a framework contract.

(2) When 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 to the payment service user on the basis of a framework contract with another payment service provider or which will be given to him according to that framework contract.

Article 65 – Prior general information

(1) Before the payment service user is bound by a single payment service contract or offer, the payment service provider shall make available to the payment service user, in an easily accessible manner, the information and conditions specified in Article 66 “with regard to its own services”[167]. At the payment service user's request, the payment service provider shall provide the information and conditions on paper or on another durable medium. The information and conditions shall be given in easily understandable words and in a clear and comprehensible form. The information and conditions relating to payment services offered in Luxembourg is offered in Luxembourgish, German or French or in any other language agreed between the parties. The information and conditions relating to payment services offered in other Member States are offered in an official language of the host Member State or in any other language agreed between the parties.

(2) 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 paragraph 1, the payment service provider shall fulfil its obligations under that paragraph immediately after the execution of the payment transaction.

(3) Payment service providers may also discharge their obligations under paragraph 1 by supplying to the payment services user a copy of the draft single payment service contract or the draft payment order including the information and conditions specified in Article 66.

Article 66 – Information and conditions

(1) Payment service providers shall ensure that the following information and conditions are provided or made available to the payment service user:

[167] Law of 20 July 2018

(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"[168] executed;

(b) the maximum execution time for the payment service to be provided;

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

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

(Law of 20 July 2018)

"(1a) Payment initiation service providers shall, prior to initiation, provide the payer with, or make available to the payer, the following clear and comprehensive information:

(a) the name of the payment initiation service provider, the geographical address of its head office and, where applicable, the geographical address of its agent or branch established in the Member State where the payment service is offered, and any other contact details, including electronic mail address, relevant for communication with the payment initiation service provider;
(b) the contact details of the CSSF."

(2) Where applicable, the payment service provider shall ensure that any other relevant information and conditions specified in Article 71 shall be made available to the payment service user in an easily accessible manner.

(Law of 20 July 2018)

"Article 66-1 – Information for the payer, the payee and the payer's account servicing payment service provider in the event of a payment initiation service

(1) In addition to the information and conditions specified in Article 66, where a payment order is initiated through a payment initiation service provider, the payment initiation service provider shall, immediately after initiation, provide or make available all of the following data to the payer and, where applicable, the payee:

(a) confirmation of the successful initiation of the payment order with the payer's account servicing payment service provider;
(b) a reference enabling the payer and the payee to identify the payment transaction and, where appropriate, the payee to identify the payer, and any information transferred with the payment transaction;
(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.

(2) The payment initiation service provider shall make available to the payer's account servicing payment service provider the reference of the payment transaction."

Article 67 – 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 Article 65(1), the following information "with regard to its own services"[169]:

(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

[168] Law of 20 July 2018
[169] Law of 20 July 2018

with Article 66(1), point (d), and the amount of the payment transaction after that currency conversion; and

(e) the date of receipt of the payment order.

Article 68 – Information for the payee after execution

Immediately after the execution of the payment transaction, the payee's payment service provider shall provide the payee with or make available to the payee, in the same way as provided for in Article 65(1), the following information "with regard to its own services"[170]:

(a) "a reference"[171] 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 payee and, where applicable, a breakdown of the amount 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; and

(e) the credit value date.

CHAPTER 3: FRAMEWORK CONTRACTS

Article 69 – Scope

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

Article 70 – Prior general information

(1) In good time before the payment service user is bound by any framework contract or offer, the payment service provider shall provide the payment service user on paper or on another durable medium, with the information and conditions specified in Article 71. The information and conditions shall be given in easily understandable words and in a clear and comprehensible form. They shall be offered in Luxembourgish, German or French or in any other language agreed between the parties.

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

(3) Payment service providers may also discharge their obligations under paragraph 1 by supplying to the payment services user a copy of the draft framework contract including the information and conditions specified in Article 71.

Article 71 – Information and conditions

Payment service providers shall ensure that the following information and conditions are provided to the payment service user:

1) on the payment service provider:

(a) the 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 the Member State where the payment service is offered, and any other address, including electronic mail address, relevant for communication with the payment service provider; and

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[170] Law of 20 July 2018
[171] Law of 20 July 2018

(b) the particulars of the relevant supervisory authorities and of the register provided for in "Article 14 of Directive (EU) 2015/2366"[172] 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;

2) on use of the payment service:

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

(b) 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"[173] executed;

(c) the form of and procedure for giving consent "to initiate a payment order or"[174] execute a payment transaction and withdrawal of such consent in accordance with Articles 81 and 93;

(d) a reference to the point in time of receipt of a payment order as defined in Article 91 and the cut-off time, if any, established by the payment service provider;

(e) the maximum execution time for the payment services to be provided; (…)[175]

(f) whether there is a possibility to agree on spending limits for the use of the payment instrument in accordance with Article 82(1);

(Law of 20 July 2018)

"(g) 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 and for payment services to which 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 applies;"

3) on charges, interest and exchange rates:

(a) all charges payable by payment service users to their payment service provider "including those connected to the manner in and frequency with which information under this Law is provided or made available"[176] and, where applicable, the breakdown of the amounts of any charges;

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

(c) if agreed, the immediate application of changes in reference interest or exchange rate and information requirements related to the changes in accordance with Article 73(2);

4) on communication:

(a) where applicable, the means of communication, including the technical requirements for the payment service user's equipment "and software"[177], agreed between the parties for the transmission of information or notifications under the present Law;

(b) the manner in and frequency with which information under the present Law is to be provided or made available;

(c) the language or languages in which the framework contract will be concluded and communication during this contractual relationship undertaken; and

(d) the payment service user's right to receive the contractual terms of the framework contract and information and conditions in accordance with Article 72;

5) on safeguards and corrective measures:

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[172] Law of 20 July 2018
[173] Law of 20 July 2018
[174] Law of 20 July 2018
[175] Law of 20 July 2018
[176] Law of 20 July 2018
[177] Law of 20 July 2018

(a) where applicable, a description of measures 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 83(1), point (b);

(b) if agreed, the conditions under which the payment service provider reserves the right to block a payment instrument in accordance with Article 82;

(c) the liability of the payer in accordance with Article 88, including information on the relevant amount;

(d) 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"[178] executed payment transaction in accordance with Article 85, as well as the payment service provider's liability for unauthorised payment transactions in accordance with Article 87;

(e) the liability of the payment service provider for the "initiation or"[179] execution of payment transactions in accordance with Article 101; (…)[180]

(f) the conditions for refund in accordance with Articles 89 and 90;

(Law of 20 July 2018)

"(g) the secure procedure for notification of the payment service user by the payment service provider in the event of suspected or actual fraud or security threats;"

6) on changes in and termination of a framework contract:

(a) if agreed, information that payment service user will be deemed to have accepted changes in the conditions in accordance with Article 73, unless "the payment service user notifies"[181] the payment service provider "before the date of the proposed date of entry into force of these changes that they are not accepted"[182];

(b) the duration of the "framework contract"[183]; and

(c) the right of the payment service user to terminate the framework contract and any agreements relating to termination in accordance with Article 73(1) and Article 74;

7) on remedies:

(a) any contractual clause on the law applicable to the framework contract and/or the competent courts; and

(b) the out-of-court complaint and redress procedures available to payment service users in accordance with Article 106.

Article 72 – Accessibility of information and conditions of the framework contract

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 71 on paper or on another durable medium.

Article 73 – Changes in conditions of the framework contract

(1) Any changes in the framework contract as well as in the information and conditions specified in Article 71, shall be proposed by the payment service provider in the same way as provided for in Article 70(1) and no later than two months before their proposed date of application. "The payment service user can either accept or reject the changes before the date of their proposed date of entry into force."[184]

Where applicable in accordance with Article 71, point (6) (a), the payment service provider shall inform the payment service user that he is deemed to have accepted those changes if he does not

[178] Law of 20 July 2018
[179] Law of 20 July 2018
[180] Law of 20 July 2018
[181] Law of 20 July 2018
[182] Law of 20 July 2018
[183] Law of 20 July 2018
[184] Law of 20 July 2018

notify the payment service provider before the proposed date of their entry into force that they are not accepted. “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 effect at any time until the date when the changes would have applied.”[185]

(2) 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 “in the interest or exchange rates”[186] are based on the reference interest or exchange rates agreed on in accordance with point (3) (b) and (c) of Article 71. 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 Article 70(1), unless the parties have agreed on a specific frequency or manner in which the information is to be provided or made available. However, changes in interest or exchange rates which are more favourable to the payment service users, may be applied without notice.

(3) 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 74 – Termination

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

“(2) 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 6 months. Charges, if any, for termination of the framework contract shall be appropriate and in line with costs.”[187]

(3) If agreed in the framework contract, the payment service provider may terminate a framework contract concluded for an indefinite period by giving at least a two-month notice in the same way as provided for in Article 70(1).

(4) Charges for payment services levied on a regular basis shall be payable by the payment service user only proportionally up to the termination of the contract. If such charges are paid in advance, they shall be reimbursed proportionally.

(5) The provisions of this article are without prejudice to legal provisions governing the rights of the parties to declare the framework contract unenforceable or void.

“Article 75 – 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;
(b) the charges payable by the payer;
(c) where applicable, a breakdown of the amounts of any charges.”[188]

Article 76 – 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 the receipt of the payment order, the payer's payment service provider shall provide the payer without undue delay in the same way as laid down in Article 70(1) with 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;

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[185] Law of 20 July 2018
[186] Law of 20 July 2018
[187] Law of 20 July 2018
[188] Law of 20 July 2018

(c) the amount of any charges for the payment transaction and, where applicable, "a breakdown of the amounts of such charges"[189], 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 shall include a condition that the payer may require the information referred to in paragraph 1 to be provided or made available periodically, at least once a month, free of charge and in an agreed manner which allows the payer to store and reproduce information unchanged."[190]

Article 77 – 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 Article 70(1) with the following information:

(a) a reference enabling the payee to identify the payment transaction and (…)[191] 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"[192], 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; and

(e) the credit value date.

(2) A framework contract may include a condition that the information referred to in paragraph 1 is 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.

TITLE IV: RIGHTS AND OBLIGATIONS IN RELATION TO THE PROVISION AND USE OF PAYMENT SERVICES

CHAPTER 1: COMMON PROVISIONS

"Article 78 – Scope

(1) Where the payment service user is not a consumer, the payment service user and the payment service provider may agree that Article 79(1), Article 81(3), and Articles 86, 88 to 90, 93 and 101 do not apply in whole or in part. The payment service user and the payment service provider may also agree on time limits that are different from those laid down in Article 85.

(2) This Law is without prejudice to the provisions of Book 2, Title 2, Chapter 4, of the Consumer Code relating to consumer credit agreements."[193]

Article 79 – Charges applicable

(1) The payment service provider "shall not"[194] charge the payment service user for fulfilment of its information obligations or execution of corrective and preventive measures under the present title,

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[189] Law of 20 July 2018
[190] Law of 20 July 2018
[191] Law of 20 July 2018
[192] Law of 20 July 2018
[193] Law of 20 July 2018
[194] Law of 20 July 2018

unless otherwise specified in Articles 92(1), 93(5) and 100(2). Those charges shall be agreed between the payment service user and the payment service provider and shall be appropriate and in line with the payment service provider's actual costs.

(2) "For payment transactions provided in the European Union, where both the payer's and the payee's payment service providers are located in Luxembourg, where the payer's payment service provider is located in Luxembourg and the payee's payment service provider is located in another Member State, where the payee's payment service provider is located in Luxembourg and the payer's payment service provider is located in another Member State or, where the sole payment service provider in the payment transaction is located in Luxembourg,"[195] the payee pays the charges levied by his payment service provider, and the payer pays the charges levied by his payment service provider.

(3) No charge may be requested by the payee from the payer for the use of a given payment instrument.

Article 80 – 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 EUR 30 or which either have a spending limit of EUR 150 or store funds which do not exceed EUR 150 at any time, payment service providers may agree with their payment service users that:

(a) Article 83(1), point (b), and Article 84(1), points (c) and (d), as well as Article 88(3) and (4) do not apply if the payment instrument does not allow its blocking or prevention of its further use;

(b) Articles 86, 87 and Article 88(1)", (3) and (4)"[196] 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 92(1), the payment service provider is not required to notify the payment service user of the refusal of a payment order, if the non-execution is apparent from the context;

(d) by way of derogation from Article 93, the payer may not revoke the payment order after transmitting the payment order or giving his consent to execute the payment transaction to the payee;

(e) by way of derogation from Articles 96 and 97, other execution periods apply.

(2) For national payment transactions, the amounts referred to in paragraph 1 are doubled. For prepaid payment instruments, the amounts referred to in paragraph 1 are EUR 500.

(3) Articles 87 and 88 shall apply also to electronic money within the meaning of Article 1, point (29), except where the payer's payment service provider does not have the ability to freeze the payment account "on which the electronic money is stored"[197] or block the payment instrument.

CHAPTER 2: AUTHORISATION OF PAYMENT TRANSACTIONS

Article 81 – Consent and withdrawal of consent

(1) A payment transaction is considered to be authorised only if the payer has given consent to execute the payment transaction. A payment transaction may be authorised by the payer prior to or, if agreed between the payer and "the"[198] payment service provider, after the execution of the payment transaction.

[195] Law of 20 July 2018
[196] Law of 20 July 2018
[197] Law of 20 July 2018
[198] Law of 20 July 2018

(2) Consent to execute a payment transaction or a series of payment transactions shall be given in the form agreed between the payer and "the"[199] payment service provider. "Consent to execute a payment transaction may also be given via the payee or the payment initiation service provider."[200]

In the absence of (…)[201] consent, a payment transaction shall be considered to be unauthorised.

(3) Consent may be withdrawn by the payer at any time, but no later than the point in time of irrevocability under Article 93. Consent to execute a series of payment transactions may also be withdrawn", in which case"[202] any future payment transaction "shall"[203] be considered to be unauthorised.

(4) The procedure for giving consent shall be agreed between the payer and the "relevant"[204] payment service "providers"[205].

(Law of 20 July 2018)

"Article 81-1 – Confirmation on the availability of funds

(1) An account servicing payment service provider shall, upon the request of a payment service provider issuing card-based payment instruments, immediately confirm whether an amount necessary for the execution of a card-based payment transaction is available on the payment account of the payer, 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 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 letter (b) has been given before the first request for confirmation is made.

(2) The payment service provider may request the confirmation referred to in paragraph 1 where all of the following conditions are met:

(a) the payer has given consent to the payment service provider 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 authenticates itself towards the account servicing payment service provider before each confirmation request, and securely communicates with the account servicing payment service provider.

(3) The confirmation referred to in paragraph 1 shall consist only in a 'yes' or 'no' answer and not in a statement of the account balance. That answer shall not be stored or used for purposes other than for the execution of the card-based payment transaction.

(4) The confirmation referred to in paragraph 1 shall not allow for the account servicing payment service provider to block funds on the payer's payment account.

(5) The payer may request the account servicing payment service provider to communicate to the payer the identification of the payment service provider and the answer provided.

(6) This article does not apply to payment transactions initiated through card-based payment instruments on which electronic money as defined in point (29) of Article 1 is stored.

Article 81-2 – Rules on access to payment account in the case of payment initiation services

(1) A payer has the right to make use of a payment initiation service provider to obtain payment services as referred to in point (7) of the Annex. The right to make use of a payment initiation service provider shall not apply where the payment account is not accessible online.

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[199] Law of 20 July 2018
[200] Law of 20 July 2018
[201] Law of 20 July 2018
[202] Law of 20 July 2018
[203] Law of 20 July 2018
[204] Law of 20 July 2018
[205] Law of 20 July 2018

(2) When the payer gives its consent for a payment transaction to be executed in accordance with Article 81, the account servicing payment service provider shall perform the actions specified in paragraph 4.

(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 other 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 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;
(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;
(b) immediately after receipt of the payment order from a payment initiation service provider, provide or 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 for that purpose.

Article 81-3 – Rules on access to and use of payment account information in the case of account information services

(1) A payment service user has the right to make use of the services enabling access to account information as referred to in point (8) of the Annex. That right shall not apply where the payment account is not accessible online.

(2) The account information service provider shall:

(a) provide services only where based on the payment service user's 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 other parties and that when they are transmitted by the account information service provider, this is done 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;
(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.

(3) In relation to payment accounts, the account servicing payment service provider shall:

(a) communicate securely with account information service providers;

(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 for that purpose."

Article 82 – Limits of the use of the payment instrument "and of the access to payment accounts by payment service providers"[206]

(1) Where a specific payment instrument is used for the purposes of giving consent, the payer and "the payer's"[207] payment service provider may agree on spending limits for payment transactions executed through that payment instrument.

(2) If agreed in the framework contract, the payment service provider may reserve the right to block the payment instrument for objectively justified reasons related to the security of the payment instrument, the suspicion of unauthorised or fraudulent use of the payment instrument or, in the case of a payment instrument with a credit line, a significantly increased risk that the payer may be unable to fulfil his liability to pay.

(3) In such cases the payment service provider shall inform the payer of the blocking of the payment instrument and the reasons for it in an agreed manner, where possible, before the payment instrument is blocked and at the latest immediately thereafter, unless giving such information would compromise objectively justified security reasons or is prohibited by other relevant "European Union or national law"[208].

(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.

(Law of 20 July 2018)

"(5) An account servicing payment service provider may deny an account information service provider or a payment initiation service provider access to a payment account for objectively justified and duly evidenced reasons relating to unauthorised or fraudulent access to the payment account by that account information service provider or that payment initiation service provider, including the unauthorised or fraudulent initiation of a payment transaction. In such cases the account servicing payment service provider shall inform the payer that access to the payment account is denied and the reasons therefor in the form agreed. That information shall, where possible, be given to the payer before access is denied and at the latest immediately thereafter, unless providing such information would compromise objectively justified security reasons or is prohibited by other relevant European Union or national law.

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

(6) In the cases referred to in paragraph 5, 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 the CSSF. The information shall include the relevant details of the case and the reasons for taking action. The CSSF shall assess the case and shall, if necessary, take appropriate measures."

Article 83 – Obligations of the payment service user in relation to payment instruments "and personalised security credentials"[209]

(1) The payment service user entitled to use a payment instrument shall have the following obligations:

[206] Law of 20 July 2018
[207] Law of 20 July 2018
[208] Law of 20 July 2018
[209] Law of 20 July 2018

(a) to 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"[210]; and

(b) to notify the payment service provider, or the entity specified by the latter, without undue delay on becoming aware of loss, theft or misappropriation of the payment instrument or of its unauthorised use.

(2) For the purposes of paragraph 1, point (a), 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"[211] safe.

Article 84 – Obligations of the payment service provider in relation to payment instruments

(1) The payment service provider issuing a payment instrument shall have the following obligations:

(a) to make sure that the "personalised security credentials"[212] are not accessible to parties other than the payment service user entitled to use the payment instrument, without prejudice to the obligations on the payment service user set out in Article 83;

(b) to refrain from sending an unsolicited payment instrument, except where a payment instrument already given to the payment service user is to be replaced;

(c) to ensure that appropriate means are available at all times to enable the payment service user to make a notification pursuant to point (b) of Article 83(1) or to request unblocking "of the payment instrument"[213] pursuant to Article 82(4); on request, the payment service provider shall provide the payment service user with the means to prove, for 18 months after notification, that "the payment service user"[214] made such notification; (…)[215]

(d) to prevent all use of the payment instrument once notification pursuant to Article 83(1), point (b), has been made;

(Law of 20 July 2018)

"(e) provide the payment service user with an option to make a notification pursuant to letter (b) of Article 83(1) free of charge and, where it charges fees, the latter shall in no case exceed the replacement costs directly attributed to the payment instrument."

(2) 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"[216].

"Article 85 – Notification and rectification of unauthorised or incorrectly executed payment transactions

(1) The payment service user shall obtain rectification of an unauthorised or incorrectly executed payment transaction from the payment service provider only if the payment service user notifies the payment service provider without undue delay on becoming aware of any such transaction giving rise to a claim, including that under Article 101, and no later than 13 months after the debit date.

The time limits for notification laid down in the first subparagraph do not apply where the payment service provider has failed to provide or make available the information on the payment transaction in accordance with Title III.

(2) Where a payment initiation service provider is involved, the payment service user shall obtain rectification from the account servicing payment service provider pursuant to paragraph 1, without prejudice to Article 87(1a) and Article 101(1)."[217]

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[210] Law of 20 July 2018
[211] Law of 20 July 2018
[212] Law of 20 July 2018
[213] Law of 20 July 2018
[214] Law of 20 July 2018
[215] Law of 20 July 2018
[216] Law of 20 July 2018
[217] Law of 20 July 2018

Article 86 – Evidence on authentication and execution of payment transactions

(1) Where a payment service user denies having authorised an executed payment transaction or claims that the payment transaction was not correctly executed, it is for "the"[218] 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"[219].

(Law of 20 July 2018)

"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 of which it is in charge."

(2) 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,"[220] 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 his obligations under Article 83. "The payment service provider, including, where appropriate, the payment initiation service provider, shall provide supporting evidence to prove fraud or gross negligence on part of the payment service user."[221]

Article 87 – Payment service provider's liability for unauthorised payment transactions

(1) Without prejudice to Article 85, in the case of an unauthorised payment transaction, the payer's payment service provider "shall refund"[222] 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, except where the payer's payment service provider has reasonable grounds for suspecting fraud and communicates those grounds to the CSSF in writing. Where applicable, the payer's payment service provider shall restore the debited payment account to the state in which it would have been had the unauthorised payment transaction not taken place. The credit value date for the payer's payment account shall be no later than the date the amount had been debited."[223]

(Law of 20 July 2018)

"(1a) Where the payment transaction is initiated through a payment initiation service provider, the account servicing payment service provider shall refund immediately, and in any event no later than by the end of the following business day the amount of the unauthorised payment transaction and, where applicable, restore the debited payment account to the state in which it would have been had the unauthorised payment transaction not taken place.

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. In accordance with Article 86(1), 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 of which it is in charge."

(2) Further financial compensation may be determined in accordance with the law applicable to the contract concluded between the payer and "the"[224] payment service provider "or the contract concluded between the payer and the payment initiation service provider if applicable"[225].

[218] Law of 20 July 2018
[219] Law of 20 July 2018
[220] Law of 20 July 2018
[221] Law of 20 July 2018
[222] Law of 20 July 2018
[223] Law of 20 July 2018
[224] Law of 20 July 2018
[225] Law of 20 July 2018

Article 88 – Payer's liability for unauthorised payment transactions

(1) By way of derogation from Article 87 the payer "may be obliged to bear"[226] the losses relating to any unauthorised payment transactions, up to a maximum of EUR "50"[227], resulting from the use of a lost or stolen payment instrument or (…)[228] from the misappropriation of a payment instrument.

(Law of 20 July 2018)

"The first subparagraph shall not apply if:

(a) the loss, theft or misappropriation of a payment instrument was not detectable to the payer prior to a payment, except where the payer has acted fraudulently; or

(b) the loss 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."

(2) The payer shall bear all the losses relating to any unauthorised payment transactions if he incurred them by acting fraudulently or by failing to fulfil one or more of his obligations under Article 83 with intent or gross negligence. In such case, the maximum amount referred to in paragraph 1 of this article shall not apply.

(Law of 20 July 2018)

"(2a) Where the payer's payment service provider does not require strong customer authentication, the payer shall not bear any financial losses unless the payer has acted fraudulently. Where the payee or the payment service provider of the payee fails to accept strong customer authentication, it shall refund the financial damage caused to the payer's payment service provider."

(3) 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 83(1), point (b), except where he has acted fraudulently.

(4) If the payment service provider does not provide appropriate means for the notification at all times of the loss, theft or misappropriation of a payment instrument, pursuant to Article 84(1), point (c), the payer shall not be liable for the financial consequences resulting from use of that payment instrument, except where he has acted fraudulently.

(Law of 20 July 2018)

"Article 88-1 – Payment transactions where the transaction amount is not known in advance

(1) Where a payment transaction is initiated by the payee 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 undue 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 89 – Refunds for payment transactions initiated by or through a payee

(1) A payer is entitled to a refund from his payment service provider of an authorised payment transaction initiated by or through a payee 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 given; and

(b) the amount of the payment transaction exceeded the amount the payer could reasonably have expected taking into account his previous spending pattern, the conditions in his framework contract and relevant circumstances of the case.

At the payment service provider's request, the payer shall "bear the burden of proving such conditions are met"[229].

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[226] Law of 20 July 2018
[227] Law of 20 July 2018
[228] Law of 20 July 2018
[229] Law of 20 July 2018

The refund consists of the full amount of the executed payment transaction. "The credit value date for the payer's payment account shall be no later than the date the amount was debited."[230]

"Without prejudice to paragraph 3, in case of direct debit transactions referred to in Article 1 of Regulation (EU) No 260/2012, the payer has, in addition to the right referred to in this paragraph, an unconditional right to refund within the time frame set in Article 90 of this Law."[231]

(2) However, for the purposes of point (b) of the first subparagraph of paragraph 1, the payer may not rely on currency exchange reasons if the reference exchange rate agreed with his payment service provider in accordance with Articles 66(1), point (d), and 71, point (3) (b), was applied.

(3) It may be agreed in the framework contract between the payer and the payment service provider that the payer has no right to a refund where he has given his consent to execute the payment transaction directly to his payment service provider and, where applicable, information on the future payment transaction has been provided or made available in an agreed manner to the payer for at least four weeks before the due date by the payment service provider or by the payee.

Article 90 – Requests for refunds for payment transactions initiated by or through a payee

(1) The payer has the right to request the refund referred to in Article 89 of an authorised payment transaction initiated by or through a payee 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 full amount of the payment transaction or provide justification for refusing the refund, indicating to the payer that he may refer to the CSSF in accordance with Article 106 if he does not accept the justification provided.

The payment service provider's right under the first subparagraph to refuse the refund shall not apply in the case set out in the last subparagraph of Article 89(1).

CHAPTER 3: EXECUTION OF PAYMENT TRANSACTIONS

Section 1: Payment orders and amounts transferred

Article 91 – Receipt of payment orders

(1) The time of receipt shall be when the payment order (…)[232] is received by the payer's payment service provider. 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. 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. "The payer's account shall not be debited before receipt of the payment order."[233]

(2) If the payment service user initiating a payment order "and the"[234] payment service provider agree that execution of the payment order shall start on a specific day or at the end of a certain period or on the day on which the payer has put funds at "the"[235] payment service provider's disposal, the time of receipt for the purposes of Article 96 is deemed to be the agreed day. If the agreed day is not a business day for the payment service provider, the payment order received shall be deemed to have been received on the following business day.

Article 92 – Refusal of payment orders

(1) Where the payment service provider refuses to execute a payment order "or initiate a payment transaction"[236], the refusal and, if possible, the reasons for it and the procedure for correcting any

[230] Law of 20 July 2018
[231] Law of 20 July 2018
[232] Law of 20 July 2018
[233] Law of 20 July 2018
[234] Law of 20 July 2018
[235] Law of 20 July 2018
[236] Law of 20 July 2018

factual mistakes that led to the refusal shall be notified to the payment service user, unless prohibited by other relevant Community or national legislation.

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 96.

The framework contract may include a condition that the payment service provider may charge "a reasonable fee for such a refusal"[237] if the refusal is objectively justified.

(2) Where all of the conditions set out in the payer's framework contract are met, the payer's 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 a payee or through"[238] a payee, unless prohibited by other relevant Community or national legislation.

(3) For the purposes of Articles 96 and 101, a payment order of which execution has been refused shall be deemed not to have been received.

Article 93 – Irrevocability of a payment order

(1) The payment service user may not revoke a payment order once it has been received by the payer's payment service provider, unless otherwise specified in this article.

"(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."[239]

(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 91(2) 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"[240]. In the case referred to in paragraphs 2 and 3, the payee's consent shall also be required. If provided for in the framework contract, the "relevant"[241] payment service provider may charge for revocation.

Article 94 – Amounts transferred and amounts received

(1) The payment service provider"(s)"[242] of the payer, the payment service provider"(s)"[243] of the payee and any intermediaries of the payment service providers have to transfer the full amount of the payment transaction and refrain from deducting charges from the amount transferred.

(2) However, the payee and "the"[244] payment service provider may agree that the "relevant"[245] payment service provider deduct its charges from the amount transferred before crediting it to the payee. In such a case, the full amount of the payment transaction and charges shall be separated in the information given to the payee.

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

[237] Law of 20 July 2018
[238] Law of 20 July 2018
[239] Law of 20 July 2018
[240] Law of 20 July 2018
[241] Law of 20 July 2018
[242] Law of 20 July 2018
[243] Law of 20 July 2018
[244] Law of 20 July 2018
[245] Law of 20 July 2018

by or through the payee, "the"[246] payment service provider "of the payee"[247] shall ensure that the full amount of the payment transaction is received by the payee.

Section 2: Execution time and value date

Article 95 – Scope

This section shall apply to:

(a) payment transactions in Euro;

(b) national payment transactions in the currency of the Member State outside the euro area (…)[248]; and

(c) payment transactions involving only one currency conversion between the Euro and the currency of a Member State outside the Euro area, provided that the required currency conversion is carried out in the Member State outside the Euro area concerned and, in the case of cross-border payment transactions, the cross-border transfer takes place in Euro.

(2) The present section shall apply to "payment transactions not referred to in paragraph 1"[249], unless otherwise agreed between the payment service user and his payment service provider, with the exception of Article 99, which is not at the disposal of the parties. "However, where the payment service user and its payment service provider agree on a longer period than that set in Article 96, for intra-European Union payment transactions, that longer period shall not exceed 4 business days following the time of receipt as referred to in Article 91."[250]

Article 96 – Payment transactions to a payment account

(1) The payer's payment service provider shall ensure that, after the "time of receipt as referred to in"[251] Article 91, the amount of the payment transaction is credited to the payee's payment service provider's account by the end of the following business day. "That time limit"[252] may be extended by a further business day for paper-initiated payment transactions.

(2) 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 the payment service provider has received the funds in accordance with Article 99.

(3) The payee's payment service provider shall transmit a payment order "initiated by the payee or through the payee"[253] to the payer's payment service provider within the time limits agreed between the payee and "the"[254] payment service provider, enabling settlement, as far as direct debit is concerned, on the agreed due date.

Article 97 – 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 period specified in Article 96.

Article 98 – Cash placed on a payment account

Where a consumer places cash on a payment account with the 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 (…)[255] receipt of the funds. Where the payment service user is not a

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[246] Law of 20 July 2018
[247] Law of 20 July 2018
[248] Law of 20 July 2018
[249] Law of 20 July 2018
[250] Law of 20 July 2018
[251] Law of 20 July 2018
[252] Law of 20 July 2018
[253] Law of 20 July 2018
[254] Law of 20 July 2018
[255] Law of 20 July 2018

consumer, the amount shall be made available and value dated at the latest on the following business day after receipt of the funds.

Article 99 – 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.

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:

(a) no currency conversion; or
(b) a currency conversion between the euro and a Member State currency or between two Member State currencies."[256]

(Law of 20 July 2018)
"The obligation laid down in the second subparagraph shall also apply to payments within one payment service provider."

(2) The debit value date for the payer's payment account shall be no earlier than the point in time at which the amount of the payment transaction is debited to that payment account.

Section 3: Liability

Article 100 – 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 Article 101 for non-execution or defective execution of the payment transaction.

However the payer's payment service provider shall make reasonable efforts to recover the funds involved in the payment transaction. "The payee's payment service provider shall cooperate in those efforts also by communicating to the payer's payment service provider all relevant information for the collection of funds."[257]

(Law of 20 July 2018)
"In the event that the collection of funds under the second subparagraph 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 a legal claim to recover the funds."

If agreed in the framework contract, the payment service provider may charge the payment service user for recovery.

(3) If the payment service user provides information additional to that specified in point (a) of Article 66 or point (2)(b) of Article 71, 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 101 – "Payment service providers' liability for non-execution, defective or late execution of payment transactions"[258]

(1) Where a payment order is initiated "directly"[259] by the payer, "the payer's payment service provider"[260] shall, without prejudice to Article 85, Article 100(2) and (3), and Article 104, be liable

[256] Law of 20 July 2018
[257] Law of 20 July 2018
[258] Law of 20 July 2018
[259] Law of 20 July 2018
[260] Law of 20 July 2018

to the payer for correct execution of the payment transaction, unless it can prove to the payer and, where relevant, to the payee's payment service provider that the payee's payment service provider received the amount of the payment transaction in accordance with Article 96(1), in which case, the payee's payment service provider shall be liable to the payee for the correct execution of the payment transaction.

Where the payer's payment service provider is liable under the first subparagraph, 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. “The credit value date for the payer’s payment account shall be no later than the date on which the amount was debited.”[261]

Where the payee's payment service provider is liable under the first subparagraph, it shall immediately place the amount of the payment transaction at the payee's disposal and, where applicable, credit the corresponding amount to the payee's payment account. “The credit value date for the payee’s payment account shall be no later than the date on which the amount would have been value dated, had the transaction been correctly executed in accordance with Article 99. 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.”[262]

In the case of a non-executed or defectively executed payment transaction where the payment order is initiated by the payer, “the payer’s”[263] payment service provider shall, regardless of liability under the present paragraph, on request, make immediate efforts to trace the payment transaction and notify the payer of the outcome. “This shall be free of charge for the payer.”[264]

(2) Where a payment order is initiated by or through the payee, “the”[265] “payee’s”[266] payment service provider shall, without prejudice to Article 85, Article 100(2) and (3), and Article 104, be liable to the payee for correct transmission of the payment order to the payment service provider of the payer in accordance with Article 96(3). Where the payee's payment service provider is liable under the present subparagraph, he shall immediately re-transmit the payment order in question to the payment service provider of the payer. “In the case of a late transmission of the payment order, the amount shall be value dated on the payee’s payment account no later than the date the amount would have been value dated had the transaction been correctly executed.”[267]

In addition, the payment service provider of the payee shall, without prejudice to Article 85, Article 100(2) and (3), and Article 104, be liable to the payee for handling the payment transaction in accordance with its obligations under Article 99. Where the payee's payment service provider is liable under the present subparagraph, he shall ensure that the amount of the payment transaction is at the payee's disposal immediately after that amount is credited to the payee's payment service provider's account. “The amount shall be value dated on the payee’s payment account no later than the date the amount would have been value dated had the transaction been correctly executed.”[268]

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 first and second subparagraphs, the payer's payment service provider shall be liable to the payer. Where the payer's payment service provider is so liable he shall, as appropriate and without undue delay, refund to the payer the amount of the non-executed or defective payment transaction and restore the debited payment account to the state in which it would have been had the defective payment transaction not taken place. “The credit value date for the payer’s payment account shall be no later than the date the amount was debited. The obligation under this subparagraph shall not apply to the payer’s payment service provider where the payer’s payment service provider proves that the payee’s payment service provider has received the amount of the payment transaction, even if execution of payment transaction is merely delayed. If so, the payee’s payment service provider shall value date the

[261] Law of 20 July 2018
[262] Law of 20 July 2018
[263] Law of 20 July 2018
[264] Law of 20 July 2018
[265] Law of 20 July 2018
[266] Law of 20 July 2018
[267] Law of 20 July 2018
[268] Law of 20 July 2018

amount on the payee's payment account no later than the date the amount would have been value dated had it been executed correctly."[269]

In the case of a non-executed or defectively executed payment transaction where the payment order is initiated by or through the payee, "the payee's"[270] payment service provider shall, regardless of liability under this paragraph, on request, make immediate efforts to trace the payment transaction and notify the payee of the outcome. "This shall be free of charge for the payee."[271]

(3) In addition, payment service providers shall be liable to their respective payment service users for any charges for which they are responsible, and for any interest to which the payment service user is subject as a consequence of non-execution or defective", including late,"[272] execution of the payment transaction.

(Law of 20 July 2018)

"Article 101-1 – 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 Article 85 and Article 100(2) and (3), refund to the payer the amount of the non-executed or defective payment transaction and, where applicable, restore the debited payment account to the state in which it would have been had the defective payment transaction not taken place.

The 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 91 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.

(2) 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 102 – Additional financial compensation

Any financial compensation additional to that provided for under this section may be determined in accordance with the law applicable to the contract concluded between the payment service user and "the"[273] payment service provider.

Article 103 – Right of recourse

(1) Where the liability of a payment service provider under "Articles 87 and"[274] 101 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 87 and"[275] 101. "That shall include compensation where any of the payment service providers fail to use strong customer authentication."[276]

(2) Further financial compensation may be determined in accordance with agreements between payment service providers and/or intermediaries and the law applicable to the agreement concluded between them.

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[269] Law of 20 July 2018
[270] Law of 20 July 2018
[271] Law of 20 July 2018
[272] Law of 20 July 2018
[273] Law of 20 July 2018
[274] Law of 20 July 2018
[275] Law of 20 July 2018
[276] Law of 20 July 2018

Article 104 – Absence of liability

"No liability shall arise under Chapter 2 or 3"[277] of the present title (…)[278] 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 covered by national or Community legislation.

"CHAPTER 4: AUTHENTICATION, INCIDENT REPORTING AND DATA PROTECTION"[279]

Article 105 – Data protection

Payment systems and payment service providers are entitled to process personal data (...)[280] when this is necessary to safeguard the prevention, investigation and detection of payment fraud. "The provision of information to individuals about the processing of personal data and the processing of such personal data and any other processing of personal data for the purposes of this Law shall be carried out in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data."[281]

(Law of 20 July 2018)
"Payment service providers shall only access, process and retain personal data necessary for the provision of their payment services, with the consent of the payment service user."

(Law of 20 July 2018)
"Article 105-1 - Management of operational and security risks

(1) 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. As part of that framework, payment service providers shall establish and maintain effective incident management procedures, including for the detection and classification of major operational and security incidents.

(2) Payment service providers shall provide to the CSSF, at least on an annual basis, an updated and comprehensive assessment of the operational and security risks relating to the payment services they provide and on the adequacy of the mitigation measures and control mechanisms implemented in response to those risks.

Article 105-2 - Incident reporting

(1) In the case of a major operational or security incident, payment service providers shall, without undue delay, notify the CSSF.

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

(2) Upon receipt of the notification referred to in paragraph 1, the CSSF shall, without undue delay, provide the relevant details of the incident to the EBA and to the ECB. The CSSF shall, after assessing the relevance of the incident to relevant authorities in Luxembourg, notify them accordingly.

The CSSF shall cooperate with the EBA and the ECB to assess the relevance of the incident to other relevant authorities of Luxembourg and, where applicable, of the European Union. These authorities shall be notified accordingly. On the basis of that notification, the CSSF or, where applicable, the other relevant authorities shall take all of the necessary measures to protect the immediate safety of the financial system.

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[277] Law of 20 July 2018
[278] Law of 20 July 2018
[279] Law of 20 July 2018
[280] Law of 20 July 2018
[281] Law of 20 July 2018

(3) Payment service providers shall provide, at least on an annual basis, statistical data on fraud relating to different means of payment to the CSSF. The CSSF shall provide the EBA and the ECB with such data in an aggregated form.

Article 105-3 - 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 letter (b) of paragraph 1, payment service providers shall, for electronic remote payment transactions, 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 put in place 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. Paragraphs 1 and 3 shall also apply when the information is requested through an account information service provider.

(5) 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.

Article 105-4 - Obligation to inform consumers of their rights

(1) The CSSF and the payment service providers which have a website shall ensure that the leaflet referred to in Article 106(1) of Directive (EU) 2015/2366 is made available in an easily accessible manner on their websites.

(2) Payment service providers shall ensure that the leaflet is also made available on paper at their branches, their agents and the entities to which their activities are outsourced.

(3) Payment service providers shall not charge their clients for making available the information referred to in this article and shall make the information available to persons with disabilities in an accessible format.

(4) Payment service providers shall inform payment service users that the CSSF is competent for the alternative dispute resolution in relation to the rights and obligations established by Titles III and IV, in accordance with Article 106.

The information referred to in the first subparagraph shall be mentioned in a clear, comprehensive and easily accessible way on the website of the payment service providers which have a website, where applicable, at the branch, and in the general terms and conditions of the contract between the payment service provider and the payment service user. It shall specify how further information on the CSSF as the alternative dispute resolution entity concerned and on the conditions for using it can be accessed."

CHAPTER 5: OUT-OF-COURT COMPLAINT AND REDRESS PROCEDURES FOR THE SETTLEMENT OF DISPUTES

Article 106 – Out-of-court redress and complaints

(Law of 20 May 2011)

"(1) The CSSF is competent to receive complaints by customers of payment service providers referred to in point (37) (i) to (iv) of Article 1 and authorised in Luxembourg, of electronic money issuers referred to in point (15a) (i) to (iii) of Article 1 and authorised in Luxembourg, of persons benefiting from an exemption under Article 48 or 48-1, of branches or agents set up in Luxembourg by

payment service providers or electronic money issuers where Luxembourg is not the home Member State, "and to settle disputes out-of-court in relation to the rights and obligations established by Title II, Chapter 4, and Titles III and IV opposing payment service users and electronic money holders, and"[282] such providers or persons", in accordance with the provisions of Book 4 of the Consumer Code."[283] "

(2) "The users of payment services, the electronic money holders and all other interested parties, including consumer associations, can submit complaints to the CSSF where there is an alleged suspicion of infringement of the provisions in Title II, Chapter 4 and Titles III to IV of the present Law by payment service providers referred to in Article 1, point (37) (i) to (iv), and authorised in Luxembourg, by electronic money institutions referred to in Article 1, point (15a) (i) to (iv), and authorised in Luxembourg, by persons benefiting from the waiver under Article 48 or 48-1 or by branches or agents set up in Luxembourg by payment service providers or electronic money issuers where Luxembourg is not the home Member State."[284]

Where appropriate and without prejudice to the right to bring an action in the ordinary courts, the reply from the CSSF shall inform the complainant of the existence of the procedure laid down in paragraph 1.

"(3) The payment service providers referred to in point (37)(i) to (iv) of Article 1 and authorised in Luxembourg, the electronic money issuers referred to in point (15a)(i) to (iii) of Article 1 and authorised in Luxembourg, the persons benefiting from an exemption under Article 48 or 48-1 and the branches or agents established in Luxembourg by payment service providers or by electronic money issuers for which Luxembourg is not the home Member State, shall put in place these adequate and effective complaint resolution procedures for the settlement of complaints of payment service users and electronic money holders concerning the rights and obligations established by Title II, Chapter 4, and Titles III and IV. These providers and persons shall apply the procedures in every Member State where they offer payment services or issue electronic money in one of the official languages of the relevant Member State or in another language if they agreed so with the payment service users or electronic money holders.

The providers and persons referred to in the first subparagraph shall make every possible effort to reply, on paper or on another durable medium, if they agreed so with the payment service users or electronic money holders, to the payment service users' and electronic money holders' complaints. Such a reply shall address all points raised, within an adequate timeframe and at the latest within 15 business days of receipt of the complaint. In exceptional situations, if the answer cannot be given within 15 business days for reasons beyond the control of these providers and persons, they shall send a holding reply, clearly indicating the reasons for the delay in answering to the complaint and specifying the deadline by which the payment service user or electronic money holder will receive the final reply. In any event, the deadline for receiving the final reply shall not exceed 50 business days."[285]

(4) The procedures laid down in this article shall be exercised without prejudice to the right to bring an action in the ordinary courts.

(Law of 20 July 2018)

"(5) The CSSF shall cooperate with the authorities in charge of the alternative dispute resolution of the other Member States referred to in Article 102(1) of Directive (EU) 2015/2366 in order to facilitate the resolution of cross-border disputes concerning the rights and obligations established by Titles III and IV of that directive."

TITLE V: SETTLEMENT FINALITY IN PAYMENT AND SECURITIES SETTLEMENT SYSTEMS

Article 107 – Definitions

For the purposes of this title, the following definitions shall apply:

(1) "system" means a formal arrangement governed by:

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[282] Law of 20 July 2018
[283] Law of 20 July 2018
[284] Law of 20 May 2011
[285] Law of 20 July 2018

– Luxembourg law, designated by the Banque centrale du Luxembourg as payment system and securities settlement system and notified to the "European Securities and Markets Authority"[286] by the Minister responsible for the financial sector, or

– the law of another Member State, designated as payment system and "notified by a Member State, before the entry into force of Directive 2010/78/EU, to the European Commission and, as from the entry into force of Directive 2010/78/EU, to the European Securities and Markets Authority"[287].

Payment systems and securities settlement systems notified by the Banque centrale du Luxembourg to the European Commission before the entry into force of the present Law and in accordance with Article 34-3 of the Law of 5 April 1993 on the financial sector, as amended are also considered as payment systems and securities settlement systems;

(Law of 8 April 2019)
"(1a) "third-country system" means a formal arrangement:

- between three or more participants, excluding the operator of that system, without counting a settlement agent, a central counterparty, a clearing house or an indirect participant, with common rules and standardised arrangements for the clearing, whether or not through a central counterparty, or execution of transfer orders between the participants;
- governed by the laws of a third country;
- provided the system is:
  (a) subject to the supervision of a supervisory authority of a State whose central bank holds a participation in the capital of the Bank for International Settlements; and
  (b) admitted on the official register of third-country payment systems and securities settlement systems of the Banque centrale du Luxembourg upon request by the operator of the system or a participant to said system established in Luxembourg;"

(2) "institution" means:

– a credit institution as defined in Article 4, point (1), of Directive 2006/48/EC authorised in a Member State, including the institutions listed in Article 2 of Directive 2006/48/EC, or

– an investment firm as defined in Article 4(1), point (1), of Directive 2004/39/EC authorised in a Member State, except the institutions listed in Article 2(1) of Directive 2004/39/EC, or

– public authorities and publicly guaranteed undertakings, or

– any undertaking whose registered office is in a third country and whose tasks correspond to those of Community credit institutions or investment firms referred to in the indents above,

which participates in a system and which is responsible for discharging obligations arising from transfer orders within that system.

[286] Law of 21 December 2012
[287] Law of 21 December 2012

Undertakings:

– which participate in a system which is supervised in accordance with the legislation of a Member State and which only execute transfer orders such as defined in the second indent of point (10), as well as payments resulting from these orders, and

– which are responsible for discharging the financial obligations arising from transfer orders within that system,

shall be considered institutions, provided that at least three participants in this system fall within the categories referred to in the first subparagraph, from the moment that this assimilation is justified by reasons of systemic risk;

(3) "central counterparty" means an entity which is interposed between participants in a system and which acts as the exclusive counterparty of these participants with regard to their transfer orders;

(4) "settlement agent" means an entity providing to participants in systems, settlement accounts through which transfer orders within such systems are settled and, as the case may be, extending credit to those participants for settlement purposes;

(5) "clearing house" means an entity responsible for the calculation of the net positions of participants;

(6) "participant" means any person admitted as participant in the system, including an institution, central counterparty, settlement agent ", clearing house and system operator"[288].

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

"An indirect participant shall be considered a participant as such assimilation is justified on the grounds of systemic risk. Where an indirect participant is to be considered to be a participant on grounds of systemic risk, this does not limit the responsibility of the participant through which the indirect participant passes transfer orders to the system."[289]

(Law of 20 May 2011)

"(7) "indirect participant" means an institution, a central counterparty, a settlement agent, a clearing house or a system operator with a contractual relationship with a participant in a system executing transfer orders which enables the indirect participant to pass transfer orders through the system, provided that the indirect participant is known to the system operator;"

(Law of 20 May 2011)

"(8) "system operator" means the entity or entities legally responsible for the operation of a system. A system operator may also act as a settlement agent, central counterparty or clearing house;"

(9) "securities" means the instruments referred to in Annexe II, Section B of the Law of 5 April 1993 on the financial sector, as amended;

(10) "transfer order" means

– any instruction by a participant to place at the disposal of a recipient an amount of money by means of a book entry on the accounts of a credit institution, a central bank ", a central counterparty"[290] or a settlement agent, or any instruction which results in the assumption or discharge of a payment obligation as defined by the rules of the system, or

– an instruction by a participant to transfer the title to, or interest in, a security or securities by means of a book entry on a register, an account or otherwise;

(11) "insolvency proceedings" means any measure for collective settlement provided for in the law of a Member State, or a third country, either to wind up the participant or to reorganise it, where such measure involves the suspending of, or imposing limitations on, transfers or payments;

(12) "moment of opening of insolvency proceedings" means the moment when the competent judicial or administrative authority of a Member State or third country handed down its decision;

(13) "netting" means the conversion into one net claim or one net obligation of claims and obligations resulting from transfer orders which a participant or participants either issue to, or receive from,

[288] Law of 20 May 2011
[289] Law of 20 May 2011
[290] Law of 20 May 2011

one or more other participants with the result that only a net claim can be demanded or a net obligation be owed;

(14) "settlement account" means an account at a central bank, a settlement agent or a central counterparty used to "hold funds or securities"[291] and to settle transactions between participants in a system.

(Law of 20 May 2011)
"(15) "business day" means the period covering both day and night-time settlements and encompassing all events happening during the business cycle of a system;

(16) "interoperable systems" means two or more systems whose system operators have entered into an arrangement with one another that involves cross-system execution of transfer orders."

Article 108 – Scope

The present title applies to any payment system and any securities settlement system designated by the Banque centrale du Luxembourg as payment system and securities settlement system and notified to the "European Securities and Markets Authority"[292] by the Minister responsible for the financial sector.

The present title also applies to payment systems and securities settlement systems notified by the Banque centrale du Luxembourg to the European Commission before the entry into force of the present Law and in accordance with Article 34-3 of the Law of 5 April 1993 on the financial sector, as amended.

(Law of 8 April 2019)
"The present title shall not apply to third-country payment systems and securities settlement systems, without prejudice to Article 112(3), the second subparagraph of Article 113(1), the fourth subparagraph of Article 113(3) and Article 114."

Article 109 – The designation of systems

(1) The Banque centrale du Luxembourg may designate as payment or securities settlement system by formal agreement:

"– entered into between three or more participants, excluding the system operator of that system, to which may be added a settlement agent, a central counterparty, a clearing house or an indirect participant, and which has common rules and standard procedures for the netting, whether or not through a central counterparty, or for the execution of transfer orders between the participants,"[293]

– to which the participants choose to apply Luxembourg law,

– of which at least one of the participants is a legal person having its registered office in Luxembourg,

– which, in the view of the Banque centrale du Luxembourg, has appropriate rules, and

– which appoints a system operator having its registered office in Luxembourg or in another Member State.

A payment system or securities settlement system may, subject to compliance with the conditions laid down in this article, be appointed by formal agreement which consists in executing transfer orders as defined in the second indent of Article 107, point (10), and which, to a limited extent, executes orders relating to other financial instruments from the moment that the approval of such an agreement is justified by reasons of systemic risk.

A formal agreement between two participants, to which may be added a settlement agent, a central counterparty, a clearing house or an indirect participant, can also be designated as payment system or securities settlement system where the participants have elected Luxembourg law and where the agreement counts among the participants at least one legal person having its registered office in Luxembourg, and where it nominates the system operator, from the moment that the approval of such an agreement is justified by reasons of systemic risk.

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[291] Law of 20 May 2011
[292] Law of 21 December 2012
[293] Law of 20 May 2011

"An agreement entered into between interoperable systems shall not constitute a system."[294]

(2) The systems shall be organised so as to ensure the ordered settlement of transfer orders.

Their rules shall be appropriate with regard to the nature and volume of the intended activities and of the number of participants. These rules shall in particular:

- define the conditions for admission and exclusion of participants from the system,
- define the rights and obligations of the participants which result from their participation in the system,
- define the moment in time when a transfer order is entered into the system,
- lay down the moment in time from when a transfer order can no longer be revoked by a participant to the system or by a third party,
- state clearly the arrangements for settlement of transfer orders,
- set out settlement procedures which apply in normal situations and in crisis situations,
- set out risk management procedures,
- indicate the competent jurisdiction in case of dispute,
- (...)[295],
- ensure compliance with the professional obligations "as"[296] laid down in "Title I"[297] of the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended, "and in its implementing measures"[298].

"The system operator shall indicate to the Banque centrale du Luxembourg the participants in the system, including any indirect participants, as well as any change in them."[299]

(3) Where a payment system or a securities settlement system referred to in Article 108 no longer fulfils the requirements laid down in the present title, the Banque centrale du Luxembourg informs without delay the relevant system operator and the Minister responsible for the financial sector thereof.

The decision of the Banque centrale du Luxembourg may be referred to the *Tribunal administratif* (Administrative Tribunal) which deals with the substance of the case. The case shall be filed within one month, or else shall be time-barred.

The Minister responsible for the financial sector informs the "European Securities and Markets Authority"[300] of the Banque centrale du Luxembourg's opinion received pursuant to the first subparagraph.

Article 110 – The competent authorities

(1) The Minister responsible for the financial sector notifies to the "European Securities and Markets Authority"[301] of payment systems and securities settlement systems designated by the Banque centrale du Luxembourg ", including the operators of these systems."[302]

(2) The Banque centrale du Luxembourg designates payment systems and securities settlement systems which comply with the requirement laid down in the present title.

The Banque centrale du Luxembourg holds an official list of payment systems and securities settlement systems referred to in Article 108. The official list is available on the website of the

[294] Law of 20 May 2011
[295] Law of 20 May 2011
[296] Law of 13 February 2018
[297] Law of 13 February 2018
[298] Law of 13 February 2018
[299] Law of 20 May 2011
[300] Law of 21 December 2012
[301] Law of 21 December 2012
[302] Law of 20 May 2011

Banque centrale du Luxembourg and is updated regularly. It is published in the Mémorial (Luxembourg Official Journal) at least every year-end.

The Banque centrale du Luxembourg ensures the proper functioning of the systems referred to in Article 108 through the application of Article 2(5) of the Law of 23 December 1998 concerning the monetary status and the Banque centrale du Luxembourg, as amended.

The Banque centrale du Luxembourg reports annually in its annual report on the exercise of its mission laid down under Article 2(5) of the Law of 23 December 1998 concerning the monetary status and the Banque centrale du Luxembourg, as amended, and more particularly, through the application of the present title.

(Law of 8 April 2019)

"(3) The Banque centrale du Luxembourg admits third-country payment systems and securities settlement systems which comply with the requirements laid down in Article 107, point (1a). The Banque centrale du Luxembourg holds the official register of third-country payment systems and securities settlement systems referred to in Article 107, point (1a). The official register is available on the website of the Banque centrale du Luxembourg and is updated regularly. It is published in the Journal officiel du Grand-Duché de Luxembourg at least every year-end."

(Law of 15 March 2016)

"Article 111 – Settlement finality in systems referred to in Article 108

(1) Even in the event of insolvency proceedings against a participant, transfer orders and netting in systems referred to in Article 108 shall be legally enforceable between parties and binding on third parties, provided that transfer orders were entered into the system before the moment of opening of such insolvency proceedings. This shall apply even in the event of insolvency proceedings against a participant in the system concerned or in an interoperable system or against the system operator of an interoperable system which is not a participant in the system concerned.

Transfer orders entered into a system after the moment of opening of insolvency proceedings and carried out within the business day, as defined by the rules of the system, during which the opening of such proceedings occur, shall be legally enforceable and binding on third parties only if the system operator can prove that, at the time that such transfer orders become irrevocable, it was neither aware, nor should have been aware, of the opening of such proceedings.

Furthermore, from the moment of entry into a system, a netting can no longer be challenged for whatever reason, notwithstanding any legal, regulatory, contractual or usual provision which provides for the setting aside of contracts and transactions concluded before the moment of opening of insolvency proceedings.

The moment of entry of a transfer order into a system referred to in Article 108 is defined by the rules of said system.

In the case of interoperable systems, the system operator authorised in Luxembourg shall consult the system operators of the other systems concerned in order to agree, to the extent possible, on common rules on the moment of entry of a transfer order into the interoperable systems.

Unless expressly provided for by the rules of all the systems that are party to the interoperable systems, the rules of a system authorised in Luxembourg which define the moment of entry of a transfer order into said system shall not be affected by any rule of the other systems with which it is interoperable.

(2) A transfer order can no more be revoked by a participant in a system referred to in Article 108 or by a third party from the moment defined by the rules of that system.

In the case of interoperable systems, the system operator authorised in Luxembourg shall consult the system operators of the other systems concerned in order to agree, to the extent possible, on common rules on the moment of irrevocability of a transfer order in the interoperable systems.

Unless expressly provided for by the rules of all the systems that are party to the interoperable systems, the rules of a system authorised in Luxembourg which define the moment of irrevocability

of a transfer order in that system shall not be affected by any rule of the other systems with which it is interoperable.

(3) The opening of insolvency proceedings against a participant or a system operator of an interoperable system shall not prevent funds or securities available on the own settlement account of that participant from being used to fulfil that participant's obligations in the system or in an interoperable system on the business day of the opening of the insolvency proceedings.

Any credit facility of said participant connected to the system can be used against available, existing collateral security to fulfil that participant's obligations in the system or in an interoperable system.

(4) Insolvency proceedings shall not have retroactive effects on the rights and obligations of a participant arising, or in connection with, its participation in a system before the moment of opening of an insolvency procedure. This shall apply, inter alia, as regards the rights and obligations of a participant in an interoperable system or of a system operator of an interoperable system which is not a participant.

(5) No settlement account held with a system operator or settlement agent, as well as no transfer, via a credit institution incorporated under Luxembourg law or foreign law to such settlement account, may be seized, sequestered or blocked in any way by a participant (other than the system operator or settlement agent), a counterparty or a third party."

Article 112 – Preservation of the rights of holders of collateral security provided in the context of payment or securities settlement systems within the meaning of Article 107, point (1) "or point (1a)"[303], or in the context of operations of central banks of the Member States or the European Central Bank from the effects of the insolvency of the provider of collateral

(1) For the purposes of this article, "collateral security" shall mean all realisable assets, "including money and, without limitations, financial collateral consisting of cash, financial instruments or credit claims,"[304] provided under a pledge, a pension agreement, a fiduciary transfer or under an analogue agreement or otherwise, for the purpose of securing rights and obligations potentially arising in connection with a system within the meaning of Article 107, point (1) "or point (1a)"[305], or provided to central banks of the Member States or to the European Central Bank.

(Law of 20 May 2011)

"(2) The rights of a system operator or of a participant to collateral security provided to them in connection with a system within the meaning of Article 107, point (1) "or point (1a)"[306], or any interoperable system, and the rights of central banks of the Member States or the European Central Bank to collateral security provided to them in the context of operations carried out in their capacity as central banks, shall not be affected by insolvency proceedings against:

(a) the participant (in the system concerned or in an interoperable system);

(b) the system operator of an interoperable system which is not a participant;

(c) a counterparty to central banks of the Member States or the European Central Bank; or

(d) any third party which provided the collateral security.

Notwithstanding any provision to the contrary laid down by the law relating to insolvency proceedings, such collateral security may be realised for the satisfaction of the rights covered thereby."

(Law of 15 March 2016)

"Where a system operator has provided collateral security to another system operator in connection with an interoperable system, the rights of the providing system operator to that collateral security shall not be affected by insolvency proceedings against the receiving system operator."

(3) Where securities, including rights in securities, are provided as collateral security to participants ", system operators"[307] or central banks of the Member States or the European Central Bank as

[303] Law of 8 April 2019
[304] Law of 20 May 2011
[305] Law of 8 April 2019
[306] Law of 8 April 2019
[307] Law of 20 May 2011

described in the preceding paragraph, and their right (or that of any nominee, agent or third party acting on their behalf) with respect to the securities is legally recorded on a register, account or centralised deposit system located in a Member State, the determination of the rights of such entities as holders of collateral security in relation to those securities shall be governed by the law of that Member State.

(Law of 8 April 2019)

"Where securities, including rights in securities, are provided as collateral security to participants, system operators or to central banks of the Member States or the European Central Bank as described in paragraph 2, and their right or that of any nominee, agent or third party acting on their behalf with respect to these securities is legally recorded on a register, account or centralised deposit system located in a third country whose system has been admitted by the Banque centrale du Luxembourg on the register held in accordance with Article 110(3), the determination of the rights of such entities as holders of collateral security in relation to those securities shall be governed by the law of that third country."

Article 113 – Opening of insolvency proceedings against a participant in a payment or securities settlement system within the meaning of Article 107, point (1) "or point (1a)"[308]

(1) In the event of insolvency proceedings being opened against a participant in a system referred to in Article 108, the rights and obligations arising from, or in connection with, the participation of that participant shall be determined by Luxembourg law.

In the event of insolvency proceedings being opened against a Luxembourg participant in a system within the meaning of Article 107, point (1), of another Member State "or a third-country system within the meaning of Article 107, point (1a)"[309], the rights and obligations arising from, or in connection with, the participation of that participant shall be determined by the law governing that system.

(2) Where, in relation to a Luxembourg participant in a system within the meaning of Article 107, point (1), an application is made to the *Tribunal*, or where the *Tribunal* delivers a judgment which, by application "of Part II, Titles II and III, of the Law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended"[310], which have the effect of suspending payments by that participant, the court registry of the *Tribunal* shall forthwith notify the CSSF and the Banque centrale du Luxembourg of the application or decision in question, stating the time at which it was respectively lodged or delivered.

The court registry of the *Tribunal* shall similarly notify the CSSF and the Banque centrale du Luxembourg of any subsequent decision the effect of which is to terminate the suspension of payments by the participant or to modify the legal basis thereof.

(3) The Banque centrale du Luxembourg shall in turn ensure that it takes steps without delay to notify the operator of the system referred to in Article 108 of any application or decision to open insolvency proceedings in respect of a Luxembourg participant.

Where the matter concerns a Luxembourg participant in a system of another Member State, the Banque centrale du Luxembourg shall without delay notify the decision to the competent authorities in the other Member States responsible for the oversight of said system, "to the European Systemic Risk Board and to the European Securities and Markets Authority"[311] without prejudice to the provisions laid down "in Part II of the Law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended"[312].

Without prejudice to the provisions laid down "in Part II of the Law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended"[313], the Banque centrale du Luxembourg shall be the competent authority for the purposes of receiving, from an authority of another Member State or of a third country designated for that purpose, notification of the decision to open insolvency proceedings taken by the competent judicial or administrative authority of that Member State or third country in relation to a participant in a system referred to in Article 108.

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[308] Law of 8 April 2019
[309] Law of 8 April 2019
[310] Law of 8 April 2019
[311] Law of 21 December 2012
[312] Law of 8 April 2019
[313] Law of 8 April 2019

(Law of 8 April 2019)

"Where a Luxembourg participant to a third-country system is concerned, the Banque centrale du Luxembourg shall ensure to notify without delay the operator of said system of the request or decision to open insolvency proceedings in relation to a Luxembourg participant."

(Law of 20 May 2011)

"Article 114 – Information obligation applicable to Luxembourg institutions participating in payment systems or securities settlement systems within the meaning of Article 107, point (1) "or point (1a)"[314]

Any institution within the meaning of Article 107, point (2), established in Luxembourg shall, on request, inform anyone with legitimate interest of the payment systems and securities settlement systems in which it participates and provide information about the main rules governing the functioning of those systems."

Article 115 – Obligations applicable to payment system and securities settlement system operators referred to in Article 108

The payment system and securities settlement system operators referred to in Article 108 shall notify to the Banque centrale du Luxembourg the participants to systems, including any potential indirect participant as well as any change to such persons.

TITLE VI: TRANSITIONAL, AMENDING, REPEALING AND FINAL PROVISIONS

"Article 116 – Transitional provisions

(1) Payment institutions and electronic money institutions incorporated under Luxembourg law which have taken up activities by 13 January 2018 shall be allowed to continue those activities until 13 July 2018 in accordance with the requirements provided for in this Law, as into force prior to 13 January 2018, and in Directive 2007/64/EC without being required to seek a new authorisation in accordance with the provisions of Article 8 or 24-4 of this Law.

The payment institutions and electronic money institutions referred to in the first subparagraph shall submit all relevant information to the CSSF in order to allow the latter to assess until 13 July 2018 whether those payment institutions or electronic money institutions comply with the requirements laid down in Title II. The authorisation of payment institutions and electronic money institutions which upon verification by the CSSF comply with the requirements laid down in Title II shall be maintained and they shall remain in the registers referred to in Article 36.

Where the requirements referred to in the second subparagraph are not complied with, the CSSF shall determine which measures need to be taken by the payment institution or electronic money institution concerned to ensure compliance with these requirements or the CSSF advises the Minister responsible for the CSSF to withdraw the authorisation.

In case of withdrawal of the authorisation, the entities concerned are prohibited from continuing to provide payment services or issue electronic money in accordance with Articles 4 and 4-1.

(2) Where the CSSF has already the evidence that the payment institutions referred to in the first subparagraph of paragraph 1 comply with the requirements defined under Title II, Chapter 1, Section 1, the authorisation of these payment institutions shall be maintained and they shall remain in the registers referred to in Article 36.

The CSSF shall inform the payment institutions concerned accordingly.

(3) The natural or legal persons which benefited from an exemption under Article 48 of this Law, as into force prior to 13 January 2018, and which have taken up the activity of payment service provision before 13 January 2018 shall be allowed to continue, until 13 January 2019, their activities in Luxembourg in accordance with the provisions of this Law, as into force prior to 13 January 2018, without being required to seek authorisation in accordance with Article 8 and without being required to comply with the other provisions laid down or referred to under Title II.

In accordance with Article 4, if the persons referred to in the first subparagraph have not been granted a new exemption pursuant to Article 48 or an authorisation from the Minister responsible

[314] Law of 8 April 2019

for the CSSF under this Law, they shall be prohibited from continuing to provide payment services as from 13 January 2019.

(4) Where the CSSF has already the evidence that the persons referred to in the first subparagraph of paragraph 3 comply with the requirements defined in Article 48, these persons shall continue to benefit from their exemption and they shall remain in the registers referred to in Article 36.

The CSSF shall inform the natural or legal persons concerned accordingly.

(5) By way of derogation from paragraph 1, payment institutions that have been granted authorisation to provide payment services as referred to in point (7) of the Annex to this Law, as into force prior to 13 January 2018, shall keep their authorisation to provide those payment services which are considered to be payment services as referred to in point (3) if, by 13 January 2020, the CSSF has the evidence that these payment institutions comply with the requirements defined in Articles 15(3) and 17.

(6) The legal persons which have performed in Luxembourg, before 12 January 2016, activities of payment initiation service providers or account information service providers within the meaning of this Law shall seek an authorisation in accordance with Article 8 or a registration in accordance with Article 48-1a if they intend to continue to perform those activities. However, they are allowed to continue their activities in Luxembourg after 13 January 2018 for a period of 18 months at the most following the entry into force of the regulatory technical standards referred to in Article 98 of Directive (EU) 2015/2366. If such persons have not obtained authorisation or registration within this period, they shall be prohibited to continue to perform their activities in accordance with Article 4.

(7) The security measures referred to in Articles 81-1, 81-2, 81-3 and 105-3 shall apply as from 18 months after the date of entry into force of the regulatory technical standards referred to in Article 98 of Directive (EU) 2015/2366.

(8) The transitional period until the application of the security measures referred to in Articles 81-1, 81-2, 81-3 and 105-3 shall not be used as a pretext by the account servicing payment service providers to block or obstruct the use of payment initiation or account information services for the accounts that they are servicing."[315]

Article 117 – Amending provisions relating to the Law of 5 April 1993 on the financial sector, as amended

The Law of 5 April 1993 on the financial sector, as amended shall be amended as follows:

1) Point (9) of Article 1 shall be completed as follows:

"i.e. the persons whose regular occupation or business is the provision of one or more investment services to third parties and/or the performance of one or more investment activities on a professional basis"

2) Point (27) of Article 1 shall be amended as follows:

""professionals of the financial sector" means credit institutions and the PFS;".

3) Point (28) of Article 1 shall be amended as follows:

"PFS" means the persons whose regular occupation or business is to exercise a financial sector activity or one of the connected or ancillary activities referred to in sub-section 3 of section 2 of Chapter 2 of Part I of this Law, excluding credit institutions and persons subject to Article 1-1(2) of this Law;".

The following new Article 1(1) shall be added before Part I:

"Art. 1-1 Scope

(1) This Law shall apply to credit institutions and PFS.

(2) It shall not apply to:

[315] Law of 20 July 2018

(a) insurance or reinsurance undertakings governed by the Law of 6 December 1991 on the insurance sector, as amended;

(b) persons which provide investment services exclusively for their parent undertaking, for their subsidiaries or for another subsidiary of their parent undertaking;

(c) persons which provide a service under this Law, exclusively to one or more undertakings forming part of the same group as the undertaking providing the service, unless otherwise provided;

(d) persons which provide a service under Chapter 2 of Part I of this Law where that service is provided in an incidental manner in the course of a professional activity and if the latter is regulated by legal or regulatory provisions or a code of ethics governing the profession which do not exclude the provision of that service;

(e) persons which do not provide any investment services or activities other than dealing on own account unless they are market makers or deal on own account outside a regulated market or an MTF on an organised, frequent and systematic basis by providing a system accessible to third parties in order to engage in dealings with them;

(f) persons which provide investment services consisting exclusively in the administration of employee-participation schemes;

(g) persons which provide investment services which only involve both administration of employee-participation schemes and the provision of investment services exclusively for their parent undertaking, for their subsidiaries or for another subsidiary of their parent undertaking;

(h) the members of the European System of Central Banks nor to other national bodies performing similar functions, nor to other public bodies charged with or intervening in the management of the public debt;

(i) undertakings for collective investment governed by the Law of 13 February 2007 relating to specialised investment funds or the Law of 20 December 2002 relating to undertakings for collective investment, as amended, nor to their managers and advisers;

(j) pension funds governed by the Law of 13 July 2005 on institutions for occupational retirement provision in the form of sepcav or assep nor to pension funds subject to the supervision of the *Commissariat aux Assurances,* nor to their asset managers and liability managers;

(k) persons dealing on own account in financial instruments, or providing investment services in commodity derivatives or derivative contracts included in Annexe II, Section B, point (10), to the clients of their main business, provided this is an ancillary activity to their main business, when considered on a group basis, and that main business is not the provision of investment services within the meaning of Sections A and C of Annexe II or the exercise of one or more of the activities listed in Annexe I;

(l) persons providing investment advice in the course of providing another professional activity not covered by sub-sections 1 and 2 of Chapter 2 of Part I of this Law provided that the provision of such advice is not specifically remunerated;

(m) persons whose main business consists of dealing on own account in commodities and/or commodity derivatives. This exemption does not apply where persons dealing on own account in commodities and/or commodity derivatives are part of a group the main business of which is the provision of other investment services listed in Sections A and C of Annexe II or the exercise of one or more activities listed in Annexe I;

(n) firms which provide investment services and/or perform investment activities consisting exclusively in dealing on own account on markets in financial futures or options or other derivatives and on cash markets for the sole purpose of hedging positions on derivatives markets or which deal for the account of other members of those markets or make prices for them and which are guaranteed by clearing members of the same markets, where responsibility for ensuring the performance of contracts entered into by such firms is assumed by clearing members of the same markets;

(o) undertakings within the meaning of the Law of 15 June 2004 relating to the investment company in risk capital (SICAR), nor to their managers;

(p) securitisation undertakings, nor to fiduciary-representatives having dealings with such undertakings;

(q) payment institutions governed by the Law of 10 November 2009 on payment services;

(r) other persons carrying on any activity the taking up and pursuit of which are governed by special laws.

(3) The rights conferred by Directive 2004/39/EC of 21 April 2004 on markets in financial instruments on credit institutions and investment firms shall not extend to the provision of services as counterparty in transactions carried out by public bodies dealing with public debt or by members of the European System of Central Banks performing their tasks as provided for by the Treaty and the Statute of the European System of Central Banks and of the European Central Bank or performing equivalent functions under national provisions."

5) Following the insertion of a new Article 1-1, the current Article 1-1 is renumbered 1-2.

6) The sentence in Article 3(7) which reads

"Without prejudice to sections 3 and 4 of this Chapter and Article 18(2) of the law on markets in financial instruments" is replaced with the sentence "Without prejudice to section 3 of this Chapter, Chapter 2 of Title II of the Law of 10 November 2009 on payment services and Article 18(2) of the law on markets in financial instruments"

7) Article 5(2) shall be amended as follows:

"(2) The credit institution shall meet the organisational requirements referred to in Article 37-1 when providing investment services and/or performing investment activities. When exercising its activity of depositary bank of undertakings for collective investment, pension funds, undertakings governed by the Law of 15 June 2004 relating to the investment company in risk capital, the credit institution shall not be submitted to the afore-mentioned requirements."

8) Section 4 of Chapter 1 of Part 1 is hereby repealed.

9) Article 13 shall be replaced by the following:

"This Chapter applies to any natural person established in Luxembourg for professional reasons, as well as to any legal person governed by Luxembourg law whose regular occupation or business is to exercise a financial sector activity or one of the connected or ancillary activities referred to in sub-section 3 of section 2 of this Chapter on a professional basis."

10) At the beginning of Article 17(1a) the term "the applicant" shall be replaced with the term "the investment firm".

11) The following second subparagraph shall be added to Article 17(1a):

"The internal governance arrangements, processes, procedures and mechanisms referred to in this article shall be comprehensive and proportionate to the nature, scale and complexity of the investment firm's activities."

12) The first sentence in Article 17(2) shall be replaced by the following:

"The investment firm shall fulfil the organisational requirements defined in Article 37-1 for the investment services provided and/or the investment activities performed, as well as for the ancillary services provided as referred to in Section C of Annex II."

13) The second subparagraph of Article 17(2) shall be completed with the following sentence:

"The administrative and accounting organisation and internal control procedures shall be comprehensive and proportionate to the nature, scale and complexity of the activities of a PFS other than an investment firm."

14) Article 17(3) is hereby repealed.

15) Articles 28 -1 and 28-6 are hereby repealed.

16) In the second subparagraph of Article 29(1), the reference to Article 13(2)(d) is replaced by the reference to Article 1-1(2)(c).

17) The words "payment institutions" are inserted in the header of Article 29-1(1) between the acronyms "PFS" and "UCI".

18) The words “payment institutions” are inserted in the first indent of Article 29-1(1) after “PFS”.

19) The words “payment institutions” are inserted in paragraph 1 of Article 29-2 between the acronyms “PFS” and “UCI”.

20) The words “payment institutions” are inserted in paragraph 1 of Article 29-3 between the acronyms “PFS” and “UCI”.

21) The words “payment institutions” are inserted in paragraph 1 of Article 29-4 between the acronyms “PFS” and “UCI”.

22) The words “to payment institutions” are inserted in the last subparagraph of Article 29-4(1) after “to PFS”.

23) Chapter 5 of Part I is hereby repealed.

24) Article 35(1) is hereby repealed.

25) At the end of the first subparagraph of Article 35(4) the following words shall be added: “in accordance with the following paragraph.”

26) The following new paragraph 5 shall be added to Art. 35:

“(5) Chapter 4 of this Part shall apply to the investment services provided and/or the investment activities performed by the credit institutions and investment firms referred to in paragraph 4. In addition, it shall also apply to the ancillary services provided by investment firms. When exercising its activity of depositary bank of undertakings for collective investment, pension funds, undertakings governed by the Law of 15 June 2004 relating to the investment company in risk capital, the credit institution shall not be submitted to the organisational requirements defined in Article 37-1.”

27) Chapter 1 of Part II is hereby repealed.

28) Article 37(2) is hereby repealed and replaced with the following text:

“(2) Assets of clients must be deposited with any of the following entities:

(a) a central bank;

(b) a credit institution authorised in Luxembourg or in another Member State;

(c) a credit institution authorised in a third country;

(d) an eligible money market fund.

Financial instruments held by a PFS on behalf of their clients may be deposited into an account or accounts opened with a third party provided that the PFS exercises all due skill, care and diligence in the selection, appointment and periodic review of the third party and that arrangements for the holding and safekeeping of those financial instruments are agreed upon with the third party.”

29) Part IIa is hereby repealed.

30) The second sentence of Article 42 is hereby repealed.

31) The end of paragraph 2 of Article 44-2 shall be amended as follows:

“- the authorities entrusted with the public task of supervising payment systems or securities settlement systems,

information intended for the performance of their tasks.”

32) The following new paragraph 5 shall be added to Article 44-2:

“(5) In an emergency situation as referred to in Articles 50-1(6) and 51-6b(6), the CSSF may supply information to the competent departments of the Finance Ministries of the Member States concerned for the purpose of preventing, managing or solving a financial crisis.”

33) The following words shall be added to the beginning of Article 47: “Without prejudice to Chapter 1 of Title II of the Law of 10 November 2009 on payment services,”

34) Chapter 2a of Part III is hereby repealed.

35) Article 48 is amended as follows:

"Art. 48 Definitions

For the purposes of this Chapter:

– "financial holding company" means a financial institution, the subsidiary undertakings of which are either exclusively or mainly credit institutions or financial institutions, at least one of such subsidiaries being a credit institution, and which is not a mixed financial holding company within the meaning of Article 51-9, point (3);

– "mixed-activity holding company" means a parent undertaking, other than a financial holding company or a credit institution or a mixed financial holding company within the meaning of Article 51-9, point (3), the subsidiaries of which include at least one credit institution;

– "ancillary services undertaking" means an undertaking the principal activity of which consists in owning or managing property, managing data-processing services, or any other similar activity which is ancillary to the principal activity of one or more credit institutions or of one or more investment firms;

– "Luxembourg parent financial holding company" means a financial holding company set up in Luxembourg which is not itself a subsidiary of a credit institution authorised in Luxembourg or of another financial holding company set up in Luxembourg;

– "EU parent financial holding company" means a parent financial holding company set up in a Member State, and which is not a subsidiary of a credit institution authorised in any Member State or of another financial holding company set up in any Member State;

– "Luxembourg parent credit institution" means a credit institution authorised in Luxembourg which has a credit institution or a financial institution as a subsidiary or which holds a participation in such an institution, and which is not itself a subsidiary of another credit institution authorised in Luxembourg, or of a financial holding company set up in Luxembourg;

– "EU parent credit institution" means a parent credit institution authorised in a Member State which is not a subsidiary of another credit institution authorised in a Member State or of a financial holding company set up in a Member State."

36) Article 50-1(6) is amended as follows:

"(6) Where an emergency situation, including adverse developments in financial markets, arises, which potentially jeopardises the stability of the financial system in any of the Member States where entities of a group have been authorised, and the CSSF is the competent authority responsible for supervision on a consolidated basis in accordance with Article 49, it shall, subject to the provisions of Articles 44 to 44-2, alert as soon as is practicable the central banks of the Member States concerned and the competent departments of the Finance Ministries of the Member States concerned. Where possible, the CSSF shall use existing defined channels of communication."

37) Article 51-2 is amended as follows:

"**Art. 51-2 Definitions**

For the purposes of this Chapter:

– "financial institution" means an undertaking other than a credit institution or an investment firm, the principal activity of which is to acquire holdings or to carry on one or more of the activities listed in points (2) to (12) of Annexe I of this Law;

– "financial holding company" means a financial institution the subsidiary undertakings of which are either exclusively or mainly investment firms or other financial institutions, at least one of which is an investment firm, and which is not a mixed financial holding company within the meaning of Article 51-9, point (3);

– "mixed-activity holding company" means a parent undertaking, other than a financial holding company or an investment firm or a mixed financial holding company within the meaning of Article 51-9, point (3), the subsidiaries of which include at least one investment firm;

– "ancillary services undertaking" means an undertaking within the meaning of Article 48;

– “Luxembourg parent financial holding company” means a financial holding company which is not itself a subsidiary of a credit institution or investment firm authorised in Luxembourg or of another financial holding company set up in Luxembourg;

– “EU parent financial holding company” means a parent financial holding company in a Member State which is not a subsidiary of a credit institution or investment firm authorised in any Member State or of another financial holding company set up in any Member State;

– “Luxembourg parent investment firm” means an investment firm authorised in Luxembourg which has a credit institution or an investment firm, or a financial institution as a subsidiary or which holds a participation in such institutions, and which is not itself a subsidiary of another credit institution or investment firm authorised in Luxembourg, or of a financial holding company set up in Luxembourg;

– “EU parent investment firm” means a parent investment firm in a Member State which is not a subsidiary of another institution authorised in any Member State or of another financial holding company set up in any Member State.

Furthermore, for the purposes of this chapter, the terms “investment firm” shall include third-country investment firms.”

38) Article 51-6b(6) is amended as follows:

“(6) Where an emergency situation, including adverse developments in financial markets, arises, which potentially jeopardises the stability of the financial system in any of the Member States where entities of a group have been authorised, and the CSSF is the competent authority responsible for supervision on a consolidated basis in accordance with Article 51-3, it shall, subject to the provisions of Articles 44 to 44-2, alert as soon as is practicable the central banks of the Member States concerned and the competent departments of the Finance Ministries of the Member States concerned. Where possible, the CSSF shall use existing defined channels of communication.”

39) The third and fourth subparagraph of Article 52 (1) are repealed.

40) The fourth indent of Article 60 shall be amended as follows:

“– “establishment” shall mean an establishment which manages funds for third-parties. This term covers credit institutions, commission agents, asset managers, professionals acting for their own account, distributors of units of UCIs which accept or make payments and underwriters of financial instruments and market makers;”.

41) Article 60-2(9) shall be amended as follows:

“(9) The Registry shall forthwith inform the CSSF and the Banque centrale du Luxembourg of the essential content of the judgment. It shall notify the judgment to the CSSF, the Banque centrale du Luxembourg and to the establishment by registered post.”

42) Article 61(6) shall be amended as follows:

“(6) The Registry shall forthwith inform the CSSF and the Banque centrale du Luxembourg of the essential content of the judgment. It shall notify the judgment to the CSSF, the Banque centrale du Luxembourg and to the establishment by registered post.”

43) Chapter 4 of Part IV is hereby repealed.

44) Point (4) of Annexe 1 shall be amended as follows:

“4. Payment services within the meaning of Article 1, point (38), of the Law of 10 November 2009 on payment services.”

45) Point (5) of Annexe 1 shall be amended as follows:

“5. Issuing and administering other means of payment (e.g. travellers' cheques and bankers' drafts) insofar as this activity is not covered by point (4).”

Article 118 – Amending provisions to the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended

The Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended, is hereby amended as follows:

1) Point (1) of Article 2(1) shall be completed as follows:

"and payment institutions licensed or authorised to exercise their activities in Luxembourg in accordance with the Law of 10 November 2009 on payment services;".

2) The following new point (1a.) shall be added to Article 2(1):

"1a. The natural and legal persons benefiting from the waiver in accordance with Article 48 of the Law of 10 November 2009 on payment services;".

3) Point (7) of Article 2(1) shall be amended as follows:

"persons listed in article 1-1(2) of the Law of 5 April 1993 on the financial sector, as amended except for points (a), (e), (h), (i), (j), (l), (o), (p), (q) and (r) of this paragraph;".

Article 119 – Amending provisions to the Law of 18 December 2006 on financial services provided at distance

The Law of 18 December 2006 on financial services provided at distance is hereby amended as follows:

1) The current text of Article 5 shall become the new paragraph 1 of said article.

2) The following new paragraph 2 shall be added to Article 5:

"(2) Where the Law of 10 November 2009 on payment services is also applicable, the information provisions under Article 3(1) of this law, with the exception of points (2) (c) to (g), (3) (a), (d) and (e), and (4) (b), shall be replaced with Articles 65, 66, 70 and 71 of the Law of 10 November 2009 on payment services.".

Article 120 – Amending provisions to the Law of 15 December 2000 on postal services and financial postal services, as amended

The Law of 15 December 2000 on postal services and financial postal services, as amended shall be amended as follows:

1) The first sentence of Article 28 shall be completed as follows:

", as well as the provision of payment services and the issuing electronic means of payment."

2) The following new subparagraph shall be added to Article 28:

"Article 53 of the Law of 10 November 2009 on payment services applies to the issuing of electronic means of payment by the *Entreprise des Postes et Télécommunications*."

Article 121 – Amending provisions to the Law of 13 July 2007 on markets in financial instruments

The Law of 13 July 2007 on markets in financial instruments shall be amended as follows:

1) Article 27(1) shall be amended as follows:

"(1) This article applies to credit institutions and to investment firms incorporated under Luxembourg law, as well as to Luxembourg branches of credit institutions and investment firms incorporated under foreign law insofar as they provide investment services and/or perform investment activities without prejudice to Article 1a.(2) of the Law of 5 April 1993 on the financial sector, as amended."

2) Article 28(1) shall be amended as follows:

"(1) This article applies to credit institutions and to investment firms incorporated under Luxembourg law, as well as to Luxembourg branches of credit institutions and investment firms incorporated under foreign law insofar as they provide investment services and/or perform investment activities without prejudice to Article 1a.(2) of the Law of 5 April 1993 on the financial sector, as amended."

Article 122 – Amending provisions to the Law of 20 December 2002 relating to undertakings for collective investment, as amended

The Law of 20 December 2002 relating to undertakings for collective investment, as amended shall be amended as follows:

1) Point (20) of the first subparagraph of Article 1 shall be deleted;

2) The following words shall be added at the end of point (a) of Article 41(1):

"within the meaning of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments,".

3) The last sentence of the second subparagraph of Article 77(4) shall be deleted.

Article 123 – Amending provisions to the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended

The Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended, shall be amended as follows:

1) At the end of the first subparagraph of Article 2(1) the words "and SICARs" shall be replaced by the following:

", SICARs and payment institutions within the meaning of the Law of 10 November 2009 on payment services.".

2) The third subparagraph of Article 2 (1) is repealed.

3) The following new last subparagraph shall be added to Article 2(1):

"Pursuant to Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation), the CSSF is the competent authority for verifying that the persons subject to its supervision comply with the laws protecting the consumers' interests.".

4) The following second subparagraph shall be added to Article 3-1:

"When carrying out its duties, the CSSF shall take into account the objective of a convergent application at Community level of EU provisions and national provisions transposing Community texts relating to financial services as well as good supervisory practices and recommendations issued within the scope of multilateral arrangements in place at Community level."

Article 124 – Amending provisions to the Law of 23 December 1998 concerning the monetary status and the Banque centrale du Luxembourg, as amended

The Law of 23 December 1998 relating to the monetary status and to the Banque centrale du Luxembourg, as amended, shall be amended as follows:

1) The following new paragraph 5 shall be added to Article 2:

"In view of its tasks relating to the promotion of the smooth operation of payment systems, the Central Bank shall ensure the efficiency and safety of payment systems and securities settlement systems, as well as the safety of payment instruments.

The means of coordination and cooperation employed for the performance of these tasks shall be the subject of agreements between the Central Bank and the Commission de Surveillance du secteur financier, respecting the legal competences of the parties.".

2) The current text of Article 2(5) shall become the new paragraph 6 of said article.

3) Article 15 is amended as follows:

"**Art. 15.** "Article 15. The Council of the Central Bank shall propose an auditor to the Governing Council of the ECB in accordance with the procedure laid down in the Statute of the ESCB and of the ECB. At the end of the approval procedure at European level, the auditor shall be appointed by the Government in Cabinet. The auditor must fulfil the requirements to carry out the profession of *réviseur d'entreprises agréé* (approved statutory auditor). The auditor shall be appointed for five financial years. The auditor's fees shall be paid by the Central Bank."

4) The following new section shall be added after Article 27-2:

"**Payment systems, securities settlement systems and payment instruments**

Art. 27-3. For the purpose of performing the tasks set out in Article 2(5), the Central Bank may ask payment systems and securities settlement systems to provide any information relating to the operation of those systems which is necessary in order to assess their efficiency and safety and may also ask issuers of payment instruments to provide any information relating to those payment instruments which is necessary in order to assess their safety.

The Central Bank shall be authorised to undertake site visits in order to collect the information referred to in paragraph 1. It shall coordinate with the Commission de surveillance du secteur financier to this end."

5) In Article 33(2), the words "subject to reciprocity" shall be deleted.

Article 125 – Amending provisions relating to the Law of 6 December 1991 on the insurance sector, as amended

The Law of 6 December 1991 on the insurance sector, as amended shall be amended as follows:

1) The following new subparagraph shall be added to Article 2:

"Pursuant to Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (the "Regulation on Consumer protection cooperation"), the *Commissariat* is also the competent authority for verifying that the persons subject to its supervision comply with the laws protecting the consumers' interests."

2) The following second subparagraph shall be added to Article 2-1:

"When carrying out its duties, the *Commissariat* shall take into account the objective of a convergent application at Community level of EU provisions and national provisions transposing Community texts relating to the insurance sector as well as good supervisory practices and recommendations issued within the scope of multilateral arrangements in place at Community level."

Article 126 – Repealing provision

Title VII of the Law of 15 August 2000 on electronic commerce, as amended, is hereby repealed.

Article 127 – Entry into force

The present law enters into force on 1 November 2009.

Article 128 – Abbreviated form

The present law may be referred to in abbreviated form using the designation "law on payment services".

ANNEX: PAYMENT SERVICES (ARTICLE 1, POINT (38))

1. Services enabling cash to be placed on a payment account as well as all the operations required for operating a payment account.
2. Services enabling cash withdrawals from a payment account as well as all the operations required for operating a payment account.
3. 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:
   - execution of direct debits, including one-off direct debits,
   - execution of payment transactions through a payment card or a similar device,
   - execution of credit transfers, including standing orders.
4. Execution of payment transactions where the funds are covered by a credit line for a payment service user:
   - execution of direct debits, including one-off direct debits,
   - execution of payment transactions through a payment card or a similar device,
   - execution of credit transfers, including standing orders.

"5. Issuing of payment instruments and/or acquiring of payment transactions."[316]

6. Money remittance.

"7. Payment initiation services."[317]

(Law of 20 July 2018)
"8. Account information services."

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[316] Law of 20 July 2018
[317] Law of 20 July 2018