

# **PAYMENT SYSTEM LAW**

**(OGM 62/13 of 31 December 2013, 6/14 of 4 February 2014)**

*The law came into force on 8 January 2014 and it shall apply as of 9 January 2015*

## **TITLE I**

### **BASIC PROVISIONS**

#### **Subject Matter**

##### **Article 1**

- (1) The payment system operations shall be performed in the manner and under the conditions specified under this law.
- (2) The payment system shall include the provision of payment services, electronic money issue, the functioning of payment systems and other activities of the payment system.

#### **Payment services**

##### **Article 2**

- (1) Payment services shall include:
  - 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 of the payment service user held with 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 and/or acquiring of payment instruments;
  - 6) Money remittance; and
  - 7) Execution of payment transactions where the consent of the payer to execute a payment transaction is given by means of any telecommunication, digital or IT

device and the payment is made to the telecommunication, IT system or network operator, acting only as an intermediary between the payment service user and the supplier of the goods and services.

### **Negative scope**

#### **Article 3**

- (1) Provisions of this Law shall apply to none of the following:
- 1) payment transactions made exclusively in cash directly from the payer to the payee, without any intermediary intervention;
  - 2) payment transactions from the payer to the payee through a commercial agent authorised to negotiate or conclude the sale or purchase of goods or services on behalf of the payer or the payee;
  - 3) professional physical transport of banknotes and coins, including their collection, processing and delivery;
  - 4) payment transactions consisting of the non-professional cash collection and delivery within the framework of a non-profit or charitable activity;
  - 5) 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;
  - 6) money exchange business involving cash-to-cash operations, where the funds are not held on a payment account;
  - 7) 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:
    - a) paper cheques in accordance with the Geneva Convention of 19 March 1931 providing a uniform law for cheques;
    - b) paper cheques similar to those referred to in point (a) above 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;
    - c) paper-based drafts in accordance with the Geneva Convention of 7 June 1930 providing a uniform law for bills of exchange and promissory notes;
    - d) 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;
    - e) paper-based vouchers;
    - f) paper-based traveller's cheques; or
    - g) paper-based postal money orders as defined by the Universal Postal Union;
  - 8) 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 142 herein;
  - 9) payment transactions related to securities asset servicing, including dividends, income or other distributions, or redemption or sale, carried out by persons allowed to have the custody of financial instruments;
  - 10) 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

- 11) services based on instruments that can be used to acquire goods or services only in the premises used by the issuer or under a commercial agreement with the issuer either within a limited network of service providers or for a limited range of goods or services;
- 12) payment transactions executed by means of any telecommunication, digital or IT device, where the goods or services purchased are delivered to and are to be used through a telecommunication, digital or IT device, provided that the telecommunication, digital or IT operator does not act only as an intermediary between the payment service user and the supplier of the goods and services;
- 13) payment transactions carried out between payment service providers, their agents or branches for their own account;
- 14) payment transactions 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; and
- 15) services by providers to withdraw cash by means of automated teller machines acting on behalf of one or more payment card issuers, which are not a party to the framework contract with the customer withdrawing money from a payment account, on condition that these providers do not conduct other payment services as listed under Article 2 herein.

## **Payment service providers**

### **Article 4**

- (1) Payment services in Montenegro may be provided by:
  - 1) banks and other credit institutions having their head offices in Montenegro;
  - 2) a payment institution having its head office in Montenegro;
  - 3) an electronic money institutions having its head offices in Montenegro;
  - 4) a branch of a third-country credit institution having its head office in Montenegro;
  - 5) the Central Bank of Montenegro (hereinafter: the Central Bank);
  - 6) the state of Montenegro and local authorities when not acting in their capacity as public authorities.
- (2) Payment services in Montenegro may be provided only by payment service providers under in paragraph (1) above.
- (3) Payment service providers under paragraph (1) 1) and 4) above may provide payment services subject to their competencies specified under laws regulating the taking up and pursuit of their respective businesses.
- (4) Payment service providers under paragraph (1) 2) and 3) above may provide payment services pursuant to their authorities specified herein.
- (5) Rights of payment service providers under paragraph (1) 5) and 6) to provide payment services shall be specified in the law regulating their operations.

## **Payment service agents**

### **Article 5**

- (1) A payment service provider may provide payment services through an agent, unless otherwise provided by this law.
- (2) An agent shall be legal person or an entrepreneur providing payment services in the name and for the account of the payment service provider.
- (3) The payment service provider providing payment services through an agent shall be liable for all agent's actions and failures in the provision of these services.
- (4) The payment service provider providing payment services through an agent shall ensure that the agent acting on its behalf has informed payment service users thereof.

## **Electronic money**

### **Article 6**

- (1) Electronic money, within the meaning of this law, shall be electronically, including magnetically, stored monetary value as represented by a claim on the issuer which is issued on receipt of funds for the purpose of making payment transactions as defined under this law, and which is accepted by a natural or legal person other than the electronic money issuer.
- (2) Electronic money, within the meaning of this law, shall not be:
  - 1) monetary value stored on instruments that can be used to acquire goods or services only in the premises used by the issuer or under a commercial agreement with the issuer either within a limited network of service providers or for a limited range of goods or services;
  - 2) monetary value used for payment transactions executed by means of any telecommunication, digital or IT device, where the goods or services purchased are delivered to and are to be used through a telecommunication, digital or IT device, provided that the telecommunication, digital or IT operator does not act only as an intermediary between the payment service user and the supplier of the goods and services.

## **Payment system**

### **Article 7**

- (1) Payment system means a funds transfer system with formal and standardized arrangements and common rules for the processing, clearing and/or settlement of payment transactions between participants in the system.

- (2) The processing of payment transactions, within the meaning of paragraph (1) above, shall mean a process of the submission, reception and verification of transfer order based on payment transactions among the payment system participants.
- (3) The calculation of payment transactions, within the meaning of paragraph (1) above, shall mean the process of converting claims and obligations based on transfer order, which one or several participants send or receive from one or several participants – into one net obligation or one net claim.
- (4) Settlement of payment transactions, within the meaning of paragraph (1) above, shall mean the transfer of funds to settlement accounts for the purpose of executing transfer orders between participants in the system.

## **Application of provisions of other laws**

### **Article 8**

- (1) The rights and obligations of payment service providers and payment service users with regard to the provision and use of payment services other than those governed by this law shall be governed by provisions of the law regulating civil obligations.
- (2) The relationships between payment service users that are consumers and payment service providers other than those governed by this law shall be governed by the provisions of the law regulating consumer protection.
- (3) Provisions of laws governing companies shall apply to payment institutions and electronic money institutions unless otherwise specified herein.
- (4) Provisions of laws regulating bankruptcy proceedings of companies shall apply to bankruptcy proceedings of payment institutions and electronic money institutions.

## **Definitions**

### **Article 9**

For the purpose of this Law, the following definitions shall apply:

- 1) **payment transaction** means an act, initiated by the payer or by the payee, of placing, withdrawing or transferring funds, irrespective of any underlying obligations between the payer and the payee;
- 2) **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;
- 3) **payee** means a natural or legal person who is the intended recipient of funds which have been the subject of a payment transaction;
- 4) **payment service user** means a natural or legal person making use of a payment service in the capacity of payer and/or payee;
- 5) **credit institution** means an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account;

- 6) **consumer** means a natural person who, in payment service contracts covered by this Law, is acting for purposes other than his trade, business or profession;
- 7) **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;
- 8) **funds** means cash (banknotes and coins), funds in accounts, and electronic money;
- 9) **payment order** means any instruction by a payer or payee to his payment service provider requesting the execution of a payment transaction;
- 10) **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;
- 11) **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;
- 12) **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;
- 13) **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;
- 14) **payment instrument** means any personalised device and/or set of procedures agreed between the payment service user and the payment service provider and used by the payment service user in order to initiate a payment order;
- 15) **acceptance of payment instruments** is a payment service where the payment service provider enables the execution of a payment transaction initiated by the payer to the benefit of the payee, using a specified payment instrument;
- 16) **payment card** means a payment instrument enabling its holder to make payments for goods and services either at an accepting device or remotely, and/or to withdraw cash and/or use other services at an automated teller machine or another self-service device;
- 17) **means of distance communication** refers to any means 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;
- 18) **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 time adequate to the purposes of the information and which allows the unchanged reproduction of the information stored;
- 19) **business day** means a part of the 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 and enables the execution of a payment transaction to its payment service user;
- 20) **credit transfer** means a payment service where the payer instructs the payment service provider to initiate the execution of a payment transaction or several payment transactions, including the issuing of a standing order;
- 21) **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

- 22) **branch of a payment institution** means a place of business other than the head office which is a part of a payment institution, which has no legal personality and which carries out directly some or all of the transactions inherent in the business of a payment institution; all 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 within the meaning of this law;
- 23) **group** means a group of undertakings, which consists of a parent undertaking and its subsidiaries within the meaning of the law regulating company business, as well as the entities in which the parent undertaking or its subsidiaries have a holding, as well as undertakings linked to each other by a relationship in the manner that they are managed on a unified basis pursuant to a contract concluded or provisions in the articles of association of those undertakings and/or articles of incorporation or undertakings interconnected in the manner that the management bodies consist for the major part of the same persons in office during the financial year and until the consolidated accounts are drawn up;
- 24) **qualifying holding** means a direct or indirect holding on the basis of which an investor, whether a natural or legal person, acquires 10 percent or more of the capital or of the voting rights of another legal person, or a holding of less than 10 percent of the capital or of the voting rights of that legal person which makes it possible to exercise a significant influence over the management of that legal person;
- 25) **good reputation** means the reputation of a person who:
- has by his/her former professional work and personal integrity achieved good results and earned respect in the previous working environment;
  - has not been convicted by a final judgment of a crime that would make him/her unworthy of performing the function or relevant work and/or who has not been appointed member of the management board at the time the undertaking has been the subject to bankruptcy or liquidation proceedings, and/or
  - is not subject to investigation or criminal proceedings for a crime prosecuted ex officio;
- 26) **connected parties** means two or more legal and/or natural persons connected in at least one of the following ways:
- one party either has a direct or indirect participation in capital or voting rights of the other party of no less than 20%,
  - one party has a controlling share in another party, or
  - two or more parties are controlled by a third party,
- whereby the expressions **indirect participation and control** have the meaning specified in the law regulating the taking up and pursuit of the banking business;
- 27) **outsourcing** means a contractual agreement by which the performance of certain operational activities of a payment institution, an e-money institution or a payment system operator, which would otherwise be performed by them, is entrusted to third parties;
- 28) **Member State** means a member state of the European Union or a signatory to the Agreement on the European Economic Area;
- 29) **home Member State** means the Member State in which the registered office of the payment service provider is situated or, if the payment service provider has, under

- 30) **host Member State** means the Member State other than the home Member State in which a payment service provider has a branch or an agent or provides payment services;
- 31) **third country** means, until Montenegro's accession to the European Union, any foreign country, and after the accession, any country other than the Member State;
- 32) **national payment transaction** means a payment transaction provided by a payer's payment service provider and/or a payee's payment service provider in the territory of Montenegro;
- 33) **cross-border payment transaction** means a payment transaction the execution of which involves two payment service providers of which one payment service provider provides this service in the territory of Montenegro and the other payment service provider provides the same service in the territory of another Member State, as well as a payment transaction provided by one payment service provider to a payment service user in the territory of Montenegro as well as to the same or another payment service user in the territory of another Members State;
- 34) **international payment transaction** means a payment transaction the execution of which involves two payment service providers of which one payment service provider provides this service in the territory of Montenegro and the other provides the same service in the territory of a third country, as well as a payment transaction provided by one payment service provider to a payment service user in the territory of Montenegro as well as to the same or another payment service user in the territory of the third country;

## TITLE II

### TRANSPARENCY OF CONDITIONS AND OBLIGATION OF PROVIDING INFORMATION TO PAYMENT SYSTEM USERS

#### CHAPTER I

##### Payment service contracts and obligation of providing information

##### Types of payment service contracts

##### Article 10

- (1) Payment service contract shall be a contract where the payment service provider undertakes to provide certain payment services and/or a payment service to the payment service user and the payment service user undertakes to pay a certain fee for that service to the payment service provider.
- (2) A payment service contract shall be concluded either as a single payment transaction contract or as a framework contract (hereinafter: the framework contract).
- (3) The contract on a single payment transaction shall regulate the execution of one payment transaction not covered under the framework contract.



- (4) The framework contract shall regulate the future execution of individual payment transactions and it may also regulate the conditions for opening and maintaining a payment account pursuant to regulations.
- (5) Provisions under this law on the obligation of providing information when providing payment services shall apply to the relationship between the payment service user that is a consumer and his payment service provider and to the relationship between payment service user that is not a consumer and his payment service provider shall be applied if the payment service provider and user that is not a consumer agree otherwise.
- (6) The payment service provider and the payer that is not a consumer may agree to regulate by contract their mutual relationship in a different manner than that provided for in Articles 11 through 27 herein.

### **Charges for information**

#### **Article 11**

- (1) The payment service provider shall not charge the payment service user for the information it is obliged to provide under the provisions of this law.
- (2) The payment service provider and the payment service user may agree on charges for additional or more frequent information, or its transmission by means of communication other than those specified in the framework contract, provided at the payment service user's request.
- (3) The charges for information under paragraph (2) shall be appropriate and in line with the payment service provider's actual costs.

### **Burden of proof**

#### **Article 12**

In case of a dispute, the payment service provider shall prove that it has fulfilled its information obligations towards the payment service user pursuant to the provisions of this law.

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

#### **Article 13**

- (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 a third party requests a charge, he shall inform the payment service user thereof prior to the initiation of the payment transaction.

## **Transaction currency and currency conversion**

### **Article 14**

- (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 the point of sale or by the payee, the party offering the currency conversion service shall disclose to the payer all charges as well as the exchange rate to be used for converting the payment transaction and the payer shall agree to the currency conversion service on that basis

## **CHAPTER II**

### **Single payment transactions**

#### **Prior general information**

### **Article 15**

- (1) The payment service provider shall, before the payment service user is bound by any offer or single payment transaction contract, regardless of the form or manner of concluding such a contract, provide or make available to the payment service user the following information and conditions:
  - 1) a specification of the information or unique identifier that has to be provided by the payment service user in order for a payment order;
  - 2) the maximum execution time for the payment service to be provided;
  - 3) all charges payable by the payment service user to his payment service provider and, where applicable, the breakdown of the amounts of any charges;
  - 4) where applicable, the actual or reference exchange rate to be applied to the payment transaction, and
  - 5) where applicable, other information and conditions under Article 19 herein that involve the relevant payment transaction.
- (2) The information under paragraph (1) above the payment service provider shall:
  - 1) make available to a payment service user in an easily accessible manner;
  - 2) give in easily understandable words and in a clear and comprehensible form, in Montenegrin language or in any other language agreed between the payment service provider and the payment service user, and
  - 3) at the payment service user's request, provide the information and conditions on paper or on another durable medium.
- (3) If the single payment service contract has been concluded at the request of the payment service user using a means of distance communication which does not

- (4) The obligations under paragraph (1) above may also be discharged by supplying a copy of the draft single payment service contract or the draft payment order including the information and conditions specified under that paragraph.

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

#### **Article 16**

Immediately after receipt of the payment order, the payer's payment service provider shall provide or make available to the payer, in the same way as provided for in Article 15 (2) herein, the following information:

- 1) a reference enabling the payer to identify the payment transaction and, where applicable, any information relating to the payee;
- 2) the amount of the payment transaction in the currency used in the payment order;
- 3) the total amount of charges for the payment transaction payable by the payer and a breakdown of the amounts of such charges;
- 4) where the payment transaction involves currency conversion, the exchange rate used in the payment transaction by the payer's payment service provider, or a reference thereto, when different from the rate provided in accordance with Article 15 (1) 4), and the amount of the payment transaction after that currency conversion; and
- 5) the date of receipt of the payment order.

### **Information for the payee after the execution of a payment transaction**

#### **Article 17**

Immediately after the execution of a payment transaction, the payee's payment service provider shall provide or make available to the payee, in the manner referred to in Article 15 (2) herein, the following information:

- 1) a reference enabling the payee to identify the payment transaction and, where appropriate, information about the payer and other information transferred with the payment transaction;
- 2) the amount of the payment transaction in the currency in which the funds have been made available to the payee;
- 3) the total amount of charges for the payment transaction payable by the payee and a breakdown of the amounts of such charges;
- 4) where the payment transaction involves currency conversion, the exchange rate used in the payment transaction by the payee's payment service provider and the amount of the payment transaction before the currency conversion; and
- 5) the credit value date.

## **Avoiding double information**

### **Article 18**

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

## **CHAPTER III**

### **Framework contracts**

#### **Prior general information**

### **Article 19**

The payment service provider shall, before the payment service user is bound by any offer or framework contract, provide the payment service user with the following information:

- 1) on the payment service provider, in particular:
  - 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 a third country where the payment service is offered, and any other address, including electronic mail address, relevant for communication with the payment service provider; and
  - b) the particulars of the relevant supervisory authorities, of the register of banks, payment institutions or electronic money institutions or of any other relevant public register payment service providers and the registration number, or equivalent means of identification of payment service providers in that register;
- 2) on the use of the payment service, in particular:
  - a) a description of the main characteristics of the payment service to be provided;
  - b) a specification of the information or unique identifier that has to be provided by the payment service user in order for a payment order to be properly executed;
  - c) the form and manner of giving consent to execute a payment transaction and withdrawal of such consent in accordance with Articles 30 and 42 herein;
  - d) a reference to the point in time of receipt of a payment order pursuant to Article 40 herein and the cut-off time, if established by the payment service provider;
  - e) the maximum execution time for the payment service to be provided; and
  - f) whether there is a possibility to agree on the spending limits for the use of the payment instruments in accordance with Articles 31 (1) herein;
- 3) on charges, interest and exchange rates, in particular:
  - a) all charges payable by the payment service user to the payment service provider 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 method of calculating 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 22 (5) herein;
- 4) on communication, in particular:
  - a) where applicable, the means of communication, including the technical requirements for the payment service user's equipment, agreed between the parties for the transmission of information or notifications under this law,
  - b) the manner in and frequency with which information under this 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 in accordance with Article 21 (4) herein;
- 5) on safeguards and corrective measures, in particular:
  - a) where applicable, a description of steps that the payment service user is to take in order to keep safe a payment instrument and how to notify the payment service provider for the purposes of Article 32 herein,
  - b) if agreed, the conditions under which the payment service provider reserves the right to block a payment instrument in accordance with Article 31 herein,
  - c) the liability of the payer in accordance with Article 37 herein, 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 executed payment transaction in accordance with Articles 34 and 51 herein as well as the payment service provider's liability for unauthorised payment transactions in accordance with Article 36 herein,
  - e) the liability of the payment service provider for the execution of payment transactions in accordance with Articles 49 and 50 herein, and
  - f) requirements for a refund of funds in line with Articles 38 and 39 herein;
- 6) on changes in and termination of framework contract, in particular:
  - a) if agreed, information that the payment service user will be deemed to have accepted changes in the conditions in accordance with Article 22 (2), unless he notifies the payment service provider that he shall not accept them before their proposed date of entry into force,
  - b) the duration of the framework contract, and
  - c) the right of the payment service user to terminate the framework contract and any agreements relating to termination in accordance with Article 22 (3) and Article 23 herein;
- 7) on redress, in particular:
  - a) any contractual clause on the law applicable to the framework contract and/or the competent courts for the settlement of disputes arising from the framework contract,
  - b) the out-of-court settlement and redress procedures available to the payment service user in accordance with this law.

## **Manner of providing prior information**

### **Article 20**

- (1) The payment service provider shall provide the information referred to in Article 19 herein:
  - 1) in good time before the payment service user is bound by the framework contract or offer;
  - 2) on paper or on another durable medium;
  - 3) in easily understandable words, and in a clear and comprehensive form in Montenegrin language or in any other language agreed between the payment service provider and the payment service user.
- (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 meet their obligations under paragraph (1) above, the payment service provider shall fulfil these obligations immediately after the conclusion of the framework contract.
- (3) The payment service provider may also fulfil the obligations under paragraphs (1) and (2) above by supplying a copy of the draft framework contract including the information referred to in Article 19 herein.

## **Format and compulsory elements of the framework contract**

### **Article 21**

- (1) The framework contract shall be concluded on paper or on another durable medium.
- (2) The framework contract shall contain all elements and/or information under Article 19 herein.
- (3) The payment service provider shall ensure that the payment system user obtain at least one copy of the framework contract.
- (4) 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 19 herein on paper or on another durable medium.

## **Changes in the framework contract**

### **Article 22**

- (1) Payment service provider shall propose any changes in the framework contract and in the information specified in Article 19 herein in the manner as provided for in Article 20(1) and no later than two months before their proposed date of application.

- (2) The payment service provider and the payment service user may agree that the payment service user is to be deemed to have accepted these changes if he does not notify the payment service provider that he does not accept them before the proposed date of their entry into force.
- (3) In the event referred to in paragraphs (1) and (2) above, the payment service provider shall also specify that the payment service user has the right to terminate the framework contract immediately and without charge before the date of the proposed application of the changes.
- (4) The payment service provider and the payment service user may agree that changes in the interest or exchange rates arising from the reference interest rate or the reference exchange rate are to be applied immediately and without notice.
- (5) In the case under paragraph (4) above, the payment service provider shall inform the payment service user of any change in the interest rate at the earliest opportunity in the same way as provided for in Article 20(1) herein, unless the parties have agreed on a specific frequency or different manner in which such information is to be provided or made available to the payment service user.
- (6) Changes in interest or exchange rates which are more favourable to the payment service user may be applied without notice.
- (7) 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.

### **Termination of the framework contract**

#### **Article 23**

- (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) The payment service provider shall charge to the payment service user a fee for the termination of a framework contract which shall be appropriate and in line with actual costs incurred by the payment service provider.
- (3) By way of derogation from paragraph (2) above, termination of a framework contract concluded for a fixed period exceeding 12 months or for an indefinite period shall be free of charge for the payment service user after the expiry of 12 months.
- (4) It may be agreed in the framework contract that the payment service provider may terminate a framework contract concluded for an indefinite period by giving at least two months' notice in the same way as provided for in Article 20(1) herein.
- (5) 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 to the period

## **Information before the execution of individual payment transactions**

### **Article 24**

In the case of an individual payment transaction under a framework contract initiated by the payer, the payment service provider shall, at the payer's request for this specific payment transaction, provide explicit information on the maximum execution time and the charges payable by the payer and, where applicable, a breakdown of the amounts of any charges.

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

### **Article 25**

- (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 20(1) with the following information:
  - 1) a reference enabling the payer to identify each payment transaction and, where appropriate, information relating to the payee;
  - 2) 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;
  - 3) the amount of any charges for the payment transaction and, where applicable, a breakdown thereof and of the interest payable by the payer;
  - 4) where the payment transaction involves currency conversion, the exchange rate used and the amount of the payment transaction after the currency conversion, and
  - 5) the debit value date or the date of receipt of the payment order.
- (2) A framework contract may contain a proviso that the information referred to in paragraph (1) above is to be provided or made available periodically at least once a month and in an agreed manner which allows the payer to store and reproduce information unchanged.

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

### **Article 26**

- (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 20(1) herein with the following information:
  - 1) the reference enabling the payee to identify the payment transaction and, where appropriate, the payer, and any information transferred with the payment transaction;



- 2) the amount of the payment transaction in the currency in which the payee's payment account is credited;
  - 3) the total amount of charges for the payment transaction and a breakdown of the amounts of such charges, as well as the interest payable by the payee;
  - 4) where the payment transaction involves currency conversion, the exchange rate used in the payment transaction by the payee's payment service provider, and the amount of the payment transaction before the currency conversion; and
  - 5) the credit value date.
- (2) A framework contract may contain a proviso that the information referred to in paragraph (1) above 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.

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

### **Article 27**

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

- 1) by way of derogation from provisions under Articles 19, 20 and 24 herein, the payment service provider shall provide a 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 relevant information needed by the payment service user to take a decision on entering into a contract, as well as an indication of where any other information laid down in Article 19 herein is made available to the payment service user in an easily accessible manner;
- 2) by way of derogation from provisions under Article 22 herein, the payment service provider and the payment service user may agree that the payment service provider shall not be required to propose changes to the framework contract in the same way as provided for in Article 20(1) herein,
- 3) by way of derogation from provisions under Articles 25 and 26 herein, the payment service provider and the payment service user may agree that, after the execution of a payment transaction:
  - 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 and any charges, and 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,
  - the payment service provider shall not be required to provide or make available information referred to in indent above 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 upon the transaction execution.

## **TITLE III**

### **RIGHTS AND OBLIGATIONS IN RELATION TO THE PROVISION AND USE OF PAYMENT SERVICES IN MONTENEGRO**

#### **CHAPTER I**

##### **Charges and exceptions**

###### **Article 28**

- (1) The payment service provider may charge fee to the payment service user for the provision of payment services.
- (2) The payment service provider may charge fee to the payment service user for the fulfilment of obligations under Article 41(3), Article 42(7) and Article 48(4) herein, if such charges have been agreed and if they are appropriate and in line with the payment service provider's actual costs.
- (3) Where a payment transaction does not involve any currency conversion, the payee's payment service provider may levy charges for the execution of that payment transaction only on the payee, and the payer's payment service provider may levy charges for the execution of that payment transaction only on the payer.
- (4) The payment service provider may not prevent or in any other way limit the payee in offering the payee a reduction for the use of a payment card or any other payment instrument.
- (5) The payee may not request from the payer any charges for the use of a given payment instrument.
- (6) The payment service provider and the payment service user that is not a consumer may agree by contract on the payment of charges other than that provided for in paragraph (2) above.
- (7) The payment service provider shall post in its premises and its website the payment service charges and inform the Central Bank thereof within three business days following the adoption of internal regulation prescribing the amount of those charges.
- (8) The Central Bank shall publish on its website the charges levied for the provision of payment services by all payment service providers.

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

###### **Article 29**

- (1) In the case of payment instruments which, according to the framework contract, solely concern individual payment transactions not exceeding 30 euros or which either have a

- 1) Article 32 (1) 2), Article 33 (1) 3), 4) and 5), and Article 37(2) and (3) herein do not apply if the payment instrument does not allow its blocking or prevention of its further use;
  - 2) provisions under Articles 35, 36, and Article 37(1) herein 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;
  - 3) by way of derogation from Article 41(1) herein, 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;
  - 4) by way of derogation from Article 42 herein, 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, and
  - 5) by way of derogation from Article 44 herein, other execution periods shall apply.
- (2) Provisions under Articles 36 and 37 herein shall not apply to electronic money if the payer's payment service provider does not have the ability to freeze the payment account and/or block the payment instrument.

## **CHAPTER II**

### **Authorisation of payment transactions**

#### **Consent and withdrawal of consent**

##### **Article 30**

- (1) A payment transaction shall be deemed to be authorised only if the payer has given consent to execute the payment transaction.
- (2) Consent to execute the payment transaction may be given before or, if agreed between the payer and his payment service provider, after the execution of the payment transaction.
- (3) Consent to execute a payment transaction or a series of payment transactions shall be given in the form agreed between the payer and his payment service provider. If consent to execute a payment transaction has not been, the payment transaction shall be deemed to be unauthorised.
- (4) The payer may withdraw the consent given no later than the point in time of irrevocability of the payment order pursuant to in Article 42 herein.
- (5) The payer may withdraw consent to execute a series of payment transactions with the effect that any future payment transaction shall be deemed to be unauthorized.
- (6) The manner of the withdrawal of consent to execute a payment transaction shall be governed by the payment service contract between the payer and his payment service provider.

- (7) The payment service provider and the payer that is not a consumer may agree by a payment service contract on withdrawing consent in a different manner than that provided for in paragraphs (4) and (5) above.

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

#### **Article 31**

- (1) The payer and his payment service provider may agree on spending limits for payment transactions executed through that payment instrument.
- (2) It may be agreed in the framework contract that the payment service provider has the right to block a payment instrument for objective reasons related to:
- 1) the security of the payment instrument;
  - 2) the suspicion of unauthorised or fraudulent use of the payment instrument, or
  - 3) in the case of a payment instrument with a credit line, a significantly increased risk that the payer may be unable to fulfil the liability to pay.
- (3) The payment service provider shall inform the payer, in the manner agreed in the contract, of the intention to block the payment instrument and the reasons thereof, where possible, before the payment instrument is blocked.
- (4) Where the payment service provider is unable to inform the payer in accordance with paragraph (3) above, it shall do so immediately after the payment instrument has been blocked.
- (5) The provisions of paragraphs (3) and (4) above shall not apply if giving such information is contrary to objectively justified security reasons or law.
- (6) The payment service provider shall unblock the payment instrument or replace it with a new one once the reasons for blocking this payment instrument no longer exist.

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

#### **Article 32**

- (1) The payment service user entitled to use a payment instrument shall:
- 1) use the payment instrument in accordance with the terms of a framework contract governing the issue and use of the payment instrument, and
  - 2) 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) In the case referred to in paragraph (1) point 1) above, the payment service user shall, immediately after receipt of the payment instrument, take all reasonable steps to keep safe the personalised security features of that payment instrument.

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

### **Article 33**

- (1) The payment service provider issuing a payment instrument shall:
  - 1) make sure that the personalised security features of the payment instrument are not accessible to parties other than the payment service user entitled to use the payment instrument;
  - 2) refrain from sending an unsolicited payment instrument, except where a payment instrument already given to the payment service user is to be replaced;
  - 3) ensure that appropriate means are available at all times to enable the payment service user to make a notification pursuant to Article 32(1) 2) or request unblocking pursuant to Article 31(6) herein;
  - 4) provide the payment service user, on his request, with the means to prove, within 18 months after receiving notification referred to in Article 32(1) 2), that he made such notification, and
  - 5) prevent all use of the payment instrument once notification pursuant to Article 32(1)2) herein has been made.
- (2) The payment service provider shall bear the risk of sending a payment instrument and its personalised security features to the payment service user.

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

### **Article 34**

- (1) The payment service user shall obtain rectification from the payment service provider only if he notifies his payment service provider without undue delay on becoming aware of any unauthorised or incorrectly executed payment transactions giving rise to a claim, and no later than 13 months after the debit date.
- (2) By way of derogation from paragraph (1) above, should the payment service provider fails to provide or make available to the payment service user the information on the executed payment transaction in accordance with this law, the payment service user shall be entitled to the correction of unauthorised payment transaction and incorrectly executed payment transactions within the deadline longer than 13 months.
- (3) The payment service provider and the payment service user that is not a consumer may agree by contract on a time limit other than that provided for in paragraph (1) above.

## **Evidence on authentication and execution of payment transactions**

### **Article 35**

- (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

- (2) The authentication within the meaning of paragraph (1) above means a procedure which allows the payment service provider to verify the use of a specific payment instrument, including its personalised security features.
- (3) Where the payment service user denies having authorised an executed payment transaction, the use of a payment instrument recorded by the payment service provider shall in itself not necessarily be sufficient to prove either that the payer has authorised that payment transaction, or that the payer acted fraudulently or failed, with intent or gross negligence, to fulfil one or more of the obligations referred to in Article 32 herein.
- (4) The payment service provider and the payment service user that is not a consumer may agree by contract to regulate the burden of proof in a different manner than that provided for in paragraphs (1) and (3) above.

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

#### **Article 36**

- (1) In the case of an unauthorised payment transaction, the payer's payment service provider shall refund to the payer immediately the amount of the unauthorised payment transaction, and in the case of an unauthorised payment transaction from the payment account, he shall restore the debited payment account to the state in which it would have been had the payment transaction not taken place.
- (2) The payment service provider shall also refund to the payer all charges levied for the executed unauthorised payment transaction and pay any related interest.
- (3) In the case of execution of an unauthorised payment transaction, the payer shall, in addition to the rights referred to in paragraphs (1) and (2) above, be entitled to the difference up to the full amount of the damage in accordance with general rules governing liability for damage.

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

#### **Article 37**

- (1) By way of derogation from Article 36 herein, the payer shall be liable for the execution of any unauthorised payment transaction:
  - 1) up to a total of 150 euros if such execution has resulted from the use of a lost or stolen payment instrument, or from misappropriation of the payment instrument, where the payer has failed to keep safe the personalised security features of the payment instrument, or
  - 2) in its full amount if the payer has acted fraudulently or failed, with intent or gross negligence, to fulfil one or more of the obligations referred to in Article 32 herein.

- (2) By way of derogation from paragraph (1) above, where the execution of the payment transaction resulted from the use of a lost or stolen payment instrument, or from its misappropriation, the payer shall not be liable for unauthorised payment transactions:
  - 1) which have been executed after the payer has notified the payment service provider in accordance with Article 32 (1) (2) herein, or
  - 2) if the payment service provider has not provided appropriate means for the notification at all times of a lost, stolen or misappropriated payment instrument in accordance with Article 33 (1) 3) herein.
- (3) The provision under paragraph (2) above shall not apply if the payer has acted fraudulently.
- (4) The payment service provider and the payer that is not a consumer may agree to regulate by contract the payer's liability in a different manner than that provided in paragraphs (1) to (3) of this Article.

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

#### **Article 38**

- (1) A payer is entitled to a refund from his payment service provider of an authorised payment transaction initiated by or through a payee that has already been executed, if the following conditions are met:
  - 1) the authorisation did not specify the exact amount of the payment transaction when the authorisation was made; and
  - 2) 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.
- (2) At the payment service provider's request, the payer shall provide factual elements relating to conditions under paragraph (1) above.
- (3) The refund pursuant to paragraph (1) above consists of the full amount of the executed payment transaction.
- (4) For direct debits, the payer and his payment service provider may agree in the framework contract that the payer shall be entitled to a refund from his payment service provider even though the conditions for refund in paragraph (1) 1) above have not been met.
- (5) The payer may not invoke the right under paragraph (1) above if the reason for realisation of the condition under paragraph (1) 2) above was due to the application of the reference exchange rate agreed with the payer's payment service provider.
- (6) The payer and the payer's payment service provider may agree in the framework contract that the payer has no right to a refund if the following conditions are met:
  - 1) the payer has given his consent to execute the payment transaction directly to his payment service provider; and

- 2) where applicable, information on the future payment transaction was 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.
- (7) The payment service provider and the payer that is not a consumer may agree to regulate by contract the entitlement to refund in a manner different than that provided in the paragraphs (1) to (6) of this Article.

**Requests for refunds for authorized payment transactions initiated by or through a payee**

**Article 39**

- (1) The payer can request the refund referred to in Article 38 herein of an authorised payment transaction no later than eight weeks from the value date on which the funds were debited.
- (2) Within ten business days of receiving a request for a refund, the payment service provider shall:
  - 1) refund to the payer the full amount of the payment transaction; or
  - 2) provide the payer with justification for refusing the refund, indicating that the payer may, in the case of not accepting the justification provided, submit a proposal for out-of-court settlement of payment system disputes.
- (3) The payment service provider's right refuse a refund shall not apply in the case set out in Article 38 (4) herein.
- (4) The relationships between the payment service provider and the payer that is not a consumer under paragraphs (1) to (3) above may be regulated by contract in a different manner.

**CHAPTER III**

**EXECUTION OF PAYMENT TRANSACTIONS**

**Section A**

**Payment orders and amounts transferred and amounts received**

**Receipt of payment orders**

**Article 40**

- (1) The point in time of receipt is the time when the payer's payment service provider receives the order initiated directly by the payer or indirectly by or through a payee.
- (2) If the point in time of receipt is not on a business day for the payer's payment service provider, the payment order shall be deemed to have been received on the following business day.



- (3) The payment service provider may establish a cut-off time near the end of a business day for the receipt of payment orders.
- (4) If the payer's payment service provider receives a payment order after the established cut-off time, the payment order shall be deemed to have been received on the next business day.
- (5) The payment service user initiating a payment order and his payment service provider may agree that the execution of the payment order shall commence:
  - 1) on a specific day;
  - 2) at the end of a certain period;
  - 3) on the day on which the payer has made the necessary funds available to the payer's payment service provider.
- (6) In the case referred to in paragraph (5) above, the point in time of receipt of the payment order shall be deemed to be the agreed day to commence the execution of the payment order. Where the agreed day is not a business day for the payment service provider, the point in time of receipt of the payment order shall be deemed to be the next business day.

### **Refusal of payment orders**

#### **Article 41**

- (1) Where the payment service provider refuses to execute a payment order, it shall, unless otherwise provided for by other regulations, notify the payment service user of:
  - 1) the refusal;
  - 2) if possible, the reasons for refusal, and
  - 3) the procedure for correcting any mistakes that led to the refusal.
- (2) The payment service provider shall provide or make available the notification referred to in paragraph (1) above in an agreed manner at the earliest opportunity, and in any case within the time limits referred to in Article 44 herein.
- (3) It may be agreed in the framework contract that the payment service provider may charge for the notification under paragraph (1) above if the refusal of the payment order is objectively justified.
- (4) Where all terms set out in the framework contract between the payer and the payer's payment service provider are met, the payer's payment service provider may not refuse to execute an authorised payment order, irrespective of whether the payment order is initiated by the payer or by or through the payee, unless otherwise provided for by other regulations.
- (5) A payment order of which execution has been refused shall be deemed not to have been received.

### **Irrevocability of a payment order**

## **Article 42**

- (1) The payment service user may not revoke a payment order once it has been received by the payer's payment service provider, except in the cases specified in paragraphs (3), (4), (5) and (8) of this Article.
- (2) Where a payment transaction is initiated by or through the payee, 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.
- (3) By way of derogation from paragraph (2) above, 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 agreed debit date.
- (4) In the case referred to in Article 40 (5) herein, the payment service user may revoke a payment order at the latest by the end of the business day preceding the agreed day of commencement of the payment order execution.
- (5) After the time limits specified in paragraphs (1) to (4) above, a payment order may be revoked only if so agreed between the payment service user and his payment service provider.
- (6) In the cases referred to in paragraphs (2) and (3) above, the payee's agreement shall also be required.
- (7) It may be agreed in the framework contract that the payment service provider may charge for revocation.
- (8) The payment service provider and the payment service user that is not a consumer may agree to regulate by contract the irrevocability of payment orders in a different manner than that provided for under the provisions (1) to (7) of this Article.

## **Amounts transferred and amounts received**

### **Article 43**

- (1) The payment service provider of the payer, the payment service provider of the payee and any intermediaries of the payment service providers shall transfer the full amount of the payment transaction without deducting any charges from the amount transferred.
- (2) By way of derogation from paragraph (1) above, the payee and the payee's payment service provider may agree that the payment service provider deduct its charges from the amount transferred before crediting it to the payee. In such a case, the full amount of the executed payment transaction and charges levied shall be separated by the payment service provider in the information given to the payee.
- (3) If any amounts other than those referred to in paragraph (2) above 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. In

## **Section B**

### **Execution time and value date**

#### **Payment transactions to a payment account**

##### **Article 44**

- (1) The payment service provider shall ensure that, after the point in time of receipt in accordance with Article 40 herein, the amount of the payment transaction is credited to the payee's payment service provider's account at the end of the same business day.
- (2) After receiving the amount of a payment transaction, the payee's payment service provider shall credit the payee's payment account with the credit value date and make the funds available to the payee.
- (3) The payee's payment service provider shall transmit a payment order initiated by or through the payee to the payer's payment service provider within the time limits agreed between the payee and the payee's payment service provider, and in the case of a direct debit, within the time limits enabling settlement on the agreed due date of the payer's liability.

#### **Execution of payment transactions in case of absence of payee's payment account**

##### **Article 45**

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 by the end of the same business day the funds have been received.

#### **Cash placed on a payment account**

##### **Article 46**

- (1) Where a payment service user places cash on a payment account in his payment account with the payment service provider, the payment service provider shall ensure that the amount is made available and value dated immediately after the point of time of the receipt of the funds.
- (2) Provisions of Article 40 herein shall apply *mutatis mutandis* to the point of time of the receipt of the funds within the meaning of paragraph (1) of this Article.

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

## **Article 47**

- (1) The credit value date for the payee's payment account may be no later than the business day on which the amount of the payment transaction is credited to the payee's payment service provider's account.
- (2) The payment service provider of the payee shall ensure that the amount of the payment transaction is at the payee's disposal without delay after that amount has been credited to the payee's account.
- (3) 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 C**

### **Payment service provider's liability for the execution of a payment transaction**

#### **Incorrect unique identifiers**

## **Article 48**

- (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 for the non-execution or incorrect execution of a payment transaction in the part relating to the incorrectly provided unique identifier.
- (3) The payer's payment service provider shall, regardless of its liability, take reasonable steps to recover the funds involved in that payment transaction.
- (4) The payment service provider may charge the payment service user for the recovery of funds in accordance with paragraph (3) above, if so agreed in the framework contract.
- (5) If the payment service user provides information additional to that specified in Article 15(1) 1) and Article 19(1) 2)b) herein, 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.

### **Payment service provider's liability for the execution of a payment transaction initiated by the payer**

## **Article 49**

- (1) The payer's payment service provider shall be liable to the payer for the execution of a payment transaction initiated by the payer, except in the cases referred to in paragraph (3) of this Article, Article 48(2) and (5) and Article 53 herein.
- (2) The payer's payment service provider that is liable for the execution of a payment transaction shall, at the payer's request for the refund of the amount of a non-executed or an incorrectly executed payment transaction, without undue delay refund to the payer the amount of that payment transaction and, in the case of debiting, restore that payment account to the state in which it would have been had the payment transaction not taken place.
- (3) Where the payer's payment service provider proves that the payee's payment service provider received the amount of the payment transaction in accordance with Article 44 herein and with the payment order, the payee's payment service provider shall be liable to the payee for the execution of the payment transaction.
- (4) In the case referred to in paragraph (3) above, the payee's payment service provider shall without undue delay make available the amount of the payment transaction to the payee and, in the case of crediting, credit the corresponding amount to the payee's payment account.
- (5) In the case of a non-executed or defectively executed payment transaction where the payment order is initiated by the payer, his payment service provider shall regardless of liability under this paragraph and the payer's request, make immediate efforts to trace the payment transaction and notify the payer of the outcome.
- (6) The payer's payment service provider that is liable for the non-execution or incorrect execution of a payment transaction shall also be liable to its user for any charges levied and any interest belonging to the user for the non-executed or incorrectly executed payment transaction.
- (7) The payment service provider and the payer that is not a consumer may agree to regulate by contract the liability otherwise than provided in the provisions (1) to (6) of this Article.

**Payment service provider's liability for the execution of a payment transaction initiated by or through the payee**

**Article 50**

- (1) In the case of a payment transaction initiated by or through the payee, except in the cases referred to in paragraph (3) of this Article, Article 48(2) and (5) and Article 53 herein, the payee's payment service provider shall be liable to the payee:
  - 1) for the correct transmission of the payment order to the payer's payment service provider in accordance with Article 44 (3) herein, and
  - 2) for proceeding in accordance with Article 47 herein.
- (2) Where the payee's payment service provider is liable under paragraph (1)1) of this Article for a non-executed or an incorrectly executed payment transaction, it shall

- (3) Where the payee's payment service provider proves that it has correctly transmitted the payee's payment order to the payer's payment service provider and that it has proceeded in accordance with Article 47 herein, the payer's payment service provider shall be liable to the payer for the execution of the payment transaction.
- (4) In the case under paragraph (3) above, the payer's payment service provider liable for the execution of payment transaction shall, at the payer's request and without undue delay, refund to the payer the amount of the non-executed or defective payment transaction and, in the case of debiting, restore the debited payment account to the state in which it would have been had the defective payment transaction not taken place.
- (5) In the case of a non-executed or an incorrectly executed payment transaction initiated by or through the payee, the payee's payment service provider shall, at the payee's request and regardless of its liability, take immediate steps to trace the funds and notify the payee of the outcome.
- (6) The payee's payment service provider that is liable for the non-execution or incorrect execution of a payment transaction shall also be liable to its user for any charges that it has levied, and any interest to which the payment service user is subject as a consequence of non-execution or incorrect execution of the payment transaction.
- (7) The payment service provider and the payee that is not a consumer may agree by contract to regulate the liability in a different manner than that provided in the provisions (1) to (6) of above.

### **Payment service user's rights in case of an incorrectly executed payment transaction**

#### **Article 51**

- (1) In the case of an incorrectly executed payment transaction, including a delayed execution, the payment service user shall be entitled to request from its payment service provider the correct execution of the payment transaction and/or the interest for or refund of the incorrectly executed payment transaction in accordance with this law.
- (2) The payment service user shall lose the right referred to in paragraph (1) of this Article if it fails to notify its payment service provider without undue delay on becoming aware of any incorrectly executed payment transaction and no later than 13 months following the debit date and/or credit date.
- (3) By way of derogation from paragraph (2) above, should the payment service provider fails to provide or make available to the payment service user the information on the executed payment transaction in accordance with this law, the payment service user shall be entitled to execute the right under paragraph (1) above also within the deadline longer than 13 months.

- (4) The payment service provider and the payment service user that is not a consumer may agree by contract on a time limit other than that provided for in paragraph (2) above.

## **Right of recourse**

### **Article 52**

- (1) The payment service provider shall be liable to its payment service user for the execution of a payment transaction even in the case of the liability of an intermediary or a third party participating in the execution of that payment transaction.
- (2) In the case referred to in paragraph (1) above, the payment service provider shall be entitled to request from the intermediary or third party the refund of all the amounts paid by that payment service provider to its payment service user in accordance with Articles 49 and 50 herein, and compensation for any other damage suffered in accordance with general rules governing liability for damage.

## **Exclusion of liability**

### **Article 53**

The liability of the payment system providers with regard to the execution of the payment transaction shall be excluded in cases of extraordinary and unforeseeable circumstances specified under the secondary legislation that are beyond the control of the payment system provider and in the cases where the payment service provider has been obliged to comply with the law.

## **Data protection**

### **Article 54**

- (1) Information on the payment service user that the payment service provider has obtained in the course of business, including personal information, as well as information on the payment transactions and the account balance and any changes therein shall be considered confidential.
- (2) The payment service provider, members of its bodies and employed or commissioned persons, as well as other persons whose nature of business involves the access to information under paragraph (1) above may not disclose or submit or allow access to this information to any third party.
- (3) The confidentiality obligation of persons under paragraph 2 above shall not cease even after the termination of status that allowed them the access to the confidential information.
- (4) Notwithstanding paragraphs (2) and (3) above, information constituting a business secret may be disclosed or submitted:

- 1) to the Central Bank;
  - 2) on the basis of decision or order by a court, the State Persecution Office, the public authority in charge of police affairs and the public authority in charge of combating money laundering and terrorist financing, and tax authority's body in accordance with the law;
  - 3) to other parties, subject to a written consent of the payment service user.
- (5) The payment service provider shall have the right to disclose and/or submit the information under paragraph (1) above to the State Persecutor and courts, as well as to other public and legal authorities solely for the purpose of protecting its rights, in accordance with the law.
- (6) Parties and/or persons who have been given access to the information constituting business secret above in line with paragraphs (4) and (5) above shall use this information solely for their intended purpose and they may not disclose or submit or allow access to this information to any third party, unless in cases specified in the law.
- (7) Provision under paragraph (6) above shall also apply to persons employed or commissioned and/or who used to be employed or commissioned by parties who have been allowed access to the information constituting business secret in accordance with paragraphs (4) and (5) above.
- (8) In the collection and processing of information on persons under paragraph 1 above, payment service providers, payment system participants and settlement agents are obliged to act in accordance with the legislation governing personal data protection.
- (9) Payment service providers and payment system participants may collect and process the information under paragraph 8 above with a view to preventing, investigating or detecting fraudulent actions or misuses in payment system transactions.

### **Data safeguarding and reporting on payment services**

#### **Article 55**

- (1) Payment system providers shall safeguard documents on payment system users, payment transactions and the condition and changes at the payment account of the payment service user five years, and electronic data thereof ten years from the execution of payment transaction, and/or from the change at the payment account of the payment service user.
- (2) The Central Bank may prescribe the submitting entities, content, manner and deadlines for reporting on payment services.

### **Favourable position**

#### **Article 56**

Payment system provider and payment system user may agree more favourable position than those used by the payment service user in accordance with Articles 28 through Article 55(1) herein.



**TITLE IV**  
**INTERNATIONAL PAYMENT TRANSACTIONS**

**Application of provisions**

**Article 57**

Provisions of Articles 2 through 56 herein shall be applied to international payment transactions unless Articles 58 through 61 herein specify otherwise.

**Deadlines for the execution of international payment transactions**

**Article 58**

- (1) The payer's payment service provider shall debit the payer's account no later than by the end of the next business day following the order receipt date, subject to the existence of sufficient funds in the payer's account.
- (2) The payee's payment service provider shall credit the payee's account with funds received from international payment transaction when the payee's account has been indicated in the payment order and when the transfer of funds requires no additional instructions, no later than the next business day following that on which the payee's payment service provider received the notification of crediting its account.
- (3) When the transfer of funds from international payment transaction requires additional instruction with regard to the payer, the payee's payment service provider shall credit the funds to the payee's account no later than the next business day following that of receipt of the relevant additional instruction.
- (4) When the transfer of funds from international payment transaction requires additional instruction from the payee, the payee's payment service provider shall inform the payee on the receipt of funds on the same business day when it has received the notice on the receipt of those funds and credit the payee's account in accordance with the received instruction, no later than by the end of the business days when the instruction has been received.
- (5) Deadlines specified under paragraphs (1) to (4) above shall apply on international payment transactions unless otherwise agreed by the payment service provider and the payment service user, and no later than four business days following the receipt of the payment order and/or additional instruction.

**Charges**

**Article 59**

- (1) Where the payment service contract specifies that the payment service provider shall charge the fee to the payment service user for the execution of international payment

- (2) In the case the payment service provider has no information referred to in paragraph (1) above at the moment of initiating the international payment transaction it shall take necessary activities to provide the payment system user with the information on the anticipated amount of the relevant fee.
- (3) The payment service provider and the payment service user may agree on charging the fee for international payment transaction in the manner other than that specified under Article 28(3) herein.

### **Low-value payment instruments**

#### **Article 60**

The payment service provider and the payment service user may regulate under the framework contract governing international payment transactions solely using low-value payment instruments the derogation from provisions under Article 27 herein.

### **Disposal of received funds**

#### **Article 61**

After the receipt of funds from an international payment transaction, the payee may order its payment service provider solely to:

- 1) transfer the received funds to the payee's transaction account for the execution of national payment transactions;
- 2) payout cash to the payee, or
- 3) settle the payee's international payment obligations.

## **TITLE V**

### **PAYMENT ACCOUNTS**

#### **Definition**

#### **Article 62**

- (1) 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.
- (2) The Central Bank may prescribe detailed requirements and the manner of maintaining payment accounts, as well as their unique structure.

## **Joint payment account**

### **Article 63**

- (1) A joint payment account is the account held by the payment service provider on behalf of two or more payment service users, subject to the agreement on keeping the joint payment account.
- (2) Every payment service user that is an individual holder of a joint payment account shall be able to have disposal of total funds in the joint payment account, unless the agreement under paragraph (1) above stipulates restrictions to the disposal of funds in this account.
- (3) Funds in the joint payment account may be entirely used for the settlement of obligations of an individual holder to third persons.
- (4) The agreement under paragraph (1) above shall not restrict the right of third persons in the bankruptcy or liquidation or enforced collection proceedings against an individual holder of the joint payment account collect their claims on this holder by debiting the joint payment account for the total amount of claims, unless otherwise prescribed by the law.

## **Transaction account**

### **Article 64**

- (1) A transaction account is a type of the payment account opened by banks and other credit institutions offering payment services, a branch of a credit institution from a third country with the head office in Montenegro, and by the Central Bank in the name of one or more payment service users for the purpose of executing payment transactions and other purposes.
- (2) The Central Bank shall open transaction accounts for banks and other credit institutions offering payment services, as well as for entities specified by law and regulations of the Central Bank to hold such accounts with the Central Bank.
- (3) Payment institutions and electronic money institutions may not open transaction accounts for payment system users, and they shall open transaction accounts for their own purposes with banks.
- (4) A transaction account shall be opened on the basis of a contract to be concluded between the payment service provider referred to in paragraph (1) above and a payment service user.
- (5) A payment service user may have more than one transaction account with one payment service provider and transaction accounts with more than one payment services providers referred to in paragraph (1) above.
- (6) A transaction account shall be cancelled in line with the law and other regulations and/or the contract under paragraph (4) above.

- (7) Funds held on the transaction account shall be considered demand deposits.
- (8) The Central Bank shall prescribe the structure and detailed conditions and manner of opening and closing of a transaction account for the execution of national payment transactions, and it may also prescribe the structure and detailed conditions and manner of opening and closing of a transaction account for the execution of international payment transactions.
- (9) Enabling regulation under paragraph (8) above and other regulations passed by the Central Bank on the basis of its powers laid down herein shall be published in the Official Gazette of Montenegro.

### **Registry of transaction accounts**

#### **Article 65**

- (1) Payment service providers under Article 64(1) herein shall keep a registry of transaction accounts of their payment service users.
- (2) The legal person in charge of enforced collection involving funds in an account held by the executive debtor pursuant to the law governing the enforcement and securing of claims (hereinafter: the enforced collection organisation) shall maintain the Central Registry of Transaction Accounts as the common database on all transaction accounts and their holders.
- (3) Payment service providers under paragraph (1) above are obliged to submit to the enforced collection organisation the information on opened transaction accounts, the information on any change in information on those accounts and the information on cancelling those accounts, no later than by the end of the business day when such an account has been opened, cancelled or the changed has been made.
- (4) In the course of enforced collection procedure, the enforced collection organisation shall publish the names of legal persons and/or entrepreneurs, their register/personal identification numbers, the frozen amounts, and the number of days of uninterrupted account freeze.
- (5) The enforced collection organisation shall, on monthly basis, publish the information under paragraph (4) above on its website on the first business day of the following month with the balance as at the last day in the previous month, in alphabetical order.
- (6) Detailed information on the content of the Central Registry of Transaction Accounts, information to be submitted for the purpose thereof, and the manner of publishing information shall be prescribed by the public authority in charge of financial affairs.

### **Payment orders through transaction accounts**

#### **Article 66**

The Central Bank shall prescribe the basic elements and the manner of completion of the payment order for the execution of national payment transactions through transaction accounts and it may prescribe the basic elements and the manner of completion of the payment order for the execution of international payment transactions through transaction accounts.

## **TITLE VI**

### **PAYMENT INSTITUTIONS**

#### **Chapter I**

#### **STATUS PROVISIONS**

##### **Form of organisation**

##### **Article 67**

- (1) A payment institution with the registered office in Montenegro shall be a legal person authorised by the Central Bank to provide one or more payment services under Article 2 herein.
- (2) A payment institution may not provide payment services before obtaining the authorisation under paragraph (1) above.

##### **Other activities of a payment institution**

##### **Article 68**

Apart from the provision of payment services, a payment institution may also engage in:

- 1) the provision of operational and related ancillary services, such as ensuring the execution of payment transactions, provision of currency conversion services required for the execution of payment transactions, provision of safekeeping services and services related to data storage and processing;
- 2) the operation of a payment system other than a payment system in which settlement finality is performed, without prejudice to payment system access in line with provisions of Article 142 herein; and/or
- 3) an activity other than the provision of payment services.

##### **Hybrid payment institution**

##### **Article 69**

- (1) A payment institution that performs activities listed under Article 68 point 2) and/or 3) herein shall be a hybrid payment institution.
- (2) A hybrid payment institution shall perform activities under paragraph (1) above in the manner to avoid jeopardizing stability and safety of the part of the payment institution's

- (3) Provisions of this law applying to payment institutions which sole activity is providing payment services shall apply *mutatis mutandis* to hybrid payment institutions, unless otherwise prescribed under this law.

### **Minimum amount of the initial capital**

#### **Article 70**

- (1) The initial capital of a payment institution that provides payment services under Article 2 (6) herein may not be less than 20,000 euros.
- (2) The initial capital of a payment institution providing payment services under Article 2 (7) herein may not be less than 50,000 euros.
- (3) The initial capital of a payment institution providing one or several payment services under Article 2 (1) to (5) herein may not be less than 125,000 euros.
- (4) The person submitting the application for authorisation for providing payment services that are subject to different minimum amounts of the initial capital under (1) to (3) above shall provide the minimum initial capital in the highest prescribed amount for the payment service(s) for which it is prescribed.
- (5) The minimum initial capital of a payment institution must be paid in cash.
- (6) By way of derogation from paragraph (5) above, a hybrid payment institution shall allocate earmarked funds at least in the amount of the minimum initial capital.

### **Qualified holding**

#### **Article 71**

- (1) A payment institution shall inform the Central Bank on a legal or natural person's – an investor's acquiring of qualifying holding in the payment institution no later than within three days following the date of acquiring such a holding.
- (2) The information under paragraph (1) above shall be supported with the following:
- for a legal person holding the qualifying holding, documents and information to include in particular, but not limited to: a certificate of registration or any other relevant public registry, audited financial statements from the past three years with an audit opinion, an overview of connected parties and a description of the connection, including information on persons who, owing to their ownership share or in any other way, have a significant control over that group of connected persons;
  - for a natural person holding the qualifying holding – documents, data and information to include in particular, but not limited to: their names and addresses, permanent and/or temporary place of residence and other identification data,

## **Application for authorisation to provide payment services**

### **Article 72**

- (1) A legal person intending to provide payment services as a payment institution shall submit an application for authorisation to provide payment services to the Central Bank.
- (2) The application under paragraph (1) above shall be supported with the following in particular, but not limited to:
  - 1) the Certificate or Articles of Incorporation, the Articles of Association, and the certificate of registration in the Central Registry of Business Entities (hereinafter CRBE) of a legal person;
  - 2) a business programme, setting out in particular the types of payment services for which the authorisation is sought, in accordance with Article 2 herein;
  - 3) a business plan, including a financial statement projection for the first three fiscal years that demonstrates the ability of the payment institution to operate in a stable manner on the basis of adequate systems, resources and procedures and an appropriate organisational, technical and personnel structure; where such a legal person intends to provide payment services as a hybrid payment institution, it shall also submit financial statements for the past two business years and/or financial statements available as of the date of its establishment ;
  - 4) evidence of the amount of initial capital paid in for the payment institution to be established and/or funds earmarked for the initial capital of the hybrid payment institution;
  - 5) a description of measures taken and/or intended to be taken to safeguard payment service users' funds in accordance with Article 79 herein, including, where applicable, an assessment method for the representative portion of funds assumed to be used for future payment transactions;
  - 6) a description of a the envisaged management framework and internal control mechanism of the payment institution, including administrative, accounting and risk-management procedures which demonstrate that the said management framework and internal control mechanism and procedures are adequate, suitable and reliable;
  - 7) a description of the internal control mechanism, in line with this law and the law governing the prevention of money laundering and terrorist financing;
  - 8) a description of the payment institution's organisational structure, including, as appropriate, a description of the intended operation through branches and agents, outsourcing services and their share in the relevant payment system;
  - 9) for persons holding the qualifying holding in that payment institution, the evidence of the size of their holding and documents under Article 71(2) herein, ensuring safe and sound governance of the payment institution;
  - 10) identities of members of the board of directors, the executive director and persons responsible for managing the payment institution, and, where relevant, of the persons responsible for payment service provision and the evidence that these persons have adequate skills and experience to perform the activity of payment service provision, as well good reputation to be proved by evidence that:

- they have not been convicted for an offence that makes them unworthy of holding a function or performing relevant tasks and duties,
  - they were not holding managerial positions in a company at the time the company was subject to insolvency or winding up proceedings, and
  - the evidence that they are not under any investigation or subject to any criminal proceedings for a criminal offence persecuted ex officio;
- 11) where applicable, the evidence of appointment of the statutory auditor and/or audit firm to audit financial statements for the business year for which the application is submitted;
- 12) a list of persons having connections with the payment institution and the description of the manner in which they are linked.

## **Granting authorisation to provide payment services**

### **Article 73**

- (1) The Central Bank shall grant an authorisation in line with the application and documentation under Article 72 herein only if, taking into account the need to ensure safe and sound management of the payment institution, it estimates that the payment institution
- (1) has robust governance arrangements for its payment services business, which include a clear organisational structure with well-defined, transparent and consistent lines of responsibility,
  - (2) efficient procedures to identify, manage, monitor and report risks to which it is or might be exposed, and
  - (3) adequate internal control mechanisms, including sound administrative and accounting procedures; those arrangements, procedures and mechanisms shall be comprehensive and proportionate to the nature, scale and complexity of the payment services provided by the payment institution.
- (2) Where a legal person providing other payment activities has submitted the application for authorisation to provide payment services specified under Article 2 herein, the Central Bank may request the applicant to establish a separate legal person if it assesses that those non-payment services activities of the payment institution may impair either the financial soundness of the payment institution or the ability of the Central Bank to supervise the payment institution in accordance with the law.
- (3) Prior to granting the authorisation to provide payment services, the Central Bank may consult with other central banks or other relevant competent authorities in order to make a complete assessment of the submitted application.
- (4) The decision on granting the authorization to provide payment services shall be published in the Official Gazette of Montenegro.

## **Application for authorisation to provide additional payment services**

### **Article 74**



- (1) Where a payment institution, after having obtained authorisation under Article 73 herein, intends to provide payment services other than those covered by the authorization (hereinafter: additional payment services), it shall submit to the Central Bank an application for authorisation to provide such additional payment services.
- (2) The authorisation under paragraph (1) above shall be supported with the documentation specified under Article 72 herein and a rationale on the impact of the additional services on the financial statements, organizational structure, internal control mechanism and system for safeguarding payment service users' funds.
- (3) The decision on granting the authorisation to provide additional payment services shall be published in the Official Gazette of Montenegro.

### **Refusal of application for authorisation to provide payment services**

#### **Article 75**

The Central Bank shall refuse an application for authorisation to provide payment services:

- 1) where it assesses that any of the conditions under Article 73 herein has not been met;
- 2) where it assesses that the persons who intend to hold qualifying participation in a payment institution are not qualified;
- 3) where the exercise of supervision of the payment institution's operation pursuant to the provisions herein may be made difficult or prevented due to links between the payment institution and other legal or natural persons;
- 4) where it assesses that the applicant should establish a separate legal person to provide payment services.

### **Withdrawal of authorisation to provide payment services**

#### **Article 76**

- (1) The Central Bank shall withdraw authorisation to provide payment services:
  - 1) where a payment institution does not commence providing payment services in accordance with the authorisation within one year following its approval date;
  - 2) where a payment institution submits a written notification to the Central Bank stating that it no longer intends to provide the services for which authorisation has been granted;
  - 3) where a payment institution has not provided payment services for more than six months;
  - 4) where a payment institution obtains authorisation based on false or inaccurate documentation or false presentation of the data relevant to its operation; or
  - 5) where a payment institution no longer meets the conditions under which authorisation has been granted.
- (2) The Central Bank may withdraw the authorisation to provide payment services:
  - 1) where any of the reasons under Article 75 (2), (3) and (4) herein arises;
  - 2) where a payment institution threatens the stability of a payment system by continuing to provide payment services

- 3) where it determines that a payment institution has not maintained own funds in accordance with provisions of this Law;
  - 4) where a payment institution, in any manner whatsoever, prevents the supervision of its operation; or
  - 5) where a payment institution fails to implement supervisory measures imposed by the Central Bank.
- (3) The decision on withdrawal of authorisation to provide payment services shall be published in the Official Gazette of Montenegro.
- (4) The Central Bank shall submit the decision on withdrawal of authorisation to provide payment services to CRBE and issue public statement thereof in at least two printed media distributed in the territory of Montenegro.

### **Provision of payment services through agents**

#### **Article 77**

- (1) A payment institution shall provide payment services through an agent in accordance with Article 6 herein and paragraphs (2) to (7) below.
- (2) A payment service provider shall apply to the Central Bank for the listing of the agent in the register of payment institutions.
- (3) The agent may not commence its operations before it has been listed in the register under paragraph (2) above.
- (4) The Central Bank may refuse to list the agent in the register under paragraph (2) above if it has established that the submitted documents contain incomplete or inaccurate information.
- (5) The Central Bank may remove the agent from the register under paragraph (2) above if it no longer meets the prescribed requirements and/or if it has established that the listing in the register had been made on the basis of incorrect information or documents.
- (6) When the agent has been removed from the register under paragraph (2) above, documentation and funds related to outstanding liabilities and unresolved relationships connected to payment transactions performed by the agent shall be submitted to the payment service provider on whose behalf the agent has been acting.
- (7) The Central Bank shall prescribe detailed requirements for agent operations and the information and documents required for their listing in the register.
- (8) Provisions under paragraphs (1) to (7) above shall apply *mutatis mutandis* to the listing of agents of other payment service providers under Article 4 herein in the relevant registers.

## **Chapter II**

## **OPERATION OF PAYMENT INSTITUTIONS**

### **Own funds**

#### **Article 78**

- (1) In order to ensure its safe and sound operation and be able to meet obligations to creditors, a payment institution shall maintain an adequate level of own funds which at any time may not fall below the initial capital referred or the amount of own funds specified in accordance with this law, whichever is higher.
- (2) The amount of own funds of a payment institution shall be calculated in accordance with one of the following three methods:
  - 1) fixed overheads method;
  - 2) payment transaction range method;
  - 3) other operating income method.
- (3) The amount of own funds of a hybrid payment institution shall be calculated only for a part of business activities referring to providing payment services.
- (4) The method and manner for calculating own funds shall be specified in more detail in a regulation of the Central Bank, and shall be uniformly applied to all payment institutions.

### **Safeguarding of payment service users' funds**

#### **Article 79**

- (1) A payment institution shall safeguard the funds received from payment service users or through another payment service provider for the execution of payment transactions.
- (2) A payment institution shall not commingle the funds of payment service users on whose behalf they are held with the funds of other natural or legal persons received for other purposes.
- (3) Where a payment institution holds the funds of payment service users that have not been delivered to a payee or transferred to another payment service provider by the end of the business day following the day when the funds were received, the payment institution shall protect them in a following manner:
  - 1) deposit them in an account with a bank having its registered office in Montenegro;
  - 2) invest them in an account with a foreign bank with an adequate rating; or
  - 3) invest them in liquid and low-risk property.
- (4) The funds of the payment service users under (3) above shall not be the property of the payment institution, and shall neither be included in its assets, or winding-up or bankruptcy estate, nor may they be subject to execution or enforced collection against the payment institution.

- (5) A payment institution shall cover the funds of the payment service users under paragraph (1) above by an insurance policy from an insurance company or a bank's guarantee, provided that this insurance company or bank does not belong to the same group as the payment institution itself. The contracted insurance policy or guarantee must be payable in the event that the payment institution is unable to meet its financial obligations incurred by the provision of services related to the execution of payment transactions.
- (6) Where a hybrid payment institution, apart from providing payment services, performs the activities under Article 68 (3) herein and receives funds from payment service users, of which a portion is to be used for future payment transactions, and the remaining portion for the services which the payment institution provides, other than payment services, it shall safeguard the portion of funds to be used for future payment transactions in the manner under paragraph (3) or (5) above.
- (7) If a portion of funds under paragraph (6) above is variable or unknown in advance, the payment institution may determine the portion of funds to be used for future payment transactions based on the representative portion assumed to be used for these purposes, provided that such a representative portion can be reasonably estimated on the basis of historical data on previously executed payment transactions.
- (8) The Central Bank shall prescribe in detail the safeguarding of payment service users' funds under paragraph (3) point 2) above.

### **Payment institution's accounts**

#### **Article 80**

- (1) A payment institution which provides one or several payment services may hold only those payment accounts which are used exclusively for the execution of payment transactions.
- (2) Funds received by payment institutions from payment service users for the provision of payment services shall not constitute deposits or any other repayable funds within the meaning of the law governing the establishment and pursuit of the banking business, or electronic money within the meaning of this law.
- (3) A payment institution shall perform payment transactions using funds received from payment service users for the purpose of providing payment services via transaction accounts to be opened with banks.

### **Granting of credits and prohibition from accepting deposits**

#### **Article 81**

- (1) A payment institution may grant credits in connection with the provision of the payment services under Article 2 points 4), 5) and 7) herein provided that
  - 1) the credit has been granted exclusively as an ancillary service in connection with the execution of a payment transaction;

- 2) the credit repayment period does not exceed 12 months;
  - 3) the credit has not been granted from the funds of payment service users received by the payment institution and held for the execution of payment transactions; and
  - 4) own funds of the payment institution, as assessed by the Central Bank, are at all times appropriate with regard to the total amount of the credit granted.
- (2) A payment institution shall not perform activities which consist of accepting deposits or any other repayable funds within the meaning of the law regulating the taking up and pursuit of the banking business.

## **Business books and financial statements**

### **Article 82**

- (1) A payment institution shall keep business books and other business documentation and records, value assets and liabilities, and compile and publish annual financial statements in accordance with prevailing regulations and standards of the profession.
- (2) A hybrid payment institution shall keep separate business books and compile separate financial reports for the provision of payment services.
- (3) Payment institutions under paragraphs (1) and (2) above shall keep their business books and other business documentation in accordance with Article 55 herein.

## **Audit requirements**

### **Article 83**

- (1) A payment institution shall have its annual financial statements and consolidated financial statements audited in accordance with the law.
- (2) A payment institution shall, at the latest within five months following the expiry of the business year to which the annual financial statements relate, submit the following to the Central Bank:
  - 1) annual and consolidated financial statements, and
  - 2) the audit report on annual financial statements and consolidated financial statements.
- (3) A business year, within the meaning of paragraph (1) above, shall correspond to a calendar year.
- (4) The persons carrying out the audit under paragraph (1) above shall, without undue delay, inform the Central Bank of the following:
  - identified illegalities or facts and circumstances which could in any way jeopardize continued operation of the payment institution; and
  - circumstances which, pursuant to this law, have led to the withdrawal of the authorisation to provide payment services.

- (5) The persons carrying out the audit under paragraph (1) above shall inform the Central Bank in writing of any of the facts referred to in paragraph (4) above of which they became aware while auditing the financial statements of a legal person linked with that payment institution.
- (6) The submission of the information under paragraphs (4) and (5) above to the Central Bank shall not constitute the violation of confidentiality of information and the auditor shall not be held liable for that.

## **Assessment of the information system**

### **Article 84**

- (1) The Central Bank may specify that an assessment of the IT system and the adequacy of the IT system management in a payment institution is a constituent part of the audit report referred to in Article 83 herein.
- (2) The persons carrying out an audit of a payment institution shall, at the request of the Central Bank, provide additional information related to the assessment referred to in paragraph (1) above.

## **Outsourcing**

### **Article 85**

- (1) A payment institution may outsource some of its operational activities. It shall notify the Central Bank thereof prior to concluding a contract with an outsourcing service provider.
- (2) By way of derogation from paragraph (1) above, where a payment institution intends to outsource materially important operational activities, it shall, within an appropriate time limit and at the latest 90 days prior to concluding a contract with an outsourcing service provider, notify the Central Bank thereof and submit the documentation proving that the conditions referred to in paragraphs (4), (5) and (6) below have been met.
- (3) Materially important operational activities within the meaning under paragraph (2) above shall be the activities which, if performed incorrectly or not at all, would significantly impair:
  - 1) the legality of the payment institution's operation;
  - 2) the payment institution's financial stability;
  - 3) the continuity in meeting the requirements based on which the payment institution has been granted the authorisation; or
  - 4) the soundness and continuity of the payment institution's provision of payment services.
- (4) A payment institution shall ensure that the intended outsourcing:
  - 1) does not alter the relationship and obligations of the payment institution to its payment service users as defined herein;
  - 2) does not threaten the legality of the payment institution's operation;

- 3) does not result in transferring the liability from the responsible persons of the payment institution to an outsourcing service provider; and
  - 4) does not alter the conditions under which the payment institution has been granted authorisation to provide payment services.
- (5) In addition to complying with the requirements referred to in paragraph (4) above, a payment institution shall ensure that the intended outsourcing of materially important operational activities:
- 1) does not impair the quality of the payment institution's internal control mechanism, and
  - 2) it does not prevent or hinder the exercise of supervision by the Central Bank.
- (6) A payment institution shall ensure that the Central Bank can carry out on-site examination at the location where the services are provided and/or at the outsourcing service provider's premises and it shall ensure access to the outsourcing-related documentation and data possessed by the outsourcing service provider.
- (7) The Central Bank may prescribe detail requirements for the outsourcing of operational activities of a payment institution.

### **Liability of a payment institution**

#### **Article 86**

- (1) A payment institution shall be fully liable to third parties for the acts of its employees, agents, branches and outsourcing service providers in connection with the provision of payment services.
- (2) The liability referred to in paragraph (1) above may not be excluded or limited.

### **Governance arrangements**

#### **Article 87**

- (1) A payment institution shall establish and implement effective and sound governance arrangements, proportionate to the nature, scope and complexity of the operations it performs, comprising in particular but not limited to:
- 1) a clear management framework with well-defined, transparent and consistent lines of powers and responsibilities within the payment institution;
  - 2) efficient risk management, in particular operational risk management, and
  - 3) appropriate internal control mechanisms, which also include appropriate administrative and accounting procedures.
- (2) The Central Bank may prescribe in detail the governance arrangements referred to in paragraph (1) above.

### **Provision of payment services through a branch within a territory of a third country**

#### **Article 88**

- (1) A payment institution may provide payment services in a third country exclusively through a branch.
- (2) In order to establish a branch in a third country, a payment institution shall submit to the Central Bank an application for granting the authorisation.
- (3) A payment institution shall support the application referred to in paragraph (2) above with the following:
  - 1) name and address of a branch;
  - 2) a description of the branch's organisational structure;
  - 3) information on the persons who are to be responsible for managing the branch's operations, accompanied with corresponding professional qualifications and experience in accordance with Article 72 (2) 10) herein.
- (4) The provisions of this law governing the granting of the authorisation, the refusal of application for granting, refusing and revoking of the authorisation for the provision of payment services for a payment institution shall apply *mutatis mutandis* to the procedure of decision-making on granting, refusing and revoking of the authorisation for the provision of payment services in the territory of a third country.

### **Register of payment institutions**

#### **Article 89**

- (1) The Central Bank shall maintain a register of payment institutions authorised to provide payment services, and their branches and agents (hereinafter: the register of payment institutions) and update it as appropriate.
- (2) The register of payment institutions shall include a list of payment services which the individual entities under paragraph (1) above are authorised to provide and their registration number.
- (3) The register of payment institutions shall be publicly available and accessible on the website of the Central Bank.
- (4) The Central Bank shall prescribe the manner of keeping the register and the information contained therein to be made available.

#### **Article 90**

The Central Bank shall charge fees for the issuing of approvals and authorisations under this law. The amount and manner of payment of these fees shall be regulated by the Central Bank.

## **Chapter VII**

### **SUPERVISION OF PAYMENT INSTITUTIONS**

#### **Supervision of payment institutions**



## **Article 91**

- (1) The Central Bank shall exercise supervision of payment institutions.
- (2) The supervision referred in paragraph (1) above shall mean the verification of whether a payment institution operates in accordance with the provisions of this Law and regulations adopted under this Law, and in relation to its provision of payment services and its activities in accordance with Article 68 1) herein, provided that the supervision of hybrid payment institutions shall be limited to a portion of operations of these institutions which refers to the provision of payment services and related operational services.
- (3) In establishing the frequency and scope of the supervision under paragraph (1) above, the Central Bank shall take into account the type and complexity of the activities carried out by a payment institution and its risk profile.
- (4) Other competent authorities may also exercise supervision of the operation of payment institutions in accordance with their powers under the law.
- (5) In the case under paragraph (4) above, the Central Bank may participate in the supervision of the payment institution with the respective competent authority or may require from that authority the data and information which would be relevant for the supervision of the payment institution in question.
- (6) The Central Bank may prescribe detailed conditions for, and the manner of, exercising supervision of payment institutions and the responsibilities of payment institutions in the course of, and following, the supervision.
- (7) The Central Bank may charge a supervision fee which amount and the manner of calculation and payment shall be prescribed by the Central Bank.

### **Manner of exercising supervision**

## **Article 92**

- (1) The Central Bank shall exercise the supervision of payment institutions by:
  - 1) analysing reports, information and other data that payment institutions are required to submit to the Central Bank pursuant to this law and regulations of the Central Bank, information and data that payment institutions are required to submit at the Central Bank's request, and other data on the operations of payment institutions available to the Central Bank;
  - 2) direct access to business books, accounting and other documents in a payment institution and other participant in the operations subject to supervision (hereinafter: on-site examination).
- (2) The supervision of payment institutions shall be exercised by employees of the Central Bank authorised by the Central Bank for the performance of these operations.

- (3) By way of derogation from paragraph (2) above, the Central Bank may authorise persons not employed by the Central Bank to carry out individual tasks during the supervision of payment institutions.
- (4) The Central Bank shall notify a payment institution of a planned on-site examination, as a rule, at least 10 business days prior to the beginning of the on-site examination.
- (5) Notwithstanding paragraph (4) above, if the report and information available to the Central Bank reveal any irregularity that may be important for the safety and stability of the payment institution's operations, on-site examination may also begin without prior notification.
- (6) The payment institution shall allow the authorised persons of the Central Bank to carry out on-site examination and provide adequate conditions for undisturbed performance of the on-site examination.

### **On-site examination**

#### **Article 93**

- (1) A payment institution shall enable authorised persons of the Central Bank, at their request, to carry out on-site examination at the registered office of the payment institution and other localities in which the payment institution and/or another person authorised by the payment institution carries out activities and operations subject to supervision of the Central Bank.
- (2) The payment institution shall enable the authorised persons of the Central Bank, at their request, the access to its business books, other business documentation, and administrative or business records, as well as the information and related technologies, to the extent necessary for the supervision.
- (3) The payment institution shall submit to the authorised persons of the Central Bank, at their request, electronic printouts, copies of business books, other business documentation and administrative or business records, in hard copy or in the form of an electronic record on a medium. The payment institution shall provide the authorised persons with a standard interface granting access to the database management system used by the payment institution.
- (4) The supervision of the payment institution's operations shall be carried out by the authorised persons during payment institution's working hours. Where necessary due to the scope or nature of the supervision, the payment institution shall enable the authorised persons to carry out the supervision outside its working hours.

### **Examination report**

#### **Article 94**

- (1) A report on the on-site examination findings shall be prepared following the supervision of the payment institution's operation.

- (2) Notwithstanding paragraph (1) above, the report on on-site examination findings shall not be prepared where the examination under Article 92 (1) 1) herein has not disclosed any illegalities or irregularities in the payment institution's operation that would require the imposition of supervisory measures against the payment institution.
- (3) The report on on-site examination findings shall be confidential and it may not be published partially or in entirety without the Central Bank's consent.
- (4) The payment institution may submit to the Central Bank objections to the supervision report within eight business days following that of its reception.
- (5) The Central Bank may directly check statements of the payment institution contained in the objections to the on-site examination report, and, if it deems justifiable, it shall amend report to which the payment institution may submit objections within three business days following that of its receipt.
- (6) The Central Bank shall, within eight days following that of receipt of objections to the report and/or objections to amendments to the supervision report, consider the objections and inform the payment institution in writing on accepting and/or rejecting such objections.

### **Measures during the supervision**

#### **Article 95**

- (1) If a payment institution, within timeframes prescribed by the law, does not submit objections to the supervision report or if it does not objectively dispute supervision report findings, and/or amendments to the report in which irregularities in operations of the payment institution are stated, the Central Bank shall impose measures against the payment institutions ordering it to remove the identified irregularities and take timely actions to improve safety and security of the payment institution's operations.
- (2) In the case under paragraph (1) above, the Central Bank may:
  - 1) warn the payment institution in writing on the identified irregularities and request from the payment institution to take one or several activities to remove such irregularities;
  - 2) sign with the payment institution a written agreement to oblige the payment institution to remove irregularities disclosed in its operations within a specified timeframe;
  - 3) pass a decision to impose one or several measures under Article 99 herein; or
  - 4) revoke the authorisation for providing payment services.

### **Written agreement**

#### **Article 96**

- (1) The Central Bank may, upon completed supervision, sign a written agreement with the payment institution if it determines that weaknesses or irregularities identified in the payment institution's operations do not represent acting contrary to regulations and/or if

- (2) The Central Bank may propose the payment institution to sign the written agreement under paragraph (1) above provided that:
- 1) the payment institution has initiated the removal of irregularities during or immediately after the completion of supervision;
  - 2) the payment institution is ready to ensure the removal of irregularities within the proposed timeframes and in the proposed manner;
  - 3) it may be concluded from the current behaviour of the payment institution relative to measures, objections and recommendations of the Central Bank, that it will regularly meet obligations from the agreement, or
  - 4) it can be concluded from the payment institution's operations, frequency of identified irregularities that the payment institution provide regularity, safety and stability of its future operations.
- (3) The written agreement shall mandatorily regulate:
- 1) the deadline and manner of acting of the payment institution for the purpose of removing irregularities in the payment institution's operations, and
  - 2) the deadline and/or dynamics for the payment institution's reporting to the Central Bank on fulfilling obligations under the written agreement.

### **Consequences of failure to fulfil obligations taken under the written agreement**

#### **Article 97**

Where a payment institution fails to fulfil the obligations taken under the written agreement within the time limit and in the manner laid down in the agreement, the Central Bank shall pass a decision on imposing measures in line with Article 98 herein.

### **Decision on imposing measures**

#### **Article 98**

- (1) The Central Bank may, by a way of decision, impose measures on a payment institution if in the course of supervision it establishes:
- 1) that by its actions or omission of particular actions the payment institution has acted contrary to laws and other regulations;
  - 2) irregularities in the payment institution's operations which do not constitute acting contrary to regulations and no written agreement has been signed to regulate the removal of such irregularities, or
  - 3) that it is necessary for the payment institution to take actions and activities to improve its operation.
- (2) The decision under paragraph (1) above shall lay down the deadline for the implementation of the imposed measures.

- (3) The payment institution may, no later than 15 days prior to the expiry of the deadline referred to in paragraph (2) above, apply for an extension of the deadline by submitting a reasoned request. The Central Bank shall decide on the extension no later than until the expiry of the deadline laid down in the decision.

## **Types of measures imposed by decision**

### **Article 99**

- (1) A decision on imposing measures may:
- 1) Order a payment institution to harmonise its operations with this law;
  - 2) temporarily prohibit the payment institution to provide one or more payment services;
  - 3) temporarily prohibit a payment institution to extend the loan under Article 81 (1) herein;
  - 4) order the termination of agreement with agent or outsourcing provider;
  - 5) order the competent body of the payment institution to remove a member of the management board and/or an executive director and/or another person responsible for performing payment services if they no longer meet the requirements prescribed under this law and/or if they contravene the provisions of this law;
  - 6) remove the payment institution's branch and/or agent from the register;
  - 7) order the payment institution to take and/or suspend the performance of other activities.
- (2) The Central Bank shall impose the measure referred to in paragraph (1) 2) above to be in effect for no more than one year. The Central Bank shall without undue delay notify the CRBE of the imposition of this measure.
- (3) The Central Bank may order a separate entity to be established for the provision of payment services if the payment institution performs the activities referred to in Article 68 point 3) herein which impair or may impair financial stability of the payment institution or hinder the performance of supervision.
- (4) Where own funds of a payment institution are lower than the amount required under Article 78 herein or where own funds of a payment institution are not appropriate with regard to the total amount of credit granted in accordance with Article 81 (1) herein, the decision on imposing measures may:
- 1) order the payment institution to adopt and ensure the implementation of a plan of measures to provide for own funds required under the regulation adopted pursuant to Article 78 (4) herein;
  - 2) order the payment institution to adopt and ensure the implementation of a plan of measures to provide that the own funds be appropriate with regard to the total amount of the credit granted in accordance with Article 81 (1) herein;
  - 3) order the payment institution to adopt and implement a decision on capital increase;  
or
  - 4) temporarily prohibit the payment institution to distribute dividends or any form of profit.

## **Reporting to the Central Bank on decision implementation**

### **Article 100**

- (1) The decision to impose measure may specify a time limit by which a payment institution is to report to the Central Bank on the implementation of the imposed measures and provide relevant evidence thereof.
- (2) Where the Central Bank establishes that the measures imposed have not been implemented or have not been implemented within the time limit and in the manner prescribed by the decision, it may impose a new measure on the payment institution in accordance with this law.

## **Exemptions from the required minimum of own funds**

### **Article 101**

- (1) The Central Bank may order a payment institution to increase own funds up to 20% relative to own funds calculated in accordance with Article 78 herein.
- (2) At the payment institution's request, the Central Bank may, by way of decision, approve the reduction of own funds up to 20% relative to own funds calculated in accordance with Article 78 herein, provided that the payment institution's own funds may not be lower than the minimum amount of the payment institution's initial capital under Article 70 herein.
- (3) The Central Bank shall order the measures referred to in paragraphs (1) and (2) above on the basis of assessment of the payment institution's risk management, database on risk management and mechanisms for functioning of the internal controls system, as well as other information on payment institution's performance.

## **The procedure following the imposing of measures**

### **Article 102**

- (1) A payment institution shall, upon the removal of disclosed irregularities and no later than immediately after the expiry of the deadline for the removal of identified irregularities, submit to the Central Bank a report on the removal of irregularities, supported with relevant evidence.
- (2) The Central Bank shall pass a conclusion to confirm that the payment institution has removed irregularities in its operations when, based on the report under paragraph (1) above or on-site examination, it determines that the payment institution has removed all identified irregularities in its operations.
- (3) If the payment institution, fails to remove the identified irregularities within the deadline specified under paragraph (1) above, the Central Bank shall, based on available evidence or on-site examination, as appropriate, impose new measures on the payment institution in accordance with this law.

## **Reporting to the Central Bank**

### **Article 103**

- (1) Payment institution shall, without any delay, report to the Central Bank on the following in particular but not limited to:
  - 1) the submitted request for the changes to be entered into the CRBE and the completed entries of data changes into the CRBE;
  - 2) planned changes of members of the managing body, and/or executive director and/or persons responsible for performing payment services;
  - 3) executed changes of qualified holders of which the board of directors and/or the executive director was aware and/or should have been aware;
  - 4) planned changes in the payment institution's initial capital of 10 percent or more;
  - 5) if the payment institution's financial position changes to the extent that its own funds fall below the minimum amount of own funds calculated in accordance with Article 78 (4) herein;
  - 6) if it stops providing some payment services;
  - 7) the intent to stop providing all payment services, as well as the occurrence of circumstances for the revocation of the authorisation referred to in Article 76 herein;
  - 8) changes to facts on the basis of which the Central Bank entered its agent into the register;
  - 9) if it stops providing payment services through an agent;
  - 10) activities taken for safeguarding payment service users' funds in accordance with Article 79 herein; and
  - 11) all other changes altering the facts on the basis of which the Central Bank has granted the authorisation to provide payment services.
- (4) At the request of the Central Bank, the payment institution shall submit additional reports and information on all matters relevant for the exercise of supervision or performing of other tasks within the competence of the Central Bank.
- (2) The Central Bank may prescribe the content of the payment institution's report, deadlines and the manner of reporting.

## **Cooperation between the competent authorities**

### **Article 104**

- (1) The Central Bank and other competent authorities in Montenegro, which perform supervision of the payment institution's operations in accordance with the law, shall cooperate and exchange all information on payment institutions necessary for the Central Bank's performance of supervisory tasks.
- (2) The authorities referred to in paragraph (1) above shall inform one another of illegalities and/or irregularities identified in the course of supervision if such findings are relevant for the operation of the other authority.
- (3) The submission of the information and notifications referred to in paragraphs (1) and (2) above shall not constitute a violation of confidentiality of information.

- (4) The competent authority that has received the information and notifications referred to in paragraphs (1) and (2) above shall protect their confidentiality and it may use them exclusively for the purpose for which they have been given, and may not divulge them to third parties without the consent of the competent authority which submitted them.

### **Exchange of information between the Central Bank and competent authorities of Member States**

#### **Article 105**

- (1) The Central Bank shall cooperate with the competent authorities of the Member States and, where appropriate, with the European Central Bank and the national banks of the Member States and other relevant competent authorities by submitting information and notifications.
- (2) The submission of the information and notifications referred to in paragraph (1) above shall not constitute the violation of confidentiality.

### **Forms of cooperation**

#### **Article 106**

- (1) The Central Bank may conclude an agreement with one or more competent authorities in the Member States or third countries for the purpose of exercising supervision of the operation of payment institutions and establish other forms of cooperation.
- (2) Submission of information and notifications through the forms of cooperation referred to in paragraph (1) above shall not be considered the violation of confidentiality.

### **Notifications to the European Commission**

#### **Article 107**

The Central Bank shall notify the European Commission of its competences relating to granting the authorisation for the provision of payment services and supervision of payment institutions in accordance with this Law.

## **TITLE VIII**

### **ELECTRONIC MONEY**

#### **CHAPTER I**

#### **Electronic money issuers, issuing and redeemability**

#### **Electronic money issuers**

#### **Article 108**



- (1) Electronic money issuers may be:
  - 1) Banks and other credit institutions with the registered office in Montenegro;
  - 2) Electronic money institutions with the registered office in Montenegro;
  - 3) Branches of third-country credit institutions with the registered office in Montenegro;
  - 4) The Central Bank;
  - 5) The State of Montenegro and local self-government units when not acting in their capacity as public authorities.
- (2) Persons other than electronic money issuers within the meaning of paragraph (1) above may not issue electronic money in Montenegro.
- (3) Electronic money issuers under paragraph (1) 1) and 3) above may issue electronic money in accordance with the authorisation issued pursuant to the provisions of the law governing their taking up and pursuit.
- (4) Electronic money issuers under paragraph (1) 2) above may issue electronic money and provide payment services pursuant to the authorisation issued under the provisions of this law.
- (5) Rights of the electronic money issuers under paragraph (1) 4) and 5) above to electronic money issuing shall be regulated under separate regulations.

### **Electronic money issuing and redeemability**

#### **Article 109**

- (1) Electronic money issuers shall issue electronic money at par value of the received funds.
- (2) Upon request by the electronic money holder, electronic money issuers shall redeem, at any moment and at par value, the monetary value of the electronic money held.
- (3) Redemption may be subject to a fee only if stated in the contract in accordance with the contract under Article 110 herein and only provided that:
  - 1) the redemption is requested before the termination of the contract;
  - 2) the contract provides for a termination date and the electronic money holder terminates the contract before that date; or
  - 3) the redemption is requested one year following the contract expiration date.
- (4) Any such fee under paragraph (3) above shall be proportionate and commensurate with the actual costs incurred by the electronic money issuer.
- (5) Where redemption is requested before the contract expiration date, an electronic money holder may request redemption of the electronic money in whole or in part.
- (6) Where redemption is requested by an electronic money holder as at or within one year following the contract expiration date:
  - 1) the total monetary value of the electronic money held shall be redeemed; or

- 2) where the electronic money institution carries out other activities in addition to the electronic money issue 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) The electronic money issuer and the electronic money holder that is not a consumer may contract rights to electronic money redemption in the manner other than that specified under paragraphs (3) through (6) above.

### **Contract on electronic money issuing**

#### **Article 110**

- (1) Mutual relations of an electronic money issuers and an electronic money holder shall be regulated under a contract.
- (2) The contract under paragraph (1) above shall explicitly specify clear and detail conditions of redemption, including any fees relating thereto.
- (3) The electronic money issuer shall inform the electronic money holder on the conditions under paragraph (2) above before the latter's being bound by any offer or contract.

### **Prohibition of interest**

#### **Article 111**

Electronic money issuer may not pay any interest or other benefit related to the length of time during which an electronic money holder holds the electronic money.

## **Chapter II**

### **ELECTRONIC MONEY INSTITUTIONS**

#### **Organisation**

#### **Article 112**

- (1) Electronic money institution with its registered office in Montenegro is a legal person authorised by the Central Bank to issue electronic money.
- (2) Electronic money institution shall not issue electronic money prior to obtaining the authorisation under paragraph (1) above.

### **Authorisation for issuing electronic money**

#### **Article 113**

Articles 72 to 76 herein shall apply *mutatis mutandis* to the granting of authorisation for issuing electronic money.

## **Qualified holding**

### **Article 116**

- (1) No natural or legal person shall acquire qualifying holding in an electronic money institution without a prior approval of the Central Bank.
- (2) A person with a qualifying holding in an electronic money institution shall not further increase such qualifying holding as a result of which the proportion of the capital or of the voting rights held would reach or exceed 20%, 33% or 50% without a prior approval of the Central Bank.
- (3) Provisions of the law governing the taking up and pursuit of the banking business shall apply *mutatis mutandis* to the following: the procedure upon application for granting authorisation for acquiring qualifying holding in an electronic money institution, deciding upon application, denying application, acquiring qualifying holding without the Central Bank's approval, legal consequences of illegal acquisition of qualifying holding, deadlines for acquiring qualifying holding and reporting to the Central Bank by qualified holders.

## **Operations through agent and other person**

### **Article 115**

- (1) An electronic money institution shall not issue electronic money through an agent.
- (2) An electronic money institution may, pursuant to Article 77 herein, provide payment services under Article 118 (1) 1) herein through an agent.
- (3) An electronic money institution may distribute or redeem electronic money through natural or legal persons acting on its behalf, subject to the notification thereof to the Central Bank.

## **Minimum amount of initial capital**

### **Article 116**

- (1) Initial capital of an electronic money institution may not be lower than 350.000 euros at the moment of obtaining the authorisation.
- (2) The minimum initial capital of an electronic money institution shall be paid in cash.
- (3) By way of derogation from paragraph (2) above, the electronic money institution pursuing activities under Article 118 (1) 5) herein shall allocate earmarked funds at least in the amount of the minimum initial capital.

## **Own funds**

## **Article 117**

- (1) Electronic money institution shall, for the purpose of safe and sound operations, and/or fulfilment of obligations towards its creditors, maintain adequate amount of own funds. Own funds shall not in any moment fall below the initial capital or the sum of own funds determined in accordance with paragraphs (2) and (3) below, whichever is higher.
- (2) Own funds of an electronic money institution for the activity of issuing electronic money shall amount to at least 2 percent of average outstanding electronic money.
- (3) Own funds of an electronic money institutions for the activity of providing payment services not connected with the issuing of electronic money shall be calculated in accordance with Article 78 herein.
- (4) The Central Bank shall prescribe detailed conditions and manner of calculating own funds of electronic money institutions.

## **Other activities of electronic money institution**

### **Article 118**

- (1) In addition to issuing electronic money, electronic money institutions shall be entitled to engage in any of the following activities:
  - 1) the provision of payment services listed in the Article 2 herein;
  - 2) the granting of credit related to payment services referred to in Article 2 points 4), 5) or 7) herein provided that the conditions laid down in Article 81 (1) herein have been met;
  - 3) the provision of operational services and related ancillary services in respect of the issuing of electronic money or to the provision of payment services referred to in point 1) above;
  - 4) a payment system operator other than the operator of the payment system where settlement finality is performed, notwithstanding access to payment systems in accordance with the provisions of Article 142 herein; or
  - 5) business activities other than electronic money issuing.
- (2) Provisions of Article 79 herein shall apply to the protection of funds received for the provision of payment services laid down in Article 2 herein that are not linked to the activity electronic money issuing.
- (3) Where an electronic money institution performs activities other than issuing of electronic money and providing payment services, the Central Bank may request the establishment of a separate legal person for performing such activities if it determines that activities other than issuing of electronic money or providing payment services may threaten financial stability of the electronic money institution or hinder the supervision of the electronic money institution pursuant to this law.

## **Issuing of electronic money**

### **Article 119**

Any funds received by electronic money institutions from an electronic money holder shall be exchanged for electronic money without delay.

### **Prohibition of taking deposits**

#### **Article 120**

- (1) Electronic money institutions shall not take deposits or other repayable funds from the public within the meaning of the law governing the taking up and pursuit of the banking business.
- (2) Such funds shall not constitute either a deposit or other repayable funds received from the public within the meaning of the law governing the establishment and pursuit of the banking business.

### **Accounts of electronic money institution**

#### **Article 121**

- (1) Where an electronic money institution provides payment services not linked with the issuing of electronic money and within which it holds payment accounts, such accounts shall be used solely for the execution of payment transactions.
- (2) Funds received for the purpose under paragraph (1) above shall not be deemed deposit or other redeemable funds within the meaning of provision of the law governing the taking up and pursuit of the banking business.
- (3) An electronic money institution shall perform its business via transaction accounts to be opened with banks.

### **Prohibition of granting credits**

#### **Article 122**

Electronic money institutions shall not grant credits from funds received in exchange of electronic money.

### **Safeguarding of funds**

#### **Article 123**

- (1) Electronic money institutions shall safeguard funds received in exchange for electronic money issued in the manner prescribed in Article 79 herein.
- (2) Funds received by an electronic money institution in the form of payment by payment instrument need not be safeguarded in accordance with paragraph (1) above 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 this law.

- (3) Electronic money institution shall ensure the safeguard of funds under paragraph (2) above in the manner under paragraph (1) above no later than five working days following that of the electronic money issue.
- (4) Electronic money institution shall notify in advance the Central Bank on changes in the manner of safeguarding funds received in exchange for issued electronic money.
- (5) The Central Bank shall regulate in detail the protection of funds that an electronic money institution has received in exchange of the issued electronic money.

### **Mutatis mutandis**

#### **Article 124**

- (1) Articles 82 through 107 herein shall apply *mutatis mutandis* to electronic money institutions.
- (2) Notwithstanding paragraph 1 above, an electronic money institution shall record separately in its books all business changes occurring as a result of issuing electronic money and business changes occurring as a result of the provision of payment services that are not directly related to electronic money issuing.

### **TITLE IX**

#### **OUT-OF-COURT SETTLEMENT OF DISPUTES IN PAYMENT SYSTEM**

##### **Committee for out-of-court settlement of disputes in payment system**

#### **Article 125**

- (1) Out-of-court settlement of disputes in payment system shall be performed by the Committee for out-of-court settlement of disputes in payment system (hereinafter: the Committee).
- (2) Disputes in payment system, within the meaning of this law, shall be disputes between payment service providers and payment service users that refer to the execution of payment transactions and disputes between electronic money issuers and electronic money holders.
- (3) The procedure before the Committee shall be initiated at the moment of submission of a proposal for out-of-court settlement of disputes in payment system.
- (4) The Committee shall not settle disputes which are subject to pending court proceedings and it shall terminate out-of-court settlement of a dispute if a court proceeding has been initiated during the out-of-court settlement procedure.

##### **Founding and composition of the Committee**

#### **Article 126**

- (1) The Committee shall be founded in the Montenegrin Bankers Association.
- (2) The Montenegrin Bankers Association shall perform professional and administrative operations for the Committee and it shall provide premises and other technical conditions for the work of the Committee.
- (3) The Committee shall have five members, of which two members shall be appointed and relieved of duty by the Montenegrin Bankers Association and the organisation for consumer protection, and one member shall be appointed and relieved of duty by the Central Bank.
- (4) The Chairmen of the Committee shall be the member to be appointed and relieved of duty by the Central Bank.
- (5) Each member of the Committee shall have its deputy to be appointed and relieved of duty in the manner laid down in paragraph (3) above.
- (6) Members of the Committee shall be appointed for a three-year term of office with the possibility of a reappointment.

### **Conditions for and termination of the Committee membership**

#### **Article 127**

- (1) A person holding a university degree and with at least five years of work experience in the profession may be elected member of the Committee, provided that it has business capacity and has not been convicted for criminal offence making him unworthy to perform out-of-court settlement of disputes in the payment system.
- (2) A person considered a public officer under the law regulating the prevention of conflicting interests may not be appointed a member of the Committee.
- (3) A member's term of office in the Committee shall be terminated:
  - 1) by the expiry of his/her term of office;
  - 2) at his/her request;
  - 3) if it has been determined that he/she does not meet the conditions under paragraph (1) above;
  - 4) if he/she has lost his/her work ability to perform activities in the Committee;
  - 5) with his/her death.
- (4) In the case of termination of a term of office in the Committee, a new member shall be appointed within 30 days following the term of office termination date, in accordance with this law.

### **Reasons for excusing a member in the Committee**

#### **Article 128**

- (1) A member of the Committee who has personal or other interests in an out-of-court settlement of dispute in payment system or who is connected with any of parties in the dispute may not participate as a member of the Committee in the settlement of the dispute in question.
- (2) A member of the Committee who cannot be unbiased for any reason whatsoever shall immediately inform thereof the entity under Article 126 (3) herein that has appointed the member.

## **Work of the Committee**

### **Article 129**

- (1) The modus operandi and procedures of the Committee shall be specified in the Rules of Procedures to be passed by the Committee.
- (2) The Central Bank shall give its consent to the Rules of Procedures under paragraph (1) above.
- (3) Members of the Committee and their deputies shall keep confidential all information that came to their knowledge during the performance of their duties.

## **TITLE X**

### **PAYMENT SYSTEMS**

#### **CHAPTER 1**

#### **Establishment and operation of payment systems in Montenegro**

##### **Payment system establishment**

### **Article 130**

A payment system in Montenegro may be established by the payment system operators under Article 131 (2) herein and at least one participant – a payment service provider authorised to provide payment services by the Central Bank.

##### **Payment system operator**

### **Article 131**

- (1) A payment system shall be operated by a payment system operator.
- (2) A payment system operator may be:
  - 1) bank and other credit institutions having their registered office in Montenegro;
  - 2) a payment institution having its registered office in Montenegro;
  - 3) an electronic money institution having its registered office in Montenegro;
  - 4) another legal person having its registered office in Montenegro, established as a joint stock company or as a limited liability company;



- 5) the Central Bank, and
  - 6) a branch of a foreign legal person having its registered office in Montenegro.
- (3) A payment system operator may also perform other activities apart from operating a payment system, in accordance with the law.

### **Duties of payment system operator**

#### **Article 132**

- (1) A payment system operator shall ensure an undisturbed, safe and efficient functioning of the payment system.
- (2) A payment system operator shall, proportionately to the type, volume and complexity of operations arising from the rules of payment system operations, ensure the following:
  - 1) that the payment system has an adequate, reliable and satisfactory information system for performing all functions in accordance with the rules of the payment system operations, as well as its business continuity plan;
  - 2) organisational structure with well defined, articulate and consistent lines of authority and responsibility, and
  - 3) managing of risks to which the payment system is exposed or might be exposed.
- (3) The Central Bank may prescribe detailed requirements to be met by payment systems and payment system operators.

### **Payment system participants**

#### **Article 133**

- (1) Payment system participants may be:
  - 1) payment service providers,
  - 2) payment system operators,
  - 3) another payment system, and
  - 4) another person in accordance with the rules of operation of that payment system.
- (2) A payment service provider may participate in a payment system either directly or indirectly, the latter via another payment service provider.
- (3) The payment service provider referred to in Article 4 (1) 1), to 3) herein shall notify the Central Bank of each payment system in which it participates directly or indirectly, and of the relevant payment system operator, regardless of whether the payment system operates in the territory of Montenegro or in a third country.

### **Payment system licence**

#### **Article 134**

- (1) Central Bank shall issue the payment system licence to a payment system operator.

- (2) By way of derogation from paragraph (1) above, the Central Bank shall not issue the licence to:
  - 1) the payment system under article 142 (4) 3) herein, or
  - 2) the payment system it operates.
- (3) The payment system under paragraph (1) above shall not commence its operations until the Central Bank has issue the licence to that system.
- (4) The payment system operator under paragraph (1) above shall inform the Central Bank on the commencement of operations of the payment system it operates within 30 days following the licence date.
- (5) The payment system operator under paragraph (2) point 1) above shall inform the Central Bank on the intention of commencing with the payment system operations no later than within five business days prior to the beginning of operations of that payment system.

### **Payment system licensing application**

#### **Article 135**

- (1) The entity under Article 131 (2) herein shall submit to the Central Bank an application for the payment system licensing.
- (2) The application under paragraph (1) above shall be supported with the following:
  - 1) information on the payment system operator (name, registered office and address);
  - 2) documents evidencing that the payment system operator has technical, organisational and functional capacities to operate the payment system and risk management security and control mechanisms in place;
  - 3) a description of its IT system to demonstrate that the respective IT system is adequate, reliable and satisfactory with respect to the operation of all functions anticipated in the payment system rules of operations;
  - 4) a description of the organisational, technical and personnel structure of the payment system operator with respect to operating the payment system, and where appropriate, a description of outsourcing arrangements with respect to operating the payment system, as well as a description of its connection with another payment system;
  - 5) members of the board of directors and/or executive directors of the payment system operator, and where the payment system operator engages in other activities apart from the payment system operation, information about the persons responsible for the payment system operation, in accordance with Article 72 (2) 10) herein;
  - 6) a business plan of the payment system for the first three years;
  - 7) information on the participants in the payment system;
  - 8) a draft payment system agreement;
  - 9) draft payment system rules of operations;
  - 10) a statement of the authorised person of payment system operator that the information provided and documentation delivered are accurate, complete and up-to-date;

- 11) a statement of the payment system operator it shall notify the Central Bank, without undue delay, on any change in information submitted with the payment system licensing application; and
  - 12) other documents the Central Bank deems necessary for deciding on the application.
- (3) Where certain documents supporting the licensing application under paragraph (1) above are made out in a foreign language, they shall be translated in Montenegrin language by a certified translator and authorised in accordance with the law.

## **Issuing the payment system licence**

### **Article 136**

- (1) The Central Bank shall issue the payment system license if the rules of operation of the payment system meet the requirements specified in Article 140 herein and if, on the basis of the orderly submitted application and documentation specified under Article 135 herein and available information, it assesses that the following conditions have been met:
- 1) the payment system operator has technical, organisational and functional capacities to operate the payment system and control and security mechanisms and risk management mechanism in place;
  - 2) the payment system operator has a business plan of the payment system for the first three years based on realistic economic indicators;
  - 3) the persons proposed to be members of the board of directors and/or executive director of the payment system operator or, in the cases where the payment system operator also performs other activities, the persons responsible for operating the payment system have a good reputation and proper skills and experience required for operating the payment system;
  - 4) the IT system is adequate, reliable and satisfactory in relation to all functions envisaged by the rules of operation of a payment system; and
  - 5) there are no financial and/or any other reason which impair or could impair the safety and stability of the payment system operation.
- (2) During the payment system licensing procedure, the Central Bank may consult with other central banks or competent authorities with a view to making a better consideration of the submitted application.

## **Denial of a payment system licensing application**

### **Article 137**

The Central Bank shall deny payment system licensing application if it assesses that any of the conditions under Article 136 (1) herein have not been met.

## **Revoking the payment system license**

### **Article 138**

- (1) The Central Bank shall revoke the payment system license if:

- 1) the license has been issued based on false or inaccurate documentation and/or false presentation of data relevant for the payment system operations;
  - 2) the payment system operator does not commence its operation within one year following the license date;
  - 3) it no longer meets any of the licensing requirements;
  - 4) the payment system has not operated for more than six consecutive months, or
  - 5) insolvency or winding up proceedings have been initiated against the payment system operator.
- (2) The Central Bank may revoke the payment system license:
- 1) where a continued operation of the payment system would jeopardise safety and efficiency of payment services;
  - 2) where the payment system operations contravene regulations and/or the payment system rules of operation;
  - 3) where the payment system operator, in any manner whatsoever, prevents or hinders the supervision and/or oversight of the payment system; or
  - 4) where the payment system operator fails to implement supervisory measures ordered by the Central Bank.

### **Notification on issuing and revoking the license**

#### **Article 139**

The Central Bank shall publish the decision on issuing and revoking license for operation of a payment system in the "Official Gazette of Montenegro" and it shall submit it to the CRBE.

### **Rules of operation of a payment system**

#### **Article 140**

- (1) A payment system shall operate in line with the rules of operation of the payment system.
- (2) The rules of operation of a payment system shall govern standardised arrangements and common rules for processing, clearing and/or settlement of payment transactions among the payment system participants.
- (3) In the procedure of payment system licensing, the Central Bank shall give its approval to the rules of operation of the payment system.
- (4) By way of derogation from paragraph (3) above, the Central Bank shall not approve for the rules of operation of the payment system referred to in Article 134 (2) herein.
- (5) The rules of operation of a payment system shall cover in particular but not limited to:
  - 1) the payment system participants by type and a description of their role in the payment system;
  - 2) conditions for participation and termination of participation in the payment system;
  - 3) payment transactions calculated and/or settled in the payment system by the type of payment services;

- 4) the principles for clearing and/or settlement of payment transactions;
  - 5) the manner of, and conditions for, executing payment transactions, their form and content;
  - 6) reporting to participants on clearing and/or settlement;
  - 7) the manner of protection of data against abuse;
  - 8) the moment of entry and the moment of irrevocability of a transfer order, and procedures in case of the initiating the proceedings specified under Article 151 (1) herein, for payment systems where the settlement finality in payment systems is performed (hereinafter: the payment system where settlement finality is performed).
- (6) The Central Bank shall give its approval for the rules of operation of a payment system where it deems that they cover the elements referred to in paragraph (5) above and that their application ensures the protection from systemic risk and other possible risks relating to the functioning of the payment system.

### **Approval for amending the payment system contract and the payment system rules of operation**

#### **Article 141**

- (1) The Central Bank shall grant approval for amending a payment system contract and the payment system rules of operation.
- (2) Payment system operator shall submit the request to the Central Bank for granting approval to amend the payment system contract and the payment system rules of operations.
- (3) The following documents shall support the request under paragraph (2) above:
  - 1) draft amendments to the payment system contract and/or draft amendments to the payment system rules of operation, and
  - 2) a detailed rationale for amendments.
- (4) In the consideration of the request for granting the approval under paragraph (1) above, the Central Bank may request additional information.
- (5) In the course of deciding on the request for granting the approval under paragraph (1) above, the Central Bank shall particularly consider the impact of the proposed amendments to risk management in the payment system.
- (6) The Central bank may deny the request for granting the approval under paragraph (1) above if it deems that the proposed amendments would cause disturbances in the payment system, jeopardise compatibility in the functioning of other payment systems, stability and safety of the financial system in Montenegro or if such amendments are not in line with the law and regulations of the Central Bank.

### **Access to payment systems**

#### **Article 142**

- (1) The rules of operation of a payment system shall set objective, non-discriminatory and proportionate requirements for access and/or participation in the payment system.
- (2) The access and/or participation in the payment system may be restricted only to the extent necessary to safeguard against specific risks (settlement risk, operational risk, business risks and the like) and to protect the financial and operational stability of the payment system.
- (3) The rules of operation of a payment system may not specify:
  - 1) restrictions to effective participation in other payment systems;
  - 2) rules which discriminate payment service participation in relation to the rights and obligations; and
  - 3) restrictions based on the type of a payment service provider.
- (4) Provisions under paragraph (1) above shall not apply to:
  - 1) the payment systems where settlement finality is performed in accordance with this law;
  - 2) payment systems composed exclusively of payment service providers belonging to a group of entities linked by capital, where one of the linked entities enjoys effective control over the other linked entities; or
  - 3) payment systems in which a sole payment service provider (either as a single entity or as a group):
    - a) acts or can act as the payment service provider for both the payer and the payee and is exclusively responsible for the system management; and
    - b) authorizes other payment service providers to participate in the payment system and these shall have no right to negotiate charges between or among themselves in relation to the payment system although they may establish their own pricing in relation to payers and payees.

## **Outsourcing**

### **Article 143**

- (1) A payment system operator may outsource some activities related to the payment system operation. It shall notify the Central Bank thereof prior to concluding a contract with the outsourcing service provider.
- (2) A payment system operator shall ensure that the intended outsourcing complies with the following conditions:
  - 1) that it does not alter the payment system operator's relationship with, and obligations to, the payment system participants;
  - 2) that it does not threaten the compliance of the payment system's operation with the rules of operation and this law; and
  - 3) that it does not prevent or impair the exercise of supervision by the Central Bank.
- (3) A payment system operator shall be liable for damages caused by its outsourcing service provider in connection with the provision of the outsourced activity.

- (4) A payment system operator shall ensure that the Central Bank can carry out on-site examination at the location where the services are provided and/or at the outsourcing service provider's premises, and it shall ensure access to the outsourcing-related documentation and data possessed by the outsourcing service provider.
- (5) The Central Bank may prescribe detailed conditions for the outsourcing of activities related to the payment system operation.

## **Register of payment systems**

### **Article 144**

- (1) The Central Bank shall maintain a register of payment systems in Montenegro and disclose it on its website.
- (2) The register of payment systems shall contain in particular, but not limited to the following information:
  - 1) the name of a payment system,
  - 2) the name and registered office of the payment system operator, and
  - 3) the name and registered office of the payment system participants.

## **CHAPTER II**

### **SETTLEMENT FINALITY IN PAYMENT SYSTEMS**

#### **Settlement and settlement finality**

### **Article 145**

- (1) Settlement account shall mean an account of a payment system participant held with the Central Bank or a settlement agent and used for settlement in the payment system where settlement finality is performed.
- (2) Settlement finality in the payment system where settlement finality is performed shall occur when accounts of participants in that system are debited and credited.

#### **Requirements to be met by a payment system where settlement finality is performed**

### **Article 146**

- (1) A payment system where settlement finality is performed shall meet the following requirements:
  - 1) it shall be based on a contract signed by three or more participants, not including the payment system operator, a settlement agent, a clearing house or indirect participant, where at least one participant shall have its registered office in Montenegro;

- 2) it shall have established common rules and standardised arrangements for the execution, clearing and settlement of payment transactions between participants; and
  - 3) the rules of operation of the payment system define the moment of entry and the moment of irrevocability of a transfer order; and
- (2) The Central Bank shall assess the fulfilment of requirements under paragraph (1) above, except for payment systems not subject to the Central Bank licensing under this Law.

### **Interoperable system**

#### **Article 147**

- (1) An interoperable system shall consist of two or more payment systems which operators have concluded an agreement on the execution of transfer orders between these systems.
- (2) The conclusion of the agreement referred to in paragraph (1) above shall not constitute a payment system within the meaning of this law;

### **Participants in a payment system where settlement finality is performed**

#### **Article 148**

- (1) Participants in a payment system where settlement finality is performed shall be institutions, settlement agents, clearing houses, system operators and indirect participants, provided that one participant may act as a settlement agent and/or a clearing house or carry out some or all of these tasks within a system.
- (2) Institutions, within the meaning of paragraph (1) above, shall be the following entities which participate in a payment system where settlement finality is performed and which are responsible for discharging financial obligations arising from transfer orders within that system, and in particular the following:
  - 1) banks and other credit institutions;
  - 2) branches of credit institutions having registered offices in Montenegro;
  - 3) government bodies, local self-governments, the Central Bank, legal persons whose liabilities are guaranteed by Montenegro, and legal persons entrusted with public authority;
  - 4) the European Central Bank and national central banks of the Member States.
- (3) Settlement agents within the meaning of paragraph (1) above shall mean entities providing for institutions participating in the payment system the opening of settlement accounts through which transfer orders are to be settled within the system where settlement finality is performed and, subject to authorisation, extending credits to those participating institutions for settlement purposes.
- (4) Clearing houses, within the meaning of paragraph (1) above shall mean entities responsible for the calculation of the net position of institutions and settlement agents if these are participants in the payment system, which represents the conversion of



- (5) A system operator within the meaning of paragraph (1) above shall mean one or more legal persons responsible for the undisturbed functioning of the system where settlement finality is performed.
- (6) An indirect participant, within the meaning of paragraph (1) above, shall mean a settlement agent, a clearing house or a payment system operator having a contractual relationship with a participant in the payment system where settlement finality is performed that enables the indirect participant to execute transfer orders in the system, provided that such an indirect participant is known as such to the operator the system.

### **Transfer order**

#### **Article 149**

A transfer order shall mean any instruction by a participant of a payment system where settlement finality is performed to place an amount of money at the disposal of a recipient or any instruction which results in the assumption or discharge of a payment obligation between participants in the payment system as defined by the payment system` rules of operation.

### **Entry and irrevocability of transfer orders**

#### **Article 150**

- (1) The rules of operations of the payment system where settlement finality is performed shall regulate the moment in which entry into the system of a transfer order issued by either a participant in the system or by a third party shall be deemed accepted by such system.
- (2) The moment of irrevocability of a transfer order shall mean a moment defined by the rules of operation of a payment system where settlement finality is performed from which neither a participant in the system nor a third party may revoke a transfer order.
- (3) In the case of an interoperable system, each payment system determines in its own rules of operation the moment of entry and the moment irrevocability in such a way as to ensure, to the extent possible, that the rules of all systems participating in the interoperable system are coordinated in this regard.
- (4) Unless otherwise provided for by the rules of operation of all payment systems participating in the interoperable systems, one system's rules prescribing the moment of entry and the moment of irrevocability shall not be affected by any rules of operation of the other systems with which it is interoperable.

### **Insolvency proceedings and the moment of opening of insolvency proceedings**

## **Article 151**

- (1) For the purpose of this law, insolvency proceedings against a participant in the payment system where settlement finality is performed shall be considered either the opening of insolvency or winding up proceedings against the participant.
- (2) The moment of opening of insolvency proceedings, within the meaning of this law, shall be the moment when the participant receives the notification from the payment system operator of the payment system where settlement finality is performed on the opening insolvency or winding up proceedings against such participant.
- (3) Insolvency proceedings shall neither affect the rights and obligations of a participant in the payment system where settlement finality is performed and which arise from, or in connection with, its participation in that payment system earlier than the moment of opening insolvency proceedings, nor to 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 in that system.

## **Transfer orders in the event of opening of insolvency proceedings**

### **Article 152**

- (1) In the event of opening an insolvency proceedings against a participant in a payment system or a participant in an interoperable system or against the operator of an interoperable system which is not a participant, transfer orders and netting shall be legally enforceable and binding on third parties, provided that the transfer orders have entered the system before the moment of opening of the insolvency proceedings.
- (2) Notwithstanding paragraph (1) above, transfer orders that have entered into the system after the moment of opening of insolvency proceedings and which have been carried out in the course of the same business day shall be legally enforceable and binding on third parties only if the payment system operator can prove that it was not aware nor could have been aware of the opening of such proceedings at the time when these transfer orders became irrevocable.
- (3) A business day, within the meaning of paragraph (2) above shall, pursuant to the rules of the system, cover both day and night-time settlements and shall encompass all events happening during the business cycle of the system.
- (4) The nullity or voidance of payment transactions and contracts concluded prior to the moment of opening of insolvency proceedings shall not lead to the unwinding of netting.
- (5) In the event of opening of insolvency proceedings against a participant or an interoperable system operator, funds available on the settlement account of that participant or operator may be used to fulfil that participant's obligations in the payment system where settlement finality is performed or in the interoperable system on the business day of opening of such proceedings.

## **Delivery of a decision on the opening of insolvency proceedings**

### **Article 153**

- (1) Competent authority responsible for the opening of insolvency proceedings against a participant in the payment system where settlement finality is performed shall immediately submit to the Central Bank a decision on the opening of insolvency proceedings against the participant.
- (2) The Central Bank shall immediately forward the decision under paragraph (1) above to the operator of the payment system whose participant has been subject to the insolvency proceedings.

### **Applicable law**

#### **Article 154**

In the event of opening of insolvency proceedings against a participant in the payment system where settlement finality is performed, the rights and obligations arising from, or in connection with, the participation of that participant in the system shall be governed by the provisions of this law.

## **Rights of holders of collateral security in the event of insolvency proceedings against the provider of collateral security**

### **Article 155**

- (1) Opening of insolvency proceedings against a participant in the payment system where settlement finality is performed or a participant in an interoperable system or against an operator of an interoperable system which is not a participant or another provider of collateral security shall have no effects on exercising the rights of other participants or system operators to satisfy their rights from collateral security provided with regard to the participation in that payment system or the interoperable system.
- (2) Opening of insolvency proceedings against an entity which is counterparty to a Member State, the European Central Bank or the national bank of a Member State shall have no effects on exercising the rights of the Member State, the European Central Bank or national central banks of the Member States to satisfy their rights from the collateral security provided with regard to the participation in the system.

## **Notification of competent authorities in the European Union**

### **Article 156**

The Central Bank shall notify the competent authority in the European Union on payment systems where settlement finality is performed and operators of such systems.

## **CHAPTER III**

## **IMPORTANT PAYMENT SYSTEMS**

### **Criteria for determining important payment systems**

#### **Article 157**

- (1) The Central bank may prescribe criteria for determining important payment systems.
- (2) An important payment system whose disruption in operations may cause systemic risk shall be systemically important payment system.
- (3) Systemic risk, within the meaning of paragraph (2) above shall be the risk caused by a disruption in the operations of the payment system or the inability of the payment system participants to meet their obligations related to the functioning of the payment system, which results in the inability of other system participants to meet their obligations as they become due or it could threaten stability of the payment system and the financial system as a whole.
- (4) The Central Bank shall notify the competent authority of the European Union of every important payment system.

#### **RTGS system**

#### **Article 158**

- (1) The Central Bank shall be the owner and operator of, a participant in, and the settlement agent for, the payment system in which the execution of individual payment transactions is made in the real time gross settlement principle (hereinafter: the RTGS system).
- (2) The RTGS system shall be a systemically important payment system.
- (3) The Central bank shall lay down operating rules for the RTGS system.
- (4) Participants in the RTGS system may be legal persons whose accounts are opened and kept by the Central Bank pursuant to the law and a regulation of the Central Bank.

### **Settlement of payment transactions in RTGS system**

#### **Article 159**

- (1) Payment transactions of banks and other credit institutions providing payment services as well as entities determined under the Central Bank law and regulation to keep accounts with the Central Bank shall be settled in the RTGS system, in accordance with rules of operations of this system.
- (2) The Central Bank shall specify in its regulation the minimum value of payment transactions that must be processed in the RTGS system (large and small payment thresholds).

## **CHAPTER IV**

### **SUPERVISION AND OVERSIGHT OF PAYMENT SYSTEMS**

#### **Competent authority**

##### **Article 160**

The Central Bank shall supervise payment system operators and participants and oversee payment system operations.

#### **Supervision of payment system operators and participants**

##### **Article 161**

- (1) The purpose of supervision of payment system operators and participants shall be for the Central Bank to verify their compliance with the provisions of this law and the rules of operations of those payment systems, including the ensuring of access to a payment system in the manner specified in Article 142 herein.
- (2) For the purpose of supervision under paragraph (1) above, a payment system operator and a participant shall provide the Central Bank with all necessary information and documentation.
- (3) The Central Bank shall keep confidential all data and information obtained in the course of supervision, in accordance with the law.
- (4) Provisions of Articles 91 through 94 and Articles 100 and 102 herein shall apply *mutatis mutandis* to the supervision of payment system operators or participants.
- (5) Should the supervision under paragraph (1) above identify contravening the law or violations of the payment system rules of operations, the Central Bank may:
  - 1) send a written warning to the payment system operator;
  - 2) order the payment system operator and/or participant to remove irregularities in the specified timeframe;
  - 3) order the payment system operator to exclude one or more participants if they have failed to meet the requirements for participation in the payment system;
  - 4) prohibit the payment system operator from performing activities until the removal of the identified irregularities;
  - 5) take other appropriate measures.

#### **Payment system oversight**

##### **Article 162**

- (1) Payment system oversight shall involve a set of activities aimed at providing and promoting safety and efficiency of the functioning of payment systems.

- (2) For the purpose of paragraph (1) above, safety shall mean the limiting of risks that may threaten or adversely influence adequate and undisturbed functioning of a payment system and financial stability, and efficiency shall mean fast and cost-efficient performance of payment system operations, as well as the level of services that are economically viable for the system participants and their clients and which corresponds to their requirements.
- (3) The Central Bank shall oversee payment systems' operations by assessing their harmonisation with the principles for the payment system functioning.
- (4) The principles for the payment system functioning shall be determined applying international standards and principles.
- (5) Based on the payment system oversight, the Central Bank shall assess the level of compliance of the relevant payment system with the principles for the payment system functioning.
- (6) The Central Bank shall regulate the manner of assessing the level of compliance of a payment system with the principles for the payment system functioning.
- (7) By way of derogation from paragraph (1) above, the Central Bank may authorise other relevant institutions for the oversight of the payment system it operates.

## **Reporting to the Central Bank**

### **Article 163**

- (1) Payment system operators shall, without any delay, report the following to the Central Bank:
  - 1) the submitted application for entry of data in the CRBE and completed entries of data changes made in the CRBE;
  - 2) in the cases where a payment system operator engages in other activities, all changes regarding persons responsible for operating the payment system;
  - 3) of any change in the data on the payment system participants and the inclusion of new participants or the termination of participation in the payment system;
  - 4) its intention to cease performing the activity of operating the payment system and the occurrence of circumstance referred to in Article 138 herein;
  - 5) any other change relating to the conditions for the payment system operation laid down in this law and/or altering the facts on the basis of which the Central Bank has granted the payment system license.
- (2) The payment system operator that is not obliged to obtain the payment system license shall without undue delay report to the Central Bank all facts and circumstances referred to in paragraph (1) above and all changes in the rules of operation of the payment system.

- (3) At the request of the Central Bank, the payment system operator shall submit all data on payment transactions executed through the payment system.
- (4) The Central Bank may prescribe the reporting method and deadlines for payment system operators.

### **Cooperation with competent authorities and exchange of information**

#### **Article 164**

In the supervision of payment system operators and participants, the Central Bank may cooperate with other competent authorities in Montenegro and in the Member States and third countries.

## **TITLE XI**

### **DECISION-MAKING METHODS AND PROCEDURES OF THE CENTRAL BANK**

#### **Application of general administrative procedure**

#### **Article 165**

Unless otherwise provided for in this law, the provisions of the General Administrative Procedure Law shall apply to the decision-making procedures of the Central Bank under this law.

#### **Decision-making**

#### **Article 166**

The Central Bank shall decide following a summary procedure.

#### **Decisions**

#### **Article 167**

- (1) The Central Bank shall decide by passing decisions on issues within its competences specified herein.
- (2) Decisions of the Central Bank shall be final in the administrative procedure and administrative dispute may be instigated against them.

#### **Amendments to the decision**

#### **Article 168**

- (1) At the request of the party concerned, the Central Bank may amend its decision under Article 167 (1) herein when new circumstances have arisen which influence or could

- (2) In the case referred to in paragraph (1) above, the Central Bank shall take into account all facts and circumstances occurring following the adoption of the original decision.

### **Deadlines**

#### **Article 169**

- (1) The Central Bank shall decide, within 90 days of the submission of an application for granting the authorisation to provide payment services, an application for authorisation for issuing electronic money, and a payment system license and/or in cases when the submitted application and supporting documents are not complete, within 90 days following the receipt of all required information and documents.
- (2) The Central Bank shall decide on all other applications for authorisation submitted in accordance with the law within 60 days of the submission of complete applications and/or in cases when the submitted application and supporting documents are not complete, within 60 days following the receipt of all required information and documents.

### **Legal protection**

#### **Article 170**

- (1) The Governor of the Central Bank, a member of the Central Bank Council, an employee of the Central Bank, or any person authorised by the Central Bank to perform operations in respect of executing the functions of the Central Bank pursuant to this Law, shall not be held liable for damages that could be incurred during the performance of duties in accordance with this law, unless it has been proved that the particular action has been performed deliberately or as an act of gross negligence.
- (2) The Central Bank shall cover the expenses of protection of the persons under paragraph (1) above in court proceedings concerning their performance.

## **TITLE XII**

### **CROSS-BORDER PAYMENT TRANSACTIONS AND PROVISION OF PAYMENT SERVICES AND ELECTRONIC MONEY ISSUING TO AND BY A MEMBER STATE**

#### **Application**

##### **Article 171**

Unless otherwise specified under Articles 172 to 180 herein, the provisions of Articles 2 to 129 herein shall applied to cross-border payment transactions and the provision of payment services and electronic money issuing to and by a Member State.

#### **Fees**



## **Article 172**

Fees that a payment service provider charges for payment transactions in euros shall be same for both national and cross-border payment transactions.

### **Deadlines for execution of cross-border payment transactions through payment accounts**

## **Article 173**

- (1) When executing cross-border payment transactions in euros, the payer's payment service provider shall ensure that the account of the payee's payment service provider is credited with the amount of the payment transaction at the latest by the end of the next business day after the point in time of receipt of the payment order referred to in Article 40 herein.
- (2) The deadline under paragraph (1) above may be extended for one business day if the cross-border payment transaction has been initiated in hard copy.
- (3) In the case of executing cross-border payment transactions in the currencies of Member States other than the euro, the payer's payment service provider shall ensure that the account of the payee's payment service provider is credited with the amount of the payment transaction within the agreed time limits, but at the latest by the end of the next business day after the point in time of receipt of the payment order referred to in Article 40 herein.
- (4) A payment service provider and a payment service user may contract a deadline other than that specified under paragraph (3) above and it may not exceed four business days following the payment order date.
- (5) In the event that a payee has no payment account with a payment service provider that has received the funds, the payment service provider shall make the funds at the payee's disposal within the deadline specified under paragraphs (1) to (4) above.

### **Deadlines for placing cash on a payment account**

## **Article 174**

- (1) In case of a cross-border payment transaction where a payment service user that is a consumer places cash on its payment account with the payment service provider operating that account and in the currency of that payment account, the payment service provider shall make the funds available to the payee and specify the credit value date immediately after the receipt of funds.
- (2) In the case under paragraph (1) above where a payment service user is not a consumer, the payment service provider shall make the funds available to the payee and specify the credit value date no later than by the end of the next business day following the receipt of funds.

- (3) By way of derogation from paragraphs (1) and (2) above where the payment service user places cash in a currency of the Member State other than euro on its payment account with the payment service provider operating that account, the payment service user and the payment service provider may agree a deadline other than those specified under paragraphs (1) and (2) above, where such deadline may not exceed four business days following the receipt of funds.
- (4) Provisions of Article 40 herein shall apply *mutatis mutandis* to the point in time of receipt within the meaning of paragraphs (1) to (3) above.

## **Payment service providers**

### **Article 175**

In addition to payment service providers specified in Article 4 herein, payment services may be provided by:

- 1) a credit institution having its registered office in a Member State licensed/authorised for providing payment services by a competent authority in a home Member State;
- 2) a payment institution having its registered office in a Member State;
- 3) an electronic money institution having its registered office in a Member State;
- 4) the European Central Bank and a national bank of a Member State when not acting in their capacity as monetary authorities or other public authorities.

## **Electronic money issuers**

### **Article 176**

In addition to persons specified in Article 108 herein, electronic money issuers may be:

- 1) a credit institution having its registered office in a Member State licensed/authorised for issuing electronic money by a competent authority in a home Member State;
- 2) an electronic money institution having its registered office in a Member State;
- 3) the European Central Bank and a national bank of a Member State when not acting in their capacity as monetary authorities or other public authorities.

## **Provision of payment services in the territory of a Member State**

### **Article 177**

- (1) A payment institution authorized in Montenegro for providing payment services and which intends to provide payment services in the territory of a Member State directly or through a branch and/or an agent shall notify in advance the Central Bank thereof in writing.
- (2) The notification referred to in paragraph (1) above shall specify the following in particular, but not limited to:

- 1) the Member State where it intends to provide payment services;
  - 2) the manner of providing payment services – directly or through a branch and/or an agent
  - 3) the types of payment services to be provided in the Member State.
- (3) If the payment institution intends to provide payment services through a branch, in addition to information under paragraph (2) above, it shall provide the Central Bank with the information and documents in accordance with Article 88 herein. In case the payment institution intends to provide payment services through an agent, it shall provide the Central Bank with the information and documents specified under Article 77 herein.
- (4) The Central Bank shall notify the competent authority of the host Member State of the name and address of the registered office of the payment institution which intends to provide payment services through a branch or an agent in its territory, on the intention to enter such a branch or an agent into the register of payment institutions in Montenegro and submit the notification and information under paragraphs (1) to (3) above within a month following the receipt thereof and prior to the registration of such a branch or an agent.
- (5) The payment institution may start providing payment services through the branch or agent in the host Member State after the competent authority in that state has received the notification and information under paragraphs (1) to (3) above and after the payment institution's entering into the register of payment institutions in Montenegro.
- (6) Where the Central Bank receives notification from the competent authority of the host Member State that there are reasonable grounds to suspect that the payment institution authorised in Montenegro will use its branch or agent for money laundering or terrorist financing, or that the establishment of such a branch or engaging such an agent may increase the risk of money laundering and terrorist financing, it may deny the entering of such branch or agent into the register or it may remove from the register such branch or agent if they have been already registered.
- (7) The Central Bank shall cooperate with the competent authority of the host Member State in the course of supervision of the payment institution under paragraph (1) above.
- (8) The Central Bank shall exchange information and documentation with the competent authority of the host Member State required for carrying out supervision of that payment institution or its branch and/or agent in the territory of that Member State, including the on violation of regulations and suspicion on contravening regulations.
- (9) The Central Bank may, subject to prior notification of the competent authority of the host Member State, carry out on-site examination of the payment institution or its branch and/or agent in the territory of that Member State, and it may request from the competent authority of the host Member State to carry out on-site examination.

### **Provision of payment services by a payment institution from a Member State**

#### **Article 178**

- (1) A payment institution from a Member State shall be a legal person having the registered office in a Member State and which has been licensed/authorised by the competent authority of the home Member State to provide payment services as a payment institution.
- (2) The payment institution from another Member State may provide the payment services for which it has been licensed/authorised in the home Member State in Montenegro directly or through a branch or an agent.
- (3) A payment institution from the Member State may commence providing payment services in Montenegro when the Central Bank has received a notification from the competent authority of that state on the intention of the payment institution to provide such services in Montenegro, and where the payment institution intends to provide payment services through a branch or an agent, after such a branch or an agent has been entered into the register of payment institutions maintained by the competent authority of the home Member State.
- (4) Information under Article 177 (2) and (3) herein shall be submitted in addition to notification under paragraph (3) above.
- (5) An agent of a payment institution from a member State that is to operate in the territory of Montenegro may only be a legal person or an entrepreneur with the registered office in Montenegro.
- (6) The Central Bank shall cooperate with the competent authority of the home Member State in the course of supervision of a payment institution from a Member State that operates in Montenegro directly or through a branch and/or an agent.
- (7) The Central Bank shall exchange information and documentation with the competent authority of the home Member State required for carrying out the supervision of that payment institution, including the information on violation of regulations and suspicion on contravening regulations.
- (8) The competent authority of the home Member State may, subject to prior notification of the Central Bank, commence on-site examination in the territory of Montenegro of the payment institution licensed/authorised to provide payment services in Montenegro. This on-site examination may also be performed by the Central Bank, at the request of the competent authority.
- (9) The Central Bank shall notify the competent authority of the home Member State of any reasonable grounds to suspect that the provision of payment services in Montenegro by a payment institution from that Member State involves an act or an attempted act of money laundering or terrorist financing or that the provision of such services could increase the risk of money laundering or terrorist financing.

### **Mutatis mutandis**

### **Article 179**

Provisions of Articles 177 and 178 herein shall apply *mutatis mutandis* to the electronic money institutions.

### **Scope of application**

#### **Article 180**

Provisions of Articles 172 to 179 herein shall apply to:

- 1) payment transactions in euros;
- 2) national payment transactions in currencies of non-euro area Member States, and
- 3) payment transactions including only conversion of currency between euro and the currency of a non-euro area Member State, providing that the required currency conversion is performed in that non-euro area Member State and, in case of cross-border transactions, that the cross-border transfer is performed in euros.

### **TITLE XIII**

#### **PENALTY PROVISIONS**

##### **Violations by payment service providers**

#### **Article 181**

- (1) The payment service provider referred to in Article 5, paragraph (1) points 1) to 4) and Article 178 points 1) to 3) herein shall be fined between 2,500 euros and 20,000 euros:
  - 1) if it levies charges for the information it is obliged to provide (Article 11 paragraph (1));
  - 2) if it levies charges that are not appropriate or in line with the actual costs (Article 11 paragraph (3));
  - 3) if it fails to inform a payment service user of a charge for the use of a given payment instrument prior to the initiation of a payment transaction (Article 13 paragraph (2));
  - 4) if it fails to provide general prior information in accordance with the provisions of Article 15, paragraphs (1), (2) and (3) herein;
  - 5) if, after receipt of a payment order, it fails to immediately provide or make available the information to the payer in accordance with Article (16) herein;
  - 6) if, immediately after the execution of a payment transaction, it fails to provide information to the payee in accordance with Article 17 herein;
  - 7) if, before a payment service user is bound by any offer or framework contract, it fails to provide the payment service user with the general information referred to in Article 19 herein;
  - 8) if it fails to provide a payment service user with the prior general information in the manner referred to in Article 20 herein;
  - 9) if it fails to provide a payment user, at his/her request, with the terms of the framework contract and information in accordance with Article 19 of this Act in the paper form or on any other durable medium (Article 21 paragraph (4));
  - 10) if, in the case of changes in the framework contract, interest or exchange rates, it fails to act in accordance with the provisions of Article 22 herein;

- 11)if, in the case of termination of the framework contract, it levies a charge contrary to the provisions of Article 23 paragraph (2) herein or fails to reimburse a charge in accordance with the provisions of Article 23 paragraph 5 herein;
- 12)if, at the payer's request, it fails to provide information in accordance with Article 24 herein prior to the execution of an individual payment transaction;
- 13)if, after having debited the payer's payment account for the amount of a single transaction or in case the payer is not using the account, after having received the payment order, it fails to provide the payer with information in accordance with Article 25 herein;
- 14)if, after the execution of an individual payment transaction, it fails to provide the payee with information in accordance with Article 26 herein;
- 15)if it charges a payment service user contrary to Article 28 paragraphs (2), (3) and (5) herein;
- 16)if it prevents the payee from offering the payer a reduction for the use of a given payment instrument (Article 28, paragraph (4));
- 17)if it fails to post in its premises and on its website the payment service charges or fails to inform the Central Bank thereof within three business days following the adoption of internal regulation prescribing the amount of those charges (Article 28 paragraph (7));
- 18)if it fails to inform the payer of the blocking of the payment instrument in accordance with Article 31, paragraphs (3) and (4) of this Act;
- 19)if it fails to unblock the payment instrument or replace it with a new one once the reasons for blocking this payment instrument no longer exist (Article 31, paragraph (6));
- 20)if it, as a payment instrument issuer, acts contrary to the provisions of Article 33 herein;
- 21)if, in the case of execution of an unauthorised payment transaction, it fails to act in the manner and within the time limit referred to in Article 36 herein;
- 22)if, at the payer's request for a refund for an authorised payment transactions, it fails to act in accordance with Article 39 paragraph (2) herein;
- 23)if it fails to refund funds Article 39 paragraph (3);
- 24) if it fails to notify the payment service user of the refusal of a payment order in accordance with the provisions of Article 41 paragraphs (1) and (2) herein;
- 25) if it refuses to execute an authorised payment order (Article 41, paragraph (4));
- 26)if, in executing a payment transaction, it fails to act in accordance with Article 43 herein;
- 27)if it fails to execute a payment to another payment service provider within the deadlines referred to in Article 44 paragraph (1), Article 58 paragraphs (1), (2), (3), and (4) and Article 174 herein;
- 28)if it fails to execute a payment order to its payee in accordance with Article 44 paragraph (2), Article 45, and Article 47 paragraphs (1) and (2) herein;
- 29)if it fails to transmit a payment order to the payer's payment service provider in accordance with Article 44, paragraph (3) herein;
- 30)if in the case of placing cash it fails to make the funds available and to credit the account in accordance with the provisions of Article 46 and Article 174 herein;
- 31) if it sets the debit value date for the payer's payment account contrary to Article 47 paragraph (3) herein;
- 32)if, in the case of an incorrectly executed payment transaction, it fails to take reasonable steps to recover the funds to the payer (Article 48, paragraph (3) herein);

- 33) if, in the case of a non-executed or incorrectly executed payment transaction and at the request of the payment service user, it fails to act in accordance with Article 49, paragraph (5) or Article 50, paragraphs (4) and (5) herein;
  - 34) if it fails to keep the documents on payment service users, payment transactions and the balance and changes in the payment service users' payment accounts for the time periods specified under Article 55 paragraph (1) herein;
  - 35) if it fails to submit to the Central Bank the payment services report (Article 55 paragraph (2));
  - 36) if it fails to notify a payment system user and/or fails to take necessary activities pursuant to Article 59 paragraphs (1) and (2) herein;
  - 37) if after the receipt of funds from an international payment transaction, it acts contrary to provisions under Article 61 herein;
  - 38) if it provides payment services through an agent before the agent has been listed in the register of the Central Bank, and/or after his removal from the register (Article 77);
  - 39) if it fails to notify the Central Bank of each payment system in which it participates, either directly or indirectly, and of the operator of that payment system (Article 135 paragraph (3)); or
  - 40) if it charges different fees for payment transactions in euros for national and cross-border payment transactions (Article 172).
- (2) Exceptionally, the payment service provider shall not be considered to have committed any of the violations referred to in paragraph (1) above, if, where so provided herein, it has agreed with the payment service user otherwise than prescribed by this law.
  - (3) A responsible person in the payment service provider referred to in paragraph 1 above shall also be fined between 500 euros and 2,000 euros for violations referred to in paragraph (1) above.
  - (4) The payment service providers referred to in Article 5, paragraph (1), points (1) to (4) herein shall not be fined for any of the violations referred to in paragraph (1) above if they have been committed in the territory of another Member State in the course of providing payment services in that Member State through a branch or an agent.
  - (5) Where any of the violations under paragraph (1) above has been committed by the payment service users specified under Article 175 points 1) to 3) herein via their branches or agents, the latter shall be fined between 2,500 euros and 20.000 euros.
  - (6) In the case referred to in paragraph (5) above, the responsible person of the branch or the agent shall also be fined between 500 euros and 2,000 euros.

### **Violations by payees**

#### **Article 182**

- (1) The payee shall be fined between 500 euros and 2,000 euros if:
  - 1) it fails to inform the payer of a reduction for the use of a given payment instrument prior to the initiation of a payment transaction (Article 13, paragraph (1));

- 2) in the case referred to in Article 14 paragraph (2) herein, it fails to disclose to the payer all charges as well as the exchange rate to be used, prior to the currency conversion;
  - 3) it levies a charge from the payer for the use of a given payment instrument (Article 28, paragraph (5));
- (2) A responsible person of a legal person – payee shall be fined between 50 euros and 1,000 euros for any of the violations referred to in paragraph (1) above.

### **Violations by credit institutions**

#### **Article 183**

- (1) The payment service provider referred to in Article 4 paragraph (1), items 1) and 4) herein shall be fined between 2,500 euros and 20,000 euros:
- 1) if it has opened a transaction account contrary to provisions of Article 64 paragraph (4) herein;
  - 2) if it fails to keep a register of transaction accounts of their payment service users (Article 65 paragraph (1) herein);
  - 3) if it fails to submit data to the enforced collection organisation on opened transaction accounts, on changes in data on these accounts and the closing of such accounts no later than by the end of the business day when the relevant account has been opened, closed or when the relevant change has occurred (Article 65 paragraph (3) herein) or;
  - 4) if the payment order for the execution of payment transactions via transaction accounts does not contain the basic elements or is not completed in accordance with the this law (Article 66).
- (2) A responsible person of the payment service provider shall be fined between 500 euros and 2,000 euros for any of the violations referred to in paragraph (1) above.

### **Violations by payment institutions**

#### **Article 184**

- (1) The payment institution shall be fined between 2,500 euros and 20,000 euros:
- 1) if it provides payment services without the authorisation of the Central Bank in accordance with this law (Article 67 paragraph (2));
  - 2) if it fails to inform the Central Bank on a person's acquiring of qualifying holding in the payment institution no later than within three days following the date of acquiring such a holding and/or fails to submit the prescribed supporting documents (Article 71);
  - 3) if it provides ancillary payment services beyond their competencies specified herein (Article 74);
  - 4) if it fails to safeguard the funds which have been received for the execution of payment transactions in accordance with Article 79 herein;
  - 5) if it uses the payment accounts it operates for purposes other than payment transactions (Article 80 paragraph 1);



- 6) if it grants credits connected with the provision of payment services contrary to Article 81, paragraph (1) herein;
  - 7) if it accepts deposits or any other repayable funds from the public (Article 81 paragraph (2))
  - 8) if it does not keep business books and/or compiles financial statements pursuant to Article 82 paragraph (1) herein;
  - 9) if it does not keep business books and/or compiles financial statements pursuant to Article 82 paragraph (2) herein;
  - 10) if it fails to store bookkeeping documents and other documentation in accordance with Article 82 paragraph (3) herein;
  - 11) if it fails to have the financial statements and consolidated financial statements audited (Article 83, paragraph (1));
  - 12) if it fails to submit to the Central Bank reports referred to in Article 83, paragraph (2) herein;
  - 13) if it fails to notify the Central Bank of intended outsourcing in accordance with Article 85 paragraph (1) or (2) herein;
  - 14) if it outsources its operational activities contrary to the conditions referred to in Article 85 paragraphs (4) and (5) herein;
  - 15) if it fails to establish or implement governance arrangements in the manner laid down in Article 87 herein;
  - 16) if it establishes a branch in a third country without prior authorisation from the Central Bank (Article 88 paragraph (2));
  - 17) if it fails to report to the Central Bank in accordance with Article 103 paragraphs (1) and (2) herein; or
  - 18) if it provides payment services in the territory of another Member State before notifying the Central Bank thereof in writing (Article 177, paragraph (1)).
- (2) A responsible person in the payment institution shall be fined between 500 euros and 2,000 euros for any of the violations referred to in paragraph (1) above.

### **Violations by auditors**

#### **Article 185**

- (1) An audit firm shall be fined between 2,500 euros and 20,000 euros:
  - 1) if it fails to inform the Central Bank on facts and circumstances referred to in Article 83 paragraphs (4) or (5) herein; or
  - 2) if it fails to provide additional information pursuant to Article 84 paragraph 2 herein.
- (2) A responsible person in the audit firm shall be fined between 500 euros and 2,000 euros for any of the violations referred to in paragraph (1) above.
- (3) A statutory auditor shall also be fined between 2,500 euros and 6,000 euros for any of the violations referred to in paragraph (1) above.

### **Violations by electronic money institutions**

#### **Article 186**

- (1) An electronic money institution shall be fined between 2,500 euros and 20,000 euros:
- 1) if it issues electronic money without obtaining the authorisation from the Central Bank to issue electronic money (Article 112 paragraph (2));
  - 2) if it issues electronic money through an agent (Article 115 paragraph (1));
  - 3) if it fails to exchange funds received from an electronic money holder for electronic money without delay (Article 119);
  - 4) if it accepts deposits or any other repayable funds (Article 120 paragraph (1));
  - 5) if in the provision of services other than those related to the issuing of electronic money it fails to use the funds received from payment service users solely for payment transactions (Article 121);
  - 6) if it grants credits from the funds received in exchange for the issued electronic money (Article 122); or
  - 7) if it fails to safeguard the funds received in exchange for the issued electronic money in accordance with Article 125 herein.
- (2) A responsible person in the electronic money institution shall also be fined between 500 euros and 2,000 euros for any of the violations referred to in paragraph (1) above.

### **Violations by payment system operators**

#### **Article 187**

- (1) The payment system operator referred to in Article 131 paragraph (2), items (1) to (4) herein shall be fined between 2,500 euros and 20,000 euros:
- 1) if it fails to provide functioning of the payment system pursuant to provisions of Article 132 paragraphs (1) and (2) herein;
  - 2) if it commences with the payment system functioning before having obtained the authorisation from the Central Bank (Article 134 paragraph (3));
  - 3) if it fails to notify the Central Bank of the commencement of functioning of the payment system it operates within the time limit referred to in Article 134 paragraph (4) herein;
  - 4) if it amends the payment system contract and the payment system rules of operation without a prior approval of the Central Bank (Article 141 paragraphs (1) and (2));
  - 5) if it fails to provide a prior notice to the Central Bank on concluding a contract on outsourcing (Article 143, paragraph (1));
  - 6) if it outsources activities contrary to the provisions referred to in Article 143;
  - 7) if it fails to report to the Central Bank in accordance with Article 163 herein.
- (2) A responsible person of the payment system operator referred to in paragraph (1) above shall be fined between 500 euros and 2,000 euros for any of the violations referred to in paragraph (1) above.

### **Statute-barred initiation of offence proceedings**

#### **Article 188**

No offence proceedings may be initiated for offences under Article 181 to 187 after the lapse of three years following the offence date.

## **TITLE XIV**

### **TRANSITIONAL AND FINAL PROVISIONS**

#### **Time limits for the compliance of payment service provision with the provisions of this Law**

##### **Article 189**

- (1) Banks which as at the date of the entry into force of this Law are licensed to provide payment services shall continue providing payment services referred to in Article 3 herein without any special approval of the Central Bank.
- (2) Legal persons, with the exception of banks, which provide payment services under Article 2 herein as at the date of entry into force of this Law, shall submit to the Central Bank an application for authorisation to provide payment services within 90 days of the date of entry into force of this Law
- (3) Legal persons that fail to act in accordance with the provisions of paragraph (2) above may not provide payment services.

#### **Framework contracts**

##### **Article 190**

- (1) Framework contracts concluded until the effective date of this Law shall continue applying until their expiration dates.
- (2) Payment service providers shall, within 30 days following the effective date of this law, submit information under Article 19 herein that have not been included in framework contracts or which they have not been previously submitted to payment service users with which they concluded framework contract.

#### **Subordinate legislation**

##### **Article 191**

- (1) The Central Bank shall pass secondary legislation within its competence under this law until its effective date.
- (2) Regulations and acts adopted based on the Law on National Payment Operations (OGM 61/08, 31/12) shall be applied until the passing of secondary legislation under paragraph (1) above.
- (3) Notwithstanding provisions under Article 65(6) herein, the content of the Central Registry of Accounts shall be regulated by a Central Bank regulation until the

## **Continued operations of the Committee for out-of-court settlement of payment system disputes**

### **Article 192**

Members of the Committee for out-of-court settlement of payment system disputes and their deputies elected pursuant to the Law on National Payment Operations (OGM 61/08, 31/12) shall remain in office until the expiry of their respective terms of office.

## **Deferred application**

### **Article 193**

Provisions of Article 155 paragraph (2) and Articles 171 to 180 herein shall be applied as of Montenegro's accession to the European Union.

## **Cessation of effect of legal provisions**

### **Article 194**

The Law on National Payment Operations (OGM 61/08, 31/12), Article 5 of the Law on Foreign Current and Capital Operations (OGRM 45/05 and OGM 62/08), and Article 130 of the Law on Amendments to the Law on Penalties (OGM 40/11) shall cease to have effect as of the date of entry into force of this Law.

## **Entry into force and the beginning of application**

### **Article 195**

This Law shall enter into force on the eighth day following that its publishing in the Official Gazette of Montenegro and it shall apply after the expiry of one year following the effective date.