

Payment Services Oversight Act (*Zahlungsdiensteaufsichtsgesetz – ZAG*)  
ZAG

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Note: Wording as amended by Article 4 of the Act of 12 December 2019 I 2602 (No 50), but processing of documentation not complete

Footnote

(+++ Wording as of 13 January 2018 +++)

(+++ For application, see Section 11(2), Section 39(3), Section 66(4), Section 67(4) +++)

The Act was adopted by the Bundestag as Article 1 of the Act of 17 July 2017 I 2446. It entered into force on 13 January 2018 pursuant to Article 15(4) of this Act. Sections 45 to 52 and 55 entered into force on 14 September 2019 pursuant to Article 15(1) sentence 1 of the Act of 17 July 2017 I 2446 read in conjunction with the announcement of 26 July 2019 I 1113.

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## Part 1

### General provisions

#### Division 1

#### Definitions, scope, supervision

##### Section 1 Definitions

(1) "Payment service providers" means

1. undertakings that provide payment services professionally or on a scale that requires a commercially organised business operation, other than payment service providers within the meaning of numbers 2 to 5 (payment institutions);
2. electronic money institutions within the meaning of subsection (2) sentence 1 number 1 that are authorised under this Act to conduct business in Germany, to the extent that they provide payment services;
3. CRR credit institutions within the meaning of Section 1(3d) sentence 1 of the Banking Act (*Kreditwesengesetz*) that are authorised to conduct business in Germany, as well as KfW Banking Group (formerly *Kreditanstalt für Wiederaufbau*), to the extent that they provide payment services;
4. the European Central Bank, the Deutsche Bundesbank as well as other central banks in the European Union or the other signatory states to the Agreement on the European Economic Area, to the extent that they provide payment services outside their capacity as a monetary authority or other public authority;
5. central, state and local government and local authority associations as well as indirect federal and state administrative institutions, including public bodies that manage public debt, social insurance institutions and the Federal Employment Agency, to the extent that they provide payment services outside the exercise of their sovereign powers.

"Payment services" means

1. services enabling cash to be placed on a payment account as well as all the operations required for operating a payment account (inpayment business);
2. services enabling cash withdrawals from a payment account as well as all the operations required for operating a payment account (withdrawal business);

3. execution of payment transactions, including transfers of funds on a payment account with the user's payment service provider or with another payment service provider by means of
  - a) execution of direct debits, including one-off direct debits (direct debit business);
  - b) execution of payment transactions through a payment card or similar payment instrument (payment card business);
  - c) execution of credit transfers, including standing orders (credit transfer business), in each case without granting credit (payment business);
4. execution of payment transactions within the meaning of number 3 that are covered by a credit line for a payment service user within the meaning of Section 3(4) (payment business where credit is granted);
5. issuing of payment instruments or acquiring of payment transactions (acquiring);
6. services where funds are received from a payer, without a payment account being created in the name of a payer or a payee, for the sole purpose of transferring a corresponding amount to the payee or to another payment service provider acting on behalf of the payee, or where the funds are received on behalf of and made available to the payee (money remittance);
7. payment initiation services;
8. account information services.

(2) "Electronic money issuers" means

1. undertakings that conduct electronic money business, other than electronic money issuers within the meaning of numbers 2 to 4 (electronic money institutions);
2. CRR credit institutions within the meaning of Section 1(3d) sentence 1 of the Banking Act that are authorised to conduct business in Germany, as well as the KfW Banking Group, to the extent that they conduct electronic money business;
3. the European Central Bank, the Deutsche Bundesbank as well as other central banks in the European Union or the other signatory states to the Agreement on the European Economic Area, to the extent that they conduct electronic money business outside their capacity as a monetary authority or other public authority;
4. central, state and local government and local authority associations as well as indirect federal and state administrative institutions, including public bodies that manage public debt, social insurance institutions and the Federal Employment Agency, to the extent that they conduct electronic money business outside the exercise of their sovereign powers.

"Electronic money business" means the issuance of electronic money. "Electronic money" means all monetary values stored electronically, including magnetically, in the form of a claim on the issuer that is issued on payment of funds for the purpose of making payment transactions within the meaning of Section 675f(4) sentence 1 of the Civil Code (*Bürgerliches Gesetzbuch*), and that is also accepted by natural or legal persons other than the issuer. A monetary value is not electronic money if

1. it is stored on instruments within the meaning of Section 2(1) number 10; or
2. it is only used for payment transactions as defined in Section 2(1) number 11.

(3) “Institutions” within the meaning of this Act means payment institutions and electronic money institutions.

(4) “Home Member State” means the Member State of the European Union (Member State) or another signatory state to the Agreement on the European Economic Area in which the registered office of the institution is situated or, if the institution has no registered office under its national law, the Member State or signatory state in which its head office is situated. “Host Member State” means the Member State or signatory state other than the home Member State in which the institution has an agent or a branch or provides cross-border services.

(5) “Branch” means a place of business other than the head office that is a part of an institution, that has no legal personality and that carries out directly some or all of the transactions inherent in the business of an institution. All of the places of business established in the same Member State by an institution with a head office in another Member State are regarded as a single branch.

(6) “Group” means a group of undertakings that are linked to each other by a relationship referred to in Article 22(1), (2) or (7) of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182/19 of 29 June 2013; L 369/79 of 24 December 2014), as last amended by Directive 2014/102/EU (OJ L 334/86 of 21 November 2014), or undertakings within the meaning of Articles 4, 5, 6 and 7 of Commission Delegated Regulation (EU) No 241/2014 of 7 January 2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for Own Funds requirements for institutions (OJ L 74/8 of 14 March 2014), as last amended by Delegated Regulation (EU) 2015/923 (OJ L 150/1 of 17 June 2015), that are linked to each other by a relationship referred to in Article 10(1) or Article 113(6) or (7) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176/1 of 27 June 2013; L 208/68 of 2 August 2013; L 321/6 of 30 November 2013; L 193/166 of 21 July 2015), as last amended by Regulation (EU) 2016/1014 (OJ L 171/153 of 29 June 2016).

(7) A “significant holding” within the meaning of this Act is a qualifying holding pursuant to Article 4(1) number 36 of Regulation (EC) No 575/2013, as amended. Section 1(9) sentences 2 and 3 of the Banking Act shall apply mutatis mutandis to the existence and calculation of a significant holding.

(8) “Managing directors” within the meaning of this Act means those natural persons who are appointed by law, articles of association or partnership agreement to manage the

business of and represent an institution organised in the legal form of a legal person or commercial partnership. In exceptional cases, the Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*, hereinafter referred to as BaFin) may also revocably designate as a managing director another person entrusted with managing the business and representing it if that person is fit and proper and possesses the necessary knowledge, skills and experience. Where the designation of a person as a managing director is based on an application by the institution, that designation shall be revoked at the request of the institution or the managing director.

(9) “Agent” within the meaning of this Act means a natural or legal person who executes payment services on behalf of an institution as an independent business operator. The agent’s actions are attributed to the institution.

(10) “Electronic money agent” within the meaning of this Act means a natural or legal person who distributes and redeems electronic money on behalf of an electronic money institution as an independent business operator.

(11) “Payment system” means a funds transfer system based on formal and standardised arrangements and common rules for the processing, clearing or settlement of payment transactions.

(12) “Electronic communications networks” means transmission systems, switching and routing equipment and other resources, including network elements that are not active, that permit the conveyance of signals by wire, radio, optical or other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including internet) and mobile terrestrial networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed.

(13) “Electronic communications services” mean services normally provided against remuneration that consist wholly or mainly in the conveyance of signals on electronic communications networks, including telecommunications services and transmission services in networks used for broadcasting, but exclude services providing, or exercising editorial control over, content transmitted using electronic communications networks and services. Information society services within the meaning of Article 1 of Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241/1 of 17 September 2015) that do not consist wholly or mainly in the conveyance of signals on electronic communications networks are not electronic communications services for this purpose.

(14) “Average outstanding electronic money” means the average total amount of financial liabilities related to electronic money in issue at the end of each calendar day over the

preceding six calendar months, calculated on the first calendar day of each calendar month and applied to that calendar month.

(15) “Payer” means a natural or legal person who holds a payment account and allows the execution of a payment order from that payment account, or, where there is no payment account, a natural or legal person who issues the payment order.

(16) “Payee” means the natural or legal person who is the intended recipient of funds which have been the subject of a payment transaction.

(17) “Payment account” means an account held in the name of one or more payment service users that is used for the execution of payment transactions.

(18) “Account servicing payment service provider” means a payment service provider providing and maintaining a payment account for a payer.

(19) “Remote payment transaction” within the meaning of this Act means a payment transaction initiated via internet or through a device that can be used for distance communication.

(20) “Payment instrument” means a personalised device or procedure agreed between the payment service user and the payment service provider and used in order to initiate a payment order.

(21) “Direct debit” means a payment transaction for debiting a payer’s payment account, where a payment transaction is initiated by the payee on the basis of the consent given by the payer to the payee, to the payee’s payment service provider or to the payer’s own payment service provider.

(22) “Credit transfer” means a payment transaction that is initiated by the payer for crediting a payee’s payment account with a payment transaction or a series of payment transactions from a payer’s payment account by the payment service provider that holds the payer’s payment account.

(23) “Authentication” means a procedure that allows the payment service provider to verify the identity of a payment service user or the validity of the use of a specific payment instrument, including the use of the user’s personalised security credentials.

(24) “Strong customer authentication” means authentication that is designed to protect the confidentiality of the authentication data and is based on the use of two or more of the following elements that are independent, in that the breach of one does not compromise the reliability of the others:

1. knowledge, meaning something that only the user knows;

2. possession, meaning something that only the user possesses;
3. inherence, meaning something that the user is.

(25) “Personalised security credentials” means personalised features provided by the payment service provider to a payment service user for the purposes of authentication.

(26) “Sensitive payment data” means data, including personalised security credentials, that can be used to commit fraud. For the activities of payment initiation service providers and account information service providers, the name of the account owner and the account number do not constitute sensitive payment data.

(27) “Digital content” means goods or services that are produced and supplied in digital form, the use or consumption of which is restricted to a technical device and that do not include in any way the use or consumption of physical goods or services.

(28) “Payment brand” means any material or digital name, term, sign, symbol or combination thereof which is capable of denoting under which payment card scheme card-based payment transactions are carried out.

(29) “Own funds” means funds within the meaning of Article 4(1) number 118 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176/1 of 27 June 2013; L 208/68 of 2 August 2013; OJ L 321/6 of 30 November 2013; L 193/166 of 21 July 2015), as last amended by Regulation (EU) 2016/1014 (OJ L 171/153 of 29 June 2016), where at least 75% of Tier 1 capital is in the form of Common Equity Tier 1 capital as referred to in Article 50 of that Regulation and Tier 2 capital is equal to or less than one-third of Tier 1 capital.

(30) “Initial capital” within the meaning of this Act means the Common Equity Tier 1 capital comprising the items referred to in letters (a) to (e) of Article 26(1) sentence 1 of Regulation (EU) No 575/2013.

(31) “Secure, low-risk assets” within the meaning of this Act means assets falling into one of the categories referred to in Article 336(1) of Regulation (EU) No 575/2013 for which the specific risk capital charge is no higher than 1.6%, but excluding other qualifying items as defined in Article 336(4) of Regulation (EU) No 575/2013. Units in an undertaking for collective investment in transferable securities that invests solely in assets as specified in sentence 1 are also secure, low-risk assets within the meaning of this Act.

(32) “Cash withdrawal service” means the withdrawal of cash through automated teller machines for one or more card issuers without having entered into a separate framework contract with the customer withdrawing money.

(33) “Payment initiation service” means a service to initiate a payment order at the request of the payment service user with respect to a payment account held at another payment service provider.

(34) “Account information service” means an online service to provide consolidated information on one or more payment accounts held by the payment service user with one or more other payment service providers.

(35) “Acquiring of payment transactions” means a payment service provided by a payment service provider contracting with a payee to accept and process payment transactions, which results in a transfer of funds to the payee. “Issuing of payment instruments” encompasses all payment services by a payment service provider contracting to provide a payer with a payment instrument to initiate and process the payer’s payment transactions.

## **Section 2 Exclusions; authority to issue statutory orders**

(1) The following are not considered to be payment services:

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 central settlement facility or a commercial agent authorised via an agreement to negotiate or conclude the sale or purchase of goods or services on behalf of only the payer or only the payee;
3. professional physical transport of banknotes and coins, including their collection, processing and delivery;
4. 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;
5. cash-to-cash currency exchange operations;
6. 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) a paper cheque within the meaning of the Cheque Act (*Scheckgesetz*) or a similar paper cheque governed by the laws of another Member State or another signatory state to the Agreement on the European Economic Area;
  - b) a paper-based bill of exchange within the meaning of the Bill of Exchange Act (*Wechselgesetz*) or a similar paper-based bill of exchange governed by the laws of another Member State or another signatory state to the Agreement on the European Economic Area;
  - c) a paper-based voucher;
  - d) a paper-based traveller’s cheque; or
  - e) a paper-based postal money order as defined by the Universal Postal Union;

7. payment transactions carried out within a payment or securities settlement system between settlement agents, central counterparties, clearing houses or central banks and other participants of the system, and payment service providers;
8. payment transactions related to securities asset servicing carried out by undertakings referred to in number 7 or by credit institutions, financial services institutions or investment management companies (*Kapitalverwaltungsgesellschaft*) under the terms of their authorisation under the Banking Act or the Investment Code (*Kapitalanlagegesetzbuch*);
9. services provided by technical service providers that support the provision of payment services, without them entering at any time into possession of the funds to be transferred; these include the processing and storage of data, trust and privacy protection services, data and entity authentication, information technology and communication network provision, provision and maintenance of terminals and devices used for payment services; in all cases with the exclusion of payment initiation services and account information services;
10. services based on payment instruments that
  - a) can be used for the purchase of goods or services in the premises of the issuer or within a limited network of service providers under direct commercial agreement with a professional issuer;
  - b) can be used for the purchase of a very limited range of goods or services; or
  - c) are limited to use in Germany and, at the request of an undertaking or a public sector entity, are provided for specific social or tax purposes governed by the provisions of public law to acquire specific goods or services from suppliers having a commercial agreement with the issuer;
11. payment transactions by a provider of electronic communications networks or services provided in addition to electronic communications services for a subscriber to the network or service:
  - a) for the purchase of digital content and voice-based services, regardless of the device used for the purchase or consumption of the digital content and charged to the related bill; or
  - b) performed from or via an electronic device and charged to the related bill within the framework of a charitable activity or for the purchase of tickets;provided that the value of any single payment does not exceed €50 and the cumulative value of payment transactions for an individual subscriber does not exceed €300 per month;
12. payment transactions carried out between payment service providers, their agents or branches for their own account;
13. payment transactions and related services within a group or between members of a banking industry network;
14. cash withdrawal services, on condition that those service providers do not conduct any other payment services;
15. non-professional cash collection and delivery within the framework of a charitable or non-profit activity.

(2) Where an undertaking carries out an activity referred to in subsection (1) number 10 letter (a) or (b) for which the total value of payment transactions executed over the preceding

twelve months exceeds the amount of €1 million, it shall notify this activity to BaFin, including a description of the service offered and specifying the exclusion referred to in subsection (1) number 10 letter (a) or (b) under which the activity is being carried out. On the basis of that notification, BaFin will decide whether the criteria referred to in subsection (1) number 10 letter (a) or (b) have been met. Where the undertaking's activity does not meet the criteria referred to in subsection (1) number 10 letter (a) or (b), BaFin will notify the undertaking accordingly.

(3) Where an undertaking carries out an activity referred to in subsection (1) number 11, it shall notify this activity to BaFin and inform BaFin, by way of an annual audit opinion, that the activity does not exceed the limits specified in subsection (1) number 11.

(4) BaFin will notify the European Banking Authority of the notifications received under subsections (2) and (3), stating the exclusion used in each case. BaFin will make the information notified to it under subsections (2) or (3) publicly available in the register of payment institutions or, to the extent that the exclusion set out in Section 1(2) sentence 4 is applicable, in the register of electronic money institutions; it will notify the European Banking Authority separately.

(5) The Federal Ministry of Finance shall be authorised, by way of a statutory order not requiring the consent of the Bundesrat, to adopt more detailed provisions governing the content, nature and scope of the information, evidence and documents that a notification under subsections (2) and (3) shall contain. In particular, such statutory order may contain more detailed provisions governing:

1. the arrangements governing the description of the services offered if an activity is carried out under an exclusion referred to in subsection (1) number 10 letter (a) or (b);
  2. the audit opinion if an activity is carried out under the exclusion referred to in subsection (1) number 11;
  3. the permissible data storage media, transmission channels and data formats as well as concerning information to be used and notified in addition to the main information, such as particular legal entity identifiers as well as information on their up-to-dateness or validity.
- In the statutory order, the Federal Ministry of Finance may expand the notification requirements to include the obligation to submit summary reports and lists insofar as this appears necessary for the performance of BaFin's tasks, including to enable BaFin to obtain standardised documents so that it can assess the business conducted under these exclusions. The statutory order may also set out more detailed provisions governing the information to be provided to the European Banking Authority and the making available to the public of the information in the register of payment institutions and the register of electronic money institutions. The Federal Ministry of Finance may delegate this authority to BaFin by way of a statutory order. The central associations representing the institutions shall be consulted before the statutory order is issued.

(6) Sections 10 to 18 and 25 shall not apply to payment institutions that only offer an account information service as a payment service.

### **Section 3 Permitted activities and prohibited business**

(1) An institution shall not conduct the business of accepting deposits or other repayable funds from the public professionally or on a scale that requires a commercially organised business operation beyond the requirements of subsections (2) and (3) and its authorisation pursuant to Section 10(1) sentence 1 or Section 11(1) sentence 1.

(2) An electronic money institution shall exchange funds it receives for the purposes of issuing electronic money into electronic money without delay. Such funds shall not be considered to be deposits or other repayable funds from the public within the meaning of Section 1(1) sentence 2 number 1 of the Banking Act, provided that:

1. the electronic money is issued at the same time as or without delay following the receipt of the funds to be paid in in exchange for the issuance of electronic money; and
2. the electronic money and the credit balance arising from the issuance of electronic money do not bear interest and do not provide any other benefits for the holder related to the length of time it is held.

(3) To the extent that an institution services payment accounts for payment service users under the terms of its authorisation pursuant to Section 10(1) sentence 1 or Section 11(1) sentence 1, it may only carry out the settlement of payment transactions through these payment accounts. Credit balances on payment accounts serviced by the institution may not bear interest. The funds received by an institution from the payment service users designated solely for the execution of payment transactions are not considered to be deposits or other unconditionally repayable funds from the public within the meaning of Section 1(1) sentence 2 number 1 of the Banking Act or to be electronic money.

(4) Under the terms of its authorisation pursuant to Section 10(1) sentence 1 or Section 11(1) sentence 1, an institution may grant credit within the meaning of Section 19 of the Banking Act to payment service users relating to payment services as referred to in Section 1(1) sentence 2 numbers 4 or 5 only if all of the following conditions are met:

1. the credit shall be ancillary and granted exclusively in connection with the execution of a payment transaction;
2. a term of no longer than twelve months shall be agreed in the credit agreement and the credit shall be repaid in full within twelve months; and
3. such credit shall not be granted from the funds received or held for the purpose of executing a payment transaction or the issuance of electronic money.

Sentence 1 shall apply mutatis mutandis to the issuance of electronic money, provided that credit is also not granted from the funds received in exchange for the issuance of electronic money. The granting of credit by an institution within the meaning of this Act that meets the criteria set out in sentence 1 shall not be considered to be lending business within the

meaning of Section 1(1) sentence 2 number 2 of the Banking Act. In this case, the payment institution shall assess the consumer's creditworthiness before concluding a consumer credit agreement or an agreement on remunerated financial accommodation; Section 18a(1) to (10) of the Banking Act shall apply mutatis mutandis.

Footnote

(+++ Section 3: for application, see Section 39(3) +++)

#### **Section 4 BaFin's functions and general powers, decision in cases of doubt**

(1) BaFin exercises supervision over payment service providers and electronic money issuers pursuant to the provisions of this Act.

(2) As part of its statutory functions, BaFin may issue orders to institutions and their managing directors that are appropriate and necessary to prevent or stop breaches of the prudential regime or to prevent or overcome undesirable developments at an institution which may endanger the safety of the assets entrusted to the institution or impair the proper provision of payment services or conduct of electronic money business. The powers pursuant to sentence 1 include overcoming misleading advertising by institutions. Before general measures are taken pursuant to sentence 2, the central associations representing the institutions and the consumer protection associations shall be consulted.

(3) BaFin and the Deutsche Bundesbank cooperate as stipulated in this Act. Section 7 of the Banking Act shall apply mutatis mutandis.

(4) In cases of doubt, BaFin will decide whether an undertaking is subject to the provisions of this Act. Cases of doubt include, in particular, all cases where there is a dispute between the operator and BaFin or another administrative authority about classification as an institution, payment service provider or electronic money issuer. BaFin's decisions shall be binding upon the other administrative authorities.

#### **Section 5 Cooperation with other authorities**

For the supervision of institutions, payment service providers and electronic money issuers that provide payment services or conduct electronic money business in another Member State or another signatory state to the Agreement on the European Economic Area, BaFin and the Deutsche Bundesbank cooperate with the competent authorities in the other state and with the competent European authorities; this shall also apply to Sections 60 and 61. Sections 7a to 8a of the Banking Act shall apply mutatis mutandis.

#### **Section 6 Professional secrecy obligation**

Persons employed by BaFin and the Deutsche Bundesbank, supervisors and liquidators appointed pursuant to this Act, and persons commissioned pursuant to Section 4(3) of the Act Establishing the Federal Financial Supervisory Authority (*Finanzdienstleistungsaufsichtsgesetz*) shall not disclose or use without authorisation any information that comes to their attention in the course of their activities which shall be kept secret in the interests of the institution, payment service provider or electronic money issuer, or a third party (especially business and trade secrets). Section 9 of the Banking Act shall apply *mutatis mutandis*.

## **Division 2**

### **Enforcement of the authorisation requirement**

#### **Section 7 Intervention against unauthorised payment services and electronic money business**

(1) Where payment services are provided without the authorisation required under Section 10(1) or the registration required under Section 34(1) (unauthorised payment services), or where electronic money business is conducted without the authorisation required under Section 11(1) (unauthorised electronic money business), BaFin may order the undertaking as well as its shareholders and the members of its management bodies to cease business operations immediately and to liquidate this business without delay. It may:

1. issue instructions regarding liquidation; and
2. appoint a suitable person as the liquidator.

It may publish its measures pursuant to sentences 1 and 2; personal data may only be published to the extent necessary to avert danger. BaFin's powers pursuant to sentences 1 to 3 also apply *vis-à-vis* the undertaking involved in the initiation, conclusion or settlement of such business as well as *vis-à-vis* its shareholders and the members of its management bodies.

(2) Where BaFin orders the cessation of business operations or the liquidation of the unauthorised business, it shall also, in the case of legal persons and commercial partnerships, be entitled to exercise the rights referred to in Section 38(1) and (2) of the Banking Act. Subsection (1) sentence 3 shall apply *mutatis mutandis*.

(3) The liquidator shall be authorised to file a petition for the initiation of insolvency proceedings over the undertaking's assets.

(4) The liquidator shall receive appropriate remuneration and reimbursement of its expenses from BaFin in line with the rules for remunerating insolvency administrators. The amounts paid shall be refunded separately to BaFin by the undertaking concerned and, at BaFin's request, shall be provided in advance. BaFin may instruct the undertaking concerned to pay the amount laid down by BaFin directly to the liquidator on BaFin's behalf if there is no reason to suspect that this may affect the liquidator's independence.

Footnote

(+++ Section 7: for application, see Section 39(3) +++)

## **Section 8 Prosecution of unauthorised payment services and electronic money business**

(1) An undertaking as well as the members of its management bodies, its shareholders and its employees shall, upon request, provide information about all of the undertaking's business matters and present documentation to BaFin and the Deutsche Bundesbank, where it is established that, or there are reasonable grounds to suspect that the undertaking is providing payment services without authorisation, conducting electronic money business without authorisation, or that it is or has been involved in the initiation, conclusion or settlement of unauthorised payment services or electronic money business. A member of a management body, a shareholder or an employee shall, upon request, provide information and present documentation even after they have left the management body or the undertaking.

(2) BaFin may carry out inspections in the premises of the undertaking as well as in the premises of the persons and undertakings obliged to provide information and present documentation pursuant to subsection (1), insofar as this is necessary to determine the nature or scope of the business or activities; it may entrust the Deutsche Bundesbank with the task of carrying out such inspections. Persons employed by BaFin and the Deutsche Bundesbank may enter and inspect these premises for this purpose during normal office and business hours. In order to prevent imminent danger to public order and safety, they are authorised to enter and inspect these premises also outside normal office and business hours, and may enter and inspect premises which also serve as living accommodation; the basic right enshrined in Article 13 of the Basic Law (*Grundgesetz*) shall be limited in this respect.

(3) Persons employed by BaFin and the Deutsche Bundesbank may search the premises of the undertaking as well as those of persons and undertakings obliged to provide information and present documentation pursuant to subsection (1). When conducting the search, the persons employed by BaFin and the Deutsche Bundesbank may also search the persons obliged to provide information and present documentation for the purposes of seizing items within the meaning of subsection (4). The basic right enshrined in Article 13 of the Basic Law shall be limited in this respect. Searches of business premises and persons shall require a judicial order except in the event of imminent danger. Searches of premises which serve as living accommodation shall require a judicial order. The court responsible shall be the local court (*Amtsgericht*) in whose area of jurisdiction the premises are located. An appeal may be lodged against the judicial decision; Sections 306 to 310 and 311a of the Code of Criminal Procedure (*Strafprozessordnung*) shall apply mutatis mutandis. A written

record shall be made of the search. It shall specify which official agency was responsible for carrying out the search, the reason, time and place of the search and its outcome and, if no judicial order was issued, the reasonable grounds for the presumption of imminent danger.

(4) Persons employed by BaFin and the Deutsche Bundesbank may seize items which could be of importance as evidence in their investigations of the matter in hand.

(5) The parties affected shall acquiesce to measures taken pursuant to subsection (2) and subsection (3) sentences 1 and 2 as well as subsection (4). Anyone obliged to furnish information may refuse to do so if answering certain questions would place that person or one of that person's relatives as designated in Section 383(1) numbers 1 to 3 of the Code of Civil Procedure (*Zivilprozessordnung*) at risk of criminal prosecution or proceedings under the Act on Breaches of Administrative Regulations (*Gesetz über Ordnungswidrigkeiten*).

(6) Subsections (1) to (5) shall apply to other undertakings and persons *mutatis mutandis*, provided that:

1. there are reasonable grounds to suspect that they are involved in the initiation, conclusion or settlement of payment services or electronic money business which are being provided or conducted in another state contrary to a prohibition in effect in that state; and
2. the competent authority of the other state makes an appropriate request to BaFin.

(7) To the extent that and for as long as there are reasonable grounds to suspect that, or it is established that, an undertaking is providing payment services without authorisation or conducting electronic money business without authorisation, BaFin may inform the public about its suspicions, giving the name or registered name of the undertaking. Sentence 1 shall apply *mutatis mutandis* if an undertaking is not providing the unauthorised payment services or conducting the electronic money business but gives the impression publicly that it does so. The undertaking shall be consulted prior to the decision to publish the information. Where it emerges that the information published by BaFin is incorrect or that the underlying circumstances have been represented incorrectly, BaFin will inform the public of this using the same means as it previously used to announce the relevant information.

Footnote

(+++ Section 8: for application, see Section 39(3) +++)

### **Division 3 Immediate enforceability**

#### **Section 9 Immediate enforceability**

Objections to and appeals against measures taken by BaFin, including the threat and imposition of enforcement measures, on the basis of Section 4(2), Sections 7 and 8, Section 13(2) numbers 2 to 5 or Section 14(1) in conjunction with Section 2c(1b) sentences 1 and 2 and (2) sentence 1 of the Banking Act, on the basis of Section 15(1) sentences 3 and 4,

Sections 19 to 21, these also in conjunction with Section 17(3) sentence 3, Section 23(1), Section 24(4), or on the basis of Section 25(3), Section 26(3) or Section 27(3) sentence 1 or (4) sentence 2, or Section 32(2) or Section 39(8) shall have no postponing effect.

Footnote

(+++ Section 9: for application, see Section 39(3) +++)

## **Part 2**

### **Authorisation; holders of significant holdings**

#### **Division 1 Authorisation**

##### **Section 10 Authorisation to provide payment services; authority to issue orders**

(1) Anyone wishing to provide payment services in Germany professionally or on a scale which requires a commercially organised business operation and who is not a payment service provider within the meaning of Section 1(1) sentence 1 numbers 2 to 5 shall require written authorisation from BaFin. Apart from the provision of payment services, authorisation shall also cover:

1. the provision of operational and closely related ancillary services; ancillary services are services for ensuring the execution of payment transactions, foreign exchange services, services for ensuring data protection, as well as the storage and processing of data, and safekeeping activities, insofar as these services do not involve taking deposits;
2. the operation of payment systems pursuant to Section 57;
3. business activities other than the provision of payment services, having regard to applicable Union and national law.

(2) The application for authorisation shall contain the following information and evidence:

1. a description of the programme of operations setting out in particular the nature of the intended payment services;
2. a business plan including a forecast budget calculation for the first three financial years which demonstrates that the applicant is able to employ the appropriate and proportionate systems, resources and procedures to operate soundly;
3. evidence that the applicant holds the necessary initial capital as provided for in Section 12 number 3 and, for payment initiation services and account information services, evidence of the amount of cover for insured events subject to the conditions set out in Sections 16 and 36;
4. a description of measures taken to comply with the safeguarding requirements pursuant to Section 17;
5. a description of the applicant's governance arrangements and internal control mechanisms, including administrative, risk management and accounting procedures, which

demonstrates that those governance arrangements, control mechanisms and procedures are proportionate, appropriate, sound and adequate;

6. a description of the procedures in place to monitor, handle and follow up a security incident and security-related customer complaints, including an incidents reporting mechanism which takes account of the notification obligations laid down in Section 54;
7. a description of the processes in place to file, monitor, track and restrict access to sensitive payment data;
8. a description of business continuity arrangements including a clear identification of the critical operations, effective contingency plans and a procedure to regularly test and review the adequacy and efficiency of such plans;
9. a description of the principles and definitions applied for the collection of statistical data on performance, transactions and fraud;
10. a description of the security policy, including a detailed risk assessment in relation to its payment services and a description of security control and mitigation measures taken to adequately protect payment service users against the risks identified, including fraud and illegal use of sensitive and personal data;
11. a description of the internal control mechanisms which the applicant has established in order to comply with the requirements of Sections 27 and 53;
12. a description of the applicant's structural organisation, including, where applicable, a description of the intended use of agents and branches and of the off-site and on-site checks that the applicant undertakes to perform on them at least annually, as well as a description of outsourcing arrangements, and of its participation in a national or international payment system;
13. the identity of persons holding significant holdings, the size of their holdings and evidence of their suitability, taking into account the need to ensure the sound and prudent management of the applicant; Section 2c(1) sentence 4 of the Banking Act shall apply *mutatis mutandis*;
14. the identity of managing directors and, in the case of undertakings which engage in other business activities in addition to the provision of payment services, persons responsible for the management of the payment services activities of the applicant;
15. where applicable, the identity of the auditors of the annual accounts and consolidated accounts;
16. the applicant's legal status and articles of association or partnership agreement;
17. the address of the applicant's head office or registered office.

Using the documents referred to in sentence 1 numbers 4 to 6 and 12, the applicant shall provide a description of its audit arrangements and the organisational arrangements it has set up with a view to taking all reasonable steps to protect the interests of its users and to ensure continuity and reliability in the performance of payment services. The description of the security policy pursuant to sentence 1 number 10 shall indicate how these measures ensure a high level of technical security and data protection; this shall also apply to software and IT systems used by the applicant or the undertakings to which the applicant outsources the whole or part of its operations. The application shall include evidence that the persons referred to in sentence 1 number 14 are fit and proper and possess adequate theoretical and

practical knowledge and skills, including management experience, to provide payment services. The applicant shall appoint at least two managing directors; one managing director shall suffice for small undertakings. In individual cases, BaFin may require more detailed information and evidence for the information to be provided pursuant to sentences 1 to 5, insofar as this appears necessary for BaFin to fulfil its statutory mandate.

(3) Within three months of receipt of the application or, if the application is incomplete, of all of the information required for the decision, BaFin will inform the applicant whether the authorisation is granted or refused.

(4) BaFin may grant authorisation subject to conditions which shall be consistent with the objective pursued by this Act. It may also, in line with this objective, limit the authorisation to specific payment services. Where the payment institution is simultaneously engaged in other business activities, BaFin may require it to spin off these activities or to establish a separate undertaking for the payment services activities, where those activities impair or are likely to impair the financial soundness of the payment institution or the ability to monitor it.

(5) The payment institution shall notify BaFin without delay of any materially or structurally material change in the actual or legal circumstances, insofar as it affects the correctness of the information and evidence submitted pursuant to subsection (2).

(6) BaFin will publish the granting of authorisation in the Federal Gazette (*Bundesanzeiger*).

(7) To the extent that authorisation pursuant to subsection (1) is required for the provision of payment services, entries in public registers may be made only if the court of registration has been furnished with evidence of such authorisation.

(8) The Federal Ministry of Finance shall be authorised, by way of a statutory order not requiring the consent of the Bundesrat, in consultation with the Deutsche Bundesbank, to adopt more detailed provisions governing the nature, scope and form of the application documents provided for under this provision. In agreement with the Deutsche Bundesbank, the Federal Ministry of Finance may delegate this authority to BaFin by way of a statutory order. The central associations representing the institutions shall be consulted before the statutory order is issued. The Federal Office for Information Security shall be consulted where the security of IT systems is affected.

Footnote

(+++ Section 10: for non-application, see Section 2(6) +++)

## **Section 11 Authorisation to conduct electronic money business; authority to issue orders**

(1) Anyone wishing to conduct electronic money business in Germany and who is not an electronic money issuer within the meaning of Section 1(2) sentence 1 numbers 2 to 4 shall require written authorisation from BaFin. Apart from the conduct of electronic money business, authorisation pursuant to sentence 1 shall also cover:

1. the provision of payment services;
2. the granting of credit pursuant to Section 3;
3. the provision of operational and closely related ancillary services in connection with the issuance of electronic money or the provision of payment services;
4. the operation of payment systems pursuant to Section 58;
5. business activities other than the issuance of electronic money, having regard to applicable Community and national law.

(2) Section 10(2) sentence 1 numbers 2, 5 to 11, 13 and 15 to 17 shall apply *mutatis mutandis* to the content of the application for authorisation. The application for authorisation shall additionally contain the following information and evidence:

1. a description of the programme of operations setting out in particular the intended issuance of electronic money as well as the nature of the intended payment services;
2. evidence that the applicant holds the necessary initial capital as provided for in Section 12 number 3 letter (d);
3. a description of measures taken to comply with the safeguarding requirements pursuant to Sections 17 and 18;
4. a description of the applicant's structural organisation, including, where applicable, a description of the intended use of electronic money agents and branches and, where payment services are provided, agents, as well as a description of outsourcing arrangements, and of its participation in a national or international payment system; and
5. the identity of managing directors, persons responsible for the management of the applicant and, in the case of undertakings which engage in other business activities in addition to the issuance of electronic money and the provision of payment services, persons responsible for the issuance of electronic money and the provision of payment services of the applicant.

The application shall include evidence that the persons referred to in sentence 1 number 5 are fit and proper and possess adequate theoretical and practical knowledge and experience, including management experience, to conduct electronic money business and provide payment services. The applicant shall appoint at least two managing directors; one managing director shall suffice for small undertakings.

Section 10(2) sentences 2, 3 and 5 and subsections (3) and (6) shall apply *mutatis mutandis* to the further procedure.

(3) BaFin may grant authorisation subject to conditions which shall be consistent with the objective pursued by this Act. Where the electronic money institution simultaneously provides payment services or is engaged in other business activities, BaFin may require it to spin off

the provision of payment services or the other activities or to establish a separate undertaking for the electronic money business, where those other services or activities impair or are likely to impair the financial soundness of the institution or the ability to monitor it.

(4) The electronic money institution shall notify BaFin without delay of any materially or structurally material change in the actual and legal circumstances, insofar as it affects the correctness of the information and evidence submitted pursuant to subsection (2) sentences 1 and 2.

(5) To the extent that authorisation pursuant to subsection (1) is required for the conduct of electronic money business, entries in public registers may be made only if the court of registration has been furnished with evidence of such authorisation.

(6) The Federal Ministry of Finance shall be authorised, by way of a statutory order not requiring the consent of the Bundesrat, in consultation with the Deutsche Bundesbank, to adopt more detailed provisions governing the nature, scope and form of the application documents provided for under this provision. In agreement with the Deutsche Bundesbank, the Federal Ministry of Finance may delegate the authority to BaFin by way of a statutory order. The central associations representing the institutions shall be consulted before the statutory order is issued. The Federal Office for Information Security shall be consulted where the security of IT systems is affected.

Footnote

(+++ Section 11: for non-application, see Section 2(6) +++)

## **Section 12 Refusal of authorisation**

Authorisation to provide payment services or conduct electronic money business shall be refused if

1. the applicant is not a legal person or a commercial partnership;
2. in breach of Section 10(2) or Section 11(2), the application does not contain sufficient data or documentation, or the data and documentation submitted do not permit a favourable overall assessment;
3. the resources needed for business operations, in particular sufficient initial capital, are not available in Germany; the initial capital which shall be available is as follows:
  - a) in the case of payment institutions which only provide money remittance services, an amount equivalent to at least €20,000;
  - b) in the case of payment institutions which only provide payment initiation services, an amount equivalent to at least €50,000;
  - c) in the case of payment institutions which provide the payment services within the meaning of Section 1(1) sentence 2 numbers 1 to 5, an amount equivalent to at least €125,000;

d) in the case of electronic money institutions, an amount equivalent to at least €350,000;

where the institution is also an institution within the meaning of Section 1(1b) of the Banking Act, the higher of the amount required by this provision or the amount required by Section 33(1) of the Banking Act shall apply;

4. there are reasonable grounds to suspect that the applicant or the holder of a significant holding or, if this is a legal person, also a legal representative or representative pursuant to the articles of association or, in the case of a commercial partnership, a partner is not fit and proper or, for other reasons, fails to satisfy the requirements to be set in the interests of the sound and prudent management of the payment institution;

5. there are grounds which indicate that a managing director is not fit and proper, or does not possess the knowledge, skills and experience required to manage the applicant and no other person is designated as a managing director pursuant to Section 1(8) sentence 2; knowledge, skills and experience require possession of sufficient theoretical and practical knowledge and skills in connection with the business concerned, as well as managerial experience;

6. the applicant does not have either effective procedures to identify, manage, monitor and report risks or adequate internal control mechanisms, including sound administrative and accounting procedures;

7. there are reasonable grounds to suspect that effective supervision of the applicant is impaired; this shall be the case in particular if:

a) the applicant is integrated in a corporate network with other individuals or undertakings or is closely linked to such a network within the meaning of Article 4(1) number 38 of Regulation (EU) No 575/2013 which, owing to the structure of cross-shareholdings or because of inadequate economic transparency, impairs effective supervision of the institution;

b) effective supervision of the applicant is impaired by the laws, regulations and administrative provisions of a third country applicable to such individuals or undertakings;

c) the applicant is a subsidiary of an institution established in a third country that is not effectively supervised in the state in which it has its domicile or head office, or whose competent oversight body is not willing to cooperate satisfactorily with BaFin;

8. the applicant does not have its head office in Germany or provide at least part of its payment services in Germany or conduct at least part of its electronic money business in Germany;

9. the applicant does not have cover for insured events pursuant to the requirements set out in Section 16 or Section 36;

10. adequate evidence of compliance with the safeguarding requirements set out in Section 17 or Section 18 is not provided to BaFin;

11. the applicant breaches the prohibition on the issuance of electronic money via other persons pursuant to Section 31;

12. a legal norm established by the European Union or under national law prevents authorisation from being granted.

Footnote

(+++ Section 12: for non-application, see Section 2(6) +++)

### **Section 13 Lapse and revocation of authorisation**

(1) An institution's authorisation shall lapse if the institution does not make use of it within one year from the date on which it is granted or expressly renounces it.

(2) BaFin may revoke authorisation pursuant to the provisions of the Act on Administrative Procedures (*Verwaltungsverfahrensgesetz*), and also if

1. the business operations to which the authorisation relates have not been conducted for more than six months;
2. the authorisation was obtained through false statements or any other irregular means;
3. grounds become known which justified refusal of authorisation or the notification requirements set out in Section 10(5) or Section 11(4) are breached;
4. continuing to provide payment services or conduct electronic money business would constitute a threat to the stability of or the trust in the payment system operated by the institution;
5. there have been serious, repeated or systematic breaches of Section 27 of the Money Laundering Act (*Geldwäschegesetz*), of Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EU) No 1781/2006 (OJ L 141/1 of 5 June 2015), or regulations or enforceable orders enacted to implement these.

(3) Section 38 of the Banking Act shall apply *mutatis mutandis*. Section 48(4) sentence 1 and Section 49(2) sentence 2 of the Act on Administrative Procedures regarding the one-year period shall not apply.

(4) BaFin will publish the revocation or lapse of authorisation in the Federal Gazette and in the register of institutions pursuant to Section 43 or Section 44.

Footnote

(+++ Section 13: for non-application, see Section 2(6) +++) (+++ Section 13(3): for application, see Section 66(4) +++)

(+++ Section 13(3): for application, see Section 67(4) +++)

## **Division 2**

### **Holders of significant holdings**

#### **Section 14 Holders of significant holdings; authority to issue orders**

(1) The holder of a significant holding in an institution shall satisfy the requirements to be set in the interests of the sound and prudent management of the institution. Section 2c(1) sentences 1 to 7, subsections (1a), (1b), (2) and (3) of the Banking Act shall apply mutatis mutandis.

(2) The rights of BaFin and the Deutsche Bundesbank to request information and the presentation of documentation, as well as the right to review, pursuant to Section 19(1) shall apply in line with Section 44b of the Banking Act in respect of holders of significant holdings, the members of their management bodies and their employees.

(3) The Federal Ministry of Finance shall be authorised, by way of a statutory order not requiring the consent of the Bundesrat, in consultation with the Deutsche Bundesbank, to adopt more detailed provisions governing the key documents and facts that a person interested in acquiring a significant holding as defined in subsection (1) sentence 2 in conjunction with Section 2c(1) sentence 2 of the Banking Act shall disclose in the notification, insofar as this information is necessary for the performance of BaFin's tasks. In agreement with the Deutsche Bundesbank, the Federal Ministry of Finance may delegate this authority to BaFin by way of a statutory order. The central associations representing the institutions shall be consulted before the statutory order is issued.

Footnote

(+++ Section 14: for non-application, see Section 2(6) +++)

### **Part 3**

#### **Own funds, cover for insured events**

##### **Section 15 Own funds; authority to issue orders**

(1) Institutions shall have adequate own funds to enable them to comply with their obligations; the institution's own funds may not at any time fall below the amount of initial capital referred to in Section 12 number 3 or below the amount of own funds as calculated in accordance with the statutory order to be enacted under subsection (3), whichever is the higher. Where an institution grants credit within the meaning of Section 3(4), own funds shall at all times be proportionate to the overall amount of credit granted. BaFin will take the necessary measures to prevent the multiple use of elements eligible for own funds where an institution belongs to the same group as another institution within the meaning of this Act, institution within the meaning of Section 1(1b) of the Banking Act, investment management company or insurance undertaking. BaFin may decide to set an adjustment item for the own funds referred to in sentence 1 if the calculated value of the own funds determined by the institution does not appropriately reflect the actual capital base. The adjustment item set shall be revoked or declared null and void as soon as the reasons for setting it no longer apply.

(2) Institutions shall submit the information required to assess the adequacy of own funds to BaFin and the Deutsche Bundesbank every quarter. The statutory order pursuant to subsection (3) may prescribe a different reporting period in exceptional cases. In the assessment of the adequacy of own funds based on an evaluation of the business organisation, the risk management processes, the risk loss database within the meaning of Article 324 of Regulation (EU) No 575/2013, the internal control mechanisms and the actual risk situation of the institution, BaFin may require the institution to hold an amount of own funds that differs from the solvency principles by up to 20%.

(3) The Federal Ministry of Finance shall be authorised, by way of a statutory order not requiring the consent of the Bundesrat, in consultation with the Deutsche Bundesbank, to adopt more detailed provisions governing the adequacy of own funds (solvency) of institutions, in particular with regard to:

1. the calculation methods;
2. the content, nature, scope and form of the information required pursuant to subsection (2);
3. reporting obligations in the event of non-compliance with own funds requirements;
4. the data storage media, transmission channels and data formats permissible for data transmission.

In agreement with the Deutsche Bundesbank, the Federal Ministry of Finance may delegate the authority to BaFin by way of a statutory order. The central associations representing the institutions shall be consulted before the statutory order is issued.

(4) Institutions with authorisation pursuant to Section 32(1) of the Banking Act shall, in addition to the own funds requirements pursuant to this Act, also determine own funds requirements pursuant to Articles 24 to 386 of Regulation (EU) No 575/2013 or pursuant to Section 1a of the Banking Act in conjunction with Articles 24 to 386 of Regulation (EU) No 575/2013, except where they are exempted from the application of those articles. Where the requirements pursuant to this Act are higher, they shall be covered by own funds in accordance with subsection (1).

(5) Where the conditions for exemption pursuant to Section 2a of the Banking Act in conjunction with Article 7(1) and (2) of Regulation (EU) No 575/2013 are met, BaFin may waive the application of subsections (1), (2) and (4) to institutions that are included in the consolidated supervision of the superordinated institution.

Footnote

(+++ Section 15: for non-application, see Section 2(6) +++)

**Section 16 Cover for insured events for payment initiation services; authority to issue orders**

(1) An institution that provides payment initiation services shall take out professional indemnity insurance or a comparable guarantee and maintain it during the period of validity of its authorisation.

The professional indemnity insurance or comparable guarantee shall cover the territories in which the payment initiation service provider offers its services and shall cover the payment initiation service provider's liability resulting from the provisions of the Civil Code (*Bürgerliches Gesetzbuch*).

Section 17(3) shall apply *mutatis mutandis*.

(2) The professional indemnity insurance shall be taken out with an insurance undertaking authorised to conduct business in Germany. The contract shall require the insurance undertaking to notify BaFin without delay of the discontinuation or termination of the professional indemnity insurance, if applicable only after the period set out in Section 38(3) sentence 3 of the Insurance Contract Act (*Versicherungsvertragsgesetz*) has elapsed, as well as of any amendments to the contract that impair the stipulated cover for insured events with respect to third parties.

(3) In the cases referred to in Section 115(1) sentence 1 numbers 2 and 3 of the Insurance Contract Act, BaFin will provide third parties, at their request, with information about the name and address of the insurance undertaking and the contract number for the purpose of asserting liability claims, insofar as the undertaking providing the payment initiation service does not have any overriding legitimate interest in non-disclosure of the information. This shall also apply if authorisation as a payment initiation service provider has lapsed or been revoked.

(4) BaFin is the competent authority within the meaning of Section 117(2) of the Insurance Contract Act.

(5) The Federal Ministry of Finance shall be authorised, by way of a statutory order not requiring the consent of the Bundesrat, to adopt more detailed provisions governing the scope and content of the required cover for insured events. The Federal Ministry of Finance may delegate this authority to BaFin by way of a statutory order. The central associations representing the institutions and the insurance undertakings shall be consulted before the statutory order is issued.

Footnote

(+++ Section 16: for non-application, see Section 2(6) +++)

#### **Part 4 Safeguarding requirements**

## **Section 17 Safeguarding requirements for the receipt of funds in the provision of payment services and conduct of electronic money business**

(1) Institutions that provide payment services as defined in Section 1(1) sentence 2 numbers 1 to 6 or conduct electronic money business shall safeguard the funds they have received from payment service users or through another payment service provider for the execution of payment transactions or the issuance of electronic money, in accordance with methods 1 or 2. The funds

1. a) may not be commingled at any time with the funds of any natural or legal person other than the payment service user or electronic money holder on whose behalf the funds are held;

b) shall, where they are still held by the institution and have not yet been delivered to the payee or transferred to another payment service provider by the end of the business day following the day when the funds have been received, be deposited in an open trust account with a credit institution or invested in secure, liquid low-risk assets after consultation with BaFin; in this respect, BaFin may at its own diligent discretion exclude assets generally covered by Section 1(31) in individual cases if categorical classification as secure, liquid low-risk assets does not appear to be objectively justified in light of the objective recoverability of the collateral, in particular its maturity and other relevant risk factors;

c) shall be insulated from the institution's other assets in such a way that, in the event of insolvency, they do not become part of the institution's insolvency estate, and its creditors cannot access them even by way of individual execution measures; or

2. shall be covered by an insurance policy or other comparable guarantee from an insurance undertaking or credit institution that is authorised to conduct business within the scope of this Act, which does not belong to the same group as the institution itself, for an amount equivalent to that which would have needed to be segregated in the absence of the insurance policy or other comparable guarantee, payable in the event that the payment institution is unable to meet its financial obligations.

At its own diligent discretion, BaFin may impose one of the two methods described in sentence 2 on the institution.

(2) Where an institution is required to safeguard funds under subsection (1) and a portion of those funds is to be used for future payment transactions with the remaining amount to be used for non-payment services, that portion of the funds to be used for future payment transactions shall also be subject to the requirements of subsection (1). Where that portion is variable or not known in advance, sentence 1 shall apply on the basis of a representative portion assumed to be used for payment services provided such a representative portion may be reasonably estimated on the basis of historical data to BaFin's satisfaction.

(3) During ongoing business operations, the institution shall, at BaFin's request, demonstrate and provide evidence that it has taken sufficient measures to meet the requirements cited in subsections (1) and (2). Where evidence is not provided or the

measures are insufficient, BaFin may demand that the institution present the required evidence or take measures that are suitable and necessary to eliminate the existing shortcomings; BaFin may set an appropriate deadline for compliance. Where evidence is not provided or measures are not presented or taken, or not presented or taken by the stipulated deadline, BaFin may take action pursuant to Section 21 (2).

Footnote

(+++ Section 17: for non-application, see Section 2(6) +++)

### **Section 18 Safeguarding requirements for the receipt of funds for the issuance of electronic money**

Where funds are received for the purpose of issuing electronic money through payment by means of a payment instrument, these funds shall be safeguarded as soon as they have been credited to the electronic money institution's payment account or made available to the electronic money institution in accordance with Section 675s of the Civil Code, and at the latest within five business days pursuant to Section 675n(1) sentence 4 of the Civil Code following issuance of the electronic money; the requirements of Section 17 shall apply mutatis mutandis.

Footnote

(+++ Section 18: for non-application, see Section 2(6) +++)

## **Part 5**

### **Provisions regarding the ongoing supervision of institutions**

#### **Section 19 Information and inspections**

(1) An institution, the members of its management bodies, its employees, the agents and electronic money agents acting on its behalf, its branches, external service providers, and central contact persons shall, upon request, provide BaFin, the persons and entities that BaFin uses in performing its functions as well as the Deutsche Bundesbank with information about all business matters, documentation and, if necessary, copies. BaFin may perform inspections at the institutions, their branches, agents, electronic money agents and external service providers, with or without a special reason, and may entrust the Deutsche Bundesbank with the task of carrying out such inspections. Persons employed by BaFin and the Deutsche Bundesbank as well as any other persons whom BaFin uses to perform the inspections may enter and inspect the business premises of the institution, branch, agent and electronic money agent, or the external service provider for this purpose during ordinary office and business hours. The parties affected shall acquiesce to measures taken pursuant to sentences 2 and 3.

(2) BaFin and the Deutsche Bundesbank may send representatives to shareholders' meetings, general meetings or partners' meetings, as well as to meetings of the administrative and supervisory bodies. These representatives may address such meetings. The parties affected shall acquiesce to measures taken pursuant to sentences 1 and 2.

(3) Institutions shall, at BaFin's request, convene the meetings referred to in subsection (2) sentence 1, convene meetings of the administrative and supervisory bodies, and announce agenda items on which decisions are to be taken. BaFin may send representatives to a meeting convened pursuant to sentence 1; these representatives may address the meeting. The parties affected shall acquiesce to measures taken pursuant to sentences 1 and 2. This shall be without prejudice to subsection (2).

(4) Anyone obliged to provide information may refuse to do so if answering certain questions would place that person or one of that person's relatives as designated in Section 383(1) numbers 1 to 3 of the Code of Civil Procedure at risk of criminal prosecution or proceedings under the Act on Breaches of Administrative Regulations.

## **Section 20 Removal of managing directors and members of the administrative and supervisory body, transfer of management body powers to special commissioners**

(1) In the cases specified in Section 13(2) numbers 3 to 5, BaFin, instead of revoking authorisation, may demand the removal of the managing directors responsible and may also prohibit these managing directors from carrying out their activities at institutions. In the cases specified in Section 13(2) number 5, BaFin may also demand the temporary removal of the managing directors responsible and may temporarily prohibit these managing directors from carrying out their activities as managing directors at the institution or another obliged entity as defined in Section 2(1) of the Money Laundering Act. BaFin may also issue the order pursuant to sentence 2 to any other persons responsible for the breach.

(2) Subject to the conditions of subsection (1), BaFin may transfer, in full or in part, powers incumbent upon the institution's management bodies to a special commissioner deemed competent to exercise these powers. Section 45c(6) and (7) of the Banking Act shall apply *mutatis mutandis*.

(3) BaFin may also demand the removal of a managing director and also prohibit that managing director from carrying out their activities at institutions if they have intentionally or recklessly breached the provisions of this Act, the Money Laundering Act, the regulations issued to implement these laws, or orders issued by BaFin, and if they persist in such behaviour despite having been duly warned by BaFin.

(4) The members of an institution's administrative or supervisory body shall be fit and proper and have the necessary knowledge, skills and experience to perform the control

function as well as to assess and monitor the business conducted by the institution. When assessing whether one of the persons specified in sentence 1 has the necessary knowledge, skills and experience, BaFin will take account of the scope and complexity of the business conducted by the institution. If grounds are known which indicate that one of the persons specified in sentence 1 is not fit and proper or does not have the necessary knowledge, skills and experience, BaFin may demand from the institution the removal of any such persons or prohibit them from carrying out their activities. BaFin may also demand that the institution proceed in this manner against one of the persons specified in sentence 1 even if said person remained unaware of material breaches of the principles of proper management by the institution due to careless exercise of their oversight and control function or where said person did not do everything needed to eliminate detected breaches and such behaviour persisted despite due warning of the institution by BaFin. Where the court has, at the request of the supervisory board, been called upon to remove a supervisory board member, the relevant application may, provided that the conditions of sentences 3 or 4 have been met, also be submitted by BaFin if the supervisory board has failed to act on the removal instruction issued by the supervisory authority. This shall be without prejudice to the provisions of the laws on co-determination regarding the election and removal from office of staff representatives in the administrative or supervisory body.

## **Section 21 Measures in special cases and insolvency petitions**

- (1) Where an institution's own funds do not meet the requirements of this Act, BaFin may
1. prohibit or limit both withdrawals by the proprietors or shareholders and the distribution of profits; or
  2. order the institution to take measures to reduce risks insofar as they arise from certain types of activities and products, particularly from lending, or through the use of certain payment systems.
- (2) Where there is any danger to the discharge of an institution's obligations to its creditors, especially to the safety of the assets entrusted to it, if the conditions for revoking its authorisation or registration have been met, or if there are grounds for suspecting that effective supervision of the institution is not possible, BaFin may take temporary measures to avert this danger. In particular, it may
1. issue instructions to the institution's management;
  2. prohibit proprietors and managing directors from carrying out their activities, or limit such activities; and
  3. appoint supervisors.
- (3) Subject to the conditions of subsection (2) sentence 1, in order to avoid insolvency proceedings or revocation of authorisation, BaFin may temporarily
1. prohibit the acceptance of funds and granting of loans;
  2. impose a ban on sales and payments by the institution;
  3. order the institution to be closed for business with customers;

4. prohibit the acceptance of payments not intended for repaying debts to the institution. Section 45c(2) number 8, subsections (6) and (7), Section 46(1) sentences 3 to 6 and Section 46c of the Banking Act shall apply *mutatis mutandis*.

(4) Where an institution becomes insolvent or overindebted, the managing directors shall notify this fact to BaFin without delay, enclosing informative documentation; the managing directors shall also provide such notification along with the corresponding documentation if the institution is not expected to be in a position to fulfil its existing payment obligations when they fall due (imminent insolvency). Insofar as these persons are required under other legislation to file a petition for the initiation of insolvency proceedings in the event of insolvency or overindebtedness, the notification requirement pursuant to sentence 1 shall replace the requirement to file such a petition. Insolvency proceedings over an institution's assets shall be initiated in the event of insolvency, overindebtedness or, under the conditions set out in sentence 5, also in the case of imminent insolvency. The petition to initiate insolvency proceedings over the assets of an institution that has authorisation pursuant to Section 10(1) or Section 11(1) may be filed only by BaFin. In the event of imminent insolvency, however, BaFin may file a petition for insolvency only with the institution's consent and only if measures pursuant to subsection (3) do not hold out the promise of success. The insolvency court shall consult BaFin before appointing an insolvency administrator. The court order to commence insolvency proceedings shall be delivered separately to BaFin.

(5) In the case of institutions, only BaFin has the rights to petition pursuant to Section 3a(1), Section 3d(2) and Section 269d(2) of the Insolvency Code (*Insolvenzordnung*). The initiation of a coordination procedure pursuant to Sections 269d to 269i of the Insolvency Code shall be effective for the institutions belonging to the group only if it is requested or approved by BaFin.

## **Section 22 Submission of annual accounts, management report and audit reports**

(1) Institutions shall draw up annual accounts for the previous financial year in the first three months of the financial year, and shall submit their annual accounts as drawn up, and subsequently also as approved, and their management report to BaFin and the Deutsche Bundesbank without delay. The annual accounts shall bear an audit certificate or a note accounting for the withholding of such a certificate. The auditor shall submit their report on the auditing of the annual accounts (audit report) to BaFin and the Deutsche Bundesbank without delay after the completion of the audit.

(2) An institution that draws up a set of consolidated accounts or a consolidated management report shall submit these documents to BaFin and the Deutsche Bundesbank without delay. If an audit report is written by a consolidated accounts auditor, they shall submit that audit report to BaFin and the Deutsche Bundesbank without delay after the completion of the audit. The provisions of this subsection shall apply *mutatis mutandis* to

single-entity annual accounts pursuant to Section 325(2a) of the Commercial Code (*Handelsgesetzbuch*).

### **Section 23 Notification requirement upon engagement of the auditor; engagement in special cases**

(1) The institution shall notify BaFin and the Deutsche Bundesbank of the engagement of an auditor or consolidated accounts auditor without delay. Within one month of receiving such notification, BaFin may request the engagement of a different auditor if this appears necessary to achieve the object of the audit.

(2) The court of registration having jurisdiction at the domicile of the institution shall engage an auditor at the request of BaFin if

1. notification of the engagement pursuant to subsection (1) sentence 1 is not effected without delay after the end of the financial year;
2. the institution does not comply without delay with the request to engage a different auditor pursuant to subsection (1) sentence 2;
3. the auditor chosen has declined to accept the auditing mandate, is no longer active, or is unable to conclude the audit in time, and the institution has not engaged a different auditor without delay.

The engagement by the court shall be final. Section 318(5) of the Commercial Code shall apply *mutatis mutandis*. The court of registration, at the request of BaFin, may remove an auditor engaged pursuant to sentence 1.

### **Section 24 Special duties of the auditor; authority to issue orders**

(1) When auditing the annual accounts or interim accounts, the auditor shall also examine the institution's financial situation. When auditing the annual accounts, the auditor shall determine in particular whether the institution has fulfilled the notification requirements pursuant to Section 10(5), Section 11(4), Section 21(4) sentence 1, Section 28(1), also in conjunction with a statutory order pursuant to Section 28(4). The auditor shall also examine whether the institution has fulfilled its obligations

1. pursuant to the Money Laundering Act and Regulation (EU) 2015/847;
2. pursuant to Section 3, pursuant to Section 15, also in conjunction with a statutory order pursuant to Section 15(3), pursuant to Sections 16 to 18, 25 to 30 and 36;
3. pursuant to Regulation (EC) No 924/2009 of the European Parliament and of the Council of 16 September 2009 on cross-border payments in the Community and repealing Regulation (EC) No 2560/2001 (OJ L 266/11 of 9 October 2009), as amended by Regulation (EU) No 260/2012 (OJ L 94/22 of 30 March 2012), and Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009 (OJ L 94/22 of 30 March 2012), as amended by Regulation (EU) No 248/2014 (OJ L 84/1 of 20 March 2014); and

4. pursuant to Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions (OJ L 123/1 of 19 May 2015).

(2) The auditor shall notify BaFin and the Deutsche Bundesbank without delay if, in the course of the audit, the auditor becomes aware of facts

1. which might warrant the qualification or withholding of the audit certificate;
2. which could jeopardise the existence of the institution or materially impair its development;
3. which constitute a material breach of the provisions on the institution's authorisation requirements or the pursuit of business under this Act; or
4. which indicate that the managing directors have seriously breached the law, the articles of association or the partnership agreement.

At the request of BaFin or the Deutsche Bundesbank, the auditor shall explain the audit report to them, and inform them of any other facts which have come to its attention in the course of the audit which suggest that the business of the institution is not being conducted properly. The duty to notify, explain and inform pursuant to sentences 1 and 2 shall also apply in relation to an undertaking which is closely linked to the institution provided the auditor becomes aware of the relevant facts while auditing the institution. The auditor shall not be liable for the correctness of facts which it reports in good faith pursuant to this subsection.

(3) The Federal Ministry of Finance shall be authorised, by way of a statutory order not requiring the consent of the Bundesrat, in agreement with the Federal Ministry of Justice and Consumer Protection and after consulting the Deutsche Bundesbank, to adopt more detailed provisions governing the scope of the audit, the time at which it is to be carried out and the content of the audit reports, insofar as this is necessary for the performance of BaFin's tasks. In particular, the provisions shall be suitable for detecting undesirable developments which could endanger the safety of the assets entrusted to the institution or impair the proper provision of payment services or the proper conduct of electronic money business, and for obtaining consistent records for assessing the business conducted by institutions. The Federal Ministry of Finance may, in agreement with the Federal Ministry of Justice and Consumer Protection, delegate this authority to BaFin. The central associations representing the institutions shall be consulted before the statutory order is issued.

(4) This shall be without prejudice to Section 29 of the Banking Act. Without prejudice to subsections (1) to (3), BaFin may also issue provisions vis-à-vis the institution regarding the content of the audit, which shall be taken into consideration by the auditor when auditing the annual accounts. In particular, BaFin may determine areas of emphasis for the audits.

## **Section 25 Use of agents; authority to issue orders**

- (1) Where an institution intends to provide payment services via an agent, it shall communicate the following information to BaFin and the Deutsche Bundesbank:
1. the name and address of the agent;
  2. a description of the internal control mechanisms used by the agent to comply with the requirements of the Money Laundering Act; this shall be updated without delay in the event of material changes to the particulars communicated at the initial notification;
  3. the identity of managing directors and persons responsible for the management of the agent that is to be used to provide payment services, and in the case of agents that are not payment service providers, evidence that they are fit and proper and have the necessary knowledge, skills and experience;
  4. the payment services of the payment institution for which the agent is mandated;
  5. where applicable, the unique identification code or number of the agent;

BaFin will inform the institution within two months following the complete submission of the particulars pursuant to sentence 1 whether the agent will be added to the register of payment institutions. The agent may only start to provide payment services once it has been added to the register of payment institutions. If there is any change in the circumstances notified pursuant to subsection (1), the institution shall notify these changes to BaFin and the Deutsche Bundesbank in writing without delay; sentences 2 and 3 shall apply *mutatis mutandis*.

(2) The institution shall ensure that the agent is fit and proper and has the necessary knowledge, skills and experience, fulfils the statutory requirements when providing the payment services, informs the payment service user about its status prior to or during the establishment of the business relationship and notifies the payment service user about the termination of this status without delay. The institution shall retain the necessary evidence of the fulfilment of its duties pursuant to sentence 1 until at least five years have elapsed after the termination of the agent's status.

(3) BaFin may prohibit an institution which has not properly performed the selection or monitoring of its agents from tying agents within the meaning of subsections (1) and (2) to the institution. Prohibition can relate to the execution of payment services by individual agents or to the tying of agents in general.

(4) Where an institution intends to provide payment services by mandating an agent in another Member State or another signatory state to the Agreement on the European Economic Area, it shall follow the procedure pursuant to Section 38(1).

(5) The Federal Ministry of Finance shall be authorised, by way of a statutory order not requiring the consent of the Bundesrat, in consultation with the Deutsche Bundesbank, to adopt more detailed provisions on the nature, scope and form of the evidence pursuant to subsection (2) sentence 2, insofar as this is necessary for the performance of BaFin's tasks. In agreement with the Deutsche Bundesbank, the Federal Ministry of Finance may delegate

the authority to BaFin by way of a statutory order. The central associations representing the institutions shall be consulted before the statutory order is issued.

Footnote

(+++ Section 25: for non-application, see Section 2(6) +++)

## **Section 26 Outsourcing**

(1) An institution shall, depending on the nature, scope, complexity and riskiness of outsourcing to another undertaking activities and processes that are material to the provision of payment services, the conduct of electronic money business or of any of an institution's other usual services under this Act, including IT systems, make appropriate arrangements in order to avoid incurring excessive additional risks. Outsourcing shall impair neither the proper execution of such business and services nor the business organisation. In particular, the institution shall ensure ongoing appropriate and effective risk management that includes the outsourced activities and processes, and the outsourcing shall not lead to the responsibility of the managing directors or other persons specified in Section 10(2) number 14 and in Section 11(2) sentence 2 number 5 being delegated to the external service provider. The institution shall remain responsible for ensuring compliance with the statutory provisions to be observed by the institution. Outsourcing shall not prevent BaFin from performing its tasks; its right to request information, right to review and ability to supervise shall be ensured by means of suitable arrangements with regard to the outsourced activities and processes, including in the event of outsourcing to an undertaking established abroad; this shall apply mutatis mutandis to the performance of the tasks of the institution's auditors. Outsourcing requires a written agreement which lays down the institution's necessary rights to ensure compliance with the aforementioned conditions, including the right to give instructions and the right to give notice, as well as the corresponding duties on the part of the external service provider.

(2) Where an institution intends to outsource material operational functions of payment services or of electronic money business, it shall inform BaFin and the Deutsche Bundesbank accordingly. An operational function is material if a defect or failure in its performance would materially impair the continuing compliance of a payment institution with the requirements of its authorisation or its other obligations under this Act, or its financial performance, or the soundness or the continuity of its payment services or electronic money business.

(3) Where there are reasonable grounds to suspect that BaFin's right to review and ability to supervise are impaired in connection with outsourcing, BaFin may issue orders that are appropriate and necessary to eliminate these impairments and prevent future impairments at the institution. Where the measures prove to be insufficient to ensure BaFin's

right to review and ability to supervise, BaFin may order the insourcing of the outsourced functions. This shall be without prejudice to BaFin's powers pursuant to Section 27(3).

(4) If the use of entities to which functions are outsourced changes, the institution shall notify BaFin and the Deutsche Bundesbank of such changes in writing without delay.

## **Section 27 Organisational obligations**

(1) An institution shall have in place a proper business organisation; the managing directors are responsible for the institution's proper business organisation. A proper business organisation comprises, in particular:

1. appropriate measures in respect of corporate governance, control mechanisms and procedures that ensure that the institution meets its obligations;
2. the management and maintenance of a loss database and complete documentation of business operations permitting seamless monitoring by BaFin for its area of responsibility;
3. an adequate contingency plan for IT systems;
4. internal procedures and control systems which ensure compliance with Regulation (EC) No 924/2009, Regulation (EU) No 260/2012 and Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions (OJ L 123/1 of 19 May 2015);
5. without prejudice to the duties set forth in Sections 4 to 7 of the Money Laundering Act, adequate measures, including data processing systems, to ensure compliance with the requirements of the Money Laundering Act and of Regulation (EU) 2015/847; the institution may process personal data to the extent necessary to fulfil this obligation.

(2) Sections 6a, 24c, 25i, 25m and 60b of the Banking Act as well as Section 93(7) and (8) in conjunction with Section 93b of the Tax Code (*Abgabenordnung*) shall apply to institutions within the meaning of this Act mutatis mutandis. Section 24c of the Banking Act shall apply subject to the proviso that BaFin may access individual data from the filing system kept pursuant to Section 24c(1) sentence 1 of the Banking Act to the extent necessary for it to perform its prudential tasks under this Act and the Money Laundering Act, in particular with respect to unauthorised payment services and unauthorised electronic money business, and where there is particular urgency in individual cases.

(3) In individual cases, BaFin may issue orders to an institution that are appropriate and necessary to meet the requirements of a proper business organisation within the meaning of subsection (1). BaFin may lay down criteria which, if they are met, allow institutions to waive the use of data processing systems pursuant to subsection (1) sentence 2 number 5.

(4) BaFin will monitor institutions' compliance with the duties contained in Regulation (EU) 2015/847, Regulation (EC) No 924/2009, Regulation (EU) No 260/2012 and Regulation (EU) 2015/751. It may issue orders to an institution and its managing directors that are

appropriate and necessary to prevent or stop breaches of duties pursuant to the regulations listed in sentence 1.

Footnote

(+++ Section 27(1) sentence 2 number 5, subsections (2) to (4): for application, see Section 39(3) +++)

## **Section 28 Notifications; authority to issue orders**

(1) An institution shall notify to BaFin and the Deutsche Bundesbank without delay:

1. the intention to appoint a managing director or to authorise a person to individually represent the institution in all aspects of its business, stating the facts which are material to assessing their fitness and properness, knowledge, skills and experience, including management experience, as well as the realisation of that intention;
2. the retirement of a managing director and the revocation of the authorisation to individually represent the institution in all aspects of its business;
3. changes in the legal form, to the extent that a new authorisation pursuant to Section 10(1) or Section 11(1) or new registration pursuant to Section 34(1) is not already required, and changes in the firm name;
4. the acquisition or disposal of a significant holding in its own institution, the reaching, exceeding or falling below the thresholds for participating interests of 20%, 30% and 50% of the voting rights or capital, and the fact that the institution becomes or ceases to be the subsidiary of another undertaking, as soon as the forthcoming change in these participatory relationships comes to the institution's attention;
5. a loss amounting to 25% of eligible capital;
6. the relocation of the office or domicile;
7. the cessation of business operations;
8. the emergence of, change in or termination of a close link within the meaning of Article 4(1) number 38 of Regulation (EU) No 575/2013 with another natural person or another undertaking;
9. the intention to merge with another institution within the meaning of this Act or with an institution within the meaning of Section 1(1b) of the Banking Act;
10. the intention to outsource and the realisation of outsourcing.

(2) An institution shall notify BaFin and the Deutsche Bundesbank in advance of every material change to measures taken pursuant to Section 17 to secure funds. Where an institution is required to maintain cover for insured events pursuant to Section 16 or Section 36, it shall notify BaFin and the Deutsche Bundesbank in advance of every material change in the cover.

(3) Managing directors, persons responsible for the management of the institution and, in the case of institutions which engage in other business activities in addition to the provision

of payment services and the issuance of electronic money, persons who are responsible for the management of the payment services activities and the electronic money business of the institution, shall notify to BaFin and the Deutsche Bundesbank without delay:

1. the commencement and termination of activities as a managing director or as a member of the administrative or supervisory body of another undertaking; and
2. the acquisition and disposal of a direct participation in an undertaking, as well as any changes in the amount of such participation.

(4) The Federal Ministry of Finance shall be authorised, by way of a statutory order not requiring the consent of the Bundesrat, in consultation with the Deutsche Bundesbank, to adopt more detailed provisions governing the nature, scope, timing and form of the notifications and submissions of documents under this Act and on the permissible data storage media, transmission channels and data formats, and may expand the existing notification requirements to include the obligation to submit summary reports and lists, insofar as this is necessary for the performance of BaFin's tasks. In agreement with the Deutsche Bundesbank, the Federal Ministry of Finance may delegate this authority by way of a statutory order to BaFin. The central associations representing the institutions shall be consulted before the statutory order is issued.

Footnote

(+++ Section 28(1) numbers 1, 2, 6 and 7: for application, see Section 39(1) +++)

### **Section 29 Monthly returns; authority to issue orders**

(1) Institutions shall submit a monthly return to the Deutsche Bundesbank without delay after the end of each month. The Deutsche Bundesbank will forward these returns, along with its comments, to BaFin; the latter may waive its right to the forwarding of certain returns.

(2) In the cases of Section 15(1) sentence 3, BaFin may determine whether an institution shall submit an aggregated monthly return to the Deutsche Bundesbank without delay after the end of each month, and if so, how.

(3) The Federal Ministry of Finance shall be authorised, by way of a statutory order not requiring the consent of the Bundesrat, in consultation with the Deutsche Bundesbank, to adopt more detailed provisions governing the content, nature, scope, and timing as well as on the permissible data storage media, transmission channels and data formats of the monthly returns, in particular to gain an insight into developments in institutions' assets and liabilities position and profitability, and on additional information, insofar as this is necessary for the performance of BaFin's tasks. In agreement with the Deutsche Bundesbank, the Federal Ministry of Finance may delegate this authority by way of a statutory order to BaFin. The central associations representing the institutions shall be consulted before the statutory order is issued.

## **Section 30 Storage of documents**

Without prejudice to other statutory provisions, institutions shall retain all documents for at least five years for prudential purposes. Section 257(3) and (5) of the Commercial Code as well as Section 147(5) and (6) of the Tax Code shall apply mutatis mutandis. This shall be without prejudice to Section 257(4) of the Commercial Code.

## **Part 6**

### **Special provisions for electronic money business and the distribution and redeemability of electronic money**

#### **Section 31 Prohibition on issuing electronic money via other persons**

Electronic money institutions may not issue electronic money via natural or legal persons acting on behalf of the electronic money institution.

#### **Section 32 Distribution and redemption of electronic money via electronic money agents**

(1) Electronic money institutions may use an electronic money agent for the distribution or redemption of electronic money. Section 25(1) shall apply mutatis mutandis with the proviso that evidence of being fit and proper and possessing the necessary knowledge, skills and experience shall not be submitted.

(2) BaFin may prohibit an electronic money institution which has not properly performed the selection or monitoring of its electronic money agents from tying electronic money agents to the electronic money institution. Prohibition may relate to the distribution or redemption of electronic money or to the tying of electronic money agents in general.

(3) Where an electronic money institution intends to distribute or redeem electronic money via electronic money agents in a Member State or another signatory state to the Agreement on the European Economic Area, Section 25(4) in conjunction with Section 38(1) shall apply mutatis mutandis.

#### **Section 33 Duties of the electronic money issuer when issuing and redeeming electronic money**

(1) The electronic money issuer shall always issue electronic money at par value on the receipt of funds. Upon request by the electronic money holder, the electronic money issuer shall redeem, at any moment and at par value, electronic money for legal tender. Where redemption is requested before the termination of the contract, the electronic money holder may also request redemption of the electronic money in part.

(2) The electronic money issuer shall inform the electronic money holder of the conditions for the redemption of electronic money, including any fees relating thereto, before the electronic money holder is bound by any contract or offer. The conditions shall be clearly and prominently stated in the contract between the electronic money issuer and the electronic money holder.

(3) The electronic money issuer may only charge the electronic money holder a fee for the redemption of electronic money if this has been contractually agreed. Such an agreement shall be permissible only in the event that

1. the electronic money holder requests the redemption before the termination of the contract;
2. the contract was concluded for a specified period and is terminated by the electronic money holder prior to the expiry of this period; or
3. the electronic money holder requests the redemption more than one year after the date of termination of the contract.

The fee shall be proportionate and commensurate with the actual costs incurred by the electronic money issuer.

(4) By way of derogation from subsection (1) sentence 3, where redemption is requested on or up to one year after the date of the termination of the contract, the total amount of the electronic money held by the electronic money issuer shall be redeemed. Where an electronic money institution carries out one or more of the activities within the meaning of Section 11(1) sentence 2 number 5 and the electronic money holder requests a total amount following termination of the electronic money contract, this amount shall be redeemed for legal tender if it is unknown in advance what proportion of the funds is to be used as electronic money.

(5) Deviations to the provisions in subsection (1) sentence 3 and subsections (3) and (4) to the detriment of the electronic money holder shall only be permitted if the latter is not a consumer.

## **Part 7**

### **Specific provisions for account information services**

#### **Section 34 Registration requirement; authority to issue orders**

(1) Anyone wishing to provide solely account information services as a payment service professionally in Germany or on a scale that requires a commercially organised business operation only needs to be registered in writing by BaFin. The application for registration shall contain the following information and evidence:

1. a description of the programme of operations setting out in particular the nature of the intended account information service;

2. a business plan including a forecast budget calculation for the first three financial years which demonstrates that the account information service provider is able to employ the appropriate and proportionate systems, resources and procedures to operate soundly;
3. a description of the account information service's governance arrangements and internal control mechanisms, including administrative, risk management and accounting procedures, which demonstrates that those governance arrangements, control mechanisms and procedures are proportionate, appropriate, sound and adequate;
4. a description of the procedures in place to monitor, handle and follow up a security incident and security-related customer complaints, including an incidents reporting mechanism which takes account of the notification obligations laid down in Section 54;
5. a description of the processes in place to file, monitor, track and restrict access to sensitive payment data;
6. a description of business continuity arrangements including a clear identification of the critical operations, effective contingency plans and a procedure to regularly test and review the adequacy and efficiency of such plans;
7. a description of the security policy, including a detailed risk assessment in relation to the account information service provided and a description of security control and mitigation measures taken to adequately protect payment service users against the risks identified, including fraud and illegal use of sensitive and personal data;
8. a description of the account information service's structural organisation, including, where applicable, a description of the intended establishment of branches and of the off-site and on-site checks that the account information service provider undertakes to perform on them at least annually, as well as a description of outsourcing arrangements, and of its participation in a national or international payment system;
9. the identity of managing directors, persons responsible for the management of the account information service provider and, in the case of undertakings which engage in other business activities in addition to the provision of the account information service, persons responsible for the management of the payment services activities of the account information service provider;
10. the account information service's legal status and articles of association or partnership agreement;
11. the address of the account information service's head office or registered office;
12. a description of the cover for insured events pursuant to Section 36 including an explanation of the risk profile of the account information service, of the provision, if any, of payment services other than the account information service or of the pursuit of business activities other than payment services activities, the number of customers using the account information service, and the specific characteristics of the professional indemnity insurance or comparable guarantee.

Using the documents referred to in sentence 2 numbers 3, 4 and 8, the account information service provider shall provide a description of its audit arrangements and the organisational

arrangements it has set up with a view to taking all reasonable steps to protect the interests of its customers and to ensure continuity and reliability in the performance of the account information service provided. The description of the security policy pursuant to sentence 2 number 7 shall indicate how these measures ensure a high level of technical security and data protection; this shall also apply to the software and IT systems used by the account information service provider or the undertakings to which the account information service provider outsources the whole or part of its operations. The application shall include evidence that the persons referred to in sentence 2 number 9 are fit and proper and possess adequate theoretical and practical knowledge and experience to provide the account information service. The account information service provider shall appoint at least two managing directors; one managing director shall suffice for small undertakings. In individual cases, BaFin may request more detailed information and evidence for the information to be provided pursuant to sentences 2 to 6, insofar as this appears necessary for BaFin to fulfil its statutory mandate.

(2) Within three months of receipt of the application or, if the application is incomplete, of all of the information required for the decision, BaFin will inform the applicant whether the registration is granted or refused.

(3) BaFin may grant registration subject to conditions which shall be consistent with the objective pursued by this Act.

(4) Above and beyond the provision of the account information service, the registration shall encompass only the provision of operational and closely related ancillary services; ancillary services are services for ensuring data protection as well as the storage and processing of data.

(5) The account information service provider shall notify BaFin without delay of any materially or structurally material change in the actual or legal circumstances, insofar as it affects the correctness of the information and evidence submitted pursuant to subsection (1).

(6) To the extent that registration pursuant to subsection (1) is required for the provision of account information services, entries in public registers may be made only if the court of registration has been furnished with evidence of such registration.

(7) The Federal Ministry of Finance shall be authorised, by way of a statutory order not requiring the consent of the Bundesrat, in consultation with the Deutsche Bundesbank, to adopt more detailed provisions governing the nature, scope and form of the application documents provided for under this provision. In agreement with the Deutsche Bundesbank, the Federal Ministry of Finance may delegate this authority by way of a statutory order to BaFin. The central associations representing the institutions shall be consulted before the statutory order is issued. The Federal Office for Information Security shall be consulted where the security of IT systems is affected.

## **Section 35 Refusal of registration**

Registration for the provision of account information services shall be refused if

1. the application does not contain sufficient information or documentation in breach of Section 34(1);
2. the applicant does not have cover for insured events pursuant to the conditions of Section 36;
3. there are reasonable grounds to suspect that the applicant is not reliable, or does not, on other grounds, meet the standards required of such an applicant in the interests of ensuring the sound and prudent management of the account information service;
4. there are grounds which indicate that a managing director is not fit and proper, or does not possess the knowledge, skills and experience required to manage the account information service and BaFin designates another person as a managing director pursuant to Section 1(8) sentence 2; possession of the necessary knowledge, skills and experience requires possession of sufficient theoretical and practical knowledge in connection with the business concerned, as well as managerial experience;
5. the applicant does not have either effective procedures to identify, manage, monitor and report risks or adequate internal control mechanisms, including sound administrative and accounting procedures;
6. there are reasonable grounds to suspect that effective supervision of the applicant is impaired;
7. the applicant's head office is not in Germany or it does not provide at least part of its services in Germany.

## **Section 36 Cover for insured events; authority to issue orders**

(1) An institution that provides account information services shall be required to take out professional indemnity insurance or a comparable guarantee and maintain it during the period of validity of its registration. The professional indemnity insurance or comparable guarantee shall cover the territories in which the account information service provider offers its services and shall cover the account information service provider's liability to the account servicing payment service provider and the payment service user for unauthorised or fraudulent access to payment account information and unauthorised or fraudulent use of the same.

(2) The professional indemnity insurance shall be taken out with an insurance undertaking authorised to conduct business in Germany; Section 16(2) sentence 2 shall apply *mutatis mutandis*.

(3) Section 16(3) and (4) as well as Section 17(3) shall apply *mutatis mutandis*.

(4) The Federal Ministry of Finance shall be authorised, by way of a statutory order not requiring the consent of the Bundesrat, to adopt more detailed provisions governing the scope and content of the required cover for insured events. The Federal Ministry of Finance may delegate this authority to BaFin by way of a statutory order. The central associations representing the institutions and the insurance undertakings shall be consulted before the statutory order is issued.

### **Section 37 Lapse and revocation of registration**

(1) Registration shall lapse if the account information service provider does not make use of it within one year from the date on which it is granted or expressly renounces it.

(2) BaFin may revoke registration pursuant to the provisions of the Act on Administrative Procedures, and also if

1. the business operations to which the registration relates have not been conducted for more than six months;
2. the registration was obtained through false statements or any other irregular means;
3. grounds become known which justified the refusal of registration pursuant to Section 35 or if the notification requirement pursuant to Section 34(5) is breached.

(3) Section 38 of the Banking Act shall apply mutatis mutandis. Section 48(4) sentence 1 and Section 49(2) sentence 2 of the Act on Administrative Procedures regarding the one-year period shall not apply.

(4) BaFin will publish the revocation or lapse of registration in the Federal Gazette and in the register of payment institutions.

## **Part 8**

### **Passporting, branches and provision of cross-border services, branches of institutions from third countries**

#### **Section 38 Establishment of a branch, provision of cross-border services by domestic institutions**

(1) An institution authorised pursuant to Section 10(1) or Section 11(1) or registered pursuant to Section 34(1) intending to establish a branch in another Member State or another signatory state to the Agreement on the European Economic Area or to make use of agents shall notify this fact to BaFin and the Deutsche Bundesbank without delay in accordance with sentence 2. The notification shall specify:

1. the state in which the branch is to be established or the agent is to be used;
2. a business plan indicating the nature of the planned business and the organisational structure of the branch and the information pursuant to Section 10(2) sentence 1 numbers 2 and 5;

3. the information pursuant to Section 25(1) if the use of agents is intended;
4. the address at which documents may be served on the institution and records requested from the institution in the state in which it maintains a branch;
5. the names of the managers of the branch.

(2) Subsection (1) sentence 1 shall apply mutatis mutandis to the intention to provide payment services or conduct electronic money business by means of cross-border services in another Member State or in another signatory state to the Agreement on the European Economic Area. The notification shall specify:

1. the name of the state in which the cross-border service is to be provided;
2. a business plan specifying the intended activities; and
3. the information pursuant to Section 25(1) if agents or electronic money agents are to be used in this state.

(3) Where an institution intends to outsource operational functions of payment services or of electronic money business to another undertaking in another Member State or another signatory state to the Agreement on the European Economic Area, it shall notify this fact to BaFin and the Deutsche Bundesbank without delay.

(4) Within one month of receipt of all of the notifications pursuant to subsections (1) to (3), BaFin will communicate the corresponding information to the competent authorities of the host Member State in each case.

(5) BaFin will decide whether the branch or the agent is to be entered into the register of institutions pursuant to Section 43(1), Section 44(2) and will notify the competent authorities of the host Member State and the institution of its decision within three months of receipt of all the information referred to in subsections (1) to (3). BaFin's decision will also take into account an assessment of the competent authorities of the host Member State. Where BaFin disagrees with the assessment of the competent authorities of the host Member State, it shall provide the latter with the reasons for its decision. If the assessment of BaFin, in particular in light of the information received from the competent authorities of the host Member State, is not favourable, BaFin will reject the entry of the agent or branch in the register of institutions pursuant to Section 43(1), Section 44(2) or will withdraw the entry if already made.

(6) Upon entry in the register of institutions pursuant to Section 43(1), Section 44(2), the agents or branch may commence their activities in the host Member State. The institution shall notify BaFin and the Deutsche Bundesbank of the date from which it commences its activities through the agents or branch in the relevant host Member State. BaFin will inform the competent authorities of the host Member State accordingly.

(7) Where the competent authority of the host Member State informs BaFin that an institution authorised in Germany which has agents or branches in the territory of the other Member State does not comply with the prudential requirements applicable there, BaFin will,

after having assessed the information sent to it, without delay take all measures needed to ensure that the requirements are met. It shall keep the competent authorities of the host Member State and those of any other Member State concerned informed of the measures it has taken.

(8) The same rights pursuant to this Act shall be directly conferred on BaFin and the Deutsche Bundesbank vis-à-vis the foreign branch and vis-à-vis the agents, electronic money agents and external service providers used by a domestic institution in other states of the European Economic Area as vis-à-vis the institution's domestic entities. BaFin, or the Deutsche Bundesbank via BaFin, will generally obtain the consent of the competent authorities of the host Member State prior to on-site inspections.

(9) Where changes occur in the circumstances notified pursuant to subsection (1) sentence 2, subsection (2) sentence 2 or subsection (3), the institution shall notify BaFin and the Deutsche Bundesbank of these changes in writing without delay. Subsections (4) and (5) shall apply mutatis mutandis to the procedure.

### **Section 39 Establishment of a branch, provision of cross-border services by undertakings established in another state of the European Economic Area**

(1) An institution established in another Member State or another signatory state to the Agreement on the European Economic Area may, without authorisation from BaFin, via a branch or by means of cross-border services or via agents, provide payment services or conduct electronic money business or distribute or redeem electronic money via electronic money agents in Germany if the undertaking has been authorised or registered by the competent authorities of the other state, the business is covered by the authorisation or registration, and the undertaking, agents or electronic money agents are supervised in accordance with regulations corresponding to those of Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337/35 of 23 December 2015; L 169/18 of 28 June 2016) or of Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ L 267/7 of 10 October 2009) and the agents have been entered in the register of institutions maintained by the competent authority of the home Member State. This shall be without prejudice to Section 14 of the Industrial Code (*Gewerbeordnung*).

(2) Where, in the case of subsection (1), BaFin has specific grounds to suspect that money laundering within the meaning of Section 261 of the Criminal Code (*Strafgesetzbuch*) or terrorist financing within the meaning of Section 1(2) of the Money Laundering Act is taking place, has taken place, or has been attempted, in connection with the planned

mandating of an agent or electronic money agent or the establishment of a branch, or that the mandating of the agent or the establishment of the branch increases the risk of money laundering or terrorist financing taking place, it shall notify the competent authority of the home Member State. The competent authority of the home Member State is the authority which may reject the entry of the agent or the branch in the local register of payment institutions or register of electronic money institutions, or withdraw the entry if already made.

(3) Section 17 of the Act Establishing the Federal Financial Supervisory Authority as well as Sections 3, 7 to 9 and 19(1) and (4) shall apply mutatis mutandis to institutions within the meaning of subsection (1) sentence 1. In addition, Section 27(1) sentence 2 number 5, subsections (2) to (4), Section 28(1) numbers 1, 2, 6 and 7 and Sections 60 to 62 shall apply to institutions which establish a branch or use agents, provided that one or more branches of the same undertaking in Germany are deemed to be a single branch. Changes in the business plan, in particular the nature of intended activities and the organisational structure of the branch, the address and the managers shall be notified to BaFin and the Deutsche Bundesbank in writing not less than one month before the entry into force of such changes.

(4) Subsection (3) sentence 1 shall apply mutatis mutandis to agents, electronic money agents and central contact persons.

(5) Where BaFin is sent relevant information pursuant to Section 38 by the competent authorities of the state in which the institution is authorised, BaFin will assess that information within one month of receipt and provide the competent authorities of this state with relevant information in connection with the intended provision of payment services by the institution by means of establishing a branch or providing cross-border services in Germany.

(6) Should BaFin determine that the foreign institution does not comply with its prudential requirements in Germany, it shall notify the competent authorities of the home Member State without delay. Pending measures by the competent authorities of the home Member State, or where the measures taken prove inadequate, BaFin may, after informing the competent authorities of the home Member State, take the measures necessary to address a serious threat to the collective interests of the payment service users in Germany; if necessary, it may prohibit the undertaking from conducting new business in Germany. In urgent cases, BaFin may take the necessary measures before initiating the procedure. Any such measures shall be appropriate to their intended purpose of addressing a serious threat to the collective interests of the payment service users in the host Member State. They shall be terminated when the serious threat identified has been addressed. They shall not result in a preference for payment service users of the payment institution in the host Member State over payment service users of payment institutions in other Member States. BaFin will inform the competent authorities of the home Member State and those of any other Member State concerned as well as the Commission and the European Banking Authority in advance, or without delay in urgent cases, of the measures taken under sentence 2.

(7) After notifying BaFin in advance, the competent authorities of the home Member State may carry out themselves or through the intermediary of persons they appoint for that purpose inspections at the branch of the information that is required for the prudential supervision of the branch. At the request of the competent authorities of the home Member State, persons employed by BaFin and the Deutsche Bundesbank may support them in the inspection pursuant to sentence 1 or carry out the inspection on their behalf; in this context, BaFin and the Deutsche Bundesbank shall be granted the authority pursuant to Section 19 or, where there are reasonable grounds to suspect, or it is established that, the foreign undertaking is providing unauthorised payment services or conducting electronic money business without authorisation, or is carrying out unauthorised transactions pursuant to the Banking Act, the Insurance Supervision Act (*Versicherungsaufsichtsgesetz*) or the Investment Code, or is in breach of similar provisions of the home state, also the rights pursuant to Section 8.

(8) Should the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union take effect without a withdrawal agreement within the meaning of Article 50(2) sentence 2 of the Treaty on European Union having come into force by that time, BaFin may, in order to prevent adverse effects on the functioning or stability of the payments markets, order that subsections (1) to (7) be applicable *mutatis mutandis*, in whole or in part, for a transition period after the withdrawal, to undertakings established in the United Kingdom of Great Britain and Northern Ireland which, at the time of the withdrawal of the United Kingdom of Great Britain and Northern Ireland, pursuant to subsection (1), were providing payment services or conducting electronic money business in Germany via a branch or by means of cross-border services or via agents or were distributing or redeeming electronic money via electronic money agents. This shall apply only insofar as the undertakings provide payment services or conduct electronic money business after the withdrawal which are closely related to contracts that existed at the time of withdrawal. The transition period beginning from the time of the withdrawal may not exceed a duration of 21 months. The order may also be issued and made public as an administrative order (*Allgemeinverfügung*) without prior consultation.

#### **Section 40 Reporting requirement**

An institution established in another Member State which has agents or branches in Germany shall report to BaFin periodically on the activities carried out in Germany.

#### **Section 41 Central contact person; authority to issue orders**

(1) An institution established in another Member State which operates in Germany in a form other than via a branch shall, upon request, notify BaFin of a central contact person in Germany.

(2) The Federal Ministry of Finance shall be authorised, by way of a statutory order not requiring the consent of the Bundesrat, to specify the tasks of the central contact person, the requirements for the transmission of documentation and the submission of information. The Federal Ministry of Finance may delegate this authority to BaFin by way of a statutory order. The central associations representing the institutions shall be consulted before the statutory order is issued.

## **Section 42 Branches of undertakings established outside the European Economic Area**

(1) Where an undertaking established outside the European Union or European Economic Area maintains a branch in Germany which provides payment services or conducts electronic money business, that branch shall be deemed to be an institution within the meaning of this Act. Where the undertaking maintains multiple branches in Germany, these shall be deemed to be a single institution.

(2) This Act shall apply to the institutions specified in subsection (1) pursuant to subsections (3) to (6).

(3) The institution shall appoint at least two natural persons residing in Germany who are authorised to manage the business activities of the institution and represent the undertaking. These persons shall be deemed to be managing directors. Their names shall be filed for registration in the Commercial Register. For small institutions and institutions with a small volume of business, one managing director shall suffice.

(4) The institution shall keep separate books and render separate accounts to BaFin and the Deutsche Bundesbank in respect of the business it conducts and the assets of the undertaking used to conduct its business. To this extent, the provisions of the Commercial Code concerning trading books for credit institutions and financial services institutions shall apply mutatis mutandis. On the liabilities side of the annual statement of assets and liabilities, the amount of working capital supplied to the institution by the undertaking and the amount of operating profits retained by the institution to bolster its own funds shall be shown separately. The amount by which the liability items exceed the asset items or by which the asset items exceed the liability items shall be shown separately and in a single sum at the end of the statement of assets and liabilities.

(5) The statement of assets and liabilities to be drawn up for the end of each financial year pursuant to subsection (4), together with a statement of income and expenses and notes thereon, shall be deemed to constitute the annual accounts. Section 340k of the Commercial Code shall apply mutatis mutandis to the auditing of the annual accounts, provided that the auditor is chosen and engaged by the managing directors. The annual accounts of the institution shall be submitted together with the annual accounts of the undertaking for the same financial year.

(6) The sum total of the amounts shown in the quarterly report pursuant to Section 15(2) as working capital placed at the institution's disposal by the undertaking and the operating profits retained by the institution to bolster its own funds, less the amount of a credit balance on inter-branch settlement account, if any, shall be deemed to constitute the institution's own funds.

## **Part 9 Registers**

### **Section 43 Register of payment institutions**

(1) BaFin will maintain a register of payment institutions on its website, in which it shall enter:

1. every German payment institution to which it has granted authorisation pursuant to Section 10(1), together with the date and scope of this authorisation and, where applicable, the date of lapse or revocation of the authorisation;
2. every German account information service provider whose registration pursuant to Section 34 it has confirmed, together with the date of addition to the register of payment institutions and, where applicable, the date of deletion from the register of payment institutions;
3. the branches established by German payment institutions, stating the state in which the branch is established, the scope and the date on which it took up business operations;
4. the agents acting for a payment institution pursuant to Section 25 and the date on which the respective agent's activities began and ended.

Payment institutions that are registered solely as account information service providers shall be listed separately from the other payment institutions. The register of payment institutions shall be updated continuously and without delay.

(2) Where there are grounds which indicate that the data on an agent transmitted by an institution to BaFin pursuant to Section 25(1) are not applicable, BaFin may reject the agent's entry in the register of payment institutions. BaFin will notify the institution of this without delay.

(3) BaFin will, without delay, transmit the information entered in the register of payment institutions pursuant to subsection (1) to the European Banking Authority in a language customary in the field of finance. It will inform the European Banking Authority of the reasons for the lapse or revocation of any authorisation granted pursuant to Section 10(1) or Section 11(1) or any registration granted pursuant to Section 34(1).

### **Section 44 Register of electronic money institutions**

(1) BaFin will maintain on its website a separate register of electronic money institutions which shall be continuously updated and to which it shall add every German electronic

money institution to which it has granted authorisation pursuant to Section 11(1), together with the date of issue and the scope of the authorisation and, where applicable, the date of lapse or revocation of the authorisation.

(2) Branches and agents of the electronic money institution shall be added mutatis mutandis pursuant to Section 43(1) numbers 3 and 4 as well as subsection (2). Section 43(2) shall apply to both mutatis mutandis.

## **Part 10**

### **Common provisions for all payment service providers**

#### **Division 1**

##### **Card-based payment instruments**

###### **Section 45 Obligations of the account servicing payment service provider**

(1) An account servicing payment service provider shall, upon the request of a payment service provider issuing card-based payment instruments (card-issuing payment service provider), confirm to the latter without delay whether the funds necessary for the execution of a card-based payment transaction are available on the payment account of the payer, if

1. the payment account of the payer is accessible online at the time of the request;
2. the payer has given explicit consent to the account servicing payment service provider to respond to requests from a specific card-issuing payment service provider to confirm that the funds corresponding to a certain card-based payment transaction are available on the payer's payment account; and
3. the consent referred to in number 2 has been given before the first request for confirmation is made.

(2) The response of the account servicing payment service provider to the request shall not include any information on the payer's account balance and shall consist solely in a simple "yes" or "no" answer.

(3) Confirmation pursuant to subsection (1) shall not allow for the account servicing payment service provider to block funds on the payer's payment account.

###### **Section 46 Rights and obligations of the card-issuing payment service provider**

The card-issuing payment service provider may request the confirmation referred to in Section 45(1) from the account servicing payment service provider if the payer

1. has given the card-issuing payment service provider prior explicit consent to do so; and
2. has initiated the card-based payment transaction for the amount in question using a card-based payment instrument issued by the card-issuing payment service provider.

The card-issuing payment service provider shall authenticate itself towards the account servicing payment service provider before each individual confirmation request and securely communicate with the latter. The card-issuing payment service provider shall not store the response pursuant to Section 45(2) or use it for purposes other than for the execution of the card-based payment transaction. Further details are governed by the delegated legal act adopted pursuant to Article 98 of Directive (EU) 2015/2366.

### **Section 47 Exclusion for electronic money instruments**

Sections 45 and 46 shall not apply to payment transactions initiated by card-based payment instruments on which electronic money is stored.

### **Division 2**

### **Access to payment accounts on the part of payment initiation service providers and account information service providers**

### **Section 48 Obligations of the account servicing payment service provider with respect to payment initiation services**

- (1) When the payer gives its explicit consent for a payment to be executed, the account servicing payment service provider shall
  1. communicate securely with the payment initiation service provider;
  2. immediately after receipt of the payment order via a payment initiation service provider, provide or make available all information on the initiation of the payment transaction and all information accessible to the account servicing payment service provider regarding the execution of the payment transaction to the payment initiation service provider; and
  3. treat payment orders transmitted via a payment initiation service provider without any discrimination other than for objective reasons, in particular in terms of timing, priority or charges vis-à-vis payment orders transmitted directly by the payer.
  
- (2) The provision of payment initiation services shall not be dependent on the existence of a contractual relationship between the payment initiation service provider and the account servicing payment service provider for that purpose.
  
- (3) Further details are governed by the delegated legal act adopted pursuant to Article 98 of Directive (EU) 2015/2366.

### **Section 49 Obligations of the payment initiation service provider**

- (1) The payment initiation service provider shall not modify the amount, the payee or any other feature of the payment transaction. It shall not hold at any time the payer's funds in connection with the provision of the payment initiation service.

(2) A payment initiation service provider shall be obliged to identify itself towards the account servicing payment service provider of the payer every time it initiates a payment. It shall ensure that the personalised security credentials of the payment service user are not accessible to other parties, with the exception of the user and the issuer of the personalised security credentials.

(3) The payment initiation service provider shall communicate with the account servicing payment service provider, the payer and the payee in a secure way. Where it is necessary to transmit the personalised security credentials of the payer, this shall only be done through safe and efficient channels.

(4) The payment initiation service provider shall only request from the payer the data necessary to provide the payment initiation service and shall not store any sensitive payment data of the payer. It shall store, use or access data solely for the purposes of the payment initiation service as explicitly requested by the payer. Any other information it obtains about the payer in the provision of payment initiation services shall only be provided to the payee; this assumes the explicit consent of the payer.

(5) As soon as the payment order has been initiated, the payment initiation service provider shall make the reference data of the payment transaction accessible to the account servicing payment service provider of the payer.

(6) Further details are governed by the delegated legal act adopted pursuant to Article 98 of Directive (EU) 2015/2366.

#### **Section 50 Obligations of the account servicing payment service provider with respect to account information services**

(1) The account servicing payment service provider shall

1. communicate securely with the account information service provider; and
2. treat data requests transmitted by an account information service provider without any discrimination other than for objective reasons.

(2) The provision of account information services shall not be dependent on the existence of a contractual relationship between the account information service provider and the account servicing payment service provider for that purpose.

(3) Further details are governed by the delegated legal act adopted pursuant to Article 98 of Directive (EU) 2015/2366.

#### **Section 51 Obligations of the account information service provider**

(1) The account information service provider shall provide services only where based on the payment service user's explicit consent. It shall access only the information from payment accounts designated by the payment service user and associated payment transactions. It shall not request sensitive payment data linked to the payment accounts. It shall store, use or access data solely for the purposes of the account information service as explicitly requested by the payment service user.

(2) An account information service provider shall be obliged to identify itself towards the account servicing payment service provider of the payment service user for each communication session. It shall ensure that the personalised security credentials of the payment service user are not accessible to other parties, with the exception of the user and the issuer of the personalised security credentials.

(3) The account information service provider shall communicate with the account servicing payment service provider and the payment service user in a secure way. Where it is necessary to transmit the personalised security credentials, this shall only be done through safe and efficient channels.

(4) Further details are governed by the delegated legal act adopted pursuant to Article 98 of Directive (EU) 2015/2366.

## **Section 52 Access to payment accounts**

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

(2) In the cases referred to in subsection (1), the account servicing payment service provider shall inform BaFin of the incident without delay. The details of the incident and the reasons for taking action shall be stated in this regard. BaFin will assess the case and take appropriate measures if necessary. This shall be without prejudice to the duties and responsibilities of other authorities, in particular of anti-trust authorities pursuant to the Act Against Restraints on Competition (*Gesetz gegen Wettbewerbsbeschränkungen*) and of prosecution authorities pursuant to the Code of Criminal Procedure.

(3) The account servicing payment service provider shall grant access to the payment account once the reasons for denying access no longer exist.

## **Division 3**

### **Risks and incident reporting**

### **Section 53 Management of operational and security risks**

(1) A payment service provider shall establish, maintain and apply appropriate mitigation measures and control mechanisms to manage the operational and security risks relating to the payment services it provides. These include effective procedures for the treatment of disruptions to service operations as well as for the detection and classification of major operational and security incidents.

(2) A payment service provider shall transmit to BaFin on an annual basis an updated and comprehensive assessment of the operational and security risks relating to the payment services it provides and on the adequacy of the mitigation measures and control mechanisms it has implemented in response to those risks. BaFin may determine for a payment service provider that the transmission of the assessment pursuant to sentence 1 shall occur at shorter intervals.

### **Section 54 Reporting of major operational or security incidents**

(1) A payment service provider shall, without delay, notify BaFin of any major operational or security incidents. Upon receipt of a notification, BaFin will, without delay, inform the European Banking Authority and the European Central Bank of the relevant details of the incident. It shall assess the relevance of the incident to other German authorities affected in their subject-matter jurisdiction without delay and shall notify them accordingly.

(2) BaFin will cooperate in the assessment by the European Banking Authority and the European Central Bank of the relevance of the incident to other authorities of the European Union, the other Member States and the other signatory states to the Agreement on the European Economic Area affected in their subject-matter jurisdiction.

(3) Where BaFin is informed of an incident within the meaning of subsection (1) sentence 1 by the European Banking Authority or the European Central Bank, it will take the necessary measures to protect the immediate safety of the financial system.

(4) Where an incident within the meaning of subsection (1) sentence 1 may have an impact on the financial interests of its payment service users, a payment service provider shall, without delay, inform them of the incident and of all measures that they may take to mitigate the adverse effects of the incident.

(5) Payment service providers shall provide BaFin with statistical data on fraud relating to different means of payment at least on an annual basis. BaFin will provide the European Banking Authority and the European Central Bank with such data in an aggregated form.

(6) This shall be without prejudice to the reporting obligations of payment service providers to other German authorities, the cooperation tasks of BaFin as well as the

responsibilities of other German authorities with regard to major operational or security incidents.

## **Division 4**

### **Strong customer authentication**

#### **Section 55 Strong customer authentication**

(1) The payment service provider shall apply strong customer authentication where the payer

1. accesses their payment account online;
2. initiates an electronic payment transaction;
3. carries out any action through a remote channel which may imply a risk of payment fraud or other abuses.

With regard to sentence 1, a payment service provider shall have in place adequate security measures to protect the confidentiality and integrity of payment service users' personalised security credentials.

(2) Where the electronic payment transaction pursuant to subsection (1) sentence 1 number 2 is an electronic remote payment transaction, the payment service provider shall apply strong customer authentication that includes elements which dynamically link the transaction to a specific amount and a specific payee.

(3) Subsection (1) sentence 2 and subsection (2) shall also apply where payments are initiated through a payment initiation service provider. Subsection (1) shall also apply when the information is requested through an account information service provider.

(4) The account servicing payment service provider shall allow the payment initiation service provider and the account information service provider to rely on the authentication procedures provided by the account servicing payment service provider to the payment service user pursuant to subsection (1) and, where a payment initiation service provider is involved, moreover pursuant to subsection (2).

(5) Details on the requirements and procedures for the application of strong customer authentication including any exclusions from their application as well as requirements for measures used to protect the confidentiality and integrity of personalised security credentials are governed by the delegated act adopted in accordance with Article 98 of Directive (EU) 2015/2366.

## **Division 5**

### **Access to accounts and payment systems**

#### **Section 56 Access to payment accounts services in the case of CRR credit institutions**

(1) CRR credit institutions within the meaning of Section 1(3d) sentence 1 of the Banking Act shall ensure that institutions which operate in Germany on the basis of a relevant authorisation have access to payment accounts services on an objective, non-discriminatory and proportionate basis. The access referred to in sentence 1 shall be sufficiently extensive as to allow institutions to provide services in an unobstructed and efficient way. The CRR credit institution shall provide BaFin with duly motivated reasons for any rejection of the access referred to in sentence 1.

(2) This shall be without prejudice to the provisions on anti-money laundering and countering terrorist financing.

### **Section 57 Access to payment systems**

(1) In respect of payment service providers, of payment service users and of similar payment systems, the operator of a payment system may not, directly or indirectly,

1. inhibit access to the payment system by imposing restrictive conditions or through other disproportionate means;
2. provide discriminatory treatment in relation to the rights and obligations of participants in the payment system unless objectively justified;
3. allow restriction on the basis of the institutional status of the payment service provider.

The operator of a payment system may define objective conditions for participation in a payment system, provided that these are necessary to ensure effective protection of the financial and operational stability of the payment system and to safeguard against the risks inherent in participation in a payment system. These risks include, in particular, operational risk, settlement risk and business risk. Before joining and while participating in a payment system, each payment service provider and each other payment system shall, when requested, outline to the operator of, and the other participants in, the payment system that their own arrangements meet the objective conditions within the meaning of sentence 2.

Where a request for access to the system is rejected or a participant is excluded, the operator shall provide the final reasons for this when providing notification of the measure.

(2) Anyone who, as the operator of a payment system, breaches the provisions of subsection (1) shall have an obligation to the affected party to remedy the breach and, if there is a danger of repetition, to cease and desist. Anyone who breaches the provisions intentionally or negligently shall be obliged to compensate the affected party for the resulting damage; these claims may be contested before the courts.

(3) Subsections (1) and (2) shall not apply to the systems referred to in Section 1(16) of the Banking Act as well as to payment systems composed exclusively of payment service providers belonging to a group. Where a participant in a system referred to in Section 1(16) of the Banking Act allows an authorised or registered payment service provider that is not a

participant in the system to pass transfer orders through the system via the participant, that participant shall, when requested, give the same opportunity in an objective, proportionate and non-discriminatory manner to other authorised or registered payment service providers; the provisions of subsection (1) sentence 4 and subsection (2) shall apply mutatis mutandis to these participants.

(4) This shall be without prejudice to the duties and responsibilities of the anti-trust authorities pursuant to the Act Against Restraints on Competition.

### **Section 58 BaFin's functions in relation to payment card schemes, exclusions for new payment schemes in the retail payments market; authority to issue statutory orders**

(1) BaFin will monitor compliance with the obligations of the operators of payment card schemes pursuant to Regulation (EU) 2015/751; it may issue orders to operators of payment card schemes that are appropriate and necessary to prevent or stop breaches of the obligations pursuant to this Regulation.

(2) BaFin will be the competent authority pursuant to Article 4(4) of Regulation (EU) No 260/2012 to which the applications referred to in Article 4(4) of that Regulation are to be made if the applicant is established in Germany.

(3) The Federal Ministry of Finance shall be authorised, by way of a statutory order not requiring the consent of the Bundesrat, in consultation with the Deutsche Bundesbank, to adopt more detailed provisions governing the content, nature and scope of the information, evidence and documents that an application under Article 4(4) of Regulation (EU) No 260/2012 shall contain. In agreement with the Deutsche Bundesbank, the Federal Ministry of Finance may delegate the authority to BaFin by way of a statutory order. The central associations representing the payment service providers shall be consulted before the statutory order is issued.

## **Division 5a**

### **Services of technical infrastructures**

#### **Section 58a Access to services of technical infrastructures in the provision of payment services or conduct of electronic money business**

(1) An undertaking that contributes to the provision of payment services or the conduct of electronic money business in Germany by rendering services of technical infrastructures (system undertaking) shall, at the request of a payment service provider within the meaning of Section 1(1) sentence 1 numbers 1 to 3 or an electronic money issuer within the meaning of Section 1(2) sentence 1 numbers 1 or 2, make these services of technical infrastructures available to them for an appropriate fee without delay and under appropriate conditions of access. This provision of access within the meaning of sentence 1 shall be arranged such

that the requesting undertaking may provide or conduct its payment services or electronic money business in an unobstructed way.

(2) Subsection (1) shall not apply if, at the time the request is made, the system undertaking is not an undertaking whose services of technical infrastructures are used by more than ten payment service providers within the meaning of Section 1(1) sentence 1 numbers 1 to 3 or electronic money issuers within the meaning of Section 1(2) sentence 1 numbers 1 or 2 or which has more than two million registered users.

(3) By way of an exception, the system undertaking shall not be subject to the obligation according to subsection (1) if there are objectively justified reasons for rejecting the provision of access. These exist if, in particular, the system undertaking can prove that the security and integrity of the services of technical infrastructures would be specifically jeopardised by the provision of access. The rejection shall be plausibly substantiated.

(4) If a system undertaking culpably breaches subsection (1), it shall be obligated to compensate the requesting undertaking for the resulting damage. Claims may be contested before the courts.

(5) This shall be without prejudice to the duties and responsibilities of the anti-trust authorities pursuant to the Act Against Restraints on Competition.

## **Part 11 Data protection**

### **Section 59 Data protection**

(1) Operators of payment systems and payment service providers shall be permitted to process personal data to the extent necessary to safeguard the prevention, investigation and detection of payment fraud.

(2) Payment service providers shall process the personal data necessary for the provision of their payment services only with the explicit consent of the payment service user.

(3) The data protection rules on the processing of personal data shall apply.

## **Part 12**

### **Complaints and alternative dispute resolution**

#### **Section 60 Complaints against payment service providers**

(1) Payment service users and the entities referred to in sentence 2 may submit complaints to BaFin at any time with regard to a payment service provider's alleged breaches of the provisions of this Act or of Sections 675c to 676c of the Civil Code or Article 248 of the

Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuch*). The following entities shall be authorised to make complaints:

1. chambers of industry and commerce;
2. qualified entities pursuant to Section 3(1) number 1 of the Prohibitory Injunctions Act (*Unterlassungsklagengesetz*);
3. associations having legal capacity which promote commercial interests;
  - a) which, particularly based on their staff, material and financial resources, are in a position to actually perform their mandate to pursue commercial interests as set out in the articles of association; and
  - b) to which a significant number of undertakings belong which offer payment services on the same market;  
where the breach affects the interests of the members and could viably distort competition to a non-negligible extent.

(2) Complaints shall be submitted to BaFin in writing or orally for the record and shall state the facts and the reason for the complaint. In the case of complaints of payment service users with regard to payment service providers' alleged breaches of Sections 675c to 676c of the Civil Code or Article 248 of the Introductory Act to the Civil Code, the reply from BaFin will also inform the complainant of the possibility of alternative dispute resolution pursuant to Section 14(1) number 4 of the Prohibitory Injunctions Act.

Footnote

(+++ Section 60: for application, see Section 39(3) +++)

### **Section 61 Complaints against electronic money issuers**

(1) Holders of electronic money and the entities, associations and chambers referred to in Section 60(1) sentence 2 may submit complaints to BaFin at any time with regard to an electronic money issuer's alleged breaches of the provisions of this Act or of Sections 675c to 676c of the Civil Code or Article 248 of the Introductory Act to the Civil Code.

(2) Complaints shall be submitted to BaFin in writing or orally for the record and shall state the facts and the reason for the complaint. Section 60(2) sentence 2 shall apply *mutatis mutandis*.

Footnote

(+++ Section 61: for application, see Section 39(3) +++)

### **Section 62 Dispute resolution with a payment service provider**

(1) A payment service provider shall put in place and apply adequate and effective procedures for the resolution of complaints concerning the rights and obligations of payment service users under Sections 675c to 676c of the Civil Code or Article 248 of the Introductory Act to the Civil Code (dispute resolution with a payment service provider).

(2) The procedures for dispute resolution with a payment service provider shall be applied in every Member State and the other signatory states to the Agreement on the European Economic Area in which the payment service provider offers the payment services. They shall be available in an official language of the relevant Member State or in another language if agreed between the payment service provider and the payment service user.

(3) Payment service providers shall reply, on paper or, if agreed between payment service provider and payment service user, on another durable medium, to the payment service users' complaints. The reply shall address all points raised by the payment service user, within an adequate timeframe and at the latest within 15 business days of receipt of the complaint. In exceptional situations, if the answer cannot be given within 15 business days for reasons beyond the control of the payment service provider, it shall be required to send a holding reply, clearly indicating the reasons for a delay in answering to the complaint and specifying the deadline by which the payment service user will receive the final reply. In any event, the deadline for receiving the final reply shall not exceed 35 business days after receipt of the complaint.

(4) Payment service providers shall inform payment service users of the competent consumer conciliation body (*Verbraucherschlichtungsstelle*) in accordance with Section 36(1) number 1 of the Act on Alternative Dispute Resolution in Consumer Matters (*Verbraucherstreitbeilegungsgesetz*) even if they do not maintain a website and do not apply general terms and conditions or if the payment service user is not a consumer. If the payment service provider does not maintain a website or does not apply general terms and conditions, the information referred to in sentence 1 shall be provided in the payment services contract. The information referred to in sentence 1 shall also include references to where further information can be accessed on the alternative dispute resolution entity concerned and on the conditions for using it.

Footnote

(+++ Section 62: for application, see Section 39(3) +++)

## **Part 13**

### **Provisions on penalties and fines**

#### **Section 63 Provisions on penalties**

(1) A term of imprisonment of up to five years or a fine shall be imposed on anyone who

1. in violation of Section 3(1), accepts deposits or other repayable funds;
2. in violation of Section 3(2) sentence 1, fails to convert funds into electronic money or fails to do so in good time;
3. in violation of Section 3(4) sentence 1, grants credit;
4. provides payment services without authorisation pursuant to Section 10(1) sentence 1 or without registration pursuant to Section 34(1) sentence 1;
5. conducts electronic money business without authorisation pursuant to Section 11(1) sentence 1; or
6. in violation of Section 49(1) sentence 2, holds the funds referred to therein.

(2) A term of imprisonment of up to three years or a fine shall be imposed on anyone who

1. in violation of Section 21(4) sentence 1, clause 1 fails to notify, or fails to do so correctly or in good time; or
2. in violation of Section 31, issues electronic money.

(3) If the perpetrator acts with negligence, the punishment shall be imprisonment of up to three years or a fine in the cases referred to in subsection (1) and imprisonment of up to one year or a fine in the cases referred to in subsection (2).

#### **Section 64 Provisions on fines**

(1) An administrative offence shall be deemed to have been committed by anyone who violates an enforceable order pursuant to Section 7(1) sentence 2 number 1, also in conjunction with sentence 4, or pursuant to Section 20(1), (3) or (4).

(2) An administrative offence shall be deemed to have been committed by anyone who, intentionally or recklessly,

1. in violation of Section 2(2) sentence 1 or subsection (3), Section 28(1) numbers 4 to 10 or subsection (2) or Section 38(1) sentence 1, fails to notify or fails to do so in full or in good time; or
2. in violation of
  - a) Section 22(1) sentence 1 or 3 or subsection (2) sentence 1 or 2, fails to submit annual accounts, a management report, an audit report, consolidated accounts or a consolidated management report or fails to do so correctly, in full or in good time; or
  - b) Section 29(1) sentence 1, also in conjunction with subsection (2), in each case in conjunction with a statutory order pursuant to subsection (3) sentence 1 or 2, fails to submit a monthly return or fails to do so correctly, in full or in good time.

(3) An administrative offence shall be deemed to have been committed by anyone who, intentionally or negligently,

1. in violation of Section 8(1) or Section 19(1) sentence 1, fails to provide information or fails to do so correctly, in full or in good time, or fails to submit a document or fails to do so correctly, in full or in good time;

2. in violation of Section 8(5) sentence 1, also in conjunction with subsection (6), or Section 19(1) sentence 4, does not acquiesce to a measure;
3. violates an enforceable condition pursuant to Section 10(4) sentence 1 or Section 11(3) sentence 1;
4. in violation of Section 19(3) sentence 1, fails to take a measure specified therein or fails to take it in good time;
5. violates an enforceable order pursuant to Section 21(3) sentence 1 or Section 27(3) sentence 1,
- 5a. in violation of Section 27(1) sentences 1 and 2 number 5, fails to have in place appropriate measures, including data processing systems, to safeguard compliance with the requirements contained in the Money Laundering Act and Regulation (EU) 2015/847;
6. violates an enforceable order pursuant to Section 27(2) sentence 1 in conjunction with Section 6a(1) or Section 25i(4) of the Banking Act;
7. in violation of Section 27(2) sentence 1 in conjunction with Section 24c(1) sentence 1 or Section 25i(3) sentence 1 of the Banking Act, fails to maintain a filing system, or fails to do so correctly or in full;
8. in violation of Section 27(2) sentence 1 in conjunction with Section 24c(1) sentence 5 of the Banking Act, does not ensure that BaFin may access the data;
9. in violation of Section 27(2) sentence 1 in conjunction with Section 25i(1) of the Banking Act, fails to comply with the due diligence requirements pursuant to Section 10(1) of the Money Laundering Act;
10. (repealed)
11. violates an enforceable order pursuant to Section 27(2) sentence 1 in conjunction with Section 25i(4) of the Banking Act;
12. in violation of Section 27(2) sentence 1 in conjunction with Section 8(1) of the Money Laundering Act, fails to record information or intelligence collected or fails to record such information or intelligence correctly or in full;
13. violates an enforceable order pursuant to Section 27(3) to prevent and stop breaches of Regulation (EU) 2015/847;
14. in violation of Section 52(1) and (3), fails to grant a payment initiation service provider or an account information service provider access to a payment account;
15. in violation of Section 54(1) sentence 1, fails to provide information to BaFin or fails to do so correctly, in full or in good time.

(4) In the cases referred to in subsection (1), the administrative offence may be punished by an administrative pecuniary penalty of up to €1 million; in the cases referred to in subsection (3) numbers 1 and 2, the administrative offence may be punished by an administrative pecuniary penalty of up to €300,000, and in the remaining cases, the administrative offence may be punished by an administrative pecuniary penalty of up to €100,000.

(5) The administrative authority within the meaning of Section 36(1) number 1 of the Act on Breaches of Administrative Regulations is BaFin.

### **Section 65 Information in criminal cases**

In criminal proceedings initiated against the proprietors or managing directors of institutions as well as against holders of significant holdings in institutions or their legal representatives on account of violating their professional duties or committing other criminal acts in carrying out or in connection with carrying out a trade or operating any other kind of business undertaking, the court, the criminal prosecution authority or the penal enforcement authority shall, if a public action is brought, transmit to BaFin

1. the indictment or the petition in lieu of an indictment;
2. the application for the issue of a fixed penalty order; and
3. the decision concluding the proceedings together with the grounds for the decision.

If an appeal has been lodged against the decision, the decision shall be transmitted together with a reference to the fact that an appeal has been lodged. Section 60a(1a) to (3) of the Banking Act shall apply *mutatis mutandis*.

### **Part 14 Transitional provisions**

#### **Section 66 Transitional provisions for payment institutions with prior authorisation**

(1) Payment institutions with authorisation pursuant to Section 8 of this Act in the version in force up to 12 January 2018 are permitted to continue to provide those payment services for which they were granted the authorisation until such time as the BaFin decision pursuant to subsections (3) or (4) becomes legally enforceable, but until 13 July 2018 at the latest. This Act in the version in force up to 12 January 2018 shall continue to apply to them in this respect.

(2) A payment institution under subsection (1) intending to provide payment services beyond 13 July 2018 in accordance with its authorisation shall notify BaFin in writing of this intention no later than two weeks after the entry into force of this Act. No later than four weeks after the entry into force of this Act, the payment institution shall submit the information and evidence referred to in Section 10(2) sentence 1 numbers 6 to 10 as well as all information and evidence according to Section 10(5) to BaFin and the Deutsche Bundesbank.

(3) If, after assessing the information and evidence submitted in accordance with subsection (2) sentence 2, BaFin decides that authorisation pursuant to Section 10 is deemed granted, it will add the payment institution to the register pursuant to Section 43 and notify the payment institution of the decision; from that point on, this Act in the version in force from 13 January 2018 shall apply to the payment institution under subsection (1).

(4) Where the information and evidence submitted do not permit a favourable overall assessment or where the payment institution has not given notification pursuant to subsection (2) sentence 1 or submitted documentation pursuant to subsection (2) sentence 2, BaFin will determine that authorisation pursuant to Section 10 is not deemed granted. Section 13(3) shall apply mutatis mutandis.

(5) Where no authorisation pursuant to subsection (3) is granted to the payment institution within the meaning of subsection (1), BaFin will announce the lapse of authorisation when its decision becomes legally enforceable in the Federal Gazette and in the register of payment institutions pursuant to Section 30 of this Act in the version in force up to 12 January 2018.

### **Section 67 Transitional provisions for electronic money institutions with prior authorisation**

(1) Electronic money institutions are permitted to continue to conduct electronic money business under the authorisation granted to them pursuant to Section 8a of this Act in the version in force up to 12 January 2018 until the BaFin decision pursuant to subsections (3) or (4) becomes legally enforceable, but until 13 July 2018 at the latest, and are also permitted to continue to provide the payment services in that period. This Act in the version in force up to 12 January 2018 shall continue to apply to them in this respect.

(2) An electronic money institution under subsection (1) intending to conduct business beyond 13 July 2018 in accordance with its electronic money authorisation shall notify BaFin in writing of this intention no later than two weeks after the entry into force of this Act. No later than four weeks after the entry into force of this Act, the electronic money institution shall submit the information and evidence referred to in Section 11(2) sentence 1 in conjunction with Section 10(2) sentence 1 numbers 6 to 10 as well as all information and evidence according to Section 11(4) to BaFin and the Deutsche Bundesbank.

(3) If, after assessing the information and evidence submitted in accordance with subsection (2) sentence 2, BaFin decides that authorisation pursuant to Section 11 is deemed granted, it will add the electronic money institution to the register pursuant to Section 44 and notify the electronic money institution of the decision; from that point on, this Act in the version in force from 13 January 2018 shall apply to the electronic money institution under subsection (1).

(4) Where the information and evidence submitted do not permit a favourable overall assessment or where the electronic money institution has not given notification pursuant to subsection (2) sentence 1 or submitted documentation pursuant to subsection (2) sentence 2, BaFin will determine that authorisation pursuant to Section 11 is not deemed granted. Section 13(3) shall apply mutatis mutandis.

(5) Where no authorisation pursuant to subsection (3) is granted to the electronic money institution within the meaning of subsection (1), BaFin will announce the lapse of authorisation when its decision becomes legally enforceable in the Federal Gazette and in the register of electronic money institutions pursuant to Section 30a of this Act in the version in force up to 12 January 2018.

### **Section 68 Transitional provisions for specific payment services and for strong customer authentication**

(1) Undertakings which provided payment initiation services within the meaning of this Act in the version in force from 13 January 2018 in Germany prior to 12 January 2016 are permitted to continue these activities in Germany under the conditions applicable prior to 13 January 2018 until the entry into force of Sections 45 to 52 as well as Section 55.

(2) Undertakings which provided account information services within the meaning of this Act in the version in force from 13 January 2018 in Germany prior to 12 January 2016 are permitted to continue these activities in Germany under the conditions applicable prior to 13 January 2018 until the entry into force of Sections 45 to 52 as well as Section 55.

(3) Until the entry into force of Sections 45 to 52 as well as Section 55, account servicing payment service providers are not permitted to deny payment initiation service providers and account information service providers access to their payment accounts because they do not meet the requirements of Sections 45 to 52 as well as Section 55.

(4) Until entry into force of Section 55, strong customer authentication shall be applied pursuant to BaFin Circular 4/2015 (BA) of 5 May 2015, available on the BaFin website.

(5) An undertaking which offers payment services from 13 January 2018 for which no authorisation was required pursuant to this Act in the version in force up to 12 January 2018, and which intends to continue offering these services after 13 January 2018, shall submit an application for authorisation pursuant to Section 10(1) or an application for registration pursuant to Section 34(1) within three months after 13 January 2018. If the application for authorisation or the application for registration is made in good time and in full, this undertaking shall be authorised to continue operating until such time as BaFin's decision on the application for authorisation or application for registration becomes legally enforceable.