

THE CROATIAN PARLIAMENT

2243

Pursuant to Article 89 of the Constitution of the Republic of Croatia, I hereby issue the

DECISION

PROMULGATING THE ACT ON AMENDMENTS TO THE PAYMENT SYSTEM ACT

I hereby promulgate the Act on Amendments to the Payment System Act passed by the Croatian Parliament at its session on 15 November 2024.

Class: 011-02/24-02/62

No.: 71-10-01/1-24-2

Zagreb, 22 November 2024

The President of the
Republic of Croatia
Zoran Milanović, m.p.

ACT

ON AMENDMENTS TO THE PAYMENT SYSTEM ACT

Article 1

In the Payment System Act (Official Gazette 66/2018 and 114/2022), Article 2 is amended to read:

"(1) This Act transposes into the legislation of the Republic of Croatia the following acts of the European Union:

1) 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 (Text with EEA relevance) (OJ L 337, 23.12.2015) (hereinafter referred to as 'Directive (EU) 2015/2366'); and

2) Directive (EU) 2022/2556 of the European Parliament and of the Council of 14 December 2022 amending Directives 2009/65/EC, 2009/138/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU, 2014/65/EU, (EU) 2015/2366 and (EU) 2016/2341 as regards digital operational resilience for the financial sector (Text with EEA relevance) (OJ L 333, 27.12.2022) (hereinafter referred to as 'Directive (EU) 2022/2556').

(2) This Act ensures the implementation of Regulation (EU) 2024/886 of the European Parliament and of the Council of 13 March 2024 amending Regulations (EU) No 260/2012 and (EU) 2021/1230 and Directives 98/26/EC and (EU) 2015/2366 as regards instant credit transfers in euro (Text with EEA relevance) (OJ L, 2024/886, 19.3.2024)."

Article 2

In Article 5, item (10), the words "information technology" are replaced by the words "information and communication technology (hereinafter referred to as 'ICT')".

Article 3

In Article 67, paragraphs (1) and (2) are amended to read:

"(1) Notwithstanding the implementation of Chapter II of Regulation (EU) 2022/2554 of the European Parliament and of the Council of 14 December 2022 on digital operational resilience for the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014, (EU) No 909/2014 and (EU) 2016/1011 (Text with EEA relevance) (OJ L 333, 27.12.2022) (hereinafter referred to as 'Regulation (EU) 2022/2554'), payment service providers referred to in Article 7, paragraph (1), item (1), subitems (a) and (c), item (2), subitems (a) and (c), item (3), item (4), subitem (a), item (5), item (6), subitem (a), item (7), item (8) and item (9) of this Act shall establish a framework with appropriate mitigation measures and control mechanisms to manage the operational and security risks, relating to the payment services they provide and, as part of that framework, establish and maintain effective incident management procedures, including for the detection and classification of major operational and security incidents.

(2) Payment service providers referred to in paragraph (1) of this Article shall discharge their obligations referred to in paragraph (1) of this Article in accordance with the applicable European Banking Authority Guidelines on ICT and security risk management."

Article 4

In Article 68, paragraph (1) is amended to read:

"(1) Payment service providers referred to in Article 7, paragraph (1), items (8) and (9) of this Act shall, without delay and in accordance with the European Banking Authority Guidelines on major incident reporting adopted under Directive (EU) 2015/2366, notify the Croatian National Bank of each major operational or security incident."

After paragraph (6), paragraph (7) is added which reads:

"(7) Paragraphs (2) to (5) of this Article shall apply *mutatis mutandis* to the major operational or security incident with payment service providers referred to in Article 7, paragraph (1), item (7) of this Act."

Article 5

In Article 72, paragraph (5) is amended to read:

"(5) A payment service provider shall participate in the alternative dispute resolution procedure initiated by the consumer."

Article 6

The title of Title IV above the title of Article 74 is amended to read: "TRANSACTION ACCOUNTS AND PAYMENT ACCOUNT NUMBER".

Article 7

Article 74 is amended to read:

"(1) Transaction account means the payment account, in particular a current or giro account, opened and maintained by one of the following payment service providers:

- 1) a credit institution established in the Republic of Croatia;
- 2) a branch of a credit institution established in another Member State with a head office in the Republic of Croatia;
- 3) a branch of a third-country credit institution with a head office in the Republic of Croatia; and
- 4) the Croatian National Bank.

(2) The manner of determining and use of the transaction account number shall be prescribed by subordinate legislation adopted by the Croatian National Bank."

Article 8

The title of Article 75 is amended to read: "*Number of other payment accounts*".

Article 75 is amended to read:

"(1) Other payment accounts means the payment accounts opened and maintained by one of the following payment service providers:

- 1) an electronic money institution established in the Republic of Croatia;
- 2) a branch of an electronic money institution established in another Member State with a head office in the Republic of Croatia;
- 3) a branch of a third-country electronic money institution with a head office in the Republic of Croatia;
- 4) a payment institution established in the Republic of Croatia;
- 5) a branch of a payment institution established in another Member State with a head office in the Republic of Croatia.

(2) The manner of determining and use of the payment account number opened and maintained by the payment service provider referred to in paragraph (1) of this Article shall be prescribed by subordinate legislation adopted by the Croatian National Bank."

Article 9

The title of Article 76 is amended to read: "*Register of transaction accounts and other payment accounts*".

Article 76 is amended to read:

"(1) The payment service provider to which the Croatian National Bank has assigned the account number shall keep a register of payment accounts.

(2) The payment service provider referred to in paragraph (1) of this Article shall determine the payment account number in accordance with the subordinate legislation referred to in Articles 74 and 75 of this Act."

Article 10

Article 77 is amended to read:

"(1) Account number means the identification number of the payment service provider referred to in Article 74, paragraph (1) and Article 75, paragraph (1) of this Act.

(2) The account number shall be assigned by the Croatian National Bank at the request of the payment service provider referred to in paragraph (1) of this Article.

(3) The Croatian National Bank shall keep records of the account numbers assigned, and shall make this data publicly available on its website.

(4) The use of the account number shall be prescribed by subordinate legislation adopted by the Croatian National Bank."

Article 11

In Article 85, paragraph (2), items (8) and (9) are amended to read:

"8) a description of the applicant's governance arrangements and internal control mechanisms, including administrative, accounting procedures and risk management procedures, as well as the rules for the use of ICT services in accordance with Regulation (EU) 2022/2554, which demonstrate that those governance arrangements and internal control mechanisms are proportionate, appropriate, sound and adequate;

9) a description of the procedures in place to monitor, handle and follow up security incidents or security related customer complaints, including an incidents reporting mechanism which takes account of the notification obligations laid down in Chapter III of Regulation (EU) 2022/2554;"

Item (11) is amended to read:

"11) a description of business continuity arrangements, including a clear identification of the critical operations, effective ICT business continuity policy and plans, ICT response and recovery plans and a procedure to regularly test and review the adequacy and efficiency of such plans in accordance with Regulation (EU) 2022/2554;"

Item (13) is amended to read:

"13) a security policy document, including a detailed risk assessment in relation to payment services, a description of security control and risk mitigation measures taken to adequately protect payment service users against the risks identified, including fraud and illegal use of sensitive and personal data; the security control and risk mitigation measures shall indicate how they ensure a high level of digital operational resilience in accordance with Chapter II of Regulation (EU) 2022/2554, in particular in relation to technical security and data protection, including for the software and ICT systems used by the applicant or the persons to which it outsources the whole or part of its activities; security controls and risk mitigation measures shall also take into account the Guidelines of the European Banking Authority referred to in Article 67, paragraph (2) of this Act;"

Article 12

In Article 100, paragraph (1), after item (1), a new item (2) is inserted which reads:

"2) by holding with the central bank of a Member State enabling such holding at its discretion;"

The former items (2) and (3) become items (3) and (4).

Paragraph (3) is amended to read:

"(3) The funds referred to in paragraph (1), items (1) and (2) of this Article, the assets referred to in paragraph (1), item (3) of this Article and the funds collected from insurance or guarantees referred to in paragraph (1), item (4) of this Article in the amount corresponding to a payment institution's debt towards payment service users referred to in paragraph (1) of this Article shall not be the payment institution's assets and shall not be included in its winding-up or bankruptcy assets, nor may they be subject to foreclosure relating to the settlement of claims against the payment institution."

Paragraph (7) is amended to read:

"(7) The Croatian National Bank shall prescribe by subordinate legislation the scope of and methodology for the calculation of safeguarded funds referred to in paragraph (1) of this Article, the characteristics of the types of assets referred to in paragraph (1), item (3) of this Article and the characteristics of the insurance policy or comparable guarantee referred to in paragraph (1), item (4) of this Article."

Article 13

In Article 107, paragraph (5), in the introductory sentence, the word "IT" is replaced by the word "ICT".

Article 14

In Article 155, the word "prescribe" is replaced by the word "adopt".

Article 15

In Article 156, paragraph (2), item (2), the word "prescribed" is replaced by the word "adopted".

Article 16

In Article 166, paragraph (3) is amended to read:

"(3) The provisions of this Article shall not apply to payment systems composed exclusively of one payment service provider or payment service providers belonging to the same group."

Article 17

After Article 166, Article 166a and its title are inserted which read:

"Conditions for participation of a payment institution and an electronic money institution in the payment system subject to the application of the law governing settlement finality in payment systems.

Article 166a

(1) A payment institution and an electronic money institution wishing to participate and which is participating in the payment system subject to the application of either the law governing settlement finality in payment systems or a regulation of another Member State transposing Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (OJ L 166, 11.6.1998) (hereinafter referred to as 'Directive 98/26/EC'), in order to safeguard the stability and integrity of the payment system, shall continuously have in place and documented the following:

– measures for safeguarding payment service users' funds:

1) where it safeguards payment service users' funds by holding the funds in a separate account in a credit institution or by means of an investment in secure, liquid and low-risk types of assets as defined by the competent authority of the home Member State of that payment institution or the electronic money institution, as applicable:

a) the investment policy to ensure that the asset types that are chosen are liquid, secure and low-risk;

b) the number and functions of persons that have access to the safeguarding account;

c) the administration and reconciliation process to ensure that payment service users' funds are protected against the claims of other creditors of the payment institution and electronic money institution, in particular in the event of opening insolvency proceedings against the payment institution and electronic money institution within the meaning of Directive 98/26/EC or the law governing settlement finality in payment systems;

d) a contract or draft contract with the credit institution; and

e) an explicit statement by the payment institution and electronic money institution of compliance with Article 100 of this Act or the relevant provision of the home Member State national law and the payment institution and electronic money institution transposing Article 10 of Directive (EU) 2015/2366; and

2) where the payment institution and electronic money institution safeguards payment service users' funds through an insurance policy from an insurance company or comparable guarantee from an insurance company or a credit institution, it shall have in place and documented the following measures:

a) a confirmation that the insurance policy or comparable guarantee from an insurance company or a credit institution is from an entity that is not part of the same group as the payment institution and electronic money institution;

b) details of the reconciliation process to ensure that the insurance policy or comparable guarantee is sufficient to meet the obligation of the payment institution and electronic money institution of safeguarding the funds at all times;

c) the duration and the terms of renewal of the coverage; and

d) a copy of the contract or a draft contract on the insurance or comparable guarantee;

– governance arrangements and internal control mechanisms for the payment services and/or electronic money issuance services it provides, including administrative, accounting and risk management procedures, as well as the rules for the use of ICT services in conjunction with Articles 6 and 7 of Regulation (EU) 2022/2554, including:

1) a mapping of the risks identified by the payment institution and electronic money institution, including the type of risks and the procedures the payment institution and electronic money institution has in place or will put in place to assess and prevent such risks;

2) the different procedures to carry out periodical and permanent controls, including the frequency and the human resources allocated;

3) the accounting procedures by which the payment institution and electronic money institution records and reports its financial information;

4) the identity of the person or persons responsible for the internal control functions, including for periodic, permanent and compliance control, as well as an up-to-date curriculum vitae of that person or those persons;

5) the identity of any person carrying out the audit that is not a statutory audit as defined in Article 2, point (2) of Directive 2006/43/EC or the law governing audits;

6) the composition of the management body and, if applicable, of any other oversight body or committee;

7) the way outsourced functions are monitored and controlled so as to avoid impairment of the quality of the internal controls of the payment institution and electronic money institution;

8) the way any agents and branches are monitored and controlled within the framework of the internal controls of the payment institution and electronic money institution;

9) the group governance, where the payment institution and electronic money institution is the subsidiary of a regulated entity from another Member State;

– the plan in the event of the cessation of business of the payment institution and electronic money institution or of the termination of its payment services, which shall be adapted to the size and business model of the payment institution and electronic money institution and shall include a description of the mitigation measures to be adopted by the payment institution and electronic money institution in the event of the termination of its payment services, which would ensure the execution of pending payment transactions and the termination of existing contracts.

(2) The measures referred to in paragraph (1), subparagraph (2) of this Article shall demonstrate that the governance arrangements, internal control mechanisms and procedures for the use of ICT services are proportionate, appropriate, sound and adequate.

(3) The payment institution and electronic money institution authorised by the Croatian National Bank to provide payment services or issue electronic money may only participate in the payment system subject to the application of the law governing settlement finality in payment systems or a regulation of another Member State transposing Directive 98/26/EC if it obtains the confirmation of the Croatian National Bank that the conditions referred to in paragraph (1) of this Article are met and submits it to the operator of that payment system.

(4) The payment institution and electronic money institution referred to in paragraph (3) of this Article, in addition to the requirement for the issuance of a confirmation that the conditions referred to in paragraph (1) of this Article are met, shall also submit to the Croatian National Bank a written self-assessment of the compliance with those conditions, as well as the documentation demonstrating the compliance with the individual condition, which has not been previously submitted for the purpose of authorisation, reporting or supervision.

(5) The Croatian National Bank shall decide on the application for the issuance of the confirmation referred to in paragraph (4) of this Article within three months of the date of submission of a complete application.

(6) The Croatian National Bank shall refuse the application for the issuance of the confirmation referred to in paragraph (4) of this Article by a decision where it establishes, based on the available documentation and information submitted, that the payment institution or electronic money institution does not meet the conditions referred to in paragraph (1) of this Article.

(7) The provisions of paragraphs (4) to (6) of this Article shall also apply *mutatis mutandis* when the payment institution or electronic money institution that is already a participant in the payment system subject to the application of the law governing settlement finality in payment systems or a regulation of another Member State transposing Directive 98/26/EC, at the request of the operator or in accordance with the rules of operation of that payment system, submits the application to the Croatian National Bank for the issuance of a confirmation determining that the payment institution or electronic money institution still meets the conditions referred to in paragraph (1) of this Article.

(8) The confirmation issued by the Croatian National Bank in accordance with the provisions of this Article shall have the characteristic of a confirmation of facts of which the public authority does not keep official records within the meaning of the law governing the general administrative procedure."

Article 18

In Article 179, paragraph (2), item (121) is amended to read:

"121) if it fails to establish a framework for the management of operational and security risks in accordance with the applicable European Banking Authority Guidelines on ICT and security risk management (Article 67, paragraph (2), in conjunction with Article 67, paragraph (1));".

Item (124) is amended to read:

"124) if, contrary to Article 68, paragraph (1) of this Act, it fails to notify the Croatian National Bank of each major operational or security incident without delay and in accordance with the applicable European Banking Authority Guidelines on major incident reporting under Directive (EU) 2015/2366;"

Item (136) is amended to read:

"136) if contrary to Article 72, paragraph (5) of this Act, it refuses to participate in the alternative dispute resolution procedure;"

After item (137), a new item (138) is added which reads:

"138) if it fails to determine or use the transaction account number it opens and maintains in accordance with the subordinate legislation of the Croatian National Bank referred to in Article 74, paragraph (2) of this Act or if it fails to determine or use the payment account number it opens and maintains in accordance with the subordinate legislation of the Croatian National Bank referred to in Article 75, paragraph (2) of this Act;"

The former item (138), which becomes item (139), is amended to read:

"139) if, as a payment service provider that maintains payment accounts to which it has determined the number in accordance with the subordinate legislation referred to in Article 74, paragraph (2) or Article 75, paragraph (2) of this Act it fails to keep a register of such accounts pursuant to Article 76 of this Act;"

The former item (139) becomes item (140).

Article 19

In Article 182, paragraph (2), item (3) is deleted.

The former items (4) and (5) become items (3) and (4).

TRANSITIONAL AND FINAL PROVISIONS

Article 20

The Croatian National Bank shall adopt the subordinate legislation referred to in Articles 7, 8, 10 and 12 of this Act within three months of the date of entry into force of this Act.

Article 21

This Act shall be published in the Official Gazette and shall enter into force on 17 January 2025, with the exception of Articles 12, 16 and 17 of this Act, which shall enter into force on 9 April 2025.

Class: 022-02/24-01/100
Zagreb, 15 November 2024

THE CROATIAN PARLIAMENT

The President
of the Croatian Parliament
Gordan Jandroković, m.p.