

ACT

of 12 September 2002

on electronic payment instruments.

(Journal of Laws of 11 October 2002)

Chapter 1

General provisions

Article 1. 1. This Act lays down the rules of issuance and use of electronic payment instruments, including electronic money instruments, the rights and obligations of parties to the contracts for electronic payment instruments and rules of establishment, organization, operation and supervision, and also liquidation of electronic money institutions.

2. Provisions of the Act shall not apply to electronic payment instruments used by banks to effect mutual payments in interbank clearing systems.

3. If the issuer of payment cards is in the same time their merchant and the contract does not provide for the possibility to accept those cards outside the issuer's own network, provisions of the Act shall apply only concerning the protection of holders and obligation to inform the National Bank of Poland, herein after referred to as "NBP".

Article 2. The terms used in the present Act shall have the following meaning:

- 1) acquirer – a bank or any other legal person concluding contracts with merchants concerning acceptance of payments by means of an electronic payment instruments;
- 2) merchant -an undertaking that concluded a contract with an acquirer, concerning accepting payments by means of electronic payment instruments;
- 3) automated teller machine - a device enabling the holder or user of a payment card to withdraw cash, or additionally to perform other operations;
- 4) electronic payment instrument - every payment instrument, including that with remote access to funds, enabling the holder to perform operations by means of an electronic device or making possible the electronic identification of the holder, necessary to perform an operation, in particular a payment card or an electronic money instrument;
- 5) electronic money institution - a legal person other, than bank, functioning in form of a joint stock company, established and functioning on the basis of permission issued by appropriate authorities or provisions of the law, whose object of activity is to carry out, on its own behalf and for its benefit, the activity consisting of issuing for disposal and redeeming electronic money, and clearing the transactions performed by means of an electronic money instruments;
- 6) electronic money instrument - an electronic device, on which electronic money is stored, in particular chip card loadable up to a specified value;
- 7) payments card - a card in the meaning of Article 4 Paragraph 4 of the Act of 29 August 1997 – Banking Law (Journal of Laws 2002 No. 72, item 665, No. 126, item 1070, No. 141, item 1178, No. 144, item 1208 and No. 153, item 1271), herein after referred to as the "Banking Law";

- 8) identification code - a confidential number, password or other designation of the holder, which, together with the data contained in an electronic payment instrument is used for electronic identification of the holder;
- 9) operation - a cash withdrawal, issuing credit transfer or direct, or effecting payments by means of an electronic payment instrument;
- 10) electronic money - electronic money in the meaning of Article 4 Paragraph 5 of the Banking Law;
- 11) holder – a natural person, legal person or other entity, who on the basis of a contract for electronic payment instrument performs operations specified in the contract on its own behalf and for its benefit;
- 12) user of a payment card - a natural person, whose identification data are placed on the payment card, authorized by the holder to perform operations specified in the contract, on behalf and for benefit of the holder;
- 13) statement of operations - a list of operations performed by means of an electronic payment instrument during the settlement period adopted by the issuer, for settlement with holder the operations, commission fees and charges due to the issuer, made available to the holder upon termination of the settlement period;
- 14) domestic electronic money institution - an electronic money institution, having its registered office on the territory of the Republic of Poland;
- 15) foreign electronic money institution - an electronic money institution having its registered office abroad;
- 16) branch of a foreign electronic money institution - an organizational unit of a foreign electronic money institution, performing in her name and on her account all or certain types of activity resulting from the permission granted this institution, however all organizational units of a given foreign electronic money institution matching the above characteristics, established on the territory of the Republic of Poland, are considered as one branch;
- 17) authorization and clearing system - a legal links between the acquirer, merchants and issuers of electronic payment instruments, subject to the Polish law, within the frames of which are set out common rules for accepting payment by means of an electronic payment instruments and settlements resulting thereof.

Article 3. 1. A contract for electronic payment instrument between the issuer and the holder shall be concluded in writing. The requirement of written form shall not apply to contracts for electronic money instrument to a bearer.

2. A contract for electronic payment instrument should specify, in particular:

- 1) parties to the contract;
- 2) type of electronic payment instrument provided and devices, that the holder may use, when performing operations by means of this instrument;
- 3) types of operations, which may be performed by means of an electronic payment instrument;
- 4) normal periods, within which the issuer shall execute holder's instructions;
- 5) determination of restrictions on performing the operations, if any;
- 6) normal periods, within which holder shall settle liabilities resulting from operations performed by means of an electronic payment instrument, and from charges and commission fees or repayment of amounts due to the issuer;
- 7) type and amount of charges and commission fees, and terms of their changes;
- 8) rules for clearing the operations in foreign currencies, and indication of exchange rates to be applied;
- 9) rules of interests calculation;
- 10) rules, means and normal periods of submitting and considering complains;
- 11) period, for which the contract is signed, and terms of its extension;

- 12) means, period and important reasons for which the issuer may terminate the contract;
- 13) procedure in the case of lost electronic payment instrument.

3. The period for termination, referred to in Paragraph 2 Subparagraph 12, cannot be less than one month.

4. In the case when signature of the holder or user of a payment card is required to use this instrument, a specimen signature of the holder or user shall be attached to the contract for electronic payment instrument.

Article 4. Termination of a contract for electronic payment instrument may take place upon notice given by any party, however the issuer may terminate the contract only for important reasons, specified in the contract.

Article 5. Holder shall not be charged for operations performed by means of an electronic payment instrument, lacking his confirmation, subject to Article 28 Paragraph 1 and 6, and Article 32 Paragraph 2.

Article 6. Claims under the contract for electronic payment instrument shall expire after the lapse of 2 years.

Article 7. Issuer of an electronic payment instrument shall be obliged to publish, in the place of business or using other means of public communication, freely available:

- 1) interest rates applied;
- 2) amount of charges and commission fees levied.

Chapter 2

Acquirer and merchant

Article 8. 1. A contract between an acquirer and a merchant for accepting payments by means of electronic payment instruments should specify in particular:

- 1) types of electronic payment instruments, by means of which operations with the merchant may be performed;
- 2) procedures applied, including security procedures, and merchant's obligations related to the performance of operations;
- 3) normal period and manner of payment to the merchant by the acquirer;
- 4) reasons for which the merchant may refuse to accept the payment by means of an electronic payment instrument.

2. Acquirer is responsible to the merchant for crediting his account with the amount resulting from operations, on the principles and within periods as specified in the contract, referred to in Paragraph 1.

Article 9. The merchant may refuse to accept payment as referred to in Article 8 Paragraph 1 Subparagraph 4, in particular if:

- 1) invalidity of an electronic payment instrument;
- 2) notification has been made on an electronic payment instrument;
- 3) non-conformance of the signature on electronic payment instrument with the signature on debiting document;

- 4) refusing by the holder or user to present a document confirming their identity, in the case specified in Article 10 Paragraph 1, or when it was found that unauthorised person is using an electronic payment instrument;
- 5) obtaining acceptance for executing the operation is not possible.

Article 10. 1. In cases when there are well-founded doubts concerning identity of the holder of an electronic payment instrument or the user of a payment card, the merchant may request them to produce a document confirming their identity.

2. Merchant may keep an electronic payment instrument, if provided for by the contract, referred to in Article 8 Paragraph 1, in the case of:

- 1) invalidity of an electronic payment instrument;
- 2) notification of an electronic payment instrument;
- 3) non-conformance of the signature on electronic payment instrument with the signature on sales draft;
- 4) using the electronic payment instrument by an unauthorized person;
- 5) receiving an instruction to keep an electronic payment instrument from the acquirer.

3. Merchant shall be obliged to preserve the security procedures specified in the contract, referred to in Article 8 Paragraph 1, and in particular not provide data on the holder or user to unauthorized persons, and not allow to use improperly or to copy an electronic payment instrument.

Article 11. Merchant shall mark the place, where he carries out the activity, in a way enabling unequivocal recognition, by means of which electronic payment instruments, operations may be performed with him.

Article 12. Acquirer shall consider complaints concerning the operations contested by the issuer in a manner and within periods specified in the contract, referred to in Article 8 Paragraph 1, however in the case of operations performed on the territory of the Republic of Poland, the considering of complaints by the acquirer cannot exceed 90 days.

Article 13. 1. Acquirers shall be obliged to submit the following information to the NBP:

- 1) number of merchants;
- 2) number of devices accepting electronic payment instruments;
- 3) volume and value of transactions executed;
- 4) registered attempts to execute and transactions executed tending to violate or evade provisions of the law or rules of fair trade.

2. The minister competent for matters related to financial institutions, having sought the opinion of the President of the NBP, being guided by the need to provide the NBP with data necessary to proceed with periodical assessment of monetary settlements, shall set out, by way of regulation, the manner, detailed scope and normal periods to fulfil the obligation, referred to in Paragraph 1.

Chapter 3

Payment cards

Article 14. 1. Under a contract for payment card, the issuer of a payment card commits himself towards the holder of a payment card to settle the operations performed by means of a payment card, and the holder commits himself to pay the amounts of operations together with

the amounts of charges and commission fees due to the issuer or to pay off his liabilities onto the account indicated by the issuer.

2. Contract, referred to in Paragraph 1, shall be concluded for a definite period of time.

3. Contract, referred to in Paragraph 1, in which parties do not fix its duration, shall be considered as signed for a period of 2 years.

Article 15. 1. Entities not being banks shall be obliged to notify the NBP about the intention to begin activity consisting of issuing payment cards, at least one month prior to its beginning.

2. When notifying, the entities referred to in Paragraph 1, shall be obliged to submit the following information:

- 1) business name (firm), base and scope of activity carried out, with particular respect to the types of payment cards, that they intend to issue;
- 2) in the case of companies or limited joint-stock partnership, also disclose the partners or shareholders, holding at least 5% of votes on the meeting of shareholders or on the general meeting.

3. Entities, referred to in Paragraph 1, shall be also obliged to inform about every change concerning the information required at the day of application.

4. Issuers of payment cards shall be obliged to provide the NBP with the following information about payment cards issued by them:

- 1) types and number of payment cards issued;
- 2) volume and value of operations performed by means of those cards;
- 3) number of automated teller machines made available, number of operations performed by means of them and their value;
- 4) registered attempts to execute and transactions executed tending to violate or evade provisions of the law or rules of fair trade.

5. The minister competent for matters related to financial institutions, upon advice of the President of the NBP, being guided by the need to provide the NBP with data necessary to proceed with periodical assessment of monetary settlements, shall set out, by way of regulation, the manner, scope and normal periods to fulfil the obligation, referred to in Paragraph 4.

Article 16. 1. Holder shall be obliged to:

- 1) store the payment card and protect the identification code, with due care;
- 2) not keep the payment card together with its identification code;
- 3) notify the issuer without delay about the lost or destroyed payment card;
- 4) not make available the payment card and identification code to unauthorized persons.

2. The provisions of Paragraph 1 shall apply also to the user of a payment card.

Article 17. Issuer shall be the owner of payment card issued by him.

Article 18. Holder may withdraw from the contract for payment card within a period of 14 days following the day of obtaining the first payment card, if he did not execute any operation by means of this card. In such case the issuer shall return the amount of incurred charges to the holder. The issuer may charge the holder with costs connected with issuing the payment card, in the extent provided for in the contract.

Article 19. 1. In a contract for payment card, the Issuer may reserve the right to alter, without consent of the holder, the limits and restrictions concerning the amounts of operations performed, fixed in the contract, in the case of unpunctual repayment of receivables by the holder or when he finds their repayment in time is threatened.

2. In the case of making changes, referred to in Paragraph 1, the issuer, without delay, is obliged to inform the holder thereof.

Article 20. 1. Solely the person, whose identification data are placed on the payment card, may use the payment card.

2. A contract for payment card may specify, that a payment card will be used by the user of payment card and determine the manner of using it.

Article 21. 1. The card shall be issued after signing the contract for payment card. Till the moment of issuing, the issuer bears the responsibility for any damage resulting from using this card by an unauthorized person.

2. Upon the conclusion of contract, the issuer shall notify the holder about the conditions, time and place of issuing the payment card.

Article 22. 1. The issuer shall be obliged to take, to receive 24 hours a day, notifications of the holders or users of a payment card on lost or destroyed payment card, performed using available means of communication. The issuer shall be obliged to keep records of notifications of card's loss or destruction, containing data concerning the card number, persons notifying, circumstances, together with indicating the date, hour and minute of receiving the notification.

2. The issuer shall confirm the reception of a notification, in a manner specified in the contract for payment card.

Article 23. The issuer shall inform the holders on the manner of marking the merchants, and automated teller machines and other places, where he can perform operations by means of a payment card.

Article 24. 1. The issuer shall provide the holder with a statement of operations in a manner and within periods specified in the contract for payment card.

2. The statement, referred to in Paragraph 1, shall be provided at least once per month.

Article 25. The issuer shall be obliged to introduce the procedures for establishing and providing the identification code, in order to prevent unauthorized person from finding out the codes.

Article 26. The holder and the user of a payment card, performing payment by means of a payment card, shall be obliged to present, when required by the merchant, a document confirming their identity.

Article 27. 1. The holder shall be obliged to notify the issuer on irregularities in the statement of operations, referred to in Article 24, concerning in particular:

1) contested operations included in the statement;
2) errors or other irregularities in performing the settlement
- in the periods, specified in the contract for payment card, which cannot be less than 14 days following the days of receiving the statement.

2. The holder shall be obliged to notify the issuer, without delay, on non-receiving the statement of operations in terms specified in the contract.

3. The holder's notifications, referred to in Paragraph 1 and 2, should be considered without delay.

Article 28. 1. The holder shall bear the costs of operations performed by persons, to whom he made available the payment card or disclosed the identification code.

2. If contract does not provide otherwise, the holder shall bear the costs of operations performed by means of a lost payment card till the time of notifying the issuer about losing it, up to an amount equivalent to 150 euro in PLN. This restriction shall not concern the operations,

performed through the fault of the holder or user, and in particular when he did not fulfil the duties specified in Article 16 Paragraph 1 or in Article 27 Paragraph 1. The holder shall not bear the costs of operations performed by means of a lost payment card, if this performance took place in consequence of defective execution of obligations by the issuer or merchant. Contractual provisions less favourable to the holder shall be null and void.

3. The equivalent, referred to in Paragraph 2, shall be converted using the average euro exchange rate published by the NBP and ruling on the day of making the notification.

4. The holder shall bear the costs of operations performed after the notification, referred to in Article 22, if they have been performed through his or user's deliberate fault. Contractual provisions less favourable to the holder shall be null and void.

5. The holder shall not bear the costs of operations, subject to Paragraph 6, if the payment card has been used without physical presentation produced and without electronic holder's identification or without putting his signature on the paper voucher. The use of identification code shall not be sufficient to charge the holder with an operation contested by him, unless a safe electronic signature has been put, according to Article 5 Paragraph 1 of the Act of 18 September 2001 on electronic signature (Journal of Laws z 2001 No. 130, item 1450, and z 2002 No. 153, item 1271).

6. If the contract for payment card provides for such possibility, the holder shall bear the costs of operations remotely performed, although the payment card has been used without physical presentation.

Chapter 4

Electronic banking services

Article 29. Under a contract for electronic banking services:

- 1) the bank shall be under obligation to provide access to funds held on the account via wire or wireless communication devices used by the holder, and also to perform other actions ordered by the holder;
- 2) the holder shall authorize the bank to charge his account with the amount of performed operations, and with debit and commission fees due to the bank or shall commit himself to pay the amount due onto the account indicated by the bank, within specified time limits.

Article 30. A contract for electronic banking services should contain the provisions, referred to in Article 3 Paragraph 2, and lay down:

- 1) rules of electronic identification of the holder;
- 2) rules to be followed by the holder in connection with giving orders to perform transactions and using other services specified in the contract.

Article 31. A bank, providing services on the basis of contract for electronic banking services, shall be obliged to:

- 1) ensure security of transactions performed by the holder, with due care, and by means of appropriate technical solutions;
- 2) provide the holder with information on operations performed and settlements resulting from such transactions, and charges and commission fees collected, within time limits and in the manner specified in the contract;
- 3) inform, without delay, on refusal or lack of possibility to perform an operation ordered, for reasons independent of the bank.

Article 32. 1. The holder shall be obliged not to disclose information on the functioning of the electronic payment instrument provided within the frames of a contract for services of electronic banking, when such disclosure may become the cause of ineffectiveness of mechanisms ensuring the safety of operations ordered.

2. The holder shall bear the costs of all operations performed by persons, to whom he made available the information, referred to in Paragraph 1. The provisions of Article 28 shall apply respectively.

Article 33. Orders of the holder, concerning execution of operation by the bank may be cancelled only prior to their execution.

Article 34. The holder shall submit to the bank objections concerning the provided information, referred to in Article 31 pkt 2, in manner and period as specified in the contract. The provisions of Article 27 shall be applied respectively.

Article 35. The provisions of this chapter shall apply respectively to co-operative savings and credit unions in the extent, in which separate provisions authorise them to perform such activity.

Chapter 5

Issuers of electronic money

Article 36. 1. An electronic money institution may be established and carry out the activity in form of a joint stock company, on the basis of permission by the Commission for Banking Supervision, hereinafter referred to as the "KNB".

2. Code of Commercial Companies shall apply to a joint stock company, referred to in Paragraph 1, unless the Act provides otherwise.

3. Supervision of electronic money institutions shall be exercised by the KNB, on the principles laid down in this chapter.

4. Permission to establish and to carry out the activity by an electronic money institution may lay down the conditions, on which it shall be applicable.

5. Issuing the permission, referred to in Paragraph 4, the KNB shall have regard to protection of the interests of customers of the relevant electronic money institution or of a branch of foreign electronic money institution, and in particular shall give consideration to the need to ensure a sound and stable management of the institution.

Article 37. 1. The founders of an electronic money institution incorporated as a joint stock company may be either natural or legal persons, with the proviso that there shall be no fewer than three such founders.

2. The provision of Paragraph 1 shall not apply to electronic money institutions, whose founder is a domestic electronic money institution or foreign electronic money institution.

Article 38. 1. Shares of an electronic money institution may be acquired only for contributions in cash.

2. Shares acquired must be fully paid prior to registration of the company or to increase in capital of the company.

3. Plan of activity of an electronic money institution, presented by the founders for a period of at least 3 years should indicate, that this institution would be able to fulfil its liabilities towards the customers.

Article 39. Provisions of Article 21-23, 25-27, 30-31 and Article 33-42 of the Banking Law, subject to provisions of this Act, shall apply respectively to .the procedure of issuing permission for establishing and carrying out activity, and functioning of electronic money institutions.

Article 40. Initial capital brought in by the founders of an electronic money institution cannot be less than the equivalent of 1.000.000 euro in PLN, calculated at the average on the exchange rate published by the NBP and ruling on the day of granting permission.

Article 41. Provisions of the Banking Law referring to credit institutions shall apply respectively to undertaking and carrying out activity on the territory of the Republic of Poland by electronic money institutions seated on the territory of the European Union Member States, proceeding with supervision of those institutions, and to undertaking and carrying out activity by domestic electronic money institutions in the European Union Member countries.

Article 42. Supervision of electronic money institutions shall be aimed at securing:

- 1) fulfilling the obligations undertaken by electronic money institutions in result of issuing electronic money;
- 2) conformity of electronic money institutions activity with provisions of the Act, statute, decision on granting the permission for establishing and carrying out the activity, and other decisions and provisions issued on the basis of the Act.

Article 43. 1. Within the frames of supervision, the KNB may recommend in particular:

- 1) to undertake measures necessary to ensure appropriate level of protecting the interests of electronic money institutions' customers;
- 2) to undertake measures necessary to reach and observe the standards, referred to in the Act, and in the Regulation issued on the basis of Article 48;
- 3) to increase own funds.

2. Activities undertaken within the frames of supervision shall consist in particular of:

- 1) examination of solvency, liquidity payments and economic results obtained by electronic money institutions;
- 2) making financial assessment of electronic money institutions.

3. The inspectors for banking supervision shall undertake control activities upon producing the authorisation issued by the General Inspector for Banking Supervision

4. Furthermore, the activities, referred to in Paragraph 3, may be performed by authorized chartered accountants, upon producing the authorization issued by the General Inspector for Banking Supervision.

5. Electronic money institution shall be obliged to:

- 1) notify the KNB on undertaking and cessation of the activity;
- 2) enable the authorized persons to undertake the activities, referred to in Paragraph 2;
- 3) notify without delay the KNB on the measures, which will be taken to remove irregularities found within the frames of supervision, and comply with decisions or recommendations issued.

Article 44. 1. In the event of non-execution of recommendations concerning the performance of activity in violation of the law or of the statute, the KNB may:

- 1) impose financial penalties on members of management board of an electronic money institution up to the equivalent of three months gross remuneration of the board member

responsible for irregularities found, calculated with reference to that person's remuneration in the last three months prior to imposition of the penalty;

2) impose financial penalty on an electronic money institution up to the amount of 1.000.000 PLN.

2. The penalty, referred to in Paragraph 1 Subparagraph 1, may not be imposed, if more than 6 months elapsed from receiving by the KNB the information about performing the activity in violation of the law or of the statute, or if more than two years elapsed from the moment when such act was committed

3. Amounts obtained by the KNB by way of penalties, referred to in Paragraph 1, are part of the state budget and are subject to execution under the provisions on execution proceedings in administration.

Article 45. 1. Electronic money institution, in the scope of performed economic activity other, than issuing electronic money, may solely:

1) provide financial services strictly connected with electronic money issuing, and non-financial (services), such as performing operational functions and other ancillary functions, and also issuing and administering of other means of payment but excluding the granting of any form of credit, and

2) store data on the electronic device on behalf of other undertakings or public institutions.

2. Electronic money institution shall not have any holdings in other undertakings except where these undertakings perform operational or other ancillary functions related to electronic money issued or distributed by the institution concerned, and in the case, referred to in Article 37 Paragraph 2.

Article 46. Electronic money institution cannot receive cash for profit-making purposes, subject to repayment, and accumulate those funds, in particular receive cash subject to repayment, and keep the accounts of those funds.

Article 47. 1. Own funds of electronic money institution shall include:

1) in electronic money institution in form of a joint stock company – initial capital paid-in and registered, and supplementary capital, and reserve capitals;

2) in a branch of foreign electronic money institution - capital paid-in and registered appropriated for the activity of the branch of foreign electronic money institution on the territory of the Republic of Poland;

3) prior period undistributed profit;

4) less-deductions positions, these consisting in:

a) own shares held by the electronic money institution, carried at costs, minus valuation allowances established against a permanent diminution in value,

b) intangible assets,

c) prior period unabsorbed loss, including unpublished losses,

d) period end cumulative loss, calculated from the beginning of the financial year.

2. Electronic money institution shall be required to maintain:

1) own funds at the level no lower than the zloty equivalent of the sum specified in Article 40, calculated at the average exchange rate published by the NBP and ruling on the reporting day;

2) own funds at the level no lower than 2% of the value of outstanding electronic money issued by this institution;

3) risk-based capital ratio at the level of no less than 2%.

3. The value of outstanding electronic money shall be calculated as the bigger of following amounts:

- 1) total financial obligations resulting from remaining outstanding electronic money at end of reporting period;
- 2) average value of liabilities resulting from electronic money at end of last 6 months period, or in the case of electronic money institution carrying out activity less than 6 months - average value of expected liabilities resulting therefrom at end of the first 6 months of activity, covered by the plan of activity, which should be corrected on demand of the KNB.

4. Risk-based capital ratio of an electronic money institution shall be calculated as the ratio of own electronic money institution funds to the value of outstanding electronic money expressed in percentages.

5. In the case of non-execution of requirements, referred to in Paragraph 2, electronic money institution shall be obliged, without delay, to inform the KNB thereof.

Article 48. Guided by the need to ensure sound and prudent activity of electronic money institutions, and to protect them against the market risk arising from the issuance of electronic money, the minister competent for financial institutions' matters, having sought the opinion of the KNB, shall determine, by way of regulation:

- 1) prudential rules, fixing permissible risk in the activity of electronic money institutions, and the scope of their application;
- 2) types of financial instruments and rules of investing therein the funds resulting from liabilities undertaken in effect of issuing electronic money, and other principles of limiting the risk.

Article 49. 1. Electronic money institution shall be required to submit to the KNB audited accounts, together with the auditor's opinion and report, within 15 days of the accounts being approved, enclosing a copy of the resolution to the effect that the accounts have been approved.

2. Where irregularities are determined in the audit commissioned by a electronic money institution, the KNB may require the electronic money institution bank to retain certified auditors to ascertain the truth and accuracy of all the accounts, inspect the books of account. Where this audit review reveals the existence of irregularities, the cost of the review shall be borne by the electronic money institution.

3. The audit review specified in para. 1 above may also be commissioned directly by the KNB. In this case, the cost of audit shall be borne by the NBP. The KNB shall have the right to raise objections to the result of audits, referred to in para. 1 and 2. Should an audit commissioned by the KNB reveal irregularities, the cost of the audit shall be borne by the electronic money institution.

4. The certified auditor performing an audit of an electronic money institution's accounts or shall be required to notify the KNB immediately of any facts disclosed during their review which indicate:

- 1) the commission of a criminal offence;
- 2) a contravention of regulations governing activity of electronic money institution;
- 3) the possibility that a negative opinion will be expressed on the electronic money institution's accounts, or that expression of an opinion will be disclaimed.

Article 50. Provisions of this chapter, concerning the exercising of supervision, shall not apply to electronic money institutions, if the maximum storage amount on an electronic money instrument does not exceed the equivalent of 75 euro in PLN, calculated at the average exchange rate published by the NBP and ruling on the issuing electronic money instrument, total financial liabilities of an electronic money institution, including electronic money issued and not redeemed, at any time do not exceed the equivalent of 150.000 euro in PLN, and one of the following conditions is met:

- 1) electronic money is used as the payment instrument by entities linked through their organisations;

- 2) electronic money is used as the payment instrument exclusively in the territory of the municipality where the electronic money institution has its registered office.

Article 51. 1. The total amount of the electronic money institution's claims and extended off balance sheet commitments representing an exposure to a single party or to parties related by capital or management shall not exceed the large exposure limit, which shall constitute:

- 1) 20% of the electronic money institution's capital base - where any of those parties is the parent undertaking or a subsidiary of the electronic money institution's parent undertaking,
- 2) 25% of the electronic money institution's capital base - where these parties are not connected to the electronic money institution in the manner described in subpara. 1 above.

2. The aggregate amount of the electronic money institution's claims and extended off balance sheet commitments representing exposures in excess of 10% of its capital base to the parties referred to in para. 1 above shall not exceed 800% of that capital base.

3. The provisions of para. 1 and 2 above shall not apply where:

- 1) the electronic money institution's exposure is to the Treasury, the National Bank of Poland, the European Central Bank, or central governments or central banks of Member States of the European Union, Organization of Economic Cooperation and Development, save for those which are rescheduling their external debt or have done so over the preceding five years,
- 2) the electronic money institution's exposure is to a bank having its registered office in a Member State of the European Union, member country of the Organization for Economic Cooperation and Development, save for those which are rescheduling their external debt or have done so over the preceding five years,
- 3) the claim or extended off balance sheet commitment is secured by a guarantee or endorsement extended by the parties listed in subpara. 1 above, this exemption applying to the amount of security so received,
- 4) the claim or extended off balance sheet commitment is secured by an assignment of the rights attached to securities issued by the parties listed in subpara. 1, this exemption applying to the amount of security so received,
- 5) the claim or extended off balance sheet commitment is secured by cash collateral, title to which has been transferred to the bank, with that collateral placed on account at the electronic money institution, this exemption applying to the amount of collateral so taken.

4. An electronic money institution's management board shall be required to report to the Commission for Banking Supervision each where the electronic money institution's claims and extended off balance sheet commitments representing an exposure to a single party or to parties related by capital or management exceed the level of 10% of its capital base.

5. Without prejudice to the general limits in force, electronic money institution shall in their own capacity set internal large exposure limits and conduct periodic reviews thereof, applying criteria which take into consideration the specific nature of its own activity and in particular the industries and geographic regions concerned.

6. In the case of failure to meet the requirements, referred to in para. 1, the electronic money institution shall immediately notify the KNB.

Article 52. An electronic money institution shall develop internal procedures for managing the risk of activity, fixing the limits of market risk taken, including in particular foreign exchange risk, risk of prices of debt and capital securities and interest rates as well as liquidity risk.

Article 53. 1. An electronic money institution and a branch of foreign electronic money institution may process computer data abroad, on the basis of permission by the KNB, issued upon receiving the consent of the appropriate supervision office of the country, in which the computer data are to be processed.

2. The permission may lay down the conditions, on which it shall be applicable, justified regarding protection of the interests of customers of the interested electronic money institution or of a branch of foreign electronic money institution.

Article 54. 1. The provisions Article 142, and Article 145-157 of the Banking Law shall apply respectively to rehabilitation proceedings and winding-up of electronic money institution and foreign branches of electronic money institution.

2. Only the KNB shall be authorised to demand bankruptcy of electronic money institutions.

Chapter 6

Electronic money instrument

Article 55. Under a contract for electronic money instrument, the bank or electronic money institution shall be liable for providing the holder with electronic money on receipt of funds of an amount equal to the value of issued electronic money.

Article 56. The contract for electronic money instrument should also specify:

- 1) information concerning the devices, by means of which providing the holder with electronic money instrument is possible;
- 2) rules and conditions of acquisition of electronic money by the holder;
- 3) minimum threshold for redemption of electronic money, subject to Article 60 Paragraph 2;
- 4) conditions and time limits for redemption electronic money by the bank or electronic money institution, on demand of the holder;
- 5) rules of making payment by means of an electronic money instrument.

Article 57. Contract for electronic money instrument cannot limit the responsibility of the bank or electronic money institution to the holder for the loss of electronic money or damage resulting from incorrect performance of operation ordered by the holder, if the loss of electronic money or incorrect performance of operation is caused by defective functioning of the device, that the bank or electronic money institution consented to use.

Article 58. 1. Electronic money instrument made available to the holder should contain a mechanism preventing from storing electronic money of a value exceeding the equivalent of 150 euro in PLN calculated at the average exchange rate published by the NBP and ruling on the day of issuing electronic money instrument.

2. Electronic money shall be issued to the holder only up to the amount of cash previously paid in or funds on his account.

Article 59. 1. Funds received by the bank from the holder shall not be a deposits payable on demand or a specified maturity within the meaning of Article 5, para. 1, subpara. 1 of the Banking Law, if such funds are immediately exchanged into electronic money.

2. On the funds, referred in para. 1, banks shall not transfer the required reserve, referred to in Article 38 of the Act of 29 August 1997 on the National Bank of Poland (Journal of Laws z 1997 No. 140, item 938, z 1998 No. 160, item 1063, z 2000 No. 53, item 648, No. 62, item 718 and No. 119, item 1252, z 2001 No. 8, item 64, No. 110, item 1189 and No. 154, item 1784 and 1800, and z 2002 No. 126, item 1070 and No. 141, item 1178), on cash funds, referred to in Paragraph 1,

Article 60. 1. In the validity period of a contract for electronic money instrument, the holder may demand from the bank or from the electronic money institution to redeem the electronic money stored thereon, at their nominal value, in a form of cash or non-cash.

2. Bank or electronic money institution shall be obliged to redeem the electronic money stored on electronic money instrument, of a value not less, than the equivalent of 5 euro in PLN, calculated at the average exchange rate published by the NBP and ruling on the day of redemption.

Article 61. Holder shall notify, without delay, the bank or electronic money institution about the lost electronic money instrument, according to the procedure specified in the contract.

Article 62. 1. Bank and electronic money institution shall ensure the safety of transferring electronic money and introduce the solutions preventing from distortion or acquisition by unauthorised persons of information on operations and settlements performed with the holder.

2. Bank and electronic money institution shall enable the holder, by means of an electronic money instrument provided, to identify at least the last 5 operations performed by means of this instrument, and the balance of funds remaining and stored on electronic money instrument.

3. Bank and electronic money institution shall inform the holder on the manner of marking the places, where the electronic money instrument may be reloaded.

Article 63. 1. Responsibility of the bank or electronic money institution to the holder, resulting from the contract for electronic money instrument, shall be limited up to the value of electronic money acquired by the holder.

2. The contract for electronic money instrument may extend the responsibility of the bank, and electronic money institution to the holder above the limit resulting from Paragraph 1.

Article 64. 1. Banks and electronic money institutions shall provide the NBP with data concerning:

- 1) the value of electronic money issued;
- 2) types and volume of electronic money instruments issued;
- 3) volume and value of operations executed by means of an electronic money instruments;
- 4) volume and value of operations of reloading electronic money instruments;
- 5) registered attempts to execute and transactions executed tending to violate or evade provisions of the law.

2. The minister competent for matters related to financial institutions, having sought the opinion of the President of the NBP, being guided by the need to provide the NBP with data necessary to proceed with periodical assessment of monetary settlements, shall set out, by way of regulation, the manner, detailed scope and normal periods to fulfil the obligation referred to in Paragraph 1.

3. Electronic money institutions shall provide the NBP with data necessary to assess their financial situation and the risk they bear - in a manner, extent and within periods specified for banks.

Chapter 7

Special provisions

Article 65. Advertising and promotion of activity concerning issuing of electronic payment instruments and settling the operations executed by means of them may conduct only entity authorized to carry out such activity or entity acting on behalf of authorized entity.

Article 66. Acquirer and electronic money institution shall be required to undertake measures to prevent the use of their activities for purposes associated with criminal offence referred to in Article 299 of the Act of 6 June 1997 – the Penal Code (Journal of Laws 1997 No. 88, item 553 and No. 128, item 840, 1999 No. 64, item 729 and No. 83, item 931, 2000 No. 48, item 548, No. 93, item 1027 and No. 116, item 1216, and 2001 No. 98, item 1071) or for the purpose of concealing criminal activity. The provisions of Article 107 and 108 of the Banking Law shall apply respectively.

Article 67. 1. Solely an acquirer may operate an authorization and clearing system.

2. The provisions of chapter 3, except for Article 17 Paragraph 3 and 4, and the provisions of Article 20, Article 21 and Article 27 of the Act of 24 August 2001 on Settlement Finality in Payment and Securities Settlement Systems and on the Rules of Oversight on These Systems (Journal of Laws 2001 No. 123, item 1351) in the scope of payment systems oversight performed by the President of the NBP, shall apply respectively to authorization and clearing systems operated by acquirers not being banks.

3. Acquirer shall carry out the activity in form of a joint stock company.

4. A plan of activity of a acquirer, prepared for a period of at least 3 years, indicating that the company will be able to fulfil its liabilities towards the merchants, shall be attached to the application, referred to in Article 17 Paragraph 1 of the Act mentioned in Paragraph 2 above

5. Initial capital of a acquirer may not be inferior to the equivalent of 1.000.000 euro in PLN, calculated at the average exchange rate published by the NBP and ruling on the day of granting permission, referred to in Article 16 of the Act mentioned in Paragraph 2 above.

6. Shares of an acquirer may be acquired only for contributions in cash.

7. Shares acquired must be fully paid prior to company registration or increasing the company's initial capital.

Article 68. 1. Issuers of electronic payment instruments may exchange between themselves the information about holders improperly discharging contracts for electronic payment instrument.

2. Information, referred to in Paragraph 1, in the case of holders being private persons, shall contain the following data:

- 1) first name and name;
- 2) personal identification number (PESEL);
- 3) residence address;
- 4) description of improper execution of contracts.

3. Information, referred to in Paragraph 1, in the case of holders not being private persons, shall contain:

- 1) business name (firm), seat and address;
- 2) tax identification number (NIP);
- 3) description of improper execution of contracts.

4. Information, referred to in Paragraph 1-3, may be gathered and made available to issuers by an institution, referred to in Article 105 Paragraph 4 of the Banking Law.

5. Acquirers shall be obliged to exchange between themselves the information about merchants improperly discharging contracts or with which they therefor dissolved a contract.

6. Acquirer shall be obliged to provide the information, referred to in Paragraph 5, on demand of issuers.

7. Information, referred to in Paragraph 5, shall contain:

1) in the case of merchants being private persons – the data, referred to in Paragraph 2;
2) in the case of merchants not being private persons– the data, referred to in Paragraph 3
- and also a description of the causes for dissolving contracts or considering their execution improper.

8. In the case of suspicion of committing an offence or a fiscal offence, issuers and acquirers shall notify the public prosecutor or other organ appointed to prosecute those offences. Necessary information or documents, in particular those specified in Paragraphs 1-3 above, shall be attached to the notification.

9. In the case, referred to in Paragraph 8, issuers and acquirers should undertake co-operation with the authorities appointed to prosecute offences or fiscal offences.

Article 69. 1. If the parties draw up a clause on court of arbitration, on demand of the holder, matters connected with issuing and using the electronic payment instruments shall be adjudicated by arbitration courts indicated by the minister competent for matters related to financial institutions, unless the defendant opposes to that not later, than in the reply to the statement of claim.

2. The minister competent for matters related to financial institutions, having sought the opinion of the President of the NBP, in form of a regulation, shall indicate the courts of arbitration competent to adjudicate matters connected with issuing and using the electronic payment instruments, considering the nature of matters to be investigated by those courts and following the need to ensure the efficient course of proceedings.

Article 70. 1. In penal proceedings, merchant, holder, issuer or acquirer may be represented by an entity granted with appropriate authorization.

2. Entity, referred to in Paragraph 1, shall operate on conditions as specified in the letter of authorization and observing the principle of due diligence.

Chapter 8

Penal provisions

Article 71. 1. Whoever issues an electronic payment instrument in violation of this Act, shall be liable to a fine up to 5.000.000 PLN or imprisonment for a term up to 3 years or to both these penalties together.

2. If the object of a deed referred to in Paragraph 1 above is an electronic money instrument, the perpetrator shall be liable to a fine up to 5.000.000 PLN and imprisonment for a term up to 3 years.

3. The same penalty referred to in Paragraph 1 or 2, shall apply respectively to whoever issues an electronic payment instrument in violation of this Act, acting in the name or in the interest of a natural person, legal person or organizational unit lacking legal person status.

Article 72. 1. Whoever, in violation of this Act, fails to provide the NBP with required information or provides them in a way not conform to provisions of the law, shall be liable to a fine up to 1.000.000 PLN.

2. The same penalty shall apply to any person, who whoever commits the deed referred to in Paragraph 1 above, acting in the name or in the interest of a natural person, legal person or organizational unit lacking legal person status.

Article 73. Whoever, in violation of this Act, advertises or promotes the activity consisting of issuing electronic payment instruments, and clearing the operations performed by their means, shall be liable to a fine up to 1.000.000 PLN or imprisonment up to 1 year.

Chapter 9

Amendments to Regulations in Force, Transitory and Final Provisions

Article 74. The Act of 29 August 1997 – Banking Law (Journal of Laws 2002 No. 72, item 665, No. 126, item 1070, No. 141, item 1178, No. 144, item 1208 and No. 153, item 1271) is hereby amended as follows:

- 1) in Article 4:
 - a) in paragraph 4 the phrase used twice "cash and" shall be replaced by the following "cash or",
 - b) following subparagraph e) shall be added to paragraph 5:
"e) shall be expressed in monetary units,";
- 2) w Article 5 in Paragraph 1 in Subparagraph 6a and in Paragraph 3 the phrase ", clearing and retiring of electronic money" shall be replaced by the following "electronic money instrument";
- 3) The following point m) shall be added to article 105, Paragraph 1, Subparagraph 2 :
"m) issuers of electronic payment instruments not being banks in the scope laid down by the Act of 12 September 2002 on electronic payment instruments (Journal of Laws z 2002 No. 169, item 1385).".

Article 75. In the Act of 16 November 2000 on Counteracting Introduction of Property Values Derived from Illegal or Undisclosed Sources into Financial Circulation (Journal of Laws 2000 No. 116, item 1216, 2001 No. 63, item 641, and 2002 No. 25, item 253, No. 32, item 299, No. 41, item 365, No. 74, item 676, No. 89, item 804, No. 141, item 1178 and No. 144, item 1204) in Article 2 Paragraph 1, after the phrase "foreign bank branches" a comma shall be inserted and the following phrase added " electronic money institutions, branches of foreign electronic money institution, and acquirers, carrying out activity pursuant to the Act of 12 September 2002 on electronic payment instruments (Journal of Laws 2002 No. 169, item 1385)".

Article 76. Entities not being banks, carrying out the activity consisting of issuing payment card prior to the day of coming into force of this Act, shall be obliged to proceed with application to the NBP, referred to in Article 15 Paragraph 1, within 3 months following the day of coming into force of the Act.

Article 77. Acquirers not being banks and not operating the system in the meaning of the Act, referred to in Article 67 Paragraph 2, within 3 months following the day of coming into force of this Act shall submit to the NBP the documents, referred to in Article 17 Paragraph 2 of the Act, referred to in Article 67 Paragraph 2.

Article 78. the provisions hitherto existing shall apply to electronic payment instruments issued prior to the day of coming into force of this Act, however not longer, than during 12 months following the day of its coming into force.

Article 79. 1. This Act shall come into force upon 12 months following the day of its publication.

2. The provisions of the Act concerning electronic money institution shall apply from the day of obtaining membership of the European Union by the Republic of Poland.