

Law no. 210 from 08/11/2019
on the activity of issuing electronic money

CHAPTER I

Object, scope and definitions

Art. 1 The present law regulates the conditions of access to the activity of issuing electronic money and carrying out this activity, the conditions for carrying out the activity of providing payment services by the electronic money institutions, prudential supervision of the electronic money institutions, as well as the regime for the redemption of electronic money.

Art. 2 - (1) The activity of issuing electronic money may be carried out by the following categories of electronic money issuers:

a) credit institutions, as defined in Article 4(1) point 10 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, which carries out activity according to the Government Emergency Ordinance No. 99/2006 on credit institutions and capital adequacy, approved with amendments and completions by Law No. 227/2007, with subsequent amendments and completions;

b) electronic money institutions, as defined in Article 4(1) letter e);

c) post office giro institutions that are entitled under national law to issue electronic money;

d) the European Central Bank and the national central banks when not acting in their capacity as monetary authorities or in other capacity that involves the exercise of public authority;

e) Member States or their regional or local authorities when acting in their capacity as public authorities.

(2) Chapter II applies only to electronic money institutions.

Art. 3 - The present law does not apply to the following:

a) without prejudice to the provisions of Chapter III Title II of Law No. 209/2019 on payment services and for the modification of some normative acts, the monetary value stored in the instruments as specified in Article 4(1) letter k) and l) of Law No. 209/2019 on payment services and for the modification of some normative acts;

b) monetary value that is used to make payment transactions as specified in Article 4(1) letter m) of Law No. 209/2019 on payment services and for the modification of some normative acts.

Art. 4 - (1) For the purposes of this law, the terms and expressions below have the following meanings:

a) agent – a natural or legal person providing payment services in the name and on behalf of an electronic money institution;

b) consumer – a natural person who acts for purposes that are outside his commercial or professional activity;

c) payment account – an account held in the name of one or more electronic money holders and payment service users which is used for the execution of payment transactions;

d) distributor – a natural or legal person providing electronic money distribution and redemption, where appropriate, on behalf of an electronic money institution;

e) electronic money institution – a legal person that has been granted authorisation under Chapter II to issue electronic money;

f) electronic money - electronically, including magnetically, stored monetary value as represented by a claim on the issuer which is issued on receipt of funds for the purpose of making payment transactions and which is accepted by a natural or legal person other than the electronic money issuer;

g) Member State – any Member State of European Union, as well as any other State belonging to the European Economic Area;

h) home Member State – Member State where the registered office of the electronic money issuer is located or, if the electronic money issuer has, under its national law, no registered office, the Member State where the real head office is situated;

i) host Member State – Member State, other than the home Member State, where an electronic money issuer has a branch, a distributor, an agent or where it issues electronic money or provides payment services directly;

j) branch – operational unit, without legal personality, other than the real head office, that is a part of an electronic money institution and that directly carries out all or some of the activities of the electronic money institution.

(2) For all the terms and expressions used in the present law that were not defined in paragraph (1), the definitions provided in Law No. 209/2019 on payment services and for the modification of some normative acts, will be used accordingly.

Art. 5 - All business units set up in the same Member State by an electronic money institution that has its real headquarters in another Member State shall be considered as a single branch.

Art. 6 - (1) It is forbidden to any entity that is not an issuer of electronic money within the meaning of Article 2 to issue electronic money.

(2) It is forbidden to any entity that is not an issuer of electronic money within the meaning of Article 2 to use in the name, in the header or in other identification attributes or in connection with the activities it carries out the phrases electronic money institution, electronic money issuer or derivatives or translations thereof.

CHAPTER I

Authorisation and prudential supervision of electronic money institutions

SECTION 1

Minimum requirements for access to the activity

Art. 7 – (1) Any entity that intends to issue electronic money on the Romanian territory as an electronic money institution shall have an authorization, in accordance with this Chapter, before starting this activity

(2) The National Bank of Romania may grant authorisation only to a Romanian legal person established in accordance with Law no. 31/1990 on companies, republished, with subsequent amendments and completions, that has the real head office on the Romanian territory and issues at least a part of the electronic money on the Romanian territory.

Art. 8 – (1) The National Bank of Romania shall grant authorisation to a Romanian legal person only if the information and documents accompanying the application comply with all the requirements under this Chapter and the regulations issued for its purpose and if the overall assessment of the proposed project is favourable.

(2) For the purpose of applying paragraph (1), the National Office for Prevention and Control of Money Laundering provides the National Bank of Romania, at its request, with the information required on persons and entities exposed to the risk of money laundering and terrorist financing.

(3) For the purpose of applying the provisions of paragraph (1), at the request of the legal person referred to in Article 7(2), the National Authority for Consumer Protection analyses the documents for which, according to the regulations of the National Bank of Romania provided in paragraph (1), it is necessary for the National Authority for Consumer Protection to express an opinion and communicate to the applicant its opinion on their compliance with the provisions of Articles 93-106 of this law and, where appropriate, with the provisions of Law

No. 209/2019 on payment services and for the modification of some normative acts, under the competence of the authority according to Article 222(1) letter b) of the respective law.

(4) For the purpose of taking a decision on the authorisation application, the National Bank of Romania may consult the authorities with relevant competences.

Art. 9 – (1) The National Bank of Romania shall grant the authorisation only if it is entrusted that, from the perspective of the need to ensure a prudent and sound management of the electronic money institution, the electronic money institution has robust governance arrangements for its electronic money issuance, which include a clear organisational structure with well-defined, transparent and consistent lines of responsibility, effective procedures to identify, manage, monitor and report the risks to which it is or might be exposed, and adequate internal control mechanisms, including rigorous administrative and accounting procedures.

(2) The electronic money institution establishes the governance arrangements, procedures and mechanisms provided in paragraph (1) in order to be comprehensive and adapted to the nature, scale and complexity of the payment services provided and the electronic money issuance done by the electronic money institution.

Art. 10 – (1) The National Bank of Romania shall grant authorisation only if it is entrusted that, from the perspective of the need to ensure a prudent and sound management of the electronic money institution, the persons responsible for the management and administration of the electronic money issuance activity are of good reputation and possess the knowledge and experience appropriate to the nature, scale and complexity of the activity envisaged.

(2) For the purpose of this chapter, the persons responsible for the management and administration of the electronic money institution are:

a) in the case of electronic money institutions that have as their main activity the issuance of electronic money, the persons that, according to the articles of incorporation and/or the decision of the statutory bodies, are empowered to lead and coordinate the daily activity of the electronic money institutions and are invested with competence to engage the responsibility of these institutions; or

b) in the case of electronic money institutions that do not have as their main activity the issuance of electronic money, the persons responsible for the coordination of the organizational structure that ensures the deployment of the activity of issuing electronic money.

(3) Any of the persons specified in paragraph (2) shall be approved by the National Bank of Romania before starting the exercise of their responsibilities.

Art. 11 – The National Bank of Romania shall grant authorisation only if it is entrusted that, from the perspective of the need to ensure a prudent and sound management of the electronic

money institution, the quality of shareholders or associates having a qualified holding is appropriate.

Art. 12 – If there are close links between the payment institution, Romanian legal person, and other natural or legal persons, the National Bank of Romania shall grant authorization only if those links or the legal or administrative provisions of a third country governing one or more natural or legal persons having close links with the payment institution, or having difficulties in applying the provisions or the measures, do not prevent the effective exercise of its supervisory functions.

Art. 13 – The requirements provided in Articles 9-12 shall apply accordingly to the activity of providing payment services by the electronic money institution.

Art. 14 – If the electronic money institution is also involved in other commercial activities, other than electronic money issuance and the provision of any of the payment services specified in Article 7 of Law No. 209/2019 on payment services and for the modification of some normative acts, the National Bank of Romania may request the establishment of a separate entity for the electronic money issuance and the provision of payment services, if it considers, in the authorisation procedure or in the process of supervision of the electronic money institution, that the other commercial activities impair or are likely to impair either the financial soundness of the electronic money institution or the ability of the National Bank of Romania to supervise the electronic money institution's compliance with all obligations imposed by this Chapter and the regulations issued for its application.

Art. 15 – The authorisation granted by the National Bank of Romania allows the electronic money institution, Romanian legal person, to issue electronic money and to provide payment services covered by the authorisation in any Member State, in accordance with the provisions of Section 5.

Art. 16 – **(1)** Without prejudice to the provisions of this Chapter, the National Bank of Romania shall issue regulations establishing the documentation accompanying the application for authorisation, as well as the criteria on the basis of which the fulfilment of the requirements set out in Article 10(1) and Article 11 are examined.

(2) In applying the provisions of paragraph (1), the National Bank of Romania ensures compliance with the requirements provided by the European Banking Authority's guidelines on the authorisation of electronic money institutions, according to Article 16 of Regulation (EU) No. 1093/2010 of the European Parliament and the Council of the 24th of November 2010 for establishing an European supervisor authority (the European Banking Authority),

amending the Decision no. 716/2009/EC and repealing the Commission's Decision 2009/78/EC.

Art. 17 – Electronic money institutions shall hold at the time of authorisation a level of initial capital of not less than EUR 350.000, equivalent in RON.

Art. 18 – (1) Electronic money institutions Romanian legal persons that provide the services specified in letter g) of Article 7(1) of Law No. 209/2019 on payment services and for the modification of some normative acts shall have an insurance covering professional liability or another comparable guarantee covering, for all territories in which it offers its services, the liability for unauthorised payment operations, for non-execution, faulty or late execution of payment operations or failure to use strong customer authentication.

(2) Electronic money institutions Romanian legal persons that provide the services specified in letter h) of Article 7(1) of Law No. 209/2019 on payment services and for the modification of some normative acts shall have an insurance covering professional liability or another comparable guarantee covering, for all territories in which it offers its services, damages that may be caused to payment service providers providing account services or to payment service users as a result of unauthorised or fraudulent access to the payment account information.

Art. 19 – Electronic money institutions shall issue electronic money without delay upon receipt of funds in exchange for which it is issued.

Art. 20 – (1) Electronic money institutions may open and hold payment accounts for their clients, with the sole purpose of executing payment transactions.

(2) Electronic money institutions are prohibited to conduct the business of taking deposits or other repayable funds from the public, as defined in the Government Emergency Ordinance No. 99/2006, approved with amendments and completions by Law No. 227/2007, with subsequent amendments and completions;

(3) The receipt of funds for the issuance of electronic money as set out in Article 19 or for providing payment services shall not be considered as taking deposits or other repayable funds from the public.

Art. 21 – (1) Apart from the issuance of electronic money, the electronic money institutions may provide the payment services specified in Article 7 of Law No. 209/2019 on payment services and for the modification of some normative acts.

(2) Electronic money institutions may provide operational and closely related ancillary services to the issuance of electronic money and payment services provision, such as: ensuring

the execution of payment transactions, foreign exchange services, safekeeping activities or data storage and processing.

(3) Apart from the issuance of electronic money, the provision of payment services specified in Article 7 of Law No. 209/2019 on payment services and for the modification of some normative acts and of the operational and closely related ancillary services specified at paragraph (2) and Article 22, the electronic money institutions may carry out, in compliance with the relevant national legislation and to the extent permitted by the legislation specific to the other activities they carry out:

a) the granting of credits that are not related to payment services, in compliance with the provisions of Law No. 93/2009 on non-bank financial institutions, with subsequent amendments and completions;

b) the administration of payment systems;

c) commercial activities in compliance with the European Union legislation and relevant national legislation.

Art. 22 – Electronic money institutions may grant credits related to payment services specified in Article 7(1) letters d) and e) of Law No. 209/2019 on payment services and for the modification of some normative acts, in the conditions established by the respective regulation.

Art. 23 – The credits granted by the electronic money institutions shall not be from the funds received in exchange of the electronic money issued.

SECTION 2

Authorisation of electronic money institutions

Art. 24 – In order to obtain the authorisation for the issuance of electronic money and provision of payment services, the applicant shall submit to the National Bank of Romania an application accompanied by the documentation and information provided in the regulations issued by National Bank of Romania in application of this Chapter.

Art. 25 – **(1)** The National Bank of Romania shall evaluate and communicates to the applicant its decision regarding the granting or the rejection of the authorisation, within three months from the date of receiving the application that meets the requirement provided in Article 24.

(2) If the application does not meet the condition provided in Article 24, the National Bank of Romania communicates to the applicant which documents and information are needed to meet the requirement.

(3) The applicants have at their disposal a maximum term of three months from the date of communication provided in paragraph (2) for the submission of the documents and/or information required by the National Bank of Romania, the assessment term specified in paragraph (1) starting from the date of receipt of the respective documents and information or, where appropriate, from the expiration of the maximum term of 3 months provided in this paragraph.

(4) For situations well substantiated by the applicant, at his request, the National Bank of Romania may extend the deadline for transmission of documents and information provided in paragraph (3).

(5) The National Bank of Romania may require, within a maximum of 20 working days from the date of receipt of the application that meets the requirement provided in Article 24, other relevant information for assessment. The applicant shall submit the required information within a maximum of 30 working days from the date of communication of the request, period in which the term provided in paragraph (1) is suspended.

(6) The applicant may provide on its own initiative any other information and/or documents considered relevant, but they should be submitted no later than 30 days before the expiration date of the term in which the National Bank of Romania should rule on the application for authorisation.

(7) Information and documents submitted after the deadlines provided in this Article shall not be taken into account in assessing the application for authorisation and shall be returned to the applicant.

(8) The decision of the National Bank of Romania regarding the granting of the authorisation takes effect from the date of registration in the register provided in Article 64.

Art. 26 – (1) The National Bank of Romania shall refuse granting an authorisation if, the assessment undertaken in accordance with this Chapter and the regulations issued for its application, reveals one of the following situations:

a) the initial capital is below the minimum level established by the legal provisions in force;

b) the assessment of the programme of operation and the business plan presented reveals that the electronic money institution cannot ensure the achievement of the proposed objectives in compliance with the requirements set out in this Chapter and the applicable regulations, including due to the insufficiency of own funds reported at the regulated level for the proposed activity;

c) the governance arrangements for its electronic money issuance and payment services business, the procedures for the identification, administration, monitoring and reporting the

risks to which the electronic money institution is or might be exposed and the internal control mechanisms are not comprehensive and proportionate to the nature, scale and complexity of this activity;

d) the commercial activities, other than the issuance of electronic money or the provision of payment services, in which the entity is involved harms or could harm either the soundness of the financial situation of the electronic money institution or the ability of the National Bank of Romania to supervise compliance by the electronic money institution of all the obligations imposed by this chapter and by the regulations issued in its application;

e) the persons responsible for the management and administration of the electronic money issuance and payment services activity do not have a good reputation or do not have the knowledge and experience adequate to the nature, scale and complexity of the activity envisaged;

f) the suitability of the shareholders or associates that have qualifying holdings is not adequate;

g) the close links between the electronic money institution and other natural or legal persons might prevent the efficient exercise by the National Bank of Romania of its supervisory functions;

h) the legal provisions or administrative measures from a third country's jurisdiction governing one or more natural or legal persons to which the payment institution has close links or the difficulties involved in applying these provisions or measures might prevent the effective exercise for the National Bank of Romania of its supervisory functions;

i) the documentation and information submitted by the applicant following the application are not complete or do not meet the requirements provided by the regulations issued by the National Bank of Romania in application of this Chapter;

j) the security policy presented by the applicant does not ensure the achievement of the objective of adequate protection of payment service users against the risks associated with the payment services provided;

k) other requirements set out in this Chapter or the regulations issued for its application are not observed.

(2) If the National Bank of Romania rejects granting the authorisation, the decision shall also include the reasons underlying it.

Art. 27 – (1) The National Bank of Romania may withdraw an authorisation granted to an electronic money institution in the following situations:

a) the electronic money institution does not make use of the authorisation within 12 months from the date on which the authorisation was granted, or has ceased to engage in business for more than six months;

b) the electronic money institution does not carry out the activity of issuing electronic money on the Romanian territory;

c) the authorisation was granted based on false information or on any other illegal means;

d) the payment institution no longer fulfils the conditions that were the basis for granting the authorisation or other conditions provided by this Chapter and by the regulations issued for its application;

e) the continuation of the activities for which the electronic money institution has been authorised would constitute a threat to the stability of the payment system;

f) as a sanction in accordance with Article 75 (1) letter e);

g) in any other situations provided by the legislation in force.

(2) The decision of the National Bank of Romania regarding the withdrawal the authorisation shall be communicated in writing to the electronic money institution, together with the reasons it is based on.

(3) The shareholders or associates of an electronic money institution may decide to renounce the authorisation and, if applicable, dissolve the entity only if the procedure for insolvency was not opened for the electronic money institution.

(4) In the situation provided in paragraph (3), the electronic money institution communicates the National Bank of Romania about the decision of the general assembly of shareholders or associates, presenting also a plan to ensure the fulfilment of all obligations towards the electronic money holders and, where applicable, the payment service users. Where appropriate, the decision shall be accompanied by the evidence of termination of the contracts that provide access to the payment accounts for the provision of payment initiation services.

(5) The National Bank of Romania approves the request to renounce to the authorisation only if the requirements set out in paragraphs (3) and (4) are fulfilled.

(6) The authorisation granted to an electronic money institution ceases to be valid in the following situations:

a) there has been a merger or division of the electronic money institution from which it ceases to exist;

b) a decision has been issued to initiate the bankruptcy procedure of the electronic money institution.

(7) The National Bank of Romania enters in the register provided in Article 64 references regarding the termination of the validity of the authorisation in the situations provided in paragraph (6).

(8) The decisions of the National Bank of Romania regarding the withdrawal of the authorisation and the approval of the application for renunciation of the authorization shall be communicated to the electronic money institution and references shall be entered in the register provided in Article 64.

(9) The decisions provided in paragraph (8) take effect from the date of references registration in the register provided in Article 64 or from a later date provided in the respective decisions.

(10) From the date on which the decisions specified in paragraph (8) take effect, respectively from the termination of the authorisation's validity, the entities shall no longer issue electronic money or provide payment services.

SECTION 3

Operational requirements

Art. 28 – The changes occurred in the situation of the electronic money institutions shall be communicated to the National Bank of Romania in accordance with the regulations issued by it.

Art. 29 – (1) The electronic money institutions shall hold on a continuous basis an amount of own funds that may not fall below the level of initial capital needed for authorisation or below the amount calculated in accordance with the method for determining the own funds selected from the methods set out in Article 30 and 31, whichever the higher.

(2) The electronic money institutions shall calculate the own funds in compliance with the provisions of Article 36 of Law No. 209/2019 on payment services and for the modification of some normative acts and of the regulations of the National Bank of Romania given in its application.

Art. 30 – The National Bank of Romania lays down in the regulations issued for the application of this Chapter the requirements regarding the own funds of an electronic money institution for the activities related to issuing electronic money, regarding the method for determining the level of own funds.

Art. 31 – The level of own funds of an electronic money institution for the activities related to providing of payment services, other than those related to electronic money issuance, will

be determined according to the provisions of Article 34 of Law No. 209/2019 on payment services and for the modification of some normative acts.

Art. 32 – (1) Based on the evaluation of the risk-management procedures, risk loss database and internal control mechanisms of the electronic money institution, the National Bank of Romania may require the electronic money institution to hold an amount of own funds that is up to 20% higher than the amount resulted from adding the levels obtained according to Article 30 and 31 or may allow the electronic money institution to hold an amount of own funds that is up to 20 % lower than the amount resulted from adding the levels obtained according to Article 30 and 31.

(2) The level of own funds obtained in accordance with the provisions of paragraph (1) shall not be lower than the minimum level of initial capital set out in Article 17.

Art. 33 – The multiple use of eligible elements for calculating the own funds level if the electronic money institution carries out activities other than the issuance of electronic money and the provision of payment services or belongs to the same group as another electronic money institution, a credit institution, a payment institution, an investment firm, an asset management company or an alternative investment fund manager, an insurance or reinsurance undertaking, is forbidden.

Art. 34 – (1) The electronic money institutions shall safeguard funds received in exchange of electronic money according to the following methods:

a) the funds are highlighted separately from the funds for the activities carried out by the electronic money institution, other than the issuance of electronic money and, if the electronic money were not redeemed/transferred to another electronic money issuer by the end of the working day following the day when the funds were received, the funds shall be deposited and kept in a separate account at a credit institution or shall be invested in secure, liquid low-risk assets as defined in the regulations issued by National Bank of Romania for the application of this Chapter;

b) the funds shall be adequately covered by an insurance policy or some other comparable guarantee from an insurance company or a credit institution, that does not belong to the same group as the electronic money institution itself, for an amount equivalent to the one that should have been recorded and kept separately in the absence of the insurance policy or other comparable guarantee, payable if the electronic money institution is unable to meet its financial obligations.

(2) The creditors of the electronic money institution, other than the holders of electronic money, may not obtain the freezing of assets through precautionary measures and may not

execute under no circumstances the funds protected according to paragraph (1), including in case of insolvency of the electronic money institution.

Art. 35 – (1) In applying the provisions of Article 34, if the payment for the value of the electronic money issued is done through a payment instrument the obligation to safeguard the respective funds starts from the moment when the electronic money institution's account has been credited or when the funds become available in any other way to the electronic money institution.

(2) The safeguarding of funds foreseen in paragraph (1) should be done in maximum five business days from the date of the electronic money issuance.

Art. 36 – (1) When only a part of the monetary value issued is used as electronic money and the other part is used for other purposes, the electronic money institution has the obligation to apply the requirements set out in Article 34 and 35 only for that part of funds received in exchange of the electronic money which is used as electronic money.

(2) Where that part of the monetary value used as electronic money is variable or unknown in advance, the electronic money institutions may apply the provisions of Article 34 and 35 only to a representative part of the total funds, part that is estimated to be used as electronic money, provided that the estimation is reasonably made, based on historical data, in a manner considered appropriate by the National Bank of Romania.

Art. 37 – Electronic money institutions shall safeguard funds that were received for the execution of payment transactions, other than those related to electronic money issuance, from the payment service users directly or through another payment service provider, in accordance with the provisions of Article 38 and 39 of Law No. 209/2019 on payment services and for the modification of some normative acts, and the regulations issued in their application.

Art. 38 – (1) For the credits related to payment services, electronic money institutions shall set up, adjust and use specific credit risk provisions in accordance with the regulations issued by the National Bank of Romania.

(2) The provisions set up as above are deducted from income tax, in accordance with the provisions of Law No. 227/2015 on the Fiscal Code, as subsequently amended and supplemented.

Art. 39 – The electronic money institutions that grant credits related to payment services and whose activity is limited to electronic money issuance and payment services provision, shall organize and manage their accounting in compliance with the provisions of Law no. 82/1991- Accounting Act, as republished, further amended and supplemented and with the

specific regulations issued by the National Bank of Romania, with the approval of the Ministry of Public Finance.

Art. 40 – The annual and consolidated financial statements of the electronic money institutions as set out in Article 39 shall be audited by financial auditors or by audit firms.

Art. 41 – (1) For supervisory purpose, electronic money institutions shall communicate to the National Bank of Romania distinct accounting information related to the following activities:

a) electronic money issuance and payment services provision related to issuing electronic money, including operational and related ancillary services provided in Article 21(2) and Article 22;

b) payment services provision, other than those related to issuing electronic money, including operational and related ancillary services;

c) other activities carried out by the electronic money institution.

(2) The accounting information provided in paragraph (1) shall be accompanied by an audit report, elaborated in accordance with the applicable regulations and for the electronic money institutions that have to comply to the auditing obligation of the financial statements, the report shall be prepared by the financial auditor or the audit firm of the electronic money institution.

Art. 42 – Electronic money institutions are obliged to present to the National Bank of Romania the accounting information provided in Article 41(1), as well as other data and information requested, using the patterns and within the time limits provided in the regulations issued by the National Bank of Romania for the application of this Chapter.

Art. 43 – (1) During the exercise of their duties within the electronic money institution or their specific duties within an entity closely linked through a control relationship with the electronic money institution, the financial auditor or the audit firm shall immediately inform the National Bank of Romania when it acknowledges any act or decision concerning the electronic money institution which:

a) represents a significant breach of the law and/or of the regulations issued for its enforcement which lay down the conditions for authorisation or requirements for carrying out of activity related to electronic money issuance or payment services provision;

b) is likely to affect the electronic money institution's functioning;

c) may lead to the refusal by the financial auditor or the audit firm to express its opinion on the financial statements of the electronic money institution or to express their opinion with reservations.

(2) At the National Bank of Romania's request, the financial auditor or the audit firm of the electronic money institution shall provide any details, clarifications, explanations regarding the audit activity carried out.

(3) The fulfilment in good faith by the financial auditor or the audit firm of the electronic money institution of the obligation to inform the National Bank of Romania, according to paragraphs (1) and (2), shall not constitute a breach of the obligation to keep professional secrecy, that rests with the financial auditor or audit firm according to the law or the contractual clauses, and shall not involve the financial auditor or audit firm in liability of any kind.

(4) The National Bank of Romania has access to all the documents drawn up by the financial auditor or the audit firm of the electronic money institution during the audit action.

(5) The financial auditor or audit firm shall inform at the same time the persons that, according to the articles of incorporation and/or the statutory bodies' decision, are empowered to lead and coordinate the daily activity of electronic money institutions and are invested with the competence to engage these institutions, unless there are good reasons that compel the financial auditor/audit firm not to do so.

Art. 44 – Without prejudice to the provisions of the legislation on prevention and control of money laundering and terrorist financing or other relevant provisions of the legislation in force, the electronic money institutions shall keep all records related to electronic money issuance and payment services provision, including the operational and ancillary activities provided in Article 21(2) and Article 22, for at least five years after the end of the operation.

Art. 45 – (1) The electronic money institutions have the obligation to ensure the compliance to the requirements set out by this Chapter and by the regulations issued, if they delegate to third parties the performance of some operational functions.

(2) The electronic money institutions are fully liable for all the acts of their employees and for the activity carried out by branches, agents, distributors and other entities that externalize activities, under the conditions of this law.

SECTION 4

The outsourcing of the activities of an electronic money institution, Romanian legal person, and the provision of payment services through agents

Art. 46 – (1) The electronic money institutions are forbidden to outsource entirely or partially the issuing of electronic money.

(2) The electronic money institutions may use natural or legal persons for the distribution or redemption of electronic money.

Art. 47 – (1) The electronic money institutions shall inform the National Bank of Romania if they intend to outsource operational functions related to electronic money issuance to entities located in Romania, according to the regulations issued by the National Bank of Romania in application of this law.

(2) When outsourcing important operational functions, including IT systems, the electronic money institutions shall ensure that this is undertaken in such way as not to impair materially the quality of the electronic money institution's internal control mechanisms and the ability of the supervisory authority to monitor the electronic money institution's compliance with all obligations laid down in this Chapter and the regulations issued for its application.

Art. 48 – (1) In applying the provisions of Article 47, an operational function is considered important if its non-accomplishment or its defective accomplishment would prejudice significantly the capacity of the electronic money institution to permanently comply with the authorisation requirements laid down in this Chapter and the regulations issued for its application or any other obligations resulting from this Law, or it would significantly prejudice the financial performance, the stability of the electronic money institution or the continuity of its electronic money issuance activity.

(2) The outsourcing of important operational functions may be undertaken only if the electronic money institution observes the following requirements:

- a) the outsourcing does not lead to the delegation of the management bodies responsibility;
- b) the relationship and obligations of the electronic money institution in relation to the electronic money holders according to the present law and the regulations issued for its application are not altered;
- c) the fulfilment of the authorisation requirements laid down in this Chapter and the regulations issued for its application is not prejudiced;
- d) none of the requirements imposed for the authorisation of the electronic money institution are not eliminated or altered.

Art. 49 – Electronic money institutions may outsource operational functions related to the issuance of electronic money to foreign entities in compliance with the provisions of Articles 46-48 and with the prior information of the National Bank of Romania.

Art. 50 – The provisions of Articles 47-49 apply in the same manner if the electronic money institution intends to outsource operational functions related to payment services provision.

Art. 51 – (1) The electronic money institutions may provide payment services through agents in accordance with the provisions of Title II Chapter I Section 4 and Articles 61-66 of Law No. 209/2019 on payment services and for the modification of some normative acts, with the regulations issued for its application and with the present Law.

(2) The electronic money institutions shall ensure that the agents acting on their behalf inform accordingly the payment services user of this fact.

(3) When applying the provisions of paragraph (1), the referral to the payment institution's register will be understood as a referral to the electronic money institutions register foreseen in Article 64.

SECTION 5

The notification procedure for carrying out the activity by the electronic money institutions
Romanian legal persons in other Member States

Art. 52 – (1) Any authorized electronic money institution, Romanian legal entity, which intends to issue electronic money for the first time in another Member State, either by establishing a branch or directly, or using natural or legal persons for distribution and, where appropriate, for redemption of electronic money in another Member State, sends a request to the National Bank of Romania together with the information provided in Article 54.

(2) Within one month of receiving the request, the National Bank of Romania shall communicate to the competent authority in the host Member State the information provided in Article 54 and shall request an opinion regarding the intention of the electronic money institution.

(3) Within a maximum of three months from the receipt of the request provided in paragraph (1), the National Bank of Romania shall take a decision, taking into account the competent authority of the host Member State's opinion, and shall communicate to the electronic money institution and to the competent authority of the host Member State its decision regarding the approval or the rejection of the request.

(4) If applicable, the National Bank of Romania shall communicate to the competent authority of the host Member State the reasons of the disagreement with the negative opinion expressed by it because of the request made according to the provisions of paragraph (2).

(5) The decision of the National Bank of Romania regarding the approval of the request to carry out the activity through a branch takes effect starting from the registration date of the branch in the register of electronic money institutions provided in Article 64.

(6) The National Bank of Romania may erase the branch from the register provided for in Article 64 or it may revoke the approval of the application for using natural or legal persons for distribution and, where appropriate, for redemption of electronic money, if the competent authority of the host Member State communicates its negative opinion after the expiry of the term provided in paragraph (3).

Art. 53 – (1) The electronic money institutions may issue electronic money through a branch only after its registration in the register set out in Article 64.

(2) Issuing electronic money directly in another Member State or the use of natural or legal persons for distribution and, where appropriate, for redemption of electronic money in another Member State may be made starting from the date when the National Bank of Romania makes the communication according to Article 52(3).

(3) The electronic money institutions shall inform the National Bank of Romania concerning the date when the activity actually begins through a branch or a distributor.

(4) The National Bank of Romania sends the information provided in paragraph (3) to the competent authority from the host Member State.

Art. 54 – (1) In applying the provisions of Article 52, the authorized electronic money institutions, Romanian legal entities, should send to the National Bank of Romania information regarding the type of services they intend to provide in another Member State.

(2) If it is intended to provide services through a branch, in addition to the information provided in paragraph (1), the notification must include the names of the persons responsible for the management of the branch and information regarding:

- a) the organization's structure;
- b) the business plan, including an estimate budget for the first three financial years, proving that the branch is capable of employing the appropriate systems, resources and procedures proportional with the nature and the extent of the activity concerned;
- c) the administrative framework and the internal control mechanisms, including the administrative, risk management and accounting procedures of the applicant, which demonstrate that they are comprehensive and adapted to the nature, extent and complexity of the services provided by the branch and allow it to comply with the legal obligations regarding the prevention and combating of money laundering and terrorist financing.

(3) If it is intended to use natural or legal persons for the distribution and, where appropriate, for redemption of electronic money in another Member State, in addition to the information provided in paragraph (1), the notification must include information regarding the name and the headquarters of the distributor, respectively its name and address and, where appropriate,

the internal control mechanisms to be used by the distributor to comply with the obligations regarding the prevention and combating money laundering and terrorism financing.

(4) If the electronic money institution does not send the information or the requirements provided in paragraph (2) or (3) are not complied, the National Bank of Romania rejects the request of the electronic money institution.

Art. 55 – (1) The electronic money institutions should notify the National Bank of Romania immediately regarding the changes made concerning the information provided according to Article 54.

(2) The provisions of Article 52 and 53 apply accordingly.

Art. 56 – The provisions of Articles 61-66 of Law No. 209/2019 on payment services and for the modification of some normative acts apply accordingly if the electronic money institutions intend to provide payment services for the first time in another Member State, either directly or by establishing a branch.

SECTION 6

The relationship with third countries

Art. 57 – (1) The electronic money institutions Romanian legal persons may issue electronic money and/or provide payment services in third countries through the establishment of a branch in accordance with the regulations issued by the National Bank of Romania for the application of this Chapter.

(2) The electronic money institutions may use natural or legal persons for distributing and redeeming electronic money in third countries in accordance with the regulations issued by the National Bank of Romania.

Art. 58 – (1) The National Bank of Romania rejects the request submitted based on the provisions of Article 57 if the electronic money institution does not send the information or the requirements provided in Article 54.

(2) The National Bank of Romania may reject the registration request submitted on the basis of the provisions of Article 57 also if, based on the information held and the documentation presented by the electronic money institution, it considers that:

a) the electronic money institution does not have an appropriate financial situation in relation to the proposed activity;

b) the administrative framework, the procedures and mechanisms provided in Article 9 in conjunction with Article 13 are not adequate;

c) the legislative framework in the third state and / or its application does not allow the National Bank of Romania to exercise its supervisory functions;

d) the electronic money institution does not meet other requirements provided by this chapter and the regulations issued in its application.

Art. 59 – (1) The entities that issue electronic money and have their headquarters in third countries are allowed to perform the activities of issuing or distributing and / or redeeming of electronic money and to provide payment services on the Romanian territory only after the establishment of an electronic money institution, Romanian legal person.

(2) The branches of the entities that issue electronic money and are established in third countries that have concluded agreements with the European Union on the regime applicable for providing such activities, are exempted from the provisions of paragraph (1) because these agreements are applied with priority.

(3) When applying paragraph (2), the National Bank of Romania notifies every authorisation granted to a branch of an electronic money institution established in a third country to the European Commission.

SECTION 7

The notification procedure for carrying out the activity by the electronic money institutions from other Member States on Romania's territory

Art. 60 – (1) An electronic money institution authorized in another Member State may issue electronic money on the Romanian territory either directly or by establishing a branch, based on the notification sent to the National Bank of Romania by the competent authority of the home Member State.

(2) The notification provided in paragraph (1) must include information regarding the name and the headquarters of the electronic money institution, the authorization number and the type of services they intend to provide on the Romanian territory.

(3) If the issuance of electronic money through a branch is intended, in addition to the information provided in paragraph (2), the notification must include the names of the persons responsible for the branch's management and information regarding:

a) the organization's structure;

b) the business plan, including the estimated budget for the first three financial years, to prove that the branch is able to employ the appropriate systems, resources and procedures proportional with the nature and extent of the concerned activity;

c) the administrative framework and the internal control mechanisms, including the administrative, risk management and accounting procedures of the applicant, which proves that they are comprehensive and adapted to the nature, extent and complexity of the services provided by the branch and allow it to comply with the legal obligations regarding the prevention and combating of money laundering and terrorist financing.

(4) Within a maximum of one month from the receipt of the notification made by the competent authority of the home Member State, the National Bank of Romania evaluates the information and sends back its opinion and the relevant information on the intention of the electronic money institution in the respective Member State to carry out activity on the Romanian territory.

(5) Subsequent to the notification regarding a branch opening provided in paragraph (1), at the request of the National Bank of Romania, the National Office for the Prevention and Combating of Money Laundering and other relevant authorities may provide information regarding the risk of money laundering or financing of terrorism that the notified project implies.

(6) If from the consultation carried out according to paragraph (5) result reasonable grounds for suspicion that by opening a branch the risk of money laundering or terrorist financing could be increased or in connection with the project of opening the branch certain operations of money laundering or terrorist financing are being carried out, were carried out or there was an intention of carrying them out, the National Bank of Romania shall inform the competent authority of the home Member State.

Art. 61 – (1) An electronic money institution authorized in another Member State may use natural or legal persons for the distribution and redeemability of electronic money on the Romanian territory based on the notification sent to the National Bank of Romania by the competent authority of the home Member State.

(2) The notification provided in paragraph (1) must include information on the name and the headquarters of the electronic money institution, the name and premises of the distributor, respectively its name and address, the type of services it intends to provide on the Romanian territory and, where appropriate, the internal control mechanisms that are to be used by the distributor to comply with the obligations regarding the prevention and combating of money laundering and terrorist financing.

(3) The provisions of Article 60 paragraphs (4) – (6) apply accordingly.

Art. 62 – (1) The provisions of Articles 56-60 of Law No. 209/2019 on payment services and for the modification of some normative acts apply accordingly if the electronic money

institutions authorized in other Member States intend to provide payment services for the first time on the Romanian territory, by establishing a branch, an agent or directly.

Art. 63 – Any amendment to the information provided according to Article 60 and 61 may lead to the reassessment by the National Bank of Romania of the opinion provided according to Article 60.

SECTION 8

The register of electronic money institutions

Art. 64 – **(1)** The National Bank of Romania organizes and administers the register of electronic money institutions, that highlights the electronic money institutions, Romanian legal persons, along with their branches from other Member States and from third countries, as well as the agents of the electronic money institutions, Romanian legal persons.

(2) The register set out in paragraph (1) is public, accessible online, updated constantly and provides information regarding the activities that each electronic money institution has been authorised.

Art. 65 – The National Bank of Romania communicates to the European Banking Authority information regarding the data entered in the register, as well as other information, according to the technical standards regarding the electronic central register developed by the authority.

SECTION 9

Competent authority and supervision

Art. 66 – **(1)** The National Bank of Romania is the authority responsible for supervising compliance with the provisions of this Chapter and the regulations issued for its application.

(2) The National Bank of Romania shall ensure the prudential supervision of the authorised electronic money institutions, including for the activity regarding electronic money issuance and provision of payment services carried out through their branches and agents.

(3) The provisions of paragraphs (1) and (2) shall not imply that the National Bank of Romania has supervisory powers over the commercial activities of the electronic money institution, other than the issuing of electronic money, the provision of payment services and the activities listed in Article 21 (2) and Article 22.

(4) The provisions of Article 25 paragraph (3) and (4) of Law no. 312/2004 on the Statute of the National Bank of Romania, with subsequent amendments, shall be applicable accordingly regarding the liability regime of the National Bank or Romania's members of the

Management Board and of its personnel for exercising their attributions deriving from the application of this Chapter.

Art. 67 – (1) The supervision of electronic money institutions by the National Bank of Romania, in order to verify the compliance with the requirements imposed by this Chapter and the regulations issued for its application, shall be proportionate, adequate and adapted to the risks to which electronic money institutions are exposed.

(2) The inspections at the entities provided at paragraph (3) letter b) shall be performed by the staff of the National Bank of Romania empowered for this purpose or by financial auditors or experts appointed by the National Bank of Romania.

(3) In order to exercise its supervision function, the National Bank of Romania is entitled:

a) to require the electronic money institution to provide any information necessary to verify compliance with the requirements of this Chapter and the regulations issued for its application;

b) to carry out on-site inspections at the electronic money institution, Romanian legal person, at any of its agents or branches or at any entity to which activities were outsourced, including distributors;

c) to issue recommendations, guidelines and impose measures;

d) to suspend or to withdraw the authorisation.

(4) The electronic money institutions shall allow the staff empowered by the National Bank of Romania and the financial auditors or experts appointed by the National Bank of Romania to examine their records, accounts and operations, providing for that purpose all documents and information regarding their governance, internal control and operations, as requested by them.

(5) The electronic money institutions shall transmit to the National Bank of Romania any information requested for the purpose of supervision.

Art. 68 – (1) The National Bank of Romania establishes by regulations the regime of electronic money institutions that carry out lending activity, as legal persons reporting to the Central Credit Register.

(2) The transmission by the Central Credit Register of the information from its database to electronic money institutions shall not be considered a breach of the obligation to keep the professional secrecy.

Art. 69 – (1) Any natural or legal person that has decided to acquire, directly or indirectly, a qualifying holding in an electronic money institution, Romanian legal person, or to increase its qualifying holding so that the proportion of its voting rights or holding shares in the share capital to be above 20%, 30% or 50% or so that the electronic money institution becomes a

branch of that person, shall notify in advance, in writing, the National Bank of Romania regarding this intention.

(2) The provisions of Article 60(1) apply accordingly.

(3) By exception from the provisions of paragraph (1), in the case of electronic money institutions that carry out other business activities than issuing electronic money, providing payment services and related ancillary services to these activities, the persons provided in paragraph (1) may notify the National Bank of Romania within five working days from the date of the operation.

(4) The National Bank of Romania confirms in writing to the potential acquirer, immediately, but not later than two working days, regarding the receipt of the notification and, if applicable, the subsequent receipt of any additional information requested under the requirements of paragraphs (5) and (6) and communicates to the potential acquirer, in each case, the date when the evaluation term expires.

(5) The National Bank of Romania shall assess to which extent the quality of the potential acquirer is adequate from the perspective of the need to ensure a prudent and sound management of the electronic money institution, within 60 working days from the date of the written confirmation and of all documents that should be transmitted to it. If the notification is not accompanied by all the required documents according to the applicable regulations, the assessment term starts to run from the date when the National Bank of Romania confirms the receipt of all the respective documents.

(6) If necessary, the National Bank of Romania may request in writing, but not later than the expiration of 50 working days from the assessment term provided in paragraph (5), any additional information necessary to complete the assessment, indicating the information required.

(7) The potential acquirer shall submit the requested additional information within 20 working days from the communication date of the request, in case of non-fulfillment of this obligation, the provisions of paragraph (9) shall enter into force. During that period, the assessment term provided in paragraph (5) is suspended. Any other request from the National Bank of Romania to complete or clarify the information received no longer has the effect of suspending the assessment term.

(8) If there are reasonable grounds to consider that the influence exerted by the potential acquirer prevents the prudent and sound management of the electronic money institution in question or if the potential acquirer did not provide complete information, the National Bank of Romania shall oppose to the acquisition.

(9) If at the end of the assessment the National Bank of Romania decides to oppose the proposed acquisition, it communicates in writing to the potential acquirer its decision, within two working days from its adoption and without exceeding the deadline for conducting the assessment, indicating also the reasons that formed the basis of the decision.

(10) If until the expiration of the assessment term the National Bank of Romania does not oppose the proposed acquisition in writing, it shall be considered approved.

Art. 70 – (1) In the case of the acquisitions provided in Article 69 regarding to which the National Bank of Romania expressed its opposition, in view of the fact that the influence exerted by the acquirer prevents the prudent and sound administration of the electronic money institution, the exercise of voting rights related to the holdings held by the shareholders or associations linked to the decisions regarding the activity of issuing electronic money and the provision of payment services is suspended and the votes already cast are null.

(2) In the case of the acquisitions provided in Article 69 regarding to which the National Bank of Romania expressed its opposition, as the acquirer did not provide complete information or the person provided in Article 69(1) did not notify in connection with the acquisition according to the provisions of Article 69 paragraph (1) or (3) or the acquisition took place before to the expiration of the term of expression by the National Bank of Romania and Article 69 paragraph(3), the exercise of the voting rights related to the holdings held by them regarding the decisions regarding the activity of issuing electronic money and, as the case may be, of providing payment services shall be suspended until the situation is remedied.

(3) In applying the provisions of paragraph (2), the National Bank of Romania shall impose measures to remedy the situation and establish deadlines for it.

(4) The provisions of Article 69 and of this article do not affect the right of the National Bank of Romania to impose other measures or apply sanctions to the electronic money institution or to the persons responsible for the management and administration of the electronic money issuing activity and, where appropriate, payment service providing.

Art. 71 – (1) Any natural or legal person deciding to transfer, directly or indirectly, a qualifying holding in an electronic money institution, Romanian legal person, or to reduce its qualifying holding so that the proportion of its voting rights or of its holding in the share capital is below 20%, 30% or 50% or so that the electronic money institution in question ceases to become a subsidiary of that person shall notify in advance, in writing, the National Bank of Romania concerning this intention, according to the regulations issued in this regard.

(2) The provisions of Article 69 (3) shall apply accordingly.

Art. 72 - (1) In case there are some deficiencies, the National Bank of Romania may make recommendations to an electronic money institution, Romanian legal entity, in order to adopt appropriate measures for a prudent development of the activity.

(2) The entity has the obligation to communicate to the National Bank of Romania the measures undertaken, within the terms established by it.

Art. 73 – (1) The National Bank of Romania is entitled to impose administrative measures in order to eliminate deficiencies and their causes if it finds that an electronic money institution, Romanian legal person, or any of the persons exercising responsibilities for the administration and/or management of the activity of issuing electronic money and providing payment services within the electronic money institution:

a) infringes the provisions of Article 10(3), Article 18, 19, Article 20 (1) and (2), Article 22, 28, 29, Article 32 (1), Article 33, 34, Article 35(2), Article 36, 37, Article 38 (1), Article 39, 40, 41, 42, 44, Article 45 (1), Article 46 (1), Article 47, 49, Article 50 in conjunction with Article 47 and 49 of this law, of Article 51 of this law in conjunction with Article 49 (1) of Law no. 209/2019 on payment services and amending other normative acts, of Article 51 of this law in conjunction with Article 62, 64 and 65 of Law no. 209/2019 on payment services and amending other normative acts, of Article 53 paragraph (1) - (3) and Article 55 of this law, of Article 56 of this law in conjunction with Article 62 and 64 of Law no. 209/2019 on payment services and amending other normative acts, of Article 57 of this law, as well as of the regulations issued in application of these articles;

b) does not comply with a recommendation formulated by the National Bank of Romania in the exercise of its supervisory function.

(2) In applying the provisions of paragraph (1), the National Bank of Romania is entitled to impose to any electronic money institution Romanian legal person the following administrative measures:

a) to request the electronic money institution to increase the level of own funds above those mentioned in Article 29 and 32;

b) to request the electronic money institution to use another method in order to determine the necessary level of own funds for the activity of providing payment services;

c) to request the electronic money institution to improve its governance, the procedures and the mechanisms implemented for ensuring an adequate organization of the activity carried out or to restore and sustain its financial situation;

d) to restrict or limit the activity volume, the type of operations carried out or the network of branches of the electronic money institution, in Romania and abroad;

- e) to restrict the distribution and/or redemption of electronic money through distributors;
- f) to restrict the provision of payment services through agents or to prohibit the performance of the activity in such a manner;
- g) to cease the provision of payment services if the performing of such payment services endangers the stability of the payment system;
- h) to request the electronic money institution to replace the financial auditor or the audit firm;
- i) to request the electronic money institution to establish a separate entity for carrying out the activity of issuing electronic money and providing payment services, under the requirements provided in Article 14;
- j) any other administrative measures that are adequate and proportionate to the found facts and deficiencies, in order to remedy the situation of the electronic money institution.

Art. 74 – The National Bank of Romania is entitled to apply administrative sanctions if it finds out that an electronic money institution, Romanian legal person, and/or any of the persons responsible with the governance and/or management of the activity of issuing electronic money and the provision of payment services within the electronic money institution are guilty of the following facts:

- a) infringement of the provisions provided in Article 73 (1) letter a);
- b) non-compliance with the administrative measures imposed by the National Bank of Romania;
- c) infringement of any requirement or restrictions provided in the granted authorisation;
- d) carrying out fictive operations without real coverage, in order to incorrectly present the financial position;
- e) non-reporting, late reporting or faulty reporting of data and information to the National Bank of Romania.

Art. 75 - (1) In the cases provided in Article 74, the National Bank of Romania is entitled to apply the following administrative sanctions;

- a) written warning;
- b) fine applicable to the electronic money institution from 5.000 lei to 50.000 lei;
- c) fine applicable to the persons responsible for the administration and/or management of the activity of issuing electronic money and providing payment services within the electronic money institution, equal to 1 up to 6 medium net wages paid by the payment institution, according to the records of the previous month to the discovery of the breach;

d) the withdrawal of the approval granted for the persons responsible for the administration and/or management of the activity of issuing electronic money and provision of payment services within the electronic money institution;

e) the suspension or withdrawal of the authorisation of the electronic money institution.

(2) When individualising the sanction, the gravity of the act shall be taken into account, as well as the personal and real circumstances of the act.

(3) The sanctions provided for in paragraph (1) letter c) and d) shall be applied to the persons to whom the act can be ascribed to, as it would not have been produced if they would have executed correctly the duties derived from their function, established in accordance with the legislation applicable to companies, this Chapter and the regulations issued for its application and the internal governance framework.

(4) The sanctions provided in paragraph (1) may be applied simultaneously with the application of the measures according to Article 73 or independently.

Art. 76 – (1) The observance of the acts described in this Chapter and the regulations issued for its application, that constitute breaches of the prudential regime, shall be established by the National Bank of Romania personnel, empowered for this purpose, on the basis of the information communicated to the National Bank of Romania or during the on-site inspections carried out at the electronic money institution, Romanian legal person, at any of its branches, agents, distributors or at any entity to which activities are outsourced.

(2) The decisions on the adoption of measures or the imposition of penalties in accordance with this Chapter and the regulations issued for its application shall be taken by the governor, first-vice governor or vice governors of the National Bank of Romania, excepting the penalties set out in Article 75(1) letters d) and e), whose application is the competence of the Board of Directors within the National Bank of Romania.

Art. 77 - (1) The application of penalties shall no longer be possible after one year from the revealing the breach but no longer than three years from the breach.

(2) The fines collected shall become revenues of the state budget.

(3) The application of the sanctions shall not remove the material, civil, administrative or criminal liability, where applicable.

Art. 78 – (1) The decisions adopted by the National Bank of Romania on an electronic money institution in accordance with this Chapter and regulations issued for its application may be contested within 15 days from their communication, before the Board of Directors of the National Bank of Romania, which shall decide, indicating the reasons for the decision, within 30 days from the date of the request.

(2) The decision of the Board of Directors of the National Bank of Romania may be contested before the High Court of Cassation and Justice within 15 days from its communication.

(3) National Bank of Romania is the sole authority competent to decide on the opportunity and the qualitative evaluations and analyses that motivate its decisions.

(4) When the decisions of National Bank of Romania are contested, the courts shall assess only the legality of the decisions.

Art. 79 – The provisions of Article 78 are also applicable when the National Bank of Romania does not decide within the time limits provided by the law, on an application submitted in accordance with the provisions of this Chapter and the regulations issued for its application.

Art. 80 – Until the Board of Directors of the National Bank of Romania decides, in accordance with Article 78(1) or until the adoption of a definitive and irrevocable decision by the court, in accordance with paragraph (2) of that same article, the execution of National Bank of Romania's decision is not suspended.

Art. 81 – (1) In order to exercise of its supervisory functions in relation to the activity carried out by the electronic money institutions, directly or through their branches, agents or distributors, the National Bank of Romania shall cooperate with the competent authorities of the host Member State, or, where appropriate, of the home Member State.

(2) For the purposes of paragraph (1), National Bank of Romania shall:

a) inform the competent authorities of the home Member State every time it intends to carry out on-site inspections at the branch, agent or distributor of the electronic money institution, located on the territory of the home Member State;

b) communicate to the competent authority of the host Member State or, where for the supervision of the activity;

c) communicate to the competent authority in the host Member State, by its own initiative, all the essential information and, upon request, all the relevant information, if it discovers or suspects that the activity carried out directly, through an agent, distributor or a branch, is carried out infringing the applicable legislation;

d) take the necessary measures to ensure that the situation is remedied as soon as it is informed by the competent authority in the host Member State that an electronic money institution operating in the host Member State through an agent, distributor or a branch does not comply with the provisions of this title and communicates immediately the measures taken to the competent authority of the host Member State or to any other Member State concerned.

(3) The National Bank of Romania may delegate to the competent authority of the host Member State the task of carrying out inspections at the branch, agents and distributors of the electronic money institution, located on the territory of the host Member State.

Art. 82 – (1) For the supervision of electronic money institutions, the competent authority on the host Member State of an electronic money institution may carry out on-site inspections at the branches head offices, agents and distributors. The inspection may be performed directly or through third parties authorized for this purpose and with prior information of the National Bank of Romania.

(2) At the request of the competent authority of the home Member State, the National Bank of Romania may carry out inspections at the branches, agents and distributors of electronic money institutions, located in Romania, directly or through a third person authorized for this purpose. The requesting competent authority may participate in that inspection.

(3) At the request of the National Bank of Romania, the branches, agents and distributors provided in paragraph (1) send, for statistical and informative purposes, reports concerning the activity carried out on the Romanian territory.

Art. 83 – (1) If it finds out that an electronic money institution from another Member State operating in Romania through a branch, a distributor or an agent does not comply with the legislation of the Member State that transposes the provisions of title II of the Directive (EU) 2015/110, the National Bank of Romania informs immediately the competent authority in the home Member State of this fact.

(2) If it is necessary to take urgent measures in order to protect the collective interests of the electronic money holders or payment service users in Romania, the National Bank of Romania may impose, in parallel with the informing provided in paragraph (1), the application of some temporary protection measures.

(3) The measures provided in paragraph (2) shall be proportionate and adequate for protecting the collective interests of electronic money holders or payment service users and shall not lead to the favoring of electronic money holders or payment service users in Romania compared to those in other Member States of the respective electronic money institution.

(4) The National Bank of Romania shall impose the termination of the protection measures as soon as it becomes aware of the fact that the deficiencies that led to the situation provided in paragraph (2) were remedied.

(5) The National Bank of Romania shall inform immediately the competent authorities in the home Member State and other Member States where the electronic money institution carries out activity, the European Commission and the European Banking Authority concerning the

protection measures taken in accordance with paragraph (2) and the reasons for their application.

(6) If the circumstances allow, the National Bank of Romania sends the information provided in paragraph (5) before imposing the protection measures.

Art. 84 – The National Bank of Romania shall motivate and communicate to the electronic money institution any sanction or measure involving restrictions on the right to provide services directly or to carry out activity through branches, distributors or agents on the territory of a host Member State, disposed in application of the provisions of Articles 49-56, 60-63, 72-75 and 81-83.

Art. 85 – **(1)** If the National Bank of Romania encounters difficulties in cooperating with the competent authorities of other Member States, in the situations provided in Articles 49-56, 60-63, 81-84, 86 and 88, in the exercise of their duties in connection with the activities provided cross-border by electronic money institutions, may submit the case for settlement to the European Banking Authority and request its support, according to Article 19 of Regulation (EU) no. 1093/2010.

(2) The National Bank of Romania may benefit from the assistance granted, on its own initiative, by the European Banking Authority, pursuant to Article 19 (1) of Regulation (EU) no. 1093/2010, in order to reach an agreement with the competent authorities of other Member States.

(3) The National Bank of Romania postpones the taking of a decision in connection with the situations provided in paragraph (1) and (2) until the adoption by the European Banking Authority of a decision according to Article 19 of Regulation (EU) no. 1093/2010.

Art. 86 – The provisions of Articles 81-83 shall not prejudice the obligations of the National Bank of Romania to supervise compliance with the requirements established by the legislation on preventing and combating money laundering and terrorist financing and by Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) no. 1781/2006.

SECTION 10

Professional secrecy and the exchange of information

Art. 87 – **(1)** The Board of Directors' members, the National Bank of Romania's employees, as well as third parties appointed by the National Bank of Romania to make on-site inspection according to this law are obliged to keep the professional secrecy concerning any confidential

information they encounter while exercising their attributions, for as long as they have this quality and after the termination of their activity in the bank or, if applicable, of the relationship with the bank.

(2) The information provided in summary or aggregate form that do not allow the electronic money institution to be identified shall not be considered confidential information.

(3) The exchange of information provided in Article 88 shall be limited exclusively to the purpose of performing the tasks incumbent on the respective authorities.

(4) The provisions of paragraph (1) and (3) do not affect in any way the provisions of the criminal legislation according to which the disclosure of confidential information may be required in certain situations.

Art. 88 – (1) The National Bank of Romania collaborates with the relevant authorities from other member states that have attributions regarding the issuers of electronic money, as well as with the European Central Bank, the European Banking Authority and the central banks from other Member States.

(2) The National Bank of Romania may exchange information with:

a) the competent authorities from other Member States entitled with the authorisation and supervision of electronic money institutions;

b) The European Central Bank and the national central banks of Member States, as monetary and supervisory authorities, and, where applicable, other public authorities responsible with supervising the payment and settlement systems;

c) other relevant authorities designated in accordance with this law, with the legislation concerning information and communications technology, the personal data protection, with the legislation concerning the prevention and combating of money laundering and terrorist financing or with other normative acts applicable to the issuers of electronic money;

d) the European Banking Authority, in its quality as an entity that contributes to the consistent and coherent functioning of the supervisory mechanisms.

Art. 89 – This section shall be completed with the provisions of Article 52 on professional secrecy and Articles 3 and 4 regarding the collaboration of the National Bank of Romania with other authorities, provided in Law no. 312/2004, with subsequent amendments.

Art. 90 – (1) Without prejudice to the provisions of Article 87 and Article 89, the National Bank of Romania may provide certain information to the departments of the central administration responsible for the legislation in the field of supervision of financial institutions, as well as to the inspectors acting on behalf of these departments.

(2) The provision of the information provided in paragraph (1) may be made only for the purposes of prudential supervision. The persons to whom information is provided according to paragraph (1) are subject to professional secrecy requirements similar to those provided in Article 87.

(3) The National Bank of Romania may provide some information concerning the prudential supervision of the payment institutions to the inquiry commissions of the Romanian Parliament, the Court of Accounts of Romania, as well as other Romanian authorities with inquiry competences, respecting the following requirements:

a) these authorities have a special legal mandate to investigate and examine the activity of the National Bank of Romania concerning the prudential supervision and regulation of the electronic money institutions;

b) the information is strictly necessary for the fulfilment of the mandate provided in letter a);

c) the persons who have access to the information are subject to requirements regarding keeping the professional secrecy at least equivalent to those provided in Article 90;

d) if the information comes from the competent authorities of another Member State, it may be disclosed only with the express agreement of those authorities and only for the purposes for which the agreement was obtained.

(4) The personal data processing falling under the scope of this law shall be carried out in compliance with the regulations concerning the natural persons' protection with regard to the personal data processing.

Art. 91 – In the situations provided in Article 90, the information received by the National Bank of Romania according to Article 88 and those obtained as a result of the on-site inspections under the requirements of Article 81 shall not be disclosed without the express agreement of the competent authority from which the information where received, respectively the competent authority in the Member State where an on-site inspection was carried out.

Art. 92 – In exercising its powers provided by law, the National Bank of Romania shall collect and process any relevant data and information, including the ones regarding personal data.

CHAPTER II

Issuance and redemption of electronic money, competent authorities and their competences

SECTION 1

Provisions regarding issuance and redemption

Art. 93 – (1) The electronic money issuers shall issue electronic money at a value equal to that of the funds received in exchange for it on the receipt of funds.

(2) By exception from the provision of paragraph (1), regarding the moment of receiving the funds, the issuers of electronic money may issue electronic money before receiving the funds, in case the payment of the equivalent value of the issued electronic money is done through a payment instrument.

(3) Electronic money issuers shall inform the electronic money holders, distinctly, regarding the value of the electronic money issued and its purchase price.

Art. 94 – It is forbidden to grant interest or any other benefit related to the length of time during which an electronic money holder holds the electronic money.

Art. 95 – Electronic money issuers shall redeem, at the request of the electronic money holder, at any time, free of charge and at par value, the electronic money held.

Art. 96 – By exception from the provision of Articles 95 and 101, the electronic money issuers may charge, on redemption, a fee only if it is stated in the contract and established in accordance with Article 99(3) and only in one of the following cases:

- a)** when the redemption is requested before the termination of the contract;
- b)** when the contract provides for a termination date and the electronic money holder has terminated the contract before that date;
- c)** when the redemption is requested more than one year from the termination date of the contract.

Art. 97 – Where redemption is requested before the termination of the contract, the electronic money holder may request redemption of the electronic money completely or in part.

Art. 98 – (1) Where redemption is requested by the electronic money holder on or up to one year after the termination date of the contract, the entire monetary value of the electronic money held shall be redeemed.

(2) In applying the provisions of paragraph (1), where an electronic money institution carries out one or more of the activities provided in Article 21(3) letter c) and it is unknown in advance what share of funds is to be used as electronic money or it is variable, the electronic money institution shall redeem all funds requested by the electronic money holder.

Art. 99 – (1) Before the electronic money holder concludes the contract or accepts the offer, the electronic money issuer shall inform him upon all the contractual condition provided at paragraph (2).

(2) The contract between the electronic money issuer and the electronic money holder shall specify in a clear, concise and prominent way the conditions for the redemption of the electronic money, including information on the collection of any redemption fees, their value or calculation method.

(3) Any redemption fee shall be determined in proportion with the actual costs incurred by the electronic money issuer in connection with the redemption.

Art. 100 – Without prejudice the provision of Articles 96-98, the redemption rights of persons, other than consumers, who accept electronic money as payment, shall be subject to the contractual agreement between the electronic money issuers and the respective persons.

SECTION 2

The termination of the contract

Art. 101 – (1) The electronic money holder may terminate the contract at any moment, if the parties have not agreed on a notification period. Such a period may not exceed 30 days.

(2) The electronic money holder may decide unilaterally to terminate a contract concluded for a determined duration longer than 12 months or for an indefinite duration, free of charge after the expiration of 12 months.

Art. 102 – (1) In all cases that do not fall under Article 101, the price charged by the electronic money issuer for the unilateral termination of the contract by the electronic money holder shall correspond with the actual costs of the electronic money issuer, be limited to the their coverage, not lead to additional income or to deter the electronic money holder to terminate the contract unilaterally.

(2) Before concluding the contract, as well as in the contract, the electronic money issuer shall establish and communicate to the electronic money holder the total price related to the unilateral termination of the contract or its method of calculation.

Art. 103 – (1) If so agreed in the contract, the electronic money issuer may unilaterally terminate a contract concluded for an indefinite duration, upon a notification sent at least two months ahead.

(2) The notification shall be sent to the electronic money holder:

a) on paper or another durable medium;

b) in an understandable language, in a clear, concise and precise form;

c) in Romanian or in any other language agreed between parties.

Art. 104 – The price charged periodically for the services provided is borne by the electronic money holder proportional to the period preceding the termination of the contract. If the price is paid in advanced, it is reimbursed proportionally.

Art. 105 – The provision of this section are without prejudice to the legal provision regarding the nullity of contracts or the impossibility of their execution.

Art. 106 – If the electronic money holder is not a consumer, the parties may agree not to apply all or part of this section.

SECTION 3

Competence, notification and control

Art. 107 – (1) In order to ensure compliance with the provisions of this law by electronic money issuers, consumers, including consumer associations, may either notify the National Authority for Consumers' Protection, and legal persons may notify to the National Agency for Fiscal Administration regarding to electronic money issuers' infringements of the provisions of Articles 93-99 and 101-104 or to initiate legal actions against electronic money issuers that have infringed the provisions of this law.

(2) The National Authority for Consumers' Protection, respectively the National Agency for Fiscal Administration informs, where applicable, the claimant, in the answer formulated to it, about the existence of extrajudicial dispute resolution procedures.

(3) With regard to the amicable resolution of potential dispute and without bringing prejudice to consumers' and to the users' legal persons rights to initiate legal actions against electronic money issuers that produced infringement to the provisions of this law or to their right to notify the National Authority for Consumers' Protection or the National Agency for Fiscal Administration or the National Bank of Romania, consumers or users' legal persons may use the extrajudicial dispute resolution procedures.

Art. 108 – The provisions of Article 222 paragraph (2) - (5) of Law no. 209/2019 on payment services and amending other normative acts shall be applied accordingly also regarding the adequate and effective extrajudicial reparation procedures for the settlement of disputes deriving from this Chapter.

CHAPTER IV

Crimes and contraventions

Art. 109 – (1) The issuance, without right, of electronic money constitutes a crime and is punishable by imprisonment from six months to three years or by a fine.

(2) The use of a phrase specific to a person that is entitled under this law to issue electronic money on a professional basis, by infringing the provisions of Article 6 (2), is a crime and shall be punished with a fine.

Art. 110 – (1) The unjustified refusal of the electronic money institutions to provide to the National Bank of Romania, within maximum 10 days from the request communication, of the information and documents necessary to verify compliance with the requirements of this law is a crime and shall be punished with imprisonment from one month to one year or with a fine.

(2) Preventing, in any way, the exercise of the attributions incumbent to the National Bank of Romania, as a competent authority, is a crime and shall be punished with imprisonment from one month to one year or with a fine.

Art. 111 – (1) The following facts constitute contraventions and are sanctioned as follows:

a) non-compliance with the obligation stating that the electronic money issuers shall issue electronic money at value equal to the funds received, according to the provisions of Article 93(1), with a fine from 50,000 lei to 100,000 lei;

b) non-compliance with the obligation stating that the electronic money issuers shall issue electronic money at the moment of receiving the funds, according to the provisions of Article 93(1), with a fine from 50,000 lei to 100,000 lei;

c) if the electronic money issuers do not inform the electronic money holders in accordance with the provisions laid down in Article 93(3), with a fine from 50,000 lei to 100,000 lei;

d) granting interest or any other benefit related to the length of time during which an electronic money holder holds the electronic money, with a fine from 50,000 lei to 100,000 lei;

e) non-compliance with the obligation stating that, at the request of the electronic money holder, electronic money issuers shall redeem the electronic money held, in accordance with the provisions laid down in Article 95, with a fine from 75,000 lei to 100,000 lei;

f) non-compliance with the obligation stating that the electronic money issuer shall inform the electronic money holder, before concluding the contract or accepting the offer by him, in accordance with the provisions laid down in Article 99 (1), with a fine from 50,000 lei to 100,000 lei;

g) non-compliance with the obligation stating that the contract between the electronic money issuer and the electronic money holder shall contain all the elements provided in Article 99(2), with a fine from 75,000 lei to 100,000 lei;

h) non-compliance with the obligation stating that the redemption fees shall be proportionate with the actual costs incurred by the electronic money issuer, according to Article 99(3), with a fine from 75,000 to 100,000 lei;

i) non-compliance with the obligation stating that the electronic money issuers allow the electronic money holders to request redemption of the electronic money before the termination of the contract in accordance with the provisions laid down in Article 97, with a fine from 50,000 lei to 70,000 lei;

j) non-compliance with the obligation stating that the electronic money issuers allow the electronic money holders to request redemption of the electronic money at the termination of the contract or within one year after the termination of the contract in accordance with the provisions laid down in Article 98, with a fine from 50,000 lei to 70,000 lei;

k) non-compliance with the obligation stating that the electronic money issuers allow the electronic money holders to terminate the contract in accordance with the provisions laid down in Article 101(1), with a fine from 90,000 lei to 100,000 lei;

l) non-compliance with the obligation stating that the electronic money issuers cannot provide in the contract a notification period exceeding 30 days in accordance with the provisions laid down in Article 101(1), with a fine from 80,000 lei to 90,000 lei;

m) non-compliance with the obligation stating that the electronic money issuers have to terminate the contract, free of charge, at the request of the electronic money holder in accordance with the provisions laid down in Article 101(2), with a fine from 75,000 lei to 100,000 lei;

n) non-compliance with the obligation stating that, in cases that do not fall under Article 101, the price perceived by the electronic money issuers should meet the conditions set out in Article 102(1), with a fine from 75,000 lei to 100,000 lei;

o) non-compliance with the obligation stating that the electronic money issuers should communicate the total price related to the unilateral termination of the contract or its calculation method in accordance with the provisions laid down in Article 102(2), with a fine from 50,000 lei to 75,000 lei;

p) non-compliance with the obligation stating that the electronic money issuers should comply with the procedure for unilateral termination of the contract provided in Article 103, with a fine from 90,000 lei to 100,000 lei;

q) non-compliance with the obligation stating that the electronic money issuers should inform the electronic money holders regarding the price charged periodically for the services provided in accordance with the provisions laid down in Article 104, with a fine from 75,000 to 90,000 lei;

(2) If the contraventions are committed by a distributor natural person, as defined in Article 4(1) letter d), the maximum and minimum limits of the fine are reduced to half.

Art. 112 – (1) The ascertainment of the contraventions and the application of sanctions provided in Article 111 are done by the empowered representatives of the National Authority for Consumers' Protection, upon the receipt of a claim from consumers, consumers associations or ex officio, if the infringement of legal provisions affects or may affect the interests of consumers, respectively by the empowered representatives of the National Agency for Fiscal Administration, upon the receipt of a claim from legal persons, if the infringement of legal provisions affects or may affect their interests.

(2) The National Authority for Consumers' Protection and the National Agency for Fiscal Administration have competencies according to paragraph (1) in the case of the electronic money issuers that are located in Romania and in the case of agents, distributors or branches for which Romania is the host Member State that act according to the right of establishment.

Art. 113 – The contraventions provided in Article 111 are regulated by the Government Ordinance no. 2/2001 on the legal regime of contraventions, approved with amendments and supplements by Law no. 180/2002, subsequently amended and supplemented.

CHAPTER V

Transitory and final provisions

Art. 114 – (1) The electronic money institutions authorised by the National Bank of Romania at the date of entry into force of this law shall comply with the newly established requirements according to Chapter II within 6 months from the entry into force of this law.

(2) In applying the provisions of paragraph (1), within 3 months from the entry into force of the regulation issued by the National Bank of Romania in application of this law, the electronic money institutions shall transmit to the National Bank of Romania the necessary information and documents according to the regulation of the National Bank of Romania.

(3) The National Bank of Romania may impose to an electronic money institution provided in paragraph (1) or to the persons responsible for the administration and/or management of the activity of electronic money issuance and payment service provision provided in paragraph (1)

that did not prove the fulfillment of the legal requirements according to paragraph (1) and (2) the necessary measures to ensure compliance with the newly established legal requirements and/or to apply sanctions or may withdraw the authorisation of the electronic money institution.

(4) In maximum 60 days from the entry into force of this law, the National Bank of Romania shall communicate to the electronic money institutions provided in paragraph (1) if from the evaluation of information provided voluntarily before the entry into force of this law results that the respective institutions comply with the newly established legal requirements.

Art. 115 – The authorisation requests submitted to the National Bank of Romania according to Law no. 127/2011 on the activity of issuing electronic money, as amended and supplemented, and unresolved at the date of entry into force of this law, shall be returned to the applicants to be revised according with the requirements of this law.

Art. 116 – (1) The National Bank of Romania issues regulations in application of Chapter I, that shall be published in the Official Journal of Romania, Part I.

(2) For the purposes of a unitary application of the provisions of Chapter II and the regulations issued for its application, the National Bank of Romania may issue instructions and clarifications that shall be published on the website of the National Bank of Romania.

Art. 117 – (1) The National Bank of Romania takes into account the guidelines and recommendations issued by the European Banking Authority and the delegated acts of the European Commission regarding payment services or electronic money issuance and may issue, as appropriate, regulations, instructions and/or clarifications establishing the applicable regime of the respective guidelines and recommendations and adapts them, if necessary, to the specific conditions of the Romanian financial system.

(2) Electronic money institutions shall take into account the guidelines and recommendations issued by the European Banking Authority and the delegated acts of the European Commission concerning electronic money issuance and payment services, according to the regulations, instructions and/or clarifications issued by the National Bank of Romania

Art. 118 – (1) This law enters into force in 30 days from its publication date in the Official Journal of Romania, Part I.

(2) At the date of entry into force of this law, Law no. 127/2011 on the activity of issuing electronic money, published in the Official Journal of Romania, Part I, no. 437 of the 22th of June 2009, with subsequent amendments, shall be repealed.

* This Law transposes the provisions of Article 1, Article 2 paragraphs (1) and (2), Article 3 paragraphs (1) and (3)-(5), Article 4, Article 5 paragraphs (1)-(2) and (5)-(7), Article 6,

Article 7 paragraphs (1) and (3)-(4), Articles 8-13, Article 18 and Article 22 of Directive 2009/110/EC 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, published in Official Journal of the European Union L 267 from 10th of October 2009, as amended by the Directive (EU) 2015/2366 of the European Parliament and of the Council 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.

This law was adopted by the Romanian Parliament, respecting the provisions of Article 75 and Article 76 (1) of the republished Romanian Constitution.

Bucharest, the 8th of November 2019

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