

A person in a black wetsuit is surfing on a white wave. The image is semi-transparent, serving as a background for the text.

## Checkliste für die Beantragung einer Erlaubnis als Zahlungsinstitut

(Stand: 29.12.2016)

**PAYMENT.TECHNOLOGY.LAW.**

## Guideline 1<sup>1</sup>: General Principles

- 1.1 The information provided by applicants should be true, complete, accurate, up to date and tailored and adjusted to the particular service or services the applicant intends to provide.
- 1.2 When submitting the information required, the applicant should avoid making references to specific sections of internal procedures/documents. Instead, the applicant should extract the relevant sections and provide these to the competent authority (CA).
- 1.3 Should the CAs require clarifications on the information that had been submitted, the applicant should provide such clarification without delay.
- 1.4 Institutions should take into account their size, internal organisation and the nature, scale, and complexity of their activities when developing and implementing policies and processes. In any event, in accordance with Directive (EU) 2015/2366, the directors and the persons responsible for the management of the payment institution are of good repute and possess appropriate knowledge and experience to perform payment services, regardless of the institution's size, internal organisation and the nature, scope and the complexity of its activities and the duties and responsibilities of the specific position.
- 1.5 All personal data requested under these guidelines for authorisations as payment institutions (Pis) s are needed for the assessment of the application and will be treated by CA in accordance with the professional secrecy obligations set out in the PSD2, without prejudice to applicable Union Law and rational requirements and procedures on the exercise of the right to access, rectify, cancel or oppose.

Anforderungen nach § 10 ZAG-RefE <sup>2</sup>	Konkretisierung durch die Guidelines
<p>1. Geschäftsmodell, aus dem insbesondere die Art der beabsichtigten Zahlungsdienste hervorgeht</p>	<p><b>Guideline 3: Programme of operations</b></p> <p>3.1 The programme of operations to be provided by the applicant should contain the following information:</p> <ol style="list-style-type: none"> <li>a) a description of the type of payment services envisaged, including an explanation on how the activities and the operations which will be provided are identified by the applicant as fitting into any of the legal categories of payment services listed in Annex I of PSD2;</li> <li>b) a declaration on whether the applicant will enter or not into possession of funds;</li> <li>c) a description of the execution of the different payment services, detailing all parties involved, and including for each payment service provided:               <ol style="list-style-type: none"> <li>i. a diagram of flow of funds, unless the applicant intends to provide PIS only;</li> <li>ii. settlement arrangements, unless the applicant intends to provide PIS only;</li> <li>iii. draft contracts between all the parties involved, if applicable;</li> <li>iv. a description of the different ways through which these services are provided;</li> <li>v. flows of data; and</li> <li>vi. processing times.</li> </ol> </li> <li>d) a copy of the draft framework contract, as defined in Article4(21) of PSD2;</li> <li>e) number of different premises from which the applicant intends to provide the payment services, and/or carry out activities related to the provision of payment services, if applicable;</li> <li>f) a description of any ancillary services to payment services, if applicable;</li> <li>g) a declaration on whether or not the applicant intends to grant credit and, if so, within which limits;</li> </ol>

<sup>1</sup> Zitate aus den „Guidelines“ beziehen sich auf Abschnitt 4.1 der “Draft Guidelines on the information to be provided for the authorisation as payment institutions and e-money institutions and for the registration as account information service providers” vom 03.11.2016 EBA/CP/2016/18 (veröffentlicht unter [www.eba.europa.eu](http://www.eba.europa.eu))

<sup>2</sup> Aus dem Entwurf eines Gesetzes zur Umsetzung der aufsichtsrechtlichen Vorschriften der Zweiten Zahlungsdiensterichtlinie (Referentenentwurf des Bundesministeriums der Finanzen vom 19.12.2016, nicht veröffentlicht)

	<p>h) a declaration on whether the applicant plans to provide payment services in other member state or third country after the granting of the licence;</p> <p>i) an indication of whether the applicant intends to provide/already provides business activities as referred to in article 11 (5) of Directive 2015/2366, including a description of the type and nature of the activities, expected volume and business premises.</p>
<p>2. Geschäftsplan mit einer Budgetplanung für die ersten drei Geschäftsjahre, aus dem hervorgeht, dass das Institut über geeignete und angemessene Systeme, Ressourcen und Verfahren verfügt, um seine Tätigkeit ordnungsgemäß auszuführen</p>	<p><b>Guideline 4: Business Plan</b></p> <p>4.1. The business plan to be provided by the applicant should contain:</p> <p>a) a marketing plan consisting of:</p> <ul style="list-style-type: none"> <li>i. an analysis of the payments market;</li> <li>ii. an analysis of the company's competitive position;</li> <li>iii. a description of clients, marketing materials and distribution channels; and</li> <li>iv. the main conclusions of any marketing research carried out.</li> </ul> <p>b) Where available for existing companies, certified annual accounts of the previous three years, or a summary of the financial situation for those companies that have not yet produced annual accounts;</p> <p>c) a forecast budget calculation for the first three financial years that demonstrates that the applicant is able to employ appropriate and proportionate systems, resources and procedures that allow the applicant to operate soundly. It should include:</p> <ul style="list-style-type: none"> <li>i. an income statement and balance sheet forecast, including target scenarios and stress scenarios as well as their base assumptions, such as volume and value of transactions, number of clients, pricing, average amount per transaction, expected increase profitability threshold;</li> <li>ii. explanations on the main lines of income and expenses, the financial debts and the capital assets, and</li> <li>iii. a diagram and detailed breakdown of the estimated financial flows for the next three years.</li> </ul> <p>d) information on own funds, including the amount and detailed breakdown by paid-up capital, reserves and retained earnings; and</p> <p>e) information on, and calculation of, minimum own funds requirements in accordance with the method(s) referred to in Article 9 of Directive (EU) 2015/2366 (PSD2) as determined by the CA, unless the applicant intends to provide payment initiation services only including:</p> <ul style="list-style-type: none"> <li>i. a projection of the breakdown of the own funds for three years according to the method used, monthly for the first year, and annually for the subsequent two years; and</li> <li>ii. projection of the own funds for three years according to the other methods, monthly for the first year, and annually for the subsequent two years</li> </ul>
<p>3. Nachweis, dass das Institut über das erforderliche Anfangskapital verfügt</p>	<p><b>Guideline 6: Evidence of initial capital</b></p> <p>6.1. For the evidence of initial capital to be provided by the applicant (of EUR 125.000 for services 1-5 of Annex I of PSD2; EUR 20.000 for service 6, and EUR 50.000 for service 7) the applicant should submit the following documents:</p> <p>a) for existing undertakings, an audited account statement or public register certifying the amount of capital of the applicant;</p> <p>b) for undertakings in the process of being incorporated, a bank statement issued by a bank certifying that the funds are deposited on the applicant's bank account.</p>
<p>4. Beschreibung der Maßnahmen zur Erfüllung der Sicherungsanforderungen (Kundengeldsicherung)</p>	<p><b>Guideline 7: Measures to safeguard the funds of payment service users (applicable to payment services 1-6 only)</b></p> <p>7.1. Where the applicant safeguards the Payment Service Users funds through depositing funds in a separate account in a credit institution or through an investment in secure, liquid low risk assets, the description of the safeguarding measures should contain:</p> <ul style="list-style-type: none"> <li>a) a description of the investment policy to ensure the assets chosen are liquid secure and low risk, if applicable;</li> <li>b) contact details of the person that has access to the safeguarding account;</li> <li>c) a description of the administration and reconciliation process to ensure that payment service users' funds are insulated in the interest of payment service users, against the claims of other creditors of the payment institution, in particular in the event of insolvency; and</li> <li>d) a copy of the draft contract with credit institution, including explicit declaration of compliance with Article 10 of PSD2.</li> </ul> <p>7.2. Where the applicant safeguards the funds of the payment services user through an insurance policy or comparable guarantee from an insurance company or a credit institution, the description of the safeguarding measures should contain the following:</p> <ul style="list-style-type: none"> <li>a) a confirmation that the insurance policy or comparable guarantee from an insurance company or a credit institution is from an entity that is not part of the same group of firms as the applicant;</li> </ul>

	<ul style="list-style-type: none"> <li>b) details of the reconciliation process in place to ensure that the insurance policy or comparable guarantee is sufficient to meet the applicant's safeguarding obligations at all times;</li> <li>c) duration and renewal of the coverage; and</li> <li>d) Copy of the (draft) insurance agreement or of the (draft) comparable guarantee.</li> </ul>
<p>5. Beschreibung der Unternehmenssteuerung und der internen Kontrollmechanismen des Instituts einschließlich der Verwaltungs-, Risikomanagement- und Rechnungslegungsverfahren, aus der hervorgeht, dass diese Unternehmenssteuerung, Kontrollmechanismen und Verfahren verhältnismäßig, angemessen, zuverlässig und ausreichend sind</p>	<p><b>Guideline 8: Governance arrangements and internal control mechanisms</b></p> <p>8.1. The applicant should provide a description of the governance arrangement and internal control mechanisms consisting of:</p> <ul style="list-style-type: none"> <li>a) a mapping of the risks identified by the applicant, including the type of risks and the procedures the applicant will put in place to assess and prevent such risks;</li> <li>b) the different levels of periodical and permanent controls, including the frequency with which they are applied, the administrative procedures used, and the human resources allocated; the accounting procedures by which the applicant will record and report its financial information;</li> <li>c) a confirmation of the regulatory reporting requirements that apply to the applicant; d) the identity of the person(s) responsible for the internal control functions, including for the periodic, permanent and compliance control, as well as an up-to-date Curriculum Vitae and criminal record where this person is responsible for the management of the payment services activities of the payment institution;</li> <li>e) the identity of any auditor that is not an statutory auditor pursuant Directive 2006/43/EC;</li> <li>f) the identity and composition of the management body and, if applicable, any other oversight body or committee;</li> <li>g) a description of the way outsourced functions are monitored and controlled so as to avoid an impairment in the quality of the payment institution's internal controls;</li> <li>h) a description of the way any agents and branches are monitored and controlled within the framework of the applicant's internal controls;</li> <li>i) the periodical control program, setting out the measures to be taken over the next three years to ensure a robust governance of the payment institution; and</li> <li>j) where the applicant is the subsidiary of a regulated entity in another EU Member State, a description of the group procedures and the identity of the supervisory authority responsible for the consolidated supervision.</li> </ul>
<p>6. Beschreibung der vorhandenen Verfahren für Überwachung, Handhabung und Folgemaßnahmen bei Sicherheitsvorfällen und sicherheitsbezogenen Kundenbeschwerden, einschließlich eines Mechanismus für die Meldung von schwerwiegenden Vorfällen</p>	<p><b>Guideline 9: Procedure to monitor, handle and follow up on security incidents and security-related customer complaints</b></p> <p>9.1. The applicant should provide a description of the procedure in place to monitor, handle and follow up on security incidents and security-related customer complaints to be provided by the applicant, which should contain:</p> <ul style="list-style-type: none"> <li>a) the individual(s) and bodies responsible for assisting customers in case of fraud, technical issues, and/or claim management;</li> <li>b) the contact point for customers, including name and email address;</li> <li>c) the procedures for the reporting of incidents, including the communication of these reports to internal or external bodies, notification of mayor incidents to NCAs under Article 96 of PSD2 and in line with the EBA Guidelines on incident reporting [EBA/GL/2016/tbc]; and</li> <li>d) the monitoring tools used and the follow-up measures and procedures in place to mitigate security risks</li> </ul>
<p>7. Beschreibung der vorhandenen Verfahren für die Erfassung, Überwachung, Rückverfolgung sowie Beschränkung des Zugangs zu sensiblen Zahlungsdaten</p>	<p><b>Guideline 10: Process to file, monitor, track and restrict access to sensitive payment data</b></p> <p>10.1. The applicant should provide a description of the process in place to file, monitor, track, and restrict access to sensitive payment data consisting of:</p> <ul style="list-style-type: none"> <li>a) a list of the data classified as sensitive payment data in the context of the payment institution's business model;</li> <li>b) the procedures in place to authorise access to the sensitive payment data;</li> <li>c) a description of the monitoring tool;</li> <li>d) the access right policy, detailing access to all relevant infrastructure components and systems, including data bases and back-up infrastructures;</li> <li>e) unless the applicant intends to provide PIS only, a description of how the collected data is registered;</li> <li>f) unless the applicant intends to provide PIS only, the expected internal and/or external use of the collected data, including by counterparties;</li> <li>g) the IT system and technical security measures that have been implanted, including encryption and/or tokenization;</li> <li>h) identification of the individual(s), bodies and/or committees with access to the sensitive payment data;</li> </ul>

	<ul style="list-style-type: none"> <li>i) an explanation of how breaches will be detected and addressed; and</li> <li>j) an annual internal control program in relation to the safety of the IT systems.</li> </ul>
<p>8. Beschreibung der Regelungen zur Geschäftsfortführung im Krisenfall, einschließlich klarer Angabe der maßgeblichen Abläufe, der wirksamen Notfallpläne und eines Verfahrens für die regelmäßige Überprüfung der Angemessenheit und Wirksamkeit solcher Pläne</p>	<p><b>Guideline 11: Business continuity arrangements</b></p> <p>11.1. The applicant should provide a description of the business continuity arrangements consisting of the following information:</p> <ul style="list-style-type: none"> <li>a) a business impact analysis, including the business processes and recovery objectives, such as recovery time objectives, recovery point objectives, and protected assets;</li> <li>b) the identification of the back-up site, access to IT infrastructure, and its key software and data to recover from a disaster or disruption;</li> <li>c) an explanation of how the applicant will deal with significant continuity events and disruptions, such as the failure of key systems; the loss of key data; inaccessibility of premises; and loss of key persons;</li> <li>d) the frequency with which the applicant intends to test the Business Continuity and Disaster Recovery Plans, including how the results of the testing will be recorded; and</li> <li>e) a description of the mitigation measures to be adopted by the applicant, in case of termination of its payment services, to avoid adverse effects on payment systems and on payments services users ensuring execution of pending payment transactions and termination of existing contracts.</li> </ul>
<p>9. Beschreibung der Grundsätze und Definitionen für die Erfassung statistischer Daten über Leistungsfähigkeit, Geschäftsvorgänge und Betrugsfälle</p>	<p><b>Guideline 12: The principles and definitions applicable to the collection of statistical data on performance, transactions and fraud.</b></p> <p>12.1. The applicant should provide a description of the principles and definitions applicable to the collection of the statistical data on performance, transaction and fraud consisting of the following information:</p> <ul style="list-style-type: none"> <li>a) the type of data that is collected, in relation to customers, type of payment service, channel, instrument, jurisdictions and currencies;</li> <li>b) scope of the collection, in terms of activities and entities concerned, including branches and agents;</li> <li>c) the means of collection;</li> <li>d) the purpose of collection;</li> <li>e) the frequency of collection;</li> <li>f) supporting documents such as a manual, that describe how the system works;</li> <li>g) service level agreements with outsourcing partner(s) if the outsourcing partner is in charge of the collection of the statistical data;</li> <li>h) organisational measures and tools for the prevention of fraud; and</li> <li>i) the reporting lines in case of fraud.</li> </ul>
<p>10. Dokument zur Sicherheitsstrategie, einschließlich einer detaillierten Risikobewertung der erbrachten Zahlungsdienste und eine Beschreibung von Sicherheitskontroll- und Risikominderungsmaßnahmen zur Gewährleistung eines angemessenen Schutzes der Zahlungsdienstnutzer vor den festgestellten Risiken, einschließlich Betrug und illegaler Verwendung sensibler und personenbezogener Daten</p>	<p><b>Guideline 13: Security policy document</b></p> <p>13.1. The applicant should provide a security policy document containing the following information:</p> <ul style="list-style-type: none"> <li>a) a detailed risk assessment of the payment service(s) the applicant intends to provide, which should include risks of fraud and the security control and mitigation measures taken to adequately protect payment service users against the risks identified.</li> <li>b) a description of the IT systems, which should include             <ul style="list-style-type: none"> <li>i. the architecture of the systems and their network elements;</li> <li>ii. the business IT systems supporting the business activities provided, such as the applicant's website, wallets, the payment engine, the risk and fraud management engine and customer accounting;</li> <li>iii. the support IT systems used for the organisation and administration of the applicant, such as accounting, legal reporting systems, staff management, customer relationship management, e-mail servers, internal file servers; and</li> <li>iv. information on whether those systems are already used by the applicant or its group, and the estimated date of implementation, if applicable.</li> </ul> </li> <li>c) an exhaustive list of authorised connections from outside with partners, service providers, entities of the group and employees of the applicant working remotely, including the rationale for such connection;</li> <li>d) for each of the connections listed under point c), the logical security measures and mechanisms in place, specifying the control the applicant will have over these accesses as well as the nature and frequency of each control, such as technical versus organizational, preventive vs detective; real-time monitoring vs regular reviews, such as the use of an Active Directory separate from the group, the opening/closing of communication lines, security equipment configuration, generation of keys or client authentication certificates, system monitoring, authentication, confidentiality</li> </ul>

	<p>of communication, intrusion detection, antivirus and logs;</p> <ul style="list-style-type: none"> <li>e) the logical security measures and mechanisms that govern the internal access to IT systems, which should include:             <ul style="list-style-type: none"> <li>i. the technical and organisational nature and frequency of each measure, such as whether it is preventive or detective or whether or not it is carried out in real time; and</li> <li>ii. how the issue of client environment segregation is dealt with in cases where the applicant's IT resources are shared.</li> </ul> </li> <li>f) the physical security measures and mechanisms of the premises and the data centre of the applicant, such as access controls and environmental security;</li> <li>g) the security of the payment processes, which should include:             <ul style="list-style-type: none"> <li>i. the customer authentication procedure used for both, consultative and transactional accesses, and for all underlying payment instruments;</li> <li>ii. an explanation on how the safe delivery to the legitimate payment services user and the integrity of authentication factors such as hardware tokens and mobile application is ensured, at the time of both, initial enrolment time and renewal; and</li> <li>iii. a description of the systems and procedures that the applicant has in place for transaction analysis and identification of suspicious or unusual transactions.</li> </ul> </li> <li>h) a detailed risk assessment in relation to its payment services, including fraud and with a link to the control and mitigations explained in the application file, demonstrating that the risks are addressed;</li> <li>i) a list of the main written procedures in relation to the applicant's IT systems or, for procedures that have not yet been formalized, an estimated date for their finalisation; and</li> <li>j) any other information relevant to the risks arising from the specific activities of the applicant</li> </ul>
<p>11. Beschreibung der internen Kontrollmechanismen, die das Institut eingeführt hat, um die geldwäscherechtlichen Anforderungen sowie die Anforderungen zum Management operationeller und sicherheitsrelevanter Risiken ergriffen hat</p>	<p><b>Guideline 14: Internal control mechanisms to comply with obligations in relation to money laundering and terrorist financing (AML/CFT obligations)</b></p> <p>14.1 The description of the internal control mechanisms that the applicant has established in order to comply, where applicable, with those obligations should contain the following information:</p> <ul style="list-style-type: none"> <li>a) the applicant's assessment of the anti-money laundering and counter terrorist financing risks associated with its business, including the risks associated with the applicant's customer base, the products and services provided, the distribution channels used and the geographic areas of operation;</li> <li>b) the measures the applicant has or will put in place to mitigate the risks and comply with applicable anti money laundering and counter terrorist financing obligations, including the applicant's risk assessment process, the policies and procedures to comply with customer due diligence requirements and the policies and procedures to detect and report suspicious transactions or activities;</li> <li>c) the systems and controls the applicant has or will put in place to ensure that their branches and agents comply with applicable anti money laundering and terrorist financing requirements, including, in cases where the agent or branch is located in another Member State, the anti-money laundering and counter terrorist financing requirements of that Member State;</li> <li>d) arrangements the applicant has or will put in place to ensure that staff and agents are appropriately trained in anti-money laundering and counter terrorist financing matters;</li> <li>e) the identity of the person in charge of ensuring the applicant's compliance with anti-money laundering and counter-terrorism obligations, and evidence that their anti-money laundering and counter-terrorism expertise is sufficient to enable them to fulfil this role effectively;</li> <li>f) the systems and controls the applicant has or will put in place to ensure their anti-money laundering and counter terrorist financing policies and procedures remain up to date, effective and relevant;</li> <li>g) the systems and controls the applicant has or will put in place to ensure that the agents do not expose the applicant to increased money laundering and terrorist financing risk; and</li> <li>h) the anti-money laundering and counter terrorism manual for the staff of the applicant</li> </ul>
<p>12. Darstellung des organisatorischen Aufbaus des Instituts, gegebenenfalls einschließlich einer Beschreibung der</p>	<p><b>Guideline 5: Structural organisation</b></p> <p>5.1. The applicant should provide a description of the structural organisation of its undertaking consisting of:</p> <ul style="list-style-type: none"> <li>a) a detailed organisational chart, showing each division, department or similar structural separation, including the name of the person(s) responsible, in particular those in charge of internal control functions. The chart should be accompanied by description of the functions and</li> </ul>

<p>geplanten Inanspruchnahme von Agenten und Zweigniederlassungen und von deren Überprüfungen vor Ort oder von außerhalb ihres Standorts erfolgenden Überprüfungen, zu deren mindestens jährlicher Durchführung das Institut sich verpflichtet, sowie einer Darstellung der Auslagerungsvereinbarungen, und eine Beschreibung der Art und Weise seiner Teilnahme an einem nationalen oder internationalen Zahlungssystem</p>	<p>responsibilities of each division, department or similar structural separation.</p> <ul style="list-style-type: none"> <li>b) a forecast of the staff numbers for the next three years;</li> <li>c) a description of outsourcing arrangements consisting of: <ul style="list-style-type: none"> <li>i. the identity and geographical location of the outsourcing provider;</li> <li>ii. the identity of the persons within the within the payment institution that are responsible for each of the outsourced activities;</li> <li>iii. a clear description of the outsourced activities and its main characteristics;</li> </ul> </li> <li>d) a copy of draft outsourcing agreements;</li> <li>e) a description of the use of branches and agents, where applicable, including, <ul style="list-style-type: none"> <li>i. a mapping of the off-site and on-site checks that the applicant intends to perform at least annually on branches, agents and their frequency;</li> <li>ii. the IT systems, processes and infrastructure which are used by the applicant's agents to perform activities on behalf of the applicant;</li> <li>iii. in the case of agents the main characteristics and key points of the mandate agreement containing the full terms of the mandate, selection policy, monitoring procedures and agents' training.</li> </ul> </li> <li>f) an indication of the national and/or international payment system which the applicant will access, if applicable;</li> <li>g) a list of all natural or legal persons that have close links with the applicant, indicating their identity and the nature of those links.</li> </ul>
<p>13. Namen der Inhaber einer bedeutenden Beteiligung, die Höhe ihrer Beteiligung sowie der Nachweis, dass sie den im Interesse der Gewährleistung einer soliden und umsichtigen Führung des Instituts zu stellenden Ansprüchen genügen</p>	<p><b>Guideline 15: Identity and suitability assessment of persons with qualified holdings in the applicant</b></p> <p>15.1 For the purposes of the identity and suitability assessment of persons with qualified holdings in the applicant, the applicant should submit the following information:</p> <ul style="list-style-type: none"> <li>a) a description of the group to which the applicant belongs and indication of the parent undertaking, where applicable;</li> <li>b) a chart setting out the shareholder structure of the applicant, including the breakdown of the capital and voting rights; and</li> <li>c) a list of the names of all persons and other entities that have or will, in case of authorisation, have qualifying holdings in the applicant's capital, indicating in respect of each such person or entity: <ul style="list-style-type: none"> <li>i. the number and type of shares or other holdings subscribed or to be subscribed;</li> <li>ii. the nominal value of such shares or other holdings;</li> <li>iii. any premium paid or to be paid;</li> <li>iv. any security interests or encumbrances created over such shares or other holdings, including the identity of the secured parties; and</li> <li>v. where applicable, any commitments made by such persons or entities aimed at ensuring that the applicant will comply with applicable prudential requirements.</li> </ul> </li> </ul> <p>15.2 Where a person who has or, in case of authorisation, will have a qualifying holding in the applicant's capital is a natural person, the application should set out all of the following information relating to the identity and suitability of that person:</p> <ul style="list-style-type: none"> <li>a) personal details including the person's name and name at birth, date and place of birth, citizenship, personal national identification number (where available), address, contact details and a copy of an official identity document;</li> <li>b) a detailed curriculum vitae, stating the education and training, previous professional experience and any professional activities or other functions currently performed;</li> <li>c) a statement, accompanied by supporting documents, containing the following information concerning the person and any undertaking which the person directs or controls and of which the applicant is aware after due and careful enquiry: <ul style="list-style-type: none"> <li>i. subject to national legislative requirements concerning the disclosure of spent convictions, any criminal conviction or proceedings where the person or undertaking has been found against and which were not set aside;</li> <li>ii. any civil or administrative decisions in matters of relevance to the assessment or authorisation process where the person or undertaking has been found against and any administrative sanctions or measures imposed as a consequence of a breach of laws or regulations (including disqualification as a company director), in each case which were not set aside and against which no appeal is pending or may be filed;</li> <li>iii. any bankruptcy, insolvency or similar procedures;</li> </ul> </li> </ul>

- iv. any pending criminal investigations;
  - v. any civil or administrative investigations, enforcement proceedings, sanctions or other enforcement decisions against the person or undertaking concerning matters which may reasonably be considered to be relevant to the authorisation to commence the activity of a payment institution or to the sound and prudent management of a payment institution;
  - vi. where such documents can be obtained, an official certificate or any other equivalent document evidencing whether any of the events set out in sub- paragraphs (i)-(v) has occurred in respect of the relevant person or undertaking;
  - vii. any refusal of registration, authorisation, membership or licence to carry out trade, business or a profession;
  - viii. any withdrawal, revocation or termination of a registration, authorisation, membership or licence to carry out trade, business or a profession;
  - ix. any expulsion by an authority or public sector entity in the financial services sector or by a professional body or association;
  - x. any position of responsibility with an entity subject to any criminal conviction or proceedings, administrative investigations, sanctions or other enforcement decisions for conduct failings, including in respect of fraud, dishonesty, corruption, money laundering, terrorist financing or other financial crime or of failure to put in place adequate policies and procedures to prevent such events, held at the time when the alleged conduct occurred, together with details of such occurrences and of the person's involvement, if any, in them; and
  - xi. any dismissal from employment or a position of trust, any removal from a fiduciary relationship (save as a result of the relevant relationship coming to an end by passage of time) and any similar situation.
- d) where an assessment of reputation of the person has already been conducted by a competent authority in the financial services sector, the identity of that authority and the outcome of the assessment;
- e) the current financial position of the person, including details concerning sources of revenues, assets and liabilities, security interests and guarantees, whether granted or received;
- f) a description of the business activities of the person;
- g) financial information, including credit ratings and publicly available reports on any undertakings directed or owned by the person;
- h) description of any interests or activities of the natural person that may be in conflict with those of the payment institution and proposed methods for managing those conflicts of interest;
- i) a description of any links to politically exposed persons, as defined in Article 3(9) of Directive (EU) 2015/8494 ; and
- j) any other interests or activities of the person that may be in conflict with those of the applicant and proposed methods for managing those conflicts of interest.
- 15.3 Where a person or entity who has or, in case of authorisation, will have a qualifying holding in the applicant's capital is a legal person or is an entity which is not a legal person and which holds or should hold the participation in its own name, the application should contain the following information relating to the identity and suitability of that legal person or entity:
- a) name of the legal person or entity;
  - b) where the legal person or entity is registered in a central register, commercial register, companies register or similar public register, the register in which the legal person or entity is entered, the registration number or an equivalent means of identification in that register and a copy of the registration certificate;
  - c) the addresses of its registered office and, where different, of its head office, and principal place of business;
  - d) contact details;
  - e) corporate documents or agreements governing the entity and a summary explanation of the main legal features of the legal form or of the entity;
  - f) whether the legal person or entity has ever been or is regulated by a competent authority in the financial services sector or other government body;
  - g) the information referred to in Guideline 15(2)(c), 15(2)(d), 15(2)(e), 15(2)(f), 15(2)(g) and 15(2)(i) in relation to the legal person or entity;
  - h) description of any interests or activities of the legal person that may be in conflict with those of the payment institution and proposed methods for managing those conflicts of interest;
  - i) a list of each person who effectively directs the business of the legal person or entity, their name, date and place of birth, address, contact details, their national identification number, where available, and detailed curriculum vitae (stating relevant education and training, previous professional experience, any professional activities or other relevant functions currently performed), together with the information referred to in Guideline

- 15(2)(c) and 15(2)(d) in respect of each such person;
- j) the shareholding structure of the legal person, including at least:
- i. the name, date and place of birth, address and, where available, personal identification number or registration number and the respective share of capital and voting rights of all of its direct or indirect shareholders or members and beneficial owners, as defined in Article 3(6) of Directive (EU) 2015/849;
  - ii. information on any shareholders agreements; and
  - iii. the information referred to in Guideline 15(2)(c) in relation to the shareholders exercising or who may exercise significant influence.
- k) in the case of an entity which is not a legal person and which holds or should hold the participation in its own name, the identity of all members of the entity, together with the information set out in Guideline 15(2) if such members are natural persons, or, as the case may be, in Guideline 15(3) if such members are legal persons;
- l) if the legal person or entity is part of a group (which, for the purpose of this paragraph, should, in the case of such entities, include the members of the entity and the subsidiaries of such members), a detailed organisational chart of the structure of the group and information on the share of capital and voting rights of shareholders with significant influence over the entities of the group and on the activities currently performed by the entities of the group;
- m) if the legal person or entity is part of a group, information on the relationships between any credit institution, insurance or re-insurance undertaking or investment firm within the group and any other group entities;
- n) if the legal person or entity is part of a group, identification of any credit institution, insurance or re-insurance undertaking or investment firm within the group, the names of the relevant competent authorities, as well as an analysis of the perimeter of consolidated supervision of the credit institution and the group, including information about which group entities would be included in the scope of consolidated supervision requirements and at which levels within the group these requirements would apply on a full or sub-consolidated basis;
- o) annual financial statements, at the individual and, where applicable, at the consolidated and sub-consolidated group levels, for the last three financial years, where the legal person or entity has been in operation for that period of time (or such shorter period of time for which the legal person or the entity has been in operation and financial statements were prepared), approved by the statutory auditor or audit firm within the meaning of Directive 2006/43/EC5, where applicable, including each of the following items:
- i. the balance sheet;
  - ii. the profit and loss accounts or income statement; and
  - iii. the annual reports and financial annexes and any other documents registered with the relevant registry or competent authority of the legal person.
- p) Where the legal person has not been operating for a sufficient period of time to be required to prepare financial statements for the three financial years immediately prior to the date of the application, the application shall set out the existing financial statements (if any), as well as statements which include the forecast balance sheets and forecast profit and loss accounts or income statements of the relevant person, including planning assumptions used, at least under base case and stress scenarios, for such number of financial years as would ensure that such statements, together with the financial statements provided (if any), cover three consecutive financial years;
- q) where the legal person or entity has its head office in a third country, the application shall set out all of the following information:
- i. where the legal person or entity is supervised by an authority of a third country in the financial services sector, a certificate of good-standing, or equivalent where not available, from such foreign authority in relation to the legal person or entity;
  - ii. where the legal person or entity is supervised by an authority of a third country in the financial services sector and if the authority does issue such declarations, a declaration by that authority that there are no obstacles or limitations to the provision of information necessary for the supervision of the payment institution; and
  - iii. general information on the regulatory regime of that third country as applicable to the legal person or entity, including information on the extent to which the third country's anti-money laundering and counter-terrorist financing regime is consistent with the Financial Action Task Force's Recommendations.
- r) where the legal person is a collective investment undertaking, the application shall set out the following information:
- i. the identity of the unit holders controlling the collective investment undertaking or having a holding enabling them to prevent the taking of decisions by the collective investment undertaking;

- ii. details of the investment policy and any restrictions on investment;
  - iii. the name and position of the persons responsible, whether individually or as a committee, for defining and making the investment decisions for the collective investment undertaking, as well as a copy of any management mandate or, where applicable, terms of reference of the committee;
  - iv. in the case of undertakings which are not domiciled in a Member State, a detailed description of the applicable anti-money laundering legal framework and of the anti-money laundering procedures of the collective investment undertaking; and v. a detailed description of the performance of former holdings of the collective investment undertaking in other credit institutions, insurance or re-insurance undertakings or investment firms, indicating whether such holdings were approved by a competent authority and, if so, the identity of the authority.
- s) where the person is a sovereign wealth fund, the name of the public body in charge of defining the investment policy of the fund, as well as details of any influence exerted by that public body on the day-to-day operations of the fund and the applicant;
- t) where a trust already exists or would result from the subscription to the applicant's share capital, the application should also set out the following information:
- i. the identity of all trustees who will manage assets under the terms of the trust document and of each person who is a beneficiary or a settlor of the trust property and, where applicable, their respective shares in the distribution of income generated by the trust property;
  - ii. a copy of any document establishing or governing the trust; and
  - iii. a description of the main legal features of the relevant trust and its functioning.
- 15.4 The application shall set out all of the following information of each natural or legal person or entity who has or, in case of authorisation, will have a qualifying holding in the capital of the applicant should contain the following:
- a) details of that person's or entity's financial or business reasons for owning that holding and the person's or the entity's strategy regarding the holding, including the period for which the person or the entity intends to hold the holding and any intention to increase, reduce or maintain the level of the holding in the foreseeable future;
  - b) details of the person's or the entity's intentions in respect of the applicant and of the influence the person or the entity intends to exercise over the applicant, including in respect of the dividend policy, the strategic development and the allocation of resources of the applicant, whether or not it intends to act as an active minority shareholder and the rationale for such intention;
  - c) information on the person's or the entity's willingness to support the applicant with additional own funds if needed for the development of its activities or in case of financial difficulties;
  - d) the content of any intended shareholder's or member's agreements with other shareholders or members in relation to the applicant;
  - e) an analysis as to whether the qualifying holding will impact in any way, including as a result of the person's close links to the applicant, on the ability of the applicant to provide timely and accurate information to the competent authorities; and
  - f) the identity of each member of the management body or of senior management who will direct the business of the applicant and will have been appointed by, or following a nomination from, such shareholders or members, together with, to the extent not already provided, the information set out in Guideline 16.
- 15.5 The application should set out a detailed explanation on the specific sources of funding for the participation of each person or entity having a qualifying holding in the applicant's capital, which should include:
- a) details on the use of private financial resources, including their availability and (so as to ensure that the competent authority is satisfied that the activity that generated the funds is legitimate) source;
  - b) details on the means of payment of the intended participation, of the payment service provider used to transfer funds and, where the head office of the payment service provider is not established in a Member State, evidence that the funds used for the participation are channelled through payment service providers that are subject to antimoney laundering and terrorist financing legislative requirements consistent with those set out in Directive (EU) 2015/849, and are supervised effectively for compliance with these requirements;
  - c) details on access to financial markets, including details of financial instruments to be issued;
  - d) information on the use of borrowed funds, including the name of the lenders and details of the facilities granted, such as maturities, terms, security interests and guarantees, as well as information on the source of revenue to be used to repay such borrowings. Where the lender is not a credit institution or a financial institution authorised to grant credit, the applicant should provide to the competent authorities information on the origin of the borrowed funds;

	<p>e) information on any financial arrangement with other persons who are shareholders or members of the applicant; and</p> <p>f) information on any assets of the person who is a shareholder or member of the applicant which are to be sold in order to help finance the proposed participation, such as conditions of sale, price, appraisal, and details regarding their characteristics, including information on when and how the assets were acquired.</p> <p>15.6 Where a person who has or will, in case of authorisation, have a qualifying holding in the applicant's capital is a member of an entity which is not a legal person and the participation will be treated as an asset of that entity, the application should set out the following information:</p> <p>a) the identity of all members of the entity, together with the information set out in Guidelines (15)(2) if such members are natural persons, or, as the case may be, in Guideline (15) (3) if such members are legal persons; and</p> <p>b) details of the terms of the agreements governing the entity.</p>
<p>14. Namen der Geschäftsleiter und soweit es sich um Unternehmen handelt, die neben der Erbringung von Zahlungsdiensten anderen Geschäftsaktivitäten nachgehen, der für die Führung der Zahlungsdienstgeschäfte des Instituts verantwortlichen Personen</p>	<p><b>Guideline 16: Identity and suitability assessment of directors and persons responsible for the management of the payment institution</b></p> <p>16.1 For the purposes of the identity and suitability assessment of directors and persons responsible for the management of the payment institution, the applicant should provide the following information:</p> <p>a) Personal details including:</p> <ol style="list-style-type: none"> <li>i. the full name, gender, place and date of birth, address and contact details, nationality, and personal identification number or copy of ID card or equivalent;</li> <li>ii. details of the position for which the assessment is sought, whether or not the management body position is executive or non-executive. This should also include the following details: <ul style="list-style-type: none"> <li>- the letter of appointment, contract, offer of employment or respective drafts, as applicable;</li> <li>- the planned start date and duration of the mandate; and</li> <li>- description of the individual's key duties and responsibilities.</li> </ul> </li> </ol> <p>b) Information on suitability assessment carried out by the applicant which should include details of the result of any assessment of the suitability of the individual performed by the institution, such as relevant board minutes or suitability assessment reports or other documents;</p> <p>c) evidence of knowledge, skills and experience, which should include:</p> <ol style="list-style-type: none"> <li>i. a CV containing details of education and professional experience, including professional experience, academic qualifications, other relevant training, the name and nature of all organisations for which the individual has worked and the nature and duration of the functions performed, in particular highlighting any activities within the scope of the position sought; and</li> <li>ii. a statement from the applicant in relation to the individual's requisite experience as enumerated, as appropriate, in the Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body [Reference to future Guidelines to be inserted here after consultation].</li> </ol> <p>d) evidence of reputation, honesty, integrity, which should include:</p> <ol style="list-style-type: none"> <li>i. criminal records and relevant information on criminal investigations and proceedings, relevant civil and administrative cases, and disciplinary actions, including disqualification as a company director, bankruptcy, insolvency and similar procedures, notably through an official certificate or any objectively reliable source of information concerning the absence of criminal conviction, investigations and proceedings, such as third party investigation, testimony made by a lawyer or a notary established in the European Union;</li> <li>ii. statement as to whether criminal proceedings are pending or the person or any organisation managed by him or her has been involved as a debtor in insolvency proceedings or a comparable proceeding;</li> <li>iii. Information concerning the following : <ul style="list-style-type: none"> <li>- investigations, enforcement proceedings, or sanctions by a supervisory authority which the individual has been directly or indirectly involved in;</li> <li>- refusal of registration, authorisation, membership or licence to carry out a trade, business or profession; or the withdrawal, revocation or termination of registration, authorisation, membership or licence; or expulsion by a regulatory or government body or by a professional body or association;</li> <li>- dismissal from employment or a position of trust, fiduciary relationship, or similar situation, or having been asked to resign from employment in such a position, excluding redundancies;</li> </ul> </li> </ol>

	<ul style="list-style-type: none"> <li>- whether an assessment of reputation of the individual as an acquirer or a person who directs the business of an institution has already been conducted by another competent authority, including the identity of that authority, the date of the assessment, and evidence of the outcome of this assessment, and the consent of the individual where required to seek such information to be able to process and use the provided information for the suitability assessment; and</li> <li>- whether any previous assessment of the individual an authority from another, non-financial, sector has already been conducted, including the identity of that authority and evidence of the outcome of this assessment.</li> </ul> <p>e) Information on financial and non-financial interests, which should include:</p> <ul style="list-style-type: none"> <li>i. a description of any financial and non-financial interests, such as loans and shareholdings, and relationships and his/her close relatives, such as a spouse, registered partner, cohabite, child, parent or other relation with whom the person shares living accommodations, between the individual and his/her close relatives, or any company that the individual is closely connected with, and the institution, its parent or subsidiaries, or any person holding a qualifying holding in such an institution, including any members of those institutions or key function holders;</li> <li>ii. whether or not the individual conducts, or has conducted in the past two years, any business or has any commercial relationship with any of the above listed institutions or persons or is involved in any legal proceedings with those institutions or persons;</li> <li>iii. whether or not the individual and his/her close relatives have any competing interests with the institution , its parent or subsidiaries;</li> <li>iv. whether or not the individual is being proposed on behalf of any one substantial shareholder;</li> <li>v. any financial obligations to the institution, its parent or its subsidiaries</li> <li>vi. any national or local position of political influence held over the past 2 years, and</li> <li>vii. if a material conflict of interest is identified, a statement as to how this conflict has been satisfactorily mitigated or remedied.</li> </ul> <p>f) information on any other professional activities carried out.</p>
<p>15. Namen der Abschlussprüfer des Jahresabschlusses und des Konzernabschlusses</p>	<p><b>Guideline 17: Identity of statutory auditors and audit firms</b></p> <p>17.1 The identity of statutory auditors and audit firms as defined in Directive 2006/43/EC to be provided by the applicant, where relevant, should contain the following information:</p> <ul style="list-style-type: none"> <li>a) name, address and contact details of auditors; and</li> <li>b) date of the appointment.</li> </ul>
<p>16. die Rechtsform und die Satzung oder den Gesellschaftsvertrag des Instituts;</p>	<p><b>Guideline 2: Identification Details</b></p> <p>2.1 The identification details to be provided by the applicant should contain the following information:</p> <ul style="list-style-type: none"> <li>a) the applicant's corporate name and, if different, trade name;</li> <li>b) an indication on whether the applicant is already incorporated or in process of incorporation;</li> <li>c) the applicant's national identification number, if applicable;</li> <li>d) the applicant's legal status and (draft) articles of association and/or constitutional document evidencing the applicant's legal status;</li> <li>e) the address of the applicant's head office and registered office;</li> <li>f) the applicant's electronic address and website, if available;</li> <li>g) the person(s) in charge of dealing with the application file and authorisation procedure, and their contact details;</li> <li>h) indication on whether the applicant has ever been, or is currently being regulated, by a competent authority in the financial services sector or by any other industry-specific regulatory body;</li> <li>i) any trade association(s) that the applicant plans to join, where applicable;</li> <li>j) the register certificate of incorporation or, if applicable, negative certificate of a mercantile Register that certifies that the name applied by the company is available;</li> <li>k) evidence of the payment of any fees, or of the deposit of funds to file an application for the authorisation as payment institution, where applicable under national law.</li> </ul>
<p>17. die Anschrift der Hauptverwaltung oder des Sitzes des Instituts.</p>	

## Aderhold Rechtsanwalts-gesellschaft mbH



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