

Draft
of
Act on NemKonto

Chapter 1

Definitions

§ 1. For the purposes of this Act:

- 1) NemKonto system: System of information on NemKontos and benefit-specific accounts of private persons and legal entities and the related functions for assigning accounts, adding account information to a payment order, transfers of payment orders and account searches.
- 2) Payee: A private person or legal entity who is the intended recipient of the monetary amounts involved in a payment transaction.
- 3) Private person: A natural person who acts solely on behalf of herself or himself without being connected to a legal entity.
- 4) Legal entity: A natural person in his or her capacity as an employer or self-employed person, a Danish or foreign legal person or a branch of a foreign legal person, a trust or a legal arrangement similar to a trust, a state administrative entity, a region, a municipality or a municipal community.
- 5) NemKonto: An account of an account servicing institution that has been designated by the payee as the account to which public payers may pay amounts of money.
- 6) Benefit-specific account: An account of an account holding institution to which a specific public payer may provide benefits of a specific kind to the payee.
- 7) Type of benefit: Categorisation of the benefits paid to payees by public payers.
- 8) Designate: The payee's designation of the account that the payee wishes to be registered as a NemKonto or benefit-specific account in the NemKonto system.

- 9) Payment order: Instruction from a public payer sent through the NemKonto system to the payment processing institution or credit institution to execute a payment transaction to a payee.
- 10) Full payment order: Payment orders in the NemKonto system, which have been provided by the public payer with account information on where the payment is to be transferred, and therefore no account information is provided from the NemKonto system.
- 11) Account search: A search carried out by a private payer through a private account intermediary in the NemKonto in order to obtain the details of a payee's account.

Chapter 2

Designation for NemKontos and benefit-specific accounts in the NemKonto system

Designation for NemKonto

§ 2. Private persons who, pursuant to Section 3(1) no. 1 of the Central Person Register Act, have a CPR number assigned to them because they are registered in this country due to birth or arrival from abroad and who are not registered as having exited by Denmark shall, at the latest in connection with the first payment from a public payer, designate an account as NemKonto to which public payers may make payments of monetary amounts.

(2) Private persons who are not covered by (1) can, if they are assigned a CPR number in accordance with the Central Person Register Act or regulations laid down pursuant thereto, designate a NemKonto. The use of the NemKonto for persons included in sentence 1 shall, however, be agreed with the public payer if, prior to the instruction, the payee receives payments from the public payer in question to another account.

(3) A private person can only designate one NemKonto.

§ 3. Legal entities which have been assigned a Central Business Register (CVR) number pursuant to Section 5, cf. Section 3 of the Central Business Register Act, shall, at the latest in connection with the first payment from a public payer, designate an account as NemKonto to which public payers may make payment of amounts of money. The same applies to legal entities that are registered with the Customs and Tax Authority with a Commercial Register (SE) number.

(2) Legal entities that are not covered by (1), but which fulfil the conditions for voluntary registration in the Central Business Register in accordance with the Central Business Register Act or rules laid down pursuant thereto, shall, in order to be able to receive payments from a public payer,

- 1) be entered in the Central Business Register in accordance with the rules on voluntary registration; and
- 2) designate a NemKonto in accordance with the rules in (1).

(3). A legal entity can only designate one NemKonto. However, legal entities may designate separate NemKontos to underlying P numbers or SE numbers. The use of NemKontos for underlying P numbers must be agreed with the public payer.

Designation of benefit-specific account

§ 4. Payees covered by Section 2 or Section 3 may designate an account as a benefit-specific account to which a particular public payer may make payment of a sum of money of a particular type of benefit.

Accounts that may be designated as NemKontos and benefit-specific accounts

§ 5. Accounts with a Danish or internationally recognised account ID kept in the following institutions may be designated as NemKontos or benefit-specific accounts:

- 1) Danish financial institution: An undertaking authorised by the Danish Financial Supervisory Authority to operate as a financial institution in accordance with the Financial Business Act.
- 2) Danish payment or electronic money institution: An undertaking authorised by the Danish Financial Supervisory Authority to carry out activities as a payment institution or e-money institution under the Payments Act that is an account-servicing payment account provider.
- 3) EU/EEA credit institution: An undertaking authorised by the financial supervisory authority of an EU/EEA country to carry out the activities of credit institutions pursuant to the national legislation of that EU/EEA country implementing Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the supervision of use of credit institutions, as amended (CRD).
- 4) EU/EEA payment or electronic money institution: An undertaking authorised by the financial supervisory authority of an EU/EEA country to carry out activities as a payment or electronic money institution under the national law of that EU/EEA country implementing Directive 2015/2366/EU of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, as amended (PSD2), and Directive 2009/110/EC of the European Parliament and of the Council of 16 September

2009 on the taking up and pursuit of the business of electronic money institutions and the supervision of such an undertaking, as amended (EMD), that is an account servicing payment account provider.

- 5) Faroese or Greenlandic financial institution: An undertaking authorised by the Danish Financial Supervisory Authority to operate as a financial institution in accordance with the Decree on the entry into force for the Faroe Islands of the Financial Business Act or the Decree on the entry into force for Greenland of the Financial Business Act.
- 6) Faroese payment or e-money institution: An undertaking authorised by the Danish Financial Supervisory Authority to carry out activities as a payment institution or e-money institution in accordance with the Decree on the entry into force for the Faroe Islands of the Payments Act, which is an account-servicing payment account provider.
- 7) Third-country credit institution: An undertaking established in a country outside the EU/EEA which has authorisation from the financial supervisory authority of that country to carry out activities consisting in taking deposits from the public as well as in granting loans for its own account which are linked to accounts maintained by that undertaking in its own name.

(2) The Minister for Digital Government may lay down rules on the conditions for accounts maintained in institutions subject to (1) to be used as NemKontos or benefit-specific accounts. Furthermore, the Minister may lay down rules on the types of accounts that may be designated as NemKontos and benefit-specific accounts, and requirements on the account identifiers that an account must have in order to be designated as a NemKonto or benefit-specific account.

Designation, amendment, and deletion of accounts in the NemKonto system

§ 6. Designation, amendment or deletion of an account by the payee to the NemKonto system shall take effect no later than when payments are available in the account of the payee on the fifth business day after the account is registered as an asset or terminated NemKonto or benefit-specific account in the NemKonto system. However, for payments to foreign accounts, the date of effect may be later than the fifth business day after the account is registered as active or terminated as a result of the total turn-around time of foreign payments being longer.

§ 7. The Minister for Digital Government shall lay down rules on the designation, amendment or deletion of an account by payees such as a NemKonto or benefit-specific account, including requirements for certain designated or modified accounts to be activated by the payee in order to be recorded as a NemKonto or benefit-specific account in the NemKonto system. The Minister for Digital Government may also lay down rules on when a NemKonto or benefit-specific account can be deleted by the Agency for Digital Government in the NemKonto system.

Chapter 3

Public payers

Definition of public payers

§ 8. Public payers shall mean:

- 1) Public administration authorities.
- 2) The courts.
- 3) Institutions, associations, foundations, etc. whose expenses or accounting deficit are covered by state subsidy or by contributions, tax, or other income in accordance with the Act.
- 4) Institutions, associations, foundations, etc. that receive capital injections, grants, loans, guarantees or other support from the State or an institution, etc. covered by no. 3, if the capital injection, etc. is of significant importance to the recipient.
- 5) Autonomous institutions etc. whose operating budget is included in the Appropriation Act.
- 6) Autonomous institutions etc. with which a municipality or region has entered into an operation agreement.

(2) The Minister for Digital Government, after discussion with the Danish Parliament's management and the Danish Auditor General, may determine that the Danish Parliament and institutions under the Danish Parliament are public paying agents.

Derogation from the rules of the Act for public payers

§ 9. Public payers covered by Section 8 are not subject to the provisions of the Act to the extent that, in other legislation, rules are not compatible with the Act or rules laid down by the Act.

(2) The relevant municipality or region may decide that Section 12(1)–(4), Section 13(1) and (2), Sections 14–17 and rules laid down pursuant to Section 10, Section 11 and Section 12(5) do not apply to a public payer covered by Section 8(1) no. 6.

(3) The Minister concerned may, in agreement with the Minister for Digital Government, lay down rules to the effect that Section 12(1) to (4), Section 13(1) and (2), Sections 14 to 17 and rules laid down pursuant to Section 10, Section 11 and Section 12(5) shall not apply to one or more public payers covered by Section 8(1) nos. 3 and 4.

Connection of public payers to the NemKonto system

§ 10. The Minister for Digital Government shall lay down rules on the connection to and use of the NemKonto system by public payers, including rules on the payment of fees for connection, etc.

Reporting by public payers to the NemKonto system

§ 11. The Minister for Digital Government shall lay down rules on which public payers who, at the request of payees, shall report designation, amendment or deletion of accounts as NemKontos in the NemKonto system, including rules on the documentation requirements of public payers, administration of NemKontos, etc.

§ 12. Public payers shall, at the request of payees, report the designation, amendment or deletion of accounts as benefit-specific accounts in the NemKonto system for benefits paid by themselves, cf., however, (3). The public payer determines which benefits are covered by a type of benefit.

(2) A public payer may, at the request of a payee, lock a benefit-specific account in the NemKonto system, so that the payee cannot directly make any changes to it.

(3) If a public payer can determine, under other legislation, the manner in which the payment of a benefit to a payee is to be made, the public payer may specify and lock a benefit-specific account, irrespective of the payee's failure to request it.

(4) Similarly, where a public payer can lock a benefit-specific account in accordance with (2) and (3), the public payer in question may instruct the person making the payments to carry out this action and report the designation, change, or deletion of locked benefit-specific accounts in the NemKonto system.

(5) The Minister for Digital Government may lay down rules on the documentation requirements of public payers, administration of benefit-specific accounts, etc.

Use of the NemKonto system by public payers

§ 13. Public payers shall use the NemKonto system to make payments to payees with a NemKonto or a benefit-specific account, cf. however (3), Section 9(1) and (2), Section 14(2) and (3) and rules laid down pursuant to Section 9(3).

(2) The user account system shall be acquired from the Agency for Digital Government.

(3) Public payers are not obliged to use the NemKonto system to the extent that other legislation lays down rules that are not compatible with the Act or rules laid down by the Act.

§ 14. The payee's designated NemKonto or benefit-specific account is the correct place of payment for public payers, unless the payee has designated to the respective public payer another account to which payment is to be made. If it follows from another Act that payment must be made to the payee's designated NemKonto, this will always be the correct payment point.

(2) If the payee has instructed an account other than his or her NemKonto or benefit-specific account to which payment is to be made, the public payer may execute this payment as a full payment order in the NemKonto system.

(3) If, in the context of a payout from a public payer, the payee has not designated a NemKonto, a defined-benefit account, or another account, the public payer shall ensure that the payee is paid his or her receivable by other means. The same applies when the public payer receives information from the NemKonto system that payment cannot be made.

§ 15. A payee who is required to designate a NemKonto as specified in Section 2(1) or Section 3(1) or (2) shall bear the risk of late payment by a public payer arising from their failure to designate a NemKonto, a benefit-specific account, or another account to which payment may be made, or the payee's failure to contribute to ensuring that the payment of the receivable can be made by other means. Similarly, the payee will bear the risk of late payment in other cases from a public payer, if payment to the designated NemKonto, benefit-specific account or other account or by other means cannot be made for reasons not attributable to the NemKonto system or the public payer.

§ 16. Payment by a public payer to the account of the payee abroad shall be deemed to have been made by the public payer in due time, regardless of the fact that the payment has been received by the recipient at a later date than corresponding domestic payments, if

- 1) the payment is processed on the same day as corresponding payments to domestic accounts, and
- 2) the payment of the corresponding domestic payments is received by the beneficiaries in due time.

(2) Public payers may, in connection with the implementation of a payment, deduct additional costs, which a transfer of monetary amount to a designated NemKonto, benefit-specific account or other account abroad is associated with, unless other legislation provides otherwise.

Offsetting and payment to rightsholders

§ 17. Payment to the payee's NemKonto, benefit-specific account, or to another account does not take place if the Customs and Tax Administration has requested the transfer of the payment amount for the purpose of offsetting against the payment amount or for the purpose of payment to rightsholders who have rights in claims for payment from the Customs and Tax Administration.

(2) When a payment amount is transferred to the Customs and Tax Administration in accordance with (1), payment is considered to have been made in full discharge of liabilities for the public payer.

(3) When the Customs and Tax Administration makes any excess payments after offsetting or payments to rightsholders have been carried out, the Customs and Tax Administration shall be regarded as a public payer.

Chapter 4

Private payers, private account intermediaries and operators of financial digital infrastructures

Private payers

§ 18. A private payer may, under specified conditions, through a private account intermediary, perform account searches in the NemKonto system when the account details are to be used to make a payment to a payee and the payee's NemKonto is the correct place of payment.

(2) Private persons and legal entities that are resident or registered fiscal domicile in Denmark, in another EU/EEA country, or in the Faroe Islands, can run account notices as private investors in accordance with (1). However, this shall not apply to legal entities that are public payers under Section 8, unless the public payer is exempted under Section 9(2) or rules laid down pursuant to Section 9(3).

(3) The payee may at any time notify a private payer that the payments are not to be made to the recipient's NemKonto. The payee's right not to have the payment amount included in his or her NemKonto cannot be derogated from by agreement.

(4) The Minister for Digital Government may lay down rules on private paying agents' account searches, including rules on when and how private paying agents can look up accounts via a private account intermediary and the notification obligation of private paying agents.

(5) The Minister for Digital Government may lay down rules on the liability of the Agency for Digital Government, system and operation providers, public payers and account reporting institutions, and restrictions thereof towards private payers as a result of the unavailability of the NemKonto system, system errors in the NemKonto system, and for errors in payees' account information, etc.

(6) The Minister for Digital Government may lay down rules on the Agency for Digital Government's communication to private parties of indictments, injunctions, and exclusion from making account searches via a private account intermediary for non-compliance with rules, agreements or conditions for account searches in the NemKonto system.

Private account intermediaries

§ 19. A private account intermediary may, under specified conditions, carry out account searches on behalf of a private payer in the NemKonto system for the purpose of making payments, cf. Section 18.

(2) The following enterprises may, in agreement with the Agency for Digital Government, be connected to the NemKonto system as private account intermediaries:

- 1) A financial institution with an authorisation under the Financial Business Act or Decree on entry into force for the Faroe Islands of the Financial Business Act.
- 2) A payment or electronic money institution authorised under the Payments Act, Decree on the entry into force for the Faroe Islands of the Payments Act or an EU/EEA payment or electronic money institution authorised under the national law of the relevant EU/EEA State, implementing Directive 2015/2366/EU of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, as amended (PSD2) and Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit of and prudential supervision of the business of electronic money institutions (EMD).
- 3) An EU/EEA credit institution authorised under the national legislation of the respective EU/EEA Member State which implements Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the supervision of use of credit institutions, as amended (CRD).
- 4) An insurance company authorised under the Insurance Business Act or an insurance company authorised to conduct insurance business in the EU under national law implementing Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II).

(3) The Minister for Digital Government may lay down further regulations on which companies may be connected to the NemKonto System as private account intermediaries. The Minister for Digital Government may also lay down rules on the use of and connection to the NemKonto system by private account intermediaries, including rules on fees and conditions.

(4) The Minister for Digital Government may lay down rules on the liability of the Agency for Digital Government, system and operation providers, public payers, and account reporting institutions and restrictions thereof to private account intermediaries due to the unavailability of the NemKonto system, system errors in the NemKonto system, and for errors in beneficiary account information, etc.

(5) The Minister for Digital Government may lay down rules on the Agency for Digital Government's notice to private account intermediaries of indictments, injunctions and exclusion from using the NemKonto in the event of non-compliance with rules, agreements or conditions for use of or connection to the NemKonto system.

Operators of financial digital infrastructures

§ 20. An operator of financial digital infrastructure may, under specified conditions and in agreement with the Agency for Digital Government, on behalf of a private account intermediary, be connected to the NemKonto system.

(2) In order to be connected to the NemKonto system, an operator of financial digital infrastructure must have been designated by the Danish Financial Supervisory Authority pursuant to Section 333(1) no. 2 of the Financial Business Act as an operator of financial digital infrastructure or be an EU/EEA-based undertaking that fulfils the national legislation of the relevant EU/EEA country equivalent to Section 333(1) no. 2 of the Financial Business Act and is subject to supervision by the competent supervisory authority in the relevant EU/EEA country, corresponding to the Danish Financial Supervisory Authority's supervision of a Danish operator of financial digital infrastructures' compliance with Section 333m of the Financial Business Act.

(3) The Minister for Digital Government may lay down further regulations on which companies may be connected to the NemKonto as a financial digital infrastructure operator. The Minister for Digital Government may also lay down rules on the use of and connection to the NemKonto system by financial digital infrastructure operators, including rules on fees and conditions.

(4) The Minister for Digital Government may lay down rules on the liability of the Agency for Digital Government, system and operation providers, public payers and account reporting institutions for the liability of operators of financial digital infrastructures and restrictions thereof due to the unavailability of the NemKonto system, system errors in the NemKonto system and for errors in payees' account information, etc.

(5) The Minister for Digital Government may lay down rules on the Agency for Digital Government's communication to the operators of financial digital infrastructures of indictments, injunctions and exclusion from using the NemKonto system for non-compliance with rules, agreements or conditions for use of or connection to the NemKonto system.

Chapter 5

Public service obligations of institutions

§ 21. The Minister for Digital Government may lay down regulations to the effect that institutions referred to in Section 5(1) nos. 1 to 6 can connect to public service obligations in relation to the NemKonto system in accordance with regulations laid down pursuant to (3).

(2) The Minister for Digital Government may lay down regulations requiring institutions referred to in Section 5(1) nos. 1 and 2 to connect to public service obligations in relation to the NemKonto system in accordance with regulations laid down pursuant to (3).

(3) The Minister for Digital Government may lay down rules on which public service obligations institutions subject to rules laid down pursuant to (1) and (2) shall perform in relation to the NemKonto system, including reporting accounts maintained at the institution in question, as NemKontos to the NemKonto system according to the instructions of private persons and legal entities and updating the NemKonto system with correct information. The Minister for Digital Government may also lay down regulations on security and technical requirements when reporting to the NemKonto system, etc.

(4) The Minister for Digital Government may lay down rules to the effect that the Agency for Digital Government may provide support to institutions for the performance of public service obligations in accordance with rules laid down pursuant to (1)-(3) and on the processing and supervision of such cases, including rules on applications, deadlines, information and documentation requirements, and requirements for a statement by an approved auditor.

Chapter 6

Provision of the NemKonto system

§ 22. The Agency for Digital Government is the system owner of the NemKonto system and makes the NemKonto system available to public payers and private account intermediaries.

(2) The Agency for Digital Government ensures the development, operation, maintenance, and administration of the NemKonto system.

(3) The Agency for Digital Government may appoint public authorities or legal entities to carry out tasks pursuant to (2) on behalf of the Agency for Digital Government.

(4) The Minister for Digital Government may lay down rules for the provision of the NemKonto system to public payers and private account intermediaries, cf. (1).

§ 23. The Minister for Digital Government may make the NemKonto system available to the Greenlandic authorities.

Professional secrecy

§ 24. Public payers and anyone who carries out tasks under this Act or rules laid down pursuant to it, and anyone who otherwise provides assistance thereto, shall be liable in accordance with Sections 152–152f of the Criminal Code, to observe professional secrecy with regard to information on the technical and security configuration and on processes for developing, maintaining and operating security in the NemKonto system.

Chapter 7

Data processing and controllership

§ 25. The Agency for Digital Government may process information on private persons and legal entities, including information on NemKontos and benefit-specific accounts of private persons and legal entities and other matters, where such information is necessary for the development, operation, maintenance, and administration of the NemKonto system.

(2) The Agency for Digital Government is the data controller for the processing of personal data in the NemKonto system.

(3) The Minister for Digital Government may lay down rules to the effect that the Agency for Digital Government may process information on private persons and legal entities in the NemKonto system when this is necessary for users of the NemKonto's control and supervisory tasks.

(4) The Minister for Digital Government shall lay down rules on the processing of information in the NemKonto system, including retrieval and disclosure of information from the NemKonto system, and on the collection of fees in connection with the disclosure of the information.

§ 26. The Agency for Digital Government may obtain from the Customs and Tax Administration, the Central Person Register, and the Central Business Register information that is necessary for the development, operation, maintenance, and administration of the NemKonto system.

Chapter 8

Compensation scheme for private individuals

§ 27. The Agency for Digital Government may, upon application, allocate and pay financial compensation to private persons who have not received a lawful payment as a result of a criminal offence or as a result of errors in the designation or amendment of an account in the NemKonto system.

(2) It is a condition for the allocation and payment of compensation as a result of a criminal offence that the matter is reported to the police immediately after the private person has knowledge of the criminal offence.

(3) Private individuals who have acted with gross negligence or intentionally shall not be eligible for compensation. However, compensation may be awarded if the private person has not, due to mental illness, reduced mental functional capacity or a similar condition, been able to act prudently. This depends on a specific assessment taking into account the person's mental condition, the nature of the action or the circumstances in general. Subsection (2) shall not, however, apply if the person temporarily is in a similar condition as a result of consuming means of intoxication, narcotics or the like, or if the person had the intention of causing the damage.

§ 28. The Agency for Digital Government allocates financial compensation equal to the amount of the legitimate payment in question. The compensation shall be reduced or terminated if the private person has received the amount in whole or in part by other means.

(2) A private person who has received compensation from the Agency for Digital Government shall refund the compensation in whole or in part to the Agency for Digital Government to the extent that they have otherwise covered their loss.

§ 29. Applications for compensation shall be submitted digitally to the Agency for Digital Government using the solution indicated by the Agency for Digital Government. The Agency for Digital Government may grant exemption from the digital application requirement if there are special circumstances, such as a physical or mental disability or lack of IT competences, which mean that the private person cannot be expected to be able to digitally submit an application.

(2) The application for compensation shall be submitted as soon as possible after the private person has found that a legitimate payment has not been received and no later than 13 months after the payment in question has taken place.

(3) The Agency for Digital Government's decisions on appeals may not be appealed to any other administrative authority.

§ 30. The Agency for Digital Government joins the private person's claims against tortfeasors to the extent that the Agency for Digital Government has paid compensation to the private person. The Agency for Digital Government may refrain from pursuing requirements that have not been established by judgement, or if the costs of pursuing the requirement are likely to be incommensurate with the expected outcome of pursuing the requirement.

§ 31. The Minister for Digital Government may lay down rules on the compensation scheme, including additional requirements for compensation, rules on the submission of applications, and the handling of cases for compensation.

Chapter 9

Holding account

§ 32. The holding account is the State-owned account set up by the Agency for Digital Government to which public payers in agreement with the Agency for Digital Government have been able to make payments to payees that have not designated a NemKonto since 6 March 2012.

(2) From 1 July 2025, no amounts of money may be transferred from public payers to the holding account, cf., however, Section 33.

(3) For claims for payment of sums of money transferred to the holding account no later than 30 June 2025, limitation of the beneficiary's claims shall arise no earlier than 1 July 2028.

(4) Claims for payment of sums of money transferred to the holding account by 30 June 2025 at the latest shall not be subject to interest from 1 July 2025.

(5) Claims for payment of sums of money transferred to the holding account by 30 June 2025 may not be transferred or prosecuted from 1 July 2025.

(6) Claims for payment of amounts of money transferred to the holding account by 30 June 2025, unless the payee has claimed payment by 30 June 2028 and designated an account for use for the payment, may be credited to the State on 1 July 2028, cf., however, (7). The Agency for Digital Government carries out public warnings in the Official Gazette on this matter no later than 30 June 2027.

(7) If a payee who has not, by 30 June 2028, made a claim for payment of sums of money as referred to in (6) and designated an account for the payment to be made has overdue debts covered by the Act on the recovery of debts to the public sector, the amount of money shall be transferred to the Customs and Tax Administration with a view to covering those debts in accordance with the coverage sequence in Section 7(1) nos. 2 and 3 of the Debt Collection Act.

(8) If a claim for an amount of money that has been recorded as income in accordance with (6) is not out of date, the Agency for Digital Government will, at the request of the payee, make payment of the amount of the money, unless the amount of the money was used to cover in accordance with (7).

§ 33. The Customs and Tax Administration may continue to make payments to the holding account as of 1 July 2025.

(2) For claims for payment of sums of money transferred to the holding account from 1 July 2025 onwards, obsolescence occurs when 3 years have passed after the transfer to the holding account. The amount of money accrues to the State if the claim for payment is out of date.

(3) Claims for payment of sums of money transferred to the holding account from 1 July 2025 onwards shall not be subject to interest.

(4) Claims for payment of sums of money transferred to the holding account as from 1 July 2025 may not be transferred or subject to prosecution.

(5) The Minister for Digital Government, in agreement with the Minister for Taxation, may lay down rules that the Customs and Tax Administration may no longer authorise payments to the holding account under (1) from a specified date.

§ 34. The Agency for Digital Government shall pay any deposited claims for sums of money to the holding account to the payee by instructing the payee of a NemKonto or other account for which payment shall be made.

§ 35. The Agency for Digital Government shall, upon request, pay any claims for money held in the holding account to the public payer, if the latter has paid or will pay the amount of money to the payee.

Chapter 10

Entry into force and transitional provisions

§ 36. This Act shall come into force on 1 July 2025.

(2) Natural and legal persons who have been private payers under Section 5a of the Public Payments Act, etc., and who have made account entries in the NemKonto system up to and including 30 June 2025, but who are not resident or have a registered fiscal domicile in Denmark, in another EU/EEA country or in the Faroe Islands and are not public payers under Section 8 may, notwithstanding Section 18(2), make account entries, cf. Section 18(1) up to and including 30 June 2026.

(3) Natural and legal persons who have been connected to the NemKonto system as private payment service providers up to and including 30 June 2025, but are not a type of company referred to in Section 19(2), may, notwithstanding Section 19(2), remain connected to the NemKonto system as a private account intermediary, cf. Section 19(1) up to and including 30 June 2026.

(4) Chapter 8 of the Act shall apply to decisions taken on compensation in accordance with the Order on the payment of financial compensation in the event of fraud or error in designating or amending NemKonto as of 1 July 2025.

(5) Rules laid down pursuant to Section 1(7) and (8), Section 3(1) and (5), Section 4(1) and Section 5(2) of the Act on Public Payments, etc., cf. Consolidation Act no. 494 of 4 May 2023, shall remain in force until they are repealed or replaced by rules issued pursuant to this Act. The same applies to rules laid down pursuant to Section 12(6) of the Act on Public Payments, etc. to the extent that the rules exempt institutions, associations and funds, etc. from the provisions of Sections 1-2a, Section 3(1) and (5), Sections 4-5c, Section 6a and Section 6b of the Act on Public Payments, etc.

Chapter 11

Changes in other legislation

§ 37. The Act on Public Payments, etc., cf. Consolidation Act no. 494 of 4 May 2023, is to be amended to be as follows:

1. Sections 1-2a are repealed.

2. Section 3 (1) and (5) is repealed.

(2)-(4) subsequently become (1)-(3).

3. In Section 3(3), which becomes (2), (2) shall be amended to: ‘(1)’.

4. In Section 3(4) sentence 1 and sentence 2, which shall become (3), 1 and 2, ‘(2) and (3)’ is changed to: ‘(1) and (2)’.

5. Sections 4-5c are repealed.

6. In Section 6, ‘Section 3(2)’ is changed to: ‘Section 3(1)’:

7. Sections 6a and 6b shall be repealed.

8. In Section 12(1), (3) and (6), ‘Sections 1-5 and 6-8’ is changed to: ‘Sections 3 and 6-8’.

9. In Section 12(2) and (5), ‘Sections 1-5 and 6-7’ shall be changed to: ‘Sections 3, 6 and 7’.

§ 38. The Act on the recovery of debts to the public sector, cf. Consolidated Act no. 1063 of 26 September 2024, is amended as follows:

1. Section 8b(1) sentence 1 is to be worded as follows:

‘Payments from the public sector that have been made to the Arrears Collection Authority for the purpose of setting off claims in the process of collection or recovery or for the purpose of payment to rightsholders who have rights in claims for payment from the Customs and Tax Administration shall be remunerated with an annual interest rate equal to the interest rate pursuant to Section 5(1) and (2) of the Interest on Overdue Payments Act, minus a deduction of 4%, except that a change in interest under Section 5(1) and (2) of the Interest on Overdue Payments Act shall not take effect until 5 business days after the date of the change.’

2. In *Section 8b(4)*, ‘pursuant to Section 4a(2) of the Public Payments Act, etc.’ is changed to: ‘as referred to in (1)’.

Chapter 12

Territorial validity

§ 39. This Act does not apply to the Faroe Islands or Greenland.

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1. Introduction

Currently, the NemKonto system is a digital public infrastructure that allows public and private payers to pay to private persons and legal entities simply by their civil registration number (CPR), CVR, SE or P number. With this, the NemKonto system makes it easy and simple for private persons and legal entities, as they only have to report their account information once in order to be able to receive payments from public payers and the private payers who use the NemKonto system. The NemKonto system currently replaces the task of, on the one hand, creating and maintaining local account registers of payees with each payer, and, on the other hand, payees avoiding the need to provide account information to each payer from whom they receive payments.

The NemKonto system is social critical infrastructure due to the system's central role in the payment of public benefits, such as wages for public employees, pensions, cash benefits, etc. The existing NemKonto system contains over 6 million designated accounts and handles around 130 million public and private payments annually.

The draft Act is submitted in conjunction with the Agency for Digital Government having to develop and put into operation a new NemKonto system. The intention is that the new NemKonto system shall be owned by the Agency for Digital Government in order for the system to be continuously developed so that it is up-to-date and at all times compliant with current rules and standards for public IT systems, including security requirements. This ensures that the system will remain resilient in case of new and more complex threats and that the new system can meet the business needs of users. It is also an essential objective that the new NemKonto system continues to ensure that private persons and legal entities receive their money safely, securely and reliably.

The draft Act does not lead to significant changes for payees, but contains a clarification of the applicable rules from the Public Payments Act, etc., which it is proposed to continue to a large extent.

The draft Act contains an obligation for private persons residing in Denmark and legal entities, and foreign natural and legal persons operating a business in Denmark, to designate a NemKonto in connection with payment from public payers. The draft Act will continue the current ‘free choice’ principle, so that it is the individual private person or legal entity who designates his or her NemKonto and any benefit-specific accounts, but at the same time does not prevent the payee from indicating that a specific payment is to be deposited in another account.

The specific institute and the account to which a payment is to be made are still the payee’s choice. The NemKonto does not thereby reduce the management options of the payee on their liquidity. The draft Act does not contain rules that amend or supplement rules in other legislation on the relationship between the customer and the institution. The same applies with regard to the general principles of the law of obligations, which regulate the relationship between the individual client and the individual institution.

In addition, it is proposed that public payers be broadly obliged to use the NemKonto system to make payments to payees with a NemKonto or benefit-specific account. In addition, it is proposed that private payers can use the NemKonto system via a private account intermediary in order to carry out account searches.

It is proposed that in the future, information from the NemKonto system may be disclosed to **control and supervisory tasks** of certain private payers and financial institutions in order to reduce the risk of fraud with NemKonto.

The draft Act also contains a legal basis to establish a public service scheme. In principle, this will be an affiliation scheme under which payment, electronic money and financial institutions in Denmark and the EU/EEA can voluntarily connect. If the desired connection is not achieved, rules may be laid down stipulating that Danish payment, electronic, and financial institutions are to be obligated to perform public service obligations in relation to the NemKonto system. In addition, it is proposed that it will be possible in future to designate an account with a payment and e-money institution as NemKonto. In addition, the draft Act has been generally updated, taking into account EU law, including, inter alia, the rules on free movement in the European internal market.

In addition, it is proposed to discontinue the holding account scheme, which is a State-owned account to which public payers may by agreement carry out a transfer of money to payees that have not designated a NemKonto. This is proposed in order to deal with the amounts of money that are deposited and to ensure a standardised way for future payments by public payers.

Finally, it is proposed that the current rules on NemKonto in the Public Payments Act, etc. be repealed and some adjustments be made in the Act on the recovery of debts to the public sector.

Upon the transition from the existing NemKonto system, there will be a parallel operation period, during which information in the existing NemKonto system will be continuously transferred to the new NemKonto system, and a step-by-step implementation of the new NemKonto system will be

carried out in order to support secure and stable payments throughout the transition, in which more than 100 payment systems and 700 users will be connected to the new NemKonto system. The existing NemKontos and benefit-specific Accounts will automatically be transferred to the new NemKonto, so that payees will receive payments in their already designated accounts as before.

2. Main points of the draft Act

2.1 Designation of NemKonto

2.1.1 Legislation currently in force

There is currently an obligation for virtually all natural persons residing in Denmark and legal persons conducting business in Denmark to designate a financial institution account as NemKonto for the receipt of payments of money from public authorities. The obligation to designate a NemKonto must be understood as an invitation and not as an injunction.

It is a prerequisite for sending payments through the NemKonto system that the payee is identified by a CPR number, CVR number, SE number or P number.

Thus, under Section 1(1) of the Act on Public Payments, etc., natural persons over the age of 18 who have been assigned a CPR number under the Act on the Central Person Register and who are not registered as having exited Denmark must designate an account with a financial institution (a 'NemKonto') to which public authorities, in discharge of their obligations, can make payment of monetary amounts. The same applies to persons under the age of 18 who are assigned a CPR number in accordance with the Central Person Register Act and who receive payments from public authorities.

Natural persons must designate a NemKonto in connection with the first payment by a public authority, cf. Section 1(6) of the Act. Natural persons may only have one NemKonto (see Section 19(4) of Order No. 647 of 13 April 2021 on the NemKonto scheme) (the NemKonto Order).

Under Section 1(1) of the Act, the obligation to designate a NemKonto by natural persons is defined by both an age criterion and a residence criterion.

Under the age criterion, the obligation to designate a NemKonto applies to persons over the age of 18. However, persons under the age of 18 who receive payments from public authorities must also specify a NemKonto. This includes, inter alia, persons under the age of 18 who are to receive benefits from public authorities or have excess tax in favour of them. With regard to persons under guardianship, according to Section 24 of the Guardianship Act, it is incumbent upon the guardian, within the scope of the duty, to defend the interests of the person under guardianship. Depending on

the circumstances, this may mean that the guardian must ensure that a NemKonto is designated in accordance with Section 1(1) of the Public Payments Act, etc.

It follows from the preparatory work on Section 1 that, in order to avoid any doubt about the understanding of the residence requirement, the provision is linked to registration in the CPR register without subsequent registration that the person in question has left Denmark, cf. the Official Report of Danish Parliamentary Proceedings 2003-04, Appendix A, page 1094.

It follows from the preparatory work on Section 1(1) of the Act on Public Payments, etc. that registration in the CPR register means the allocation of a civil person register number in accordance with Section 3(1) no. 1 of the Act on the Central Person Register (the CPR Act), according to which everyone must have a CPR number if the person concerned is registered in this country due to birth or relocation from abroad, cf. the Official Report of Danish Parliamentary Proceedings 2003-04, Appendix A, pages 1094-1095. The designation obligation thus does not cover persons who have an administrative CPR number assigned under other provisions of the CPR Act or rules issued pursuant thereto, for example because they are included under the ATP (CPR Act Section 3(1) no. 2 or because they must, according to the Tax Agency, have a civil person register number in connection with tax processing in Denmark (Section 3(1) no. 3 of the CPR Act). However, persons registered as having exited or who have been assigned an administrative CPR number have the option to designate a NemKonto, but the use of such NemKontos must be agreed with the paying authority, cf. Sections 19(3) and 30(1) of the NemKonto Order.

For legal persons, the obligation to designate follows from Section 1(2) of the Act on Public Payments, etc., under which legal persons to whom a central business register (CVR) number has been assigned under the Act on the Central Business Register (the Central Business Register Act) shall designate an account with a financial institution to which public authorities in discharge of their obligations may make payment of amounts of money. This also applies to a natural person who, as an employer or self-employed person, and has been assigned a Central Business Register (CVR) number and to enterprises registered as traders with the Customs and Tax Administration.

It follows from the preparatory work on Section 1(2) of the Act that legal persons covered by the designation obligation in the provision include legal persons to whom a CVR number has been assigned under Section 5, cf. Section 3 of the CVR Act. According to the preparatory work, however, the provision does not cover public authorities because the transfer of amounts between public authorities is covered by rules on a Public Payment Service (OBS account) and State Group Payments, cf. Sections 8-11 of the Act, cf. the Official Report of Danish Parliamentary Proceedings 2003-04, Appendix A, page 1095. However, pursuant to the provision in Section 1(8) sentence 2 of the Act, the Minister for Digital Government may, inter alia, lay down rules requiring public authorities to designate a banking institution account as a NemKonto. On the basis of Section 1(8) of the Act, the NemKonto Order was issued, according to which public authorities covered by Section 3, nos. 3-6 of the CVR Act are also covered by the designation obligation, cf. Section 20 of the Order, cf. Section 4(2) no. 1.

The legal entities which are covered by Section 3 of the Central Business Register Act are the following:

- 1) A natural person in his or her capacity as an employer or self-employed person.
- 2) A legal person or a branch of a foreign legal person.
- 3) A trust or a legal arrangement similar to a trust.
- 4) A state administrative entity.
- 5) A region.
- 6) A municipality.
- 7) A municipal community.

The designation obligation covers the legal entities that have been assigned a CVR number pursuant to Section 5 of the CVR Act. It follows from Section 5(2) of the CVR Act that the Danish Business Authority assigns a CVR number to the legal entities specified in Section 3, nos. 1, 2, 3 and 7, of the CVR Act and which are notified for registration pursuant to other legislation. It further follows from Section 5(3) of the CVR Act that Statistics Denmark assigns the CVR number to the legal entities listed in Section 3, nos. 4-6, of the CVR Act, i.e. state administrative entities, regions and municipalities.

It follows from Section 1(2) of the Public Payments Act, etc., that undertakings registered as traders with the Tax Agency are covered by the designation obligation.

According to Section 1(3) of the Act, legal persons who have not been assigned a CVR number under the CVR Act shall, in order to receive payments from a public authority:

- 1) be entered in the Central Business Register in accordance with the rules on voluntary registration; and
- 2) designate a NemKonto in accordance with the rules laid down in Section 1(2) of the Act.

The preparatory work on the provision states that Section 1(3) of the Act is mainly aimed at associations that receive subsidies from the public sector under the Access to Public Administration Files Act and other similar associations, cf. the Official Report of Danish Parliamentary Proceedings 2005-06, Annex A, pages 5835 and 5840. This means easier administration for the public sector if these subsidy recipients are identified in such a way that payments can be processed in the same way as payments to citizens/enterprises, i.e. through NemKonto.

Associations, etc. are not covered by the obligation to designate a NemKonto under Section 1(2) of the Act, as they are not assigned a CVR number, since they are not, in principle, liable to tax or excise duty under the rules then in force. However, it is possible for associations to make a voluntary registration, and this registration does not entail any costs for the associations. There is no requirement as to who registers an association. A paying authority will therefore be able, in agreement with the association, to make the reporting on behalf of the association.

In addition to the obligation to specify a NemKonto as a condition for receiving public payments, the allocation of a CVR number does not entail any other obligations for an association.

It follows from Section 1(4) of the Act that the requirement to designate a NemKonto in order to be able to receive payments from a public authority in Section 1(3) of the Act does not apply to legal persons who do not meet the conditions for voluntary registration in the Central Business Register under the CVR Act or provisions laid down pursuant thereto.

Legal persons shall, at the latest when making the first payment from a public authority, specify a NemKonto, cf. Section 1(6) of the Act. Legal persons shall designate a NemKonto to the NemKonto system using the company's CVR number or, in the absence thereof, the company's SE number, cf. Section 20(1) of the NemKonto Order.

Legal persons identified by a CVR number may designate independent NemKontos for underlying P numbers or SE numbers, but the use of NemKontos for underlying P numbers shall be agreed with the paying authority's public authority, cf. Section 20(2) and Section 30(1) of the NemKonto Order.

2.1.2 Considerations of the Ministry of Digital Affairs and the proposed scheme

The NemKonto system is a central part of the digital public infrastructure and ensures that public payers can quickly and efficiently execute payments to both private persons and legal entities. The NemKonto system also makes it easy and simple for payees to be paid amounts from public and private payers by specifying their account details only once to a single public system in order to be able to receive payments.

The Ministry of Digital Affairs therefore proposes to continue the existing obligation for virtually all natural persons residing in Denmark and legal persons conducting business in Denmark to designate an account as NemKonto for the receipt of payments of money from public authorities. The

obligation to designate a NemKonto will still have to be understood only as an invitation and not as an injunction. The obligation does not entail the right to create an account that can be designated as a NemKonto. The Ministry of Digital Affairs is aware that there are private persons and legal entities experiencing challenges in creating a basic account, and as a consequence cannot designate a NemKonto. Rules on the obligations of financial institutions to offer basic deposit accounts, a basic payment account or a basic business account follow from, respectively, the Order on good practice for financial undertakings and the Act on payment accounts and basic business accounts.

It will still be a prerequisite for sending payments through the NemKonto system that the payee is identified by a CPR number, CVR number, SE number or P number.

The Ministry of Digital Affairs is of the opinion that the obligation to issue assignments shall continue to apply only to persons who are resident in Denmark. Against this background, it is proposed that the existing residence criterion shall be retained so that the obligation to designate will continue to apply only to those individuals who, pursuant to Section 3(1) no. 1 of the Act on the Central Person Register, are assigned a CPR number because they are registered in this country due to birth or arrival from abroad and who are not registered as having exited from Denmark. This is because people living abroad may not be aware that they shall receive payments from public payers in Denmark and they cannot be expected to know about the NemKonto scheme. In addition, persons removed and persons with administrative CPR numbers are not obliged to update their address in the CPR register, which in certain cases may be a prerequisite for receiving an activation letter in order to activate a NemKonto, cf. the comments on the proposed Section 6.

With the proposed scheme, it will continue to be voluntary for other private persons who are assigned a CPR number under the Central Person Register Act whether they will designate a NemKonto. Persons who have been assigned a CPR number because they are registered in this country on account of birth or relocation from abroad but are registered as having exited (Section 3(1) no. 1 of the CPR Act) or have an administrative CPR number, for example because they are included under ATP (Section 3(1) no. 2 of the CPR Act) or because, according to the tax authorities, they must have a CPR number in connection with tax processing in this country (Section 3(1) no. 3 of the CPR Act) will thus continue to be able to voluntarily choose whether they will designate a NemKonto in order to receive payments from public payers. However, it is proposed that the use of a NemKonto designated by a private person who does not have an obligation to designate shall continue to be agreed with the public payer if, prior to the designation, the payee receives payments from the public payer in question to another account. This is in order to ensure that the public payer can accommodate the payee's desired place of payment.

The Ministry of Digital Affairs is of the opinion that there is no need to continue the existing age criterion, since the timing of the assignment time obligation is practically the same for persons under and over 18 years of age. It is therefore proposed that the obligation to designate be simplified in such a way that, as is the case today, it takes place no later than the first payment from a public payer. The private person will thus have to designate an account as a NemKonto in the NemKonto system before payment for the first time from a public payer is due. This also takes into account the

need for data minimisation, as the NemKonto system will only contain account information for payees to receive payments from public payers and payees who have actively chosen to designate a NemKonto. With regard to persons under guardianship, according to Section 24 of the Guardianship Act, it is incumbent upon the guardian, within the scope of the duty, to defend the interests of the person under guardianship. This may, depending on the circumstances, mean that the guardian must ensure that a NemKonto is specified under the proposed scheme.

According to Section 42 of the Guardianship Act, natural persons can dispose of what they have acquired in their own work after they have reached the age of 15. The Ministry of Digital Affairs is of the opinion that young people between the ages of 15 and 18 will typically need a NemKonto account for the payment of wages and that payouts from public payers to young people between the ages of 15 and 18 will typically be excess tax or disbursements as it is determined they themselves can have at their disposal. Against this background, young people can designate a NemKonto themselves from the age of 15, even if they are incapacitated. Thus, it will be possible for the guardian and the young person themselves to designate the young person's NemKonto. This is without prejudice to rules on whether they are unable to create an account with, for example, a financial institution and have funds in the account. It should be noted in this connection that Section 1(2) of the Guardianship Act states that minors cannot commit themselves to legal transactions or dispose of their property unless otherwise determined.

It is also proposed that a private person can still only designate one NemKonto. This is because the purpose of the NemKonto system is to make it simple to make payments to the correct place of payment and to prevent doubts from being raised as to which account a payment is to be made.

The Ministry of Digital Affairs proposes that all legal entities that have been assigned a CVR number pursuant to Section 5, cf. Section 3 of the CVR Act – as is currently the case – will be included in the designation obligation under the proposed scheme. It is also proposed that all legal entities registered with the Customs and Tax Administration with an SE number will have to designate a NemKonto.

The following legal entities are covered by Section 3 of the CVR Act:

- 1) A natural person in his or her capacity as an employer or self-employed person.
- 2) A legal person or a branch of a foreign legal person.
- 3) A trust or a legal arrangement similar to a trust.
- 4) A state administrative entity.

5) A region.

6) A municipality.

7) A municipal community.

The designation obligation will cover the legal entities that have been assigned a CVR number pursuant to Section 5 of the CVR Act. It thus follows from Section 5(2) that the Danish Business Authority assigns a CVR number to the legal entities specified in Section 3, nos. 1, 2, 3 and 7 and which are notified for registration pursuant to other legislation. It further follows from Section 5(3) that Statistics Denmark assigns the CVR number to the legal entities listed in Section 3, nos. 4–6, i.e. state administrative entities, regions and municipalities.

Under the proposed scheme, public payers who have been assigned a CVR number under Section 5(3) of the CVR Act will still have to designate a NemKonto. This is justified, among other things, by the fact that it is considered appropriate that public payers can continue to transfer payments to other public payers without first having to receive their account information. In addition, payments between public payers provide better return responses and explanations in the event of errors in the payment information when made through the NemKonto system than through other systems. However, it should be noted that public payers are not covered by the provisions of the Act to the extent that, in other legislation, rules on payment administration are not compatible with the Act or rules laid down by the Act.

The designation obligation will also cover the legal entities registered as traders with the Customs and Tax Administration with an SE number in the Business System. A legal entity is automatically assigned an SE number by the Customs and Tax Administration upon registration.

In addition, it is proposed to continue the current scheme, according to which legal entities which have not been assigned a CVR number under the CVR Act or an SE number, will, in order to receive payments from a public payer, have to:

- 1) be entered in the Central Business Register in accordance with the rules on voluntary registration; and
- 2) designate a NemKonto in accordance with the rules applicable to legal entities that have been assigned a CVR number.

As before, the proposed scheme is mainly aimed at associations that receive subsidies from public payers under the Access to Public Administration Files Act and other similar associations. The proposal intends to maintain the current easier administration for public payers when making payments to these subsidy recipients by maintaining the requirement to register with a CVR number

and create a NemKonto, so that payments can still be processed through the NemKonto system, rather than manual processing of the payments. These subsidy recipients will typically not have a CVR number assigned under Section 5(2) of the CVR Act because they are not, as a rule, liable for tax or excise duty under the applicable rules. However, it is possible for associations to make a voluntary registration, and this registration does not entail any costs for the associations. The rules on voluntary registration of legal entities are in Order No 1243 of 29 August 2022 on the Central Business Register and data.virk.dk. There is no requirement as to who registers an association. A public payer will therefore, in agreement with the association, be able to make the report on behalf of the association. In addition to the obligation to specify a NemKonto as a condition for receiving public payments, the allocation of a CVR number does not entail any other obligations for an association.

As before, the requirement to designate a NemKonto in order to be able to receive payments from public payers is not proposed to apply to legal entities that do not meet the conditions for voluntary registration in the Central Business Register under the CVR Act or provisions laid down pursuant to the Act.

Legal entities will have to specify a NemKonto no later than the first payment by a public payer. The legal entity will thus need to have designate an account as a NemKonto in the NemKonto system before a payout from a public payer is due for payment.

Legal entities, including foreign natural and legal persons operating in Denmark, will have to specify a NemKonto using the entity's CVR number (Central Business Register Number) or, in the absence thereof, the entity's SE number.

It is proposed that a legal entity may still only designate one NemKonto. Legal entities identified by a CVR number will, however, be able to designate separate NemKontos to underlying P numbers or SE numbers, but the use of NemKontos to underlying P numbers will have to be agreed with the public payer.

2.2 Designation of benefit-specific accounts

2.2.1 Legislation currently in force

Under Section 3(5) of the Public Payments Act, the Minister for Digital Government may lay down rules on access to list several NemKontos.

It follows from the preparatory work for the provision that the provision contains a legal basis for the Minister for Digital Government to lay down rules to the effect that natural or legal persons are given the opportunity to choose different accounts for different types of payments. Rules issued pursuant to the provision will thus mean access for a natural or legal person to designate several accounts, all of which have the character of NemKontos. Contrary to Section 1(5), according to which natural and legal persons have access to specifically designate another account to which payment must be made, Section 3(5) implies that several accounts may be designated which may be used for

different payments from the public sector, cf. the Official Record of Danish Parliamentary Proceedings 2003–04, Appendix A, page 1097.

The Minister for Digital Government, on the basis of Section 3(5), has issued the NemKonto Order. Section 23, cf. Section 5(2), of the Order, states that natural and legal persons may apply to a public authority and be allocated one or more specific accounts to which the public authority in question may pay a specific benefit in discharge of its obligations.

2.2.2 Considerations of the Ministry of Digital Affairs and the proposed scheme

The Ministry of Digital Affairs' assessment is that the current scheme, in which private persons and legal entities have the possibility to designate a specific account to which a specific public payer may make payment of a specific kind of benefit, functions well and provides good flexibility and service to payees.

It is therefore proposed to continue the current scheme, so that payees can designate an account as a specific benefit account to which a certain public payer can make payment of a sum of money of a specific benefit. The public payer determines which benefits are covered by the specific kind of benefit.

A benefit-specific account has the character of a NemKonto but is only linked to payments to the payee for one particular type of benefit from one specific public payer. The payee can thereby ensure that only sums of money of the associated kind of benefit will be paid at the payee's benefit-specific account.

'Type of benefit' means a categorisation of the benefits which the public payer may pay to payees. Examples include salary, excess tax, the Education Grant and Loan Scheme in Denmark (SU), cash benefits and social pension. The current practice whereby public payers can create new types of benefits in the NemKonto system is expected to continue for the time being. In the longer term, the Agency for Digital Government may be responsible for establishing the types of benefits, among other things, at the request of public payers to improve data quality through a uniform categorisation of the benefits. The rule that it is the public payer who determines which benefits are covered by a type of benefit will be continued.

It is proposed to continue the current scheme, where the payee's designation of a benefit-specific account in the NemKonto system must be made by request to the public payer responsible for payment of the type of benefit.

Where a public payer makes a payment, in agreement with the payee, of a benefit associated with a given kind of benefit through the NemKonto system, the NemKonto system will, under the proposed scheme, add the payment order specific account of the payee for the benefit in question and not his or her NemKonto. Thus, it is the type of benefit that governs whether a payment is made to a benefit-specific account. If the payee has designated another account to the public payer in question

for which a specific payment is to be made, cf. para. 2.4.2 below for more details, the payment will not be made to the benefit-specific account.

Payees may specify several benefit-specific accounts for the same public payer or several different public payers. It is thus proposed that there should be no restriction on the number of benefit-specific accounts that a payee may have.

2.3 Types of accounts and activation of accounts in the NemKonto system

2.3.1 Legislation currently in force

Under Section 1(1) and (2) of the Public Payments Act, payees shall designate an account to a financial institution as their NemKonto.

It is clear from the preparatory work on Section 1 of the Act on Public Payments, etc. that the account designated must be set up with a financial institution, but it is irrelevant whether the financial institution is located in Denmark or abroad, cf. the Official Record of Danish Parliamentary Proceedings 2003-04, Appendix A, page 1094.

In most cases, the natural or legal person will presumably designate an account, which the person concerned already has, as a NemKonto. However, a new account may also be designated and no special facilities need be connected with the account. What is decisive is that the account can be used by public authorities to make payments. The NemKonto may therefore be used by the public authorities when the citizen or company has not designated another banking institution account to which the payment of a specific benefit must be made, cf. the Official Record of Danish Parliamentary Proceedings 2003-04, Appendix A, page 1094.

Even if natural and legal persons covered by Section 1 of the Act on Public Payments, etc. have already designated an account, it is possible at any time to designate a new account, cf. the Official Record of Danish Parliamentary Proceedings 2003-04, Appendix A, page 1095.

The agreement to create the account to be designated as NemKonto and the current administration of that account is a matter between the individual client and the individual financial institution, which is governed by the rules laid down in other legislation and general principles of the law of obligations. The Public Payments Act does not contain rules that amend or supplement these rules and principles. For example, the banking institutions' access to offset deposit accounts is not extended or impaired by the Act. Similarly, the general rules on the movement, termination, and deletion, etc. of accounts will apply, even if there is movement, termination, and deletion, etc. of an account designated as a NemKonto cf. the Official Record of Danish Parliamentary Proceedings 2003-04, Appendix A, page 1094.

It follows from Section 10(2) of the NemKonto Order that the Agency for Digital Government shall lay down the requirements for formats etc. for accounts that are intended to be used as

NemKontos and specific accounts. The Agency for Digital Government has stipulated on NemKonto.dk that the payee shall be able to provide the account number of domestic accounts to be used as NemKontos and specific accounts. For the reporting of foreign accounts by the payee, such as NemKontos and specific accounts, 1) IBAN number, 2) BIC/SWIFT code, 3) the bank name, 4) the bank address, 5) the city, 6) postal code, 7) the country and 8) the currency of the bank account must be provided. If the account is not identified by an IBAN number, the account number and bank code/routing number of the account shall be provided instead.

It follows from Section 23(1) of the Order that the NemKonto Account Register may be updated in the following ways with regard to an account with a financial institution located in Denmark:

- 1) When reporting from a citizen via the self-service solution of the NemKonto system, where citizens with an electronic ID can designate, amend or delete their NemKonto. Designations and amendments follow the procedure as specified in Section 13 of the Order.
- 2) By contacting the financial institution, cf. Section 35 of the Order, where the account to be designated as NemKonto is maintained, the citizen or undertaking may request the financial institution to designate or amend his or her NemKonto.
- 3) When contacting a public authority that the citizen or company applies for or receives payment from, the citizen or company can request the authority to specify, amend or delete their NemKonto. The updating shall be carried out in compliance with appropriate control measures and follow the procedure as specified in Section 13 of the Order.

According to Section 23(2) of the Order, the NemKonto Account Register may be updated in the following ways with regard to an account in a financial institution located abroad:

- 1) When reporting from a citizen via the self-service solution of the NemKonto system, where the citizen with an electronic ID can designate, amend or delete their own NemKonto. Instructions and amendments follow the procedure as specified in Section 13 of the Order.
- 2) When contacting a public authority that the citizen or company applies for or receives payment from, the citizen or company can request the authority to specify, amend or delete their NemKonto. The updating shall be carried out in compliance with appropriate control measures and follow the procedure as specified in Section 13 of the Order.

With regard to the designation of a specific account for a citizen or enterprise, Section 24(1) sentences 2 and 3 of the Order states that the public authority can report information on this to the NemKonto system. The report shall be made with due observance of appropriate control measures and follow the procedure as specified in Section 13 of the Order. If a specific account is not locked, a citizen with an electronic ID may change or delete the information about the account via the self-service solution of the NemKonto system cf. Section 24(3) of the Order.

Furthermore, Section 12(3) of the Order states that, in the event of the death of citizens, change of CPR number, or termination of operations, the system administrator may not use the related NemKonto and specific accounts after a specified period.

Amendments to a NemKonto shall have legal effect at the latest from the fifth business day following the date of notification, cf. Section 2(2) sentence 2 of the Act on Public Payments, etc. and Section 22(1) of the NemKonto Order. Section 22(2) of the NemKonto Order specifies that ‘with effect’ means that the new NemKonto is used for payment processing in the financial institution of the public authority. The date of notification means the date on which the new NemKonto is registered in the NemKonto Register.

Section 22(3) sentence 1 of the Order states that NemKontos and specific accounts designated or modified by public authorities on behalf of citizens or enterprises shall not be registered in the NemKonto system until they are activated by the citizen or enterprise in question. Since April 2021, the same applies to accounts designated or modified by a citizen via the self-service solution. In these cases, payment shall be made no later than the fifth business day following the activation date, cf. Section 22(3) sentence 2 of the Order.

2.3.2 Considerations of the Ministry of Digital Affairs and the proposed scheme

According to the assessment of the Ministry of Digital Affairs, it is important that the NemKonto system is made broadly available to private persons and legal entities, but that a number of requirements are also laid down for institutions that are to participate in payment transactions, so that there is high confidence in the NemKonto system. It is thus crucial that the institutions included in payment transactions are subject to effective sector supervision, and that the institutions are subject, inter alia, to rules on combating money laundering and the financing of terrorism and cooperation to prevent tax evasion.

It is proposed that an account of an account holding institution may be designated as a NemKonto or benefit-specific account. It is the individual payee who is responsible for identifying the account designated as NemKonto or benefit-specific account. The account may be, for example, a basic payment account, a basic deposit account or a basic business account. What is essential is that public payers can make payments to the account. The draft Act does not require the payee herself or himself to be the owner of the account designated as NemKonto or benefit-specific account, but there may be other legislation or other circumstances which, for example, mean that a payment cannot be made in cases where the payee does not own the designated account himself or herself. From experience, this may in particular be the case when the designated account is foreign.

The account must have a Danish or internationally recognised account identification. Account identification is the information necessary to identify the payee’s account so that the payment transaction can be executed through the NemKonto system. This could include, for example, information such as the registration and account number, the International Bank Account Number (IBAN), the

Basic Bank Account Number (BBAN), the Bank Identifier Code (BIC) and bank code/routing number.

As before, the account designated as NemKonto or benefit-specific account may be maintained in a financial institution or foreign credit institution both in the EU/EEA area and in third countries. Since the introduction of the NemKonto scheme, the payment landscape has evolved so that new types of institutions have been established, including institutions that can offer payment accounts. In order to reflect developments, meet the demand of payees and increase competition, it is proposed to introduce the possibility of designating accounts held in an account-servicing payment and electronic money institution in Denmark, in the Faroe Islands or in the EU/EEA area, such as NemKontos or benefit-specific accounts. The possibility of designating accounts with foreign credit institutions as well as foreign payment and electronic money institutions complies with the principle of the Treaty on the Functioning of the European Union (TFEU) on the free movement of services. With the proposed scheme, the Ministry of Digital Affairs has also placed emphasis on making it easy and accessible for private persons and legal entities that do not reside or have a registered office in Denmark to designate an account in an institution in their country of residence or home country as a NemKonto, which helps public payers to make payments to payees abroad in a simple and efficient manner.

It should be noted that financial institutions, foreign credit institutions and payment and electronic money institutions are regulated differently according to the specific risk they pose. There are thus differences between licence requirements, capital requirements, supervision, etc.

Financial institutions and foreign credit institutions are allowed to take deposits from the public and, as a result, are subject to comprehensive and detailed regulation aimed at protecting those deposits with a view to ensuring that customers can always access their funds. Financial institutions shall inter alia be affiliated with and make contributions to the Guaranteed Capital Fund, which covers registered deposits in a financial institution up to an amount corresponding to EUR 100,000 per depositor, e.g. in the event of the financial institution going bankrupt, cf. Sections 3 and 9 of the Act on a deposit and investment guarantee scheme.

Payment and electronic money institutions are not allowed to receive deposits and are not covered by the Act on a deposit guarantee and investment guarantee scheme. However, payment and electronic money institutions are obliged to take appropriate measures to protect the funds belonging to users under Section 35 of the Payments Act. The securing of funds may be carried out in several different ways, including the possibility for funds to be deposited in a preservation account with a credit institution or a central bank if the central bank so permits. The Danish Central Bank [Danmarks Nationalbank] has stated that payment and electronic money institutions cannot expect to access a preservation account at the Danish Central Bank.

In addition, the proposed scheme will enable the Minister for Digital Government to lay down rules on the conditions for accounts with institutions to be used as NemKontos or benefit-specific accounts. Furthermore, it is proposed that the Minister may lay down rules on the types of accounts

that may be designated as NemKontos and benefit-specific accounts, and requirements for account identification by designating and changing NemKontos and benefit-specific accounts.

The legal basis for authorisation will enable the Minister for Digital Government to lay down rules that take developments in the financial sector into account, including the development of rules intended to combat money laundering, the financing of terrorism, the financing of weapons of mass destruction, the misuse of accounts, and other financial crimes.

The requirements for the institutions may be based, for example, on the recommendations of the Financial Action Task Force (FATF) or the Danish Financial Supervisory Authority, according to which, on the basis of a risk assessment, certain countries and actors in the financial sector can be excluded, or similar recommendations by Danish or international organisations active in the fight against money laundering, terrorist financing and other financial crime.

The proposed provision takes into account adaptation of other legislation, including its development, and ensures a continuous possibility for adaptation of European standards, industry and sector specifications. For example, rules could be laid down stipulating that an account maintained at an institution that has sanctions against it may not be assigned or may not be maintained as a NemKonto or benefit-specific account, including rules on when a designated account can be deleted as a NemKonto or benefit-specific account, e.g. because it is held in an institution with sanctions against it.

The proposed scheme will not change the fact that the creation and terms of an account at an institution will continue to be a matter of private law between the individual client and his or her institution.

The proposed scheme also does not contain rules that amend or supplement rules in other legislation on the relationship between the customer and the institution. The same applies with regard to the general principles of the law of obligations, which regulate the relationship between the individual client and the individual institution. For example, the power for institutions to set off deposit accounts would not be extended or impaired by the proposed scheme.

Under the proposed scheme, it will, in principle, be the payee who is required to designate, amend and delete his or her NemKonto or benefit-specific accounts to the NemKonto system.

It is proposed that the Minister for Digital Government shall lay down rules on how and to which a payee can designate, amend, or delete her or his NemKonto or benefit-specific account, including requirements for certain designated accounts to be activated by the payee in order to take effect as a NemKonto or benefit-specific account. It is also proposed that the Minister for Digital Government be authorised to lay down rules on when a NemKonto or benefit-specific account is automatically registered as deleted from the NemKonto system.

It is assumed that the Minister for Digital Government shall lay down rules to the effect that reports to the NemKonto system can be made either through the relevant account-holding institution, through the public payer who must pay a benefit to the person concerned, or through the NemKonto support. It is also assumed that the Minister lays down rules stipulating that reports to the NemKonto system can be made via a digital self-service solution for private persons.

It is thus assumed that rules will be laid down according to which it will be possible for payees to designate or amend a NemKonto in the NemKonto system by contacting the institution that holds the account reported to the NemKonto system, if the institution is entrusted with public service obligations cf. Section 2.7.2 for more details.

In addition, it is assumed that rules will be laid down according to which it will be possible for payees to designate, amend or delete a NemKonto as well as a benefit-specific account in the NemKonto system upon contacting the public payer, who shall arrange a payment to the payee. In addition, it is assumed that the Minister for Digital Government will lay down rules stipulating that payees can designate, amend or delete a NemKonto in the NemKonto system via certain public payers, such as the municipalities.

It is also assumed that rules will be laid down under which payees can designate, amend or delete a NemKonto by contacting the NemKonto support. NemKonto support is an offer where private persons and legal entities can contact to designate, amend or delete a NemKonto. Under the proposed scheme, NemKonto support will be carried out by the Agency for Digital Government, which, as system owner, will have to administer the NemKonto system. However, the Agency for Digital Government may appoint a public authority or legal entity to perform the task in whole or in part, cf. the proposed Section 22(3).

Finally, it is assumed that rules will be laid down according to which private persons will be able to designate, change, or delete a NemKonto as well as change or delete an unlocked benefit-specific account in the NemKonto system via the digital self-service solution.

Proxy holders and guardians may designate, amend, or delete a NemKonto account, for the principal or person under guardianship, by contacting an institution that is subject to rules laid down pursuant to Section 21 of the draft Act, to the NemKonto Support Office or the public executor that will take charge of the payment in accordance with the above-mentioned rules that are presupposed to be issued for notification of designation, amending and deletion of accounts. In the long term, it is possible that proxy holders and guardians will be able to use the self-service solution of the NemKonto system when it becomes possible to use digital proxies.

It is proposed that the Minister for Digital Government may, among other things, issue regulations requiring certain designated and changed accounts to be activated by the payee in order to be registered in the NemKonto system.

It is assumed that the authorisation is used to issue rules to the effect that when a payee makes a report on the designation or amendment of an account, an activation process must be carried out before the designation or amendment is registered in the NemKonto system. It is expected that rules on the activation process will be issued in cases where the payee reports the instruction or amendment of an account on contacting a public payer, the NemKonto support or via the digital self-service solution. However, rules on an activation process may also be laid down when reporting via an institution and it is possible that the activation process can be partially or completely eliminated at a later stage.

The activation process aims to secure correct payment information in the NemKonto system and, at the same time, to help prevent abuse and fraud. The activation process thus increases the security of the NemKonto system and is also required by the existing NemKonto system.

The activation process is expected to mean that the Agency for Digital Government sends a physical post letter to the payee with a PIN code that shall be entered by phone. The expected activation process thus means that there will be a time lag between the reporting of account information and the receipt of the activation code in order to increase security. This activation process is used in the existing NemKonto system.

The Minister for Digital Government will also be able to lay down regulations on other forms of activation processes, including, for example, a possibility for reports to be digitally activated to the NemKonto system, e.g. by use of MitID.

When a legal guardian instructs a NemKonto or an unlocked benefit-specific account to a private person under guardianship, the activation letter, cf. the activation process, will in principle be sent to the guardian's address when the guardianship is registered in the CPR, with the exception of custodial parents. It must be clarified how the activation process is organised most appropriately when minors and custodial parents designate a NemKonto, cf. Section 2.1.2 for more details on the assignment of a NemKonto by guardians and young people.

By a proxy holder instructing a NemKonto or a benefit-specific account, on behalf of the private individual who has given the power of attorney, the activation letter is sent to the address of the proxy, as power of attorney is not currently supported by system. If power of attorney in the future is system-supported in the new NemKonto system, it must be clarified how the activation process is organised most appropriately.

The Minister for Digital Government will also be able to use the authorisation to lay down rules to the effect that, in exceptional cases, the activation process for the designation of a NemKonto or a benefit-specific account may be waived by the instructions of the payee or the amendment of a NemKonto via a public payer. This could be the case, for example, where the payee does not have access to her or his physical letter box at his own address, e.g. because the person is admitted to a hospital for a prolonged period of time, is in custody or is homeless. It is assumed that rules are laid down stipulating that the public payer, by way of derogation from the activation process, will have

to comply with appropriate control measures that provide an equivalent level of assurance of the correctness of reporting.

Reporting on the designation or change of NemKonto in the NemKonto system via the payee's account servicing institution is not subject under applicable law to a subsequent activation process, as their customer due diligence procedure under the anti-money laundering legislation is currently considered to be able to replace an activation process and provide equivalent assurance of the correctness of the report, and it is therefore not currently expected that the authorisation will be used to lay down rules on activation when the reporting of a NemKonto is made by the account servicing institution, but it cannot be excluded that the reports from institutions may in the long term be subject to an activation process.

The Minister for Digital Government is also authorised to lay down rules on when a NemKonto or benefit-specific account can be deleted by the Agency for Digital Government in the NemKonto system. The authorisation may be used to lay down rules to the effect that the Agency for Digital Government may, for example, delete a designated account at a specified time after a private person's death or the bankruptcy or termination of a legal entity, or on the basis of information that the account has been closed or has not been used for a number of years. The Agency for Digital Government's deletion will have the same effect as when a payee deletes a NemKonto or benefit-specific account, i.e. the account is registered as having ceased in the NemKonto system.

Depending on which public payer and which institution the public payer uses, account information may be added to the NemKonto system from one to four business days from a payment order, until payment is made. Especially for the multiple payments of, inter alia, salary and pension at each turn of the month, more time is needed to ensure that all payments can be made on time. For payments to foreign accounts, may take more than four business days from when account information regarding a payment order may be added to the NemKonto system, and payment has been completed, as a result of the fact that the total processing time for foreign payments may be longer.

It is therefore proposed that the payee's designation, amendment or deletion of an account for the NemKonto system should take effect no later than on the fifth business day after the account is registered as an asset or terminated NemKonto or benefit-specific account in the NemKonto system.

2.4 Public payers

2.4.1 Legislation currently in force

Public authorities are currently obliged to use the NemKonto system for payments to citizens and enterprises. The use in connection with payment to citizens where the citizen is assigned a CPR number, but is registered as having exited Denmark, and enterprises identified by a CVR number, but who wish to designate independent NemKontos for underlying P numbers, is, however, optional for the individual public authority, cf. Section 30 of the NemKonto Order.

It follows from the preparatory work for the Act on Public Payments, etc. that the term ‘public authorities’ is basically intended to refer to the usual concept of authority of administrative law, i.e. a delimitation which corresponds to the authorities covered by the Access to Public Administration Files Act and the Public Administration Act, cf. the Official Record of Danish Parliamentary Proceedings 2003-04, Appendix A, page 1096.

The ‘public authorities’ that are to be connected to and use the NemKonto system for payments are specified in Section 7(1) of the NemKonto Order, as follows:

- 1) Authorities covered by Access to Public Administration Files Act and the Public Administration Act, and the courts.
- 2) Autonomous institutions whose operating budget has been included in the Appropriation Act.
- 3) The Minister concerned may decide whether institutions, associations, foundations, etc. a) whose expenses or accounting deficit are covered by state subsidies or contributions, tax, or other income in accordance with the law, or b) which receive capital contributions, subsidies, loans, guarantees, or other support from the State or an institution, etc. which is covered by subpara. a, the capital injection, etc. are of significant importance to the recipient.
- 4) Autonomous institutions etc. with which a municipality or region has entered into an operation agreement.

It further follows from Section 7(2) of the Order that the Minister for Digital Government, after discussion with the Danish Parliament’s management and the Danish Auditor General, may decide that the Danish Parliament and institutions under the Danish Parliament are covered by the Order. The Danish Parliament, the Ombudsman of the Danish Parliament and the Danish Parliament’s National Audit Office are therefore also connected to the NemKonto system.

It also follows from Section 12(1)-(3) of the Act on Public Payments, etc. that the Act’s rules on NemKonto shall apply to 1) autonomous institutions, etc., whose operating budget has been included in the Appropriation Act, 2) autonomous institutions, etc., with which a municipality or region has concluded an operating agreement, and 3) institutions, associations, foundations, etc., whose expenditure or accounting deficit is covered by State subsidies or contributions, taxes or other income pursuant to the Act, or which receive capital contributions, subsidies, loans, guarantees or other support from the State or an institution, etc., which are autonomous institutions, etc., whose operating budget has been included in the Appropriation Act, if the capital contributions, etc. are of significant importance to the recipient.

However, the Act does not apply to the extent that there are, in other legislation, rules on payment administration which are not compatible with the Act or rules laid down by virtue of the Act, cf. Section 12(4).

It is clear from the preparatory work on the provision that the rules of the Act apply to the autonomous and private institutions with which a municipality has entered into an operation agreement, as in practice they are to be regarded as ‘general municipal institutions’. Similarly, the rules of the Act shall also apply to autonomous institutions, etc. that receive coverage for expenses or other support from the State, Official Record of Danish Parliamentary Proceedings 2003-04, Appendix A, page 1101.

The relevant municipality or region may, however, exempt autonomous institutions, etc. with which a municipality or region has entered into an operation agreement from the provisions of Sections 1-5 and 6-7 of the Act, cf. Section 12(5) of the Act.

The Minister concerned may, after consultation with the Minister for Finance, also exempt institutions, associations and funds, etc. as referred to in Section 12(3) from the provisions of Sections 1-5 and 6-8, cf. Section 12(6) of the Act. On the basis of the provision, Order No 768 of 12 June 2018 on subsidies etc. for private institutions for secondary education is issued to schools and the courses covered by the Order are exempt from Sections 1-6 of the Act on Public Payments etc. with respect to connection to the NemKonto system, cf. Section 27 of the Order.

Public authorities may make payments of amounts of money in full discharge of liabilities to both NemKonto and a specific account, cf. Section 5(1) and (2) of the NemKonto Order. However, payment to the NemKonto does not take place if a natural or legal person has designated another account to which a payment must be made, cf. Section 1(5) of the Act on Public Payments, etc.

It is thus also highlighted in the preparatory work for Section 1 of the Act on Public Payments, etc. that no payment shall be made to the NemKonto if a natural or legal person has specifically designated another account to which a payment shall be made, cf. the Official Record of Danish Parliamentary Proceedings 2003–04, Appendix A, page 1095. The NemKonto scheme is thus based on a ‘free choice’, since the account is designated by the individual citizen and company and the designation of a NemKonto does not prevent citizens or the company from indicating that a specific payment is to be deposited in another account, cf. the Official Record of Danish Parliamentary Proceedings 2003-04, Appendix A, page 1082.

Section 31 of the Order states that if a citizen or enterprise, in connection with a payment from a public authority, has not designated a NemKonto or has a specific account set up, the public authority shall ensure that the citizen or enterprise is otherwise credited with its credit. The risk of late payment due to failure to comply with the obligation to designate shall be borne by the citizen or enterprise.

The Ombudsman’s opinion of 20 December 2023 states that a citizen complained to the Ombudsman that the City of Copenhagen had suspended the payment of his cash assistance because he no longer had a NemKonto. The municipality wrote to the citizen that he must ensure that he has a NemKonto and otherwise may have the opportunity to have his cash assistance paid to another person’s account.

The Ombudsman found that under the legislation on public payments, etc., and its preparatory works, it must be possible for a citizen to receive payments from the public authorities, even if the citizen does not have a NemKonto or has a bank account and does not want the money to be transferred to a third party's account.

The municipality could therefore not require the citizen, as a condition for receiving payment of their cash assistance, to obtain a NemKonto or to specify another person's account to which the benefit could be transferred.

Instead, immediately after the municipality became aware that the citizen no longer had a NemKonto, the City of Copenhagen should have taken the initiative to seek clarification as to whether he or she was setting up a new NemKonto or wanted his or her cash assistance to be paid to another account – possibly another person's account. And because it was clear to the municipality that this was not the case, the municipality should within a short period of time have paid out the cash assistance in another way.

Against this background, the Ombudsman criticised the municipality's approach in the case and recommended that the municipality resume the payment of cash assistance to the citizen, cf. FOB 2023-40.

When a citizen or enterprise has designated a foreign account, it follows from Section 2a of the Act on Public Payments, etc. that payments to banking institution accounts abroad are regarded as having been made in due time by the public authorities, regardless of whether they have received them at a later date than equivalent domestic payments, if 1) they are processed the same day as corresponding payments to domestic accounts and 2) the corresponding domestic payments are received in due time.

It is apparent from the preparatory work on the provision that it has proved impossible in practice to ensure that payments to a foreign account are at the disposal of the recipient on the same day as if the payment had been assigned to a domestic account. This is due to the way in which payments abroad are made in practice. Payments processed at the same time will be a minimum of 1 day longer in the process than payments to a domestic account. A maximum delay cannot be determined, since the length of the delay depends on the country to which an amount is to be transferred, cf. the Official Record of Danish Parliamentary Proceedings 2005-06, Appendix A, pages 5840-5841.

Furthermore, it is clear from the preparatory work that the provision does not intend to regulate when a payment is timely. The timeliness of a payment depends on the legislation governing the substantive debt relationship and on any agreements between the public authority and the beneficiary. The sole purpose of the provision is to relieve the public authorities of any responsibility for delays that may be attributed to the financial institutions' business procedures in connection with the transfer of amounts to foreign accounts, cf. the Official Record of Danish Parliamentary Proceedings 2005-06, Appendix A, page 5841.

Section 23(3) of the Order states that amounts given to NemKontos abroad may be deducted from the additional costs with which the transfers are associated.

Public authorities are required to submit a number of reports to the NemKonto system. Thus, it follows from Section 26 of the Order that the public authority is responsible for disclosing information to the Agency for Digital Government relating to specific accounts associated with the authority in question. This implies that the Authority is responsible, inter alia, for ensuring that the information transmitted is correct and up to date at all times.

It also follows from Section 27 of the Order that the relevant public authority, on behalf of citizens and enterprises, shall designate, amend, block, or delete information on specific accounts in the NemKonto Account Register that relate to the performance categories of the authority. The competent authority shall determine which benefits are included in a type of benefit.

In addition, Section 28 of the Order states that a public authority's update of NemKontos and specific accounts must be approved by a different authorised case handler at the public authority than the person in charge of the update. However, updating may also be done by observing other control measures that provide the same assurance as to the accuracy of the update.

Public authorities are obligated to make any system adaptations to their own systems that are necessary in order to be able to communicate with and use the NemKonto system, cf. Section 29(4) of the Order. In special cases, the Agency for Digital Government may grant exemptions for a limited period of time from the requirement to connect public authorities to the NemKonto system.

The connection by the public authorities, including the establishment of the necessary user rights to the NemKonto system, is made separately for each of the Authority's payment systems, cf. Section 29(1) of the Order.

Use of the NemKonto system is free of charge upon payment to NemKonto or specific accounts for the public authorities, etc., cf. Section 38(1) of the NemKonto Order.

The public authorities, etc. bear the costs for any system adaptations in their own systems resulting from the connection to the NemKonto system as well as a minor connection cost to the private supplier, cf. Section 38(2) of the NemKonto Order.

2.4.2 Considerations of the Ministry of Digital Affairs and the proposed scheme

The Ministry of Digital Affairs is of the opinion that the current definition of public payers from the Act on Public Payments, etc. should be continued in the delimitation of which public payers are generally obliged to use the NemKonto system to make payments to private persons and legal entities with a NemKonto or benefit-specific account.

With the proposed scheme, the term ‘public payers’ will include the same legal entities that are currently connected to or can be connected to the NemKonto system as public authorities. It is therefore proposed that the term ‘public payers’ will include the following:

- 1) Public administration authorities.
- 2) The courts.
- 3) Institutions, associations, foundations, etc. whose expenses or accounting deficit are covered by state subsidy or by contributions, tax, or other income in accordance with the Act.
- 4) Institutions, associations, foundations, etc. that receive capital injections, grants, loans, guarantees or other support from the State or an institution, etc. covered by no. 3, if the capital injection, etc. is of significant importance to the recipient.
- 5) Autonomous institutions whose operating budget has been included in the Appropriation Act.
- 6) Autonomous institutions etc. with which a municipality or region has entered into an operation agreement.

It is proposed that the Minister for Digital Government is authorised, after discussion with the Danish Parliament’s management and the Danish Auditor General, to determine that the Danish Parliament and institutions under the Danish Parliament may be public payers. This will allow, among other things, the Danish Parliament, the Ombudsman of the Danish Parliament and the Danish Parliament’s National Audit Office to continue to be able to use the NemKonto system to carry out payments corresponding to today.

The proposed scheme on NemKonto is not intended to replace other payment administration legislation that is incompatible with the rules laid down in the draft Act. It is therefore proposed that public payers will not be subject to the provisions of the draft Act to the extent that other legislation contains rules that are not compatible with the Act or rules laid down by the Act.

It is proposed that the municipality or region concerned may decide that the rules for public payers do not apply to autonomous institutions, etc., with which a municipality or region has entered into an operation agreement.

Furthermore, it is proposed that the minister concerned, in agreement with the Minister for Digital Government, may lay down rules to the effect that the rules for public payers do not apply to institutions, associations, foundations, etc. whose costs or accounting deficits are covered by state subsidies or by contributions, tax or other income in accordance with the Act. The minister concerned may also, in agreement with the Minister for Digital Government, lay down rules to the effect that the rules for public payers do not apply to institutions, associations, foundations, etc. that

receive capital contributions, grants, loans, guarantees or other support from the State or an institution, etc., whose expenses or accounting deficit are covered by state subsidies or by contributions, tax or other income in accordance with the Act, if the capital contributions, etc. are of significant importance to the recipient.

This may be the case, for example, where it is considered disproportionate to connect the public payer in question because the costs associated with adapting IT systems clearly exceed the need for application of the NemKonto scheme to implement individual payments.

It is the assessment of the Minister for Digital Government that public payers shall, as in the current NemKonto scheme, be obliged to use the NemKonto system to make payments to private persons and legal entities who have designated a NemKonto or benefit-specific account. Public payers are expected to be able to use the NemKonto System in connection with all payments made to private persons and legal entities, including the possibility for public payers to also carry out full payment orders in the NemKonto System, where the public payer provides the payee's account information themselves and thus does not use the payee's NemKonto or benefit-specific accounts, when this is done under the instructions of the payee.

It is proposed that the Minister for Digital Government be authorised to lay down rules on the connection to and use of the NemKonto system, including rules on the payment of fees for connection, etc., by public payers. The Minister for Digital Government will then, inter alia, be able to lay down rules requiring public payers to carry out any system adaptations to their own systems that are necessary in order to be able to communicate with and use the NemKonto system. Rules may also be laid down to the effect that connection to and use of the NemKonto system is made in accordance with the conditions, technical standards and policies laid down by the Agency for Digital Government, and that connection, including the establishment of the necessary user rights to the NemKonto system, is made separately for each public payer's payment systems.

In addition, the Minister for Digital Government may lay down rules on the disconnection and suspension of public payers from the NemKonto system. This may, for example, be relevant in the event that a public payer can no longer be considered to be a public payer, or where the use of the NemKonto system by a public payer constitutes a breach of security or a security risk to private persons, legal entities or the NemKonto system as a whole. Since public payers are obliged to use the NemKonto system, any suspension or disconnection is expected, in principle, to be of temporary duration until the cause of the condition in question has been terminated or remedied.

It is also proposed that the Minister for Digital Government shall lay down rules on which public payers who, at the request of payees, shall report the designation, amendment or deletion of accounts as a NemKonto in the NemKonto system, including rules on the documentation requirements of public payers, administration of NemKontos, etc. The Minister for Digital Government will then be able to lay down rules requiring public payers to report the designation, amendment or deletion of NemKontos for the payees to whom they pay benefits.

The Minister for Digital Government will also be able to lay down rules requiring specified public payers to assist payees with the reporting of the designation, amendment or deletion of NemKonto. Rules may thus be laid down stipulating that, for example, the municipalities will have to assist payees with the reporting of the designation, amendment or deletion of NemKonto.

Furthermore, it is proposed that public payers for their own benefits types, and at the request of the payee, shall report the designation, amendment or deletion of accounts in the benefit-specific accounts of the NemKonto system.

Under the proposed scheme, the public payer must indicate the type of benefit covered by the payment to the benefit-specific account. The public payer will then be responsible for ensuring that the information disclosed in the NemKonto system regarding benefit-specific accounts is correct and up-to-date at all times. The public payer is not liable for updates made by the payee himself or herself via a self-service solution.

It is proposed that a public payer, at the request of the payee, will be able to lock a benefit-specific account so that the payee cannot directly make any changes to it.

This will be relevant, for example, in situations where a payee and the municipality have agreed that the municipality must administer the payee's pension under Section 36(2) of the Social Pension Act.

Under the proposed scheme, it will be optional for public payers whether they will lock a benefit-specific account at the request of a payee.

If the payee has not requested the locking of a benefit-specific account, the public payer may designate and lock a benefit-specific account if the public payer can determine under other legislation the way in which the payment is to be made. As an example, under Section 36(1) of the Social Pension Act, the municipal council may decide in which way a payee's pension shall be paid if it considers that a pensioner cannot administer their pension. Reference can also be made to Section 90(1) of the Active Social Policy Act.

Under the proposed scheme, a public payer who can lock a benefit-specific account under the proposed Section 12(2) and (3) will similarly be able to instruct the person who is making the payments to implement this action and report designation, change, or deletion of locked benefit-specific accounts in the NemKonto system. For example, a municipality will be able to request Udbetaling Danmark to specify, amend or delete a locked benefit-specific account when Udbetaling Danmark executes payment of the benefit in question.

It is also proposed that the Minister for Digital Affairs may lay down rules on the documentation requirements of public payers, reporting, the administration of benefit-specific accounts, etc. The Minister for Digital Government will, for example, be able to lay down rules on documentation requirements for the designation of benefit-specific accounts, including requirements for identifying

the payee, requirements for security procedures in connection with reports in the NemKonto system, and ensure that correct performance types are associated with the designated benefit-specific accounts.

Under the proposed scheme, public payers will have an obligation to acquire the NemKonto system from the Agency for Digital Government and will have to use the NemKonto system to make payments to payees with a NemKonto or a benefit-specific account. The proposed scheme means that the Agency for Digital Government is given an exclusive right, as referred to in Section 17 of the Act on public procurement, to provide the NemKonto system to public payers and that is subject to an obligation to use the solution. Since all rules on provision and application will result from the Act, there will not be a bilateral contract on reciprocal obligations, cf. Section 24 no. 24 of the Public Procurement Act, and public payers can thus acquire the NemKonto system from the Agency for Digital Government pursuant to the Act, without having to carry out a tender, cf. also preamble recitals no. 5 and 34 of Directive no. 2014/24 of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (hereinafter the Procurement Directive).

The acquisition obligation gives the Agency for Digital Government an exclusive right and aims to uphold public policy and security, including in relation to the socio-economic considerations regarding joint procurement of IT solutions in the State. The obligation of public payers to acquire the NemKonto system propagates the use of the NemKonto system, ensuring knowledge of the solution in Danish society. Awareness of the solutions is crucial for the use, security, and trust in public digital self-service, which is a prerequisite for maintaining public order. Considerations of public security are also addressed through this obligation, ensuring overall State control over social-critical IT infrastructure. It will thus be possible for the NemKonto system to be continuously and efficiently updated on pace with technological developments and shifts in the digital threat scenario. Greater certainty is thus achieved when public payers are obligated to use the NemKonto system.

Under the proposed scheme, public payers will be able to make payments to a payee's designated NemKonto or benefit-specific account, unless the payee has designated another account to the public payer in question to which payment is to be made. Public payers will, however, be able to pay to the payee's NemKonto when this follows from other legislation. When payment has been made in this way to a NemKonto or benefits-specific account, the payee cannot argue that he or she has not received the amount of money due. The proposed provision means that public payers will not be obliged to inquire from payees how they wish to receive sums of money due where the payee has designated a NemKonto or benefit-specific account that may be used for payment. The NemKonto will always be used to implement payments if the legislation stipulates that the payment of monetary amounts is to be made to the NemKonto.

The proposed scheme only governs the issue of the right place of payment, but does not regulate the issue of the amount of payment or the time for timely payment.

If, in the context of a payout from a public payer, the payee has not designated a NemKonto, a defined-benefit account, or another account, the public payer shall ensure that the payee is paid his or her receivable by other means. The same applies when the public payer receives information from the NemKonto system that payment cannot be made.

Payout in another way could be, for example, a down payment in cash, cf. also Section 8 of the Act on the National Bank of Denmark, cf. Act no. 116 of 7 April 1936, as amended, which provides that the banknotes issued by the bank ‘are legal tender from man to man and with payments and payouts made by public funds’.

The draft Act does not make public payers subject to the condition of making payments of benefits that the payee has a NemKonto or otherwise holds a bank account or other type of account, unless otherwise provided for by other legislation. Public payers may refer to the necessity for payees to designate a NemKonto in connection with the payment, cf. Section 2(1) and Section 3(1) and (2), but the draft Act also does not provide for a legal basis for public payers to order a payee to have his or her benefits paid to a beneficiary’s financial institution account if the payee does not wish to do so. Thus, the public payer cannot make a condition for payment that the payee provides an account number, but will be obliged to ensure that the payment can be made by other means, such as in cash.

This is in accordance with the Ombudsman’s opinion of 20 December 2023, in which the Ombudsman found that a municipality could not require a citizen, as a condition for the payment of his cash assistance, to have a NemKonto or to specify another person’s account to which the benefit could be transferred. Instead, immediately after the municipality became aware that the citizen no longer had a NemKonto, the municipality should have taken the initiative to seek clarification as to whether he was setting up a new NemKonto or whether he wished his cash assistance to be paid to another account – possibly another person’s account. And because it was clear to the municipality that this was not the case, the municipality should within a short period of time have paid the cash assistance in another way, cf. FOB 2023-40. Under the proposed scheme, it will be the payee who bears the risk of late payment by a public payer arising from his or her failure to designate a NemKonto, a benefit-specific account, or another account to which payment can be made, or the payee’s failure to contribute to ensuring that the payment of the receivable can be made in another way. Similarly, the payee will bear the risk of late payment in other cases from a public payer, if payment to the designated NemKonto, benefit-specific account or other account or by other means cannot be made for reasons not attributable to the NemKonto system or the public payer. The proposal does not suspend the public payer’s obligation to pay the amount of money due to the payee until the placement of a NemKonto, a benefit-specific account, another account or any other way of executing the payment. Thus, public payers shall ensure that payments are made in a timely manner, but the risk of delay, including increased costs, due to failure to designate a NemKonto, a benefit-specific account, another account, or lack of participation in ensuring that payment can be made in another way shall be borne by the payee. The proposal thus implies that no interest will accrue on the late payment in cases where the payee has failed to specify a NemKonto, a benefit-specific account, or another account, or has failed to contribute or has not contributed sufficiently to the pay-

ment by other means. This will be *mora creditoris*. This will also apply regardless of the fact that, in other legislation related to the monetary amount in question, there is a provision on interest in the event of late payment.

The risk of late payment imposed on the payee does not include a delay exceeding the time that the public payer has reasonably been required to take in order to ascertain whether the payee wishes and is able to specify a NemKonto, benefit-specific account, or other account and otherwise ensure that payment is made by other means.

Payment by a public payer to the account of the payee abroad shall be deemed to have been made by the public payer in due time, regardless of the payment having been received by the recipient at a later date than equivalent domestic payments, if 1) the payment is processed on the same day as corresponding payments to domestic accounts and 2) the payment corresponding domestic payments have been received by the recipient in due time. It will thus be the payee who bears the risk of the delay in the payment transaction in implementing the payment to a foreign account designated.

It is the public payer who indicates the date of processing of a payment order. The paying authority is not aware of whether the account is domestic or foreign, and the NemKonto system itself cannot differentiate between domestic or foreign accounts. The date of processing of a payment order will therefore not take into account the fact that the payment must be transferred to an account with a financial institution in Denmark or a credit institution abroad. However, due to the institutions' business procedures, payments to foreign accounts will often take longer (typically 1 to 2 days) in the financial system than payments to domestic accounts.

The proposed scheme thus aims to relieve public payers of any responsibility for delays that must be attributed to the institutions' business procedures in connection with the transfer of amounts to foreign accounts. In this respect, it should be noted that the number of recipients who may bear the risk of late payments is negligible.

The proposed scheme does not otherwise intend to regulate when a payment is timely.

Finally, it is proposed that public payers, in connection with the implementation of a payment, may deduct the additional costs associated with a transfer of amounts to a designated NemKonto, benefit-specific account, or other account abroad, unless otherwise provided by other legislation. This would, in practical terms, be the public payer's settlement institution, which, based on the public payer's choice, deducts costs associated with the transfer to a foreign account from the amount. The payee's amount may thus be deducted from the additional costs associated with transferring the amount to a foreign account.

2.5 Offsetting

2.5.1 Legislation currently in force

Information from the NemKonto system of payments from public authorities can be transferred to a recovery system administered by the Customs and Tax Administration, cf. Section 4a(1) of the Act on Public Payments, etc. It is clear from the preparatory work for the provision that the information that can be disclosed is related to, inter alia, the identity of the payee, the amount, the paying authority and the nature of the payment, etc., cf. the Official Record of Danish Parliamentary Proceedings 2008-09, Appendix A, L 21, as set out, page 308.

Under Section 4a(2) of the Act on Public Payments, etc., payments to the payee's NemKonto or another account do not take place if the Customs and Tax Administration has requested the transfer of the payment with a view to offsetting it in whole or in part.

In other words, if the offsetting conditions are met, a payment amount will not be paid to the recipient's NemKonto or any specific account, but instead be transferred to the Customs and Tax Administration, cf. the Official Record of Danish Parliamentary Proceedings 2008-09, Appendix A, L 21 as set out, p. 308. Transfer to the Customs and Tax Administration is made in discharge of the paying agent's liabilities, cf. Section 4a(3) of the Act on Public Payments, etc.

The Customs and Tax Administration then carries out the distribution of amounts to the authorities that have registered claims in the Customs and Tax Administration's recovery systems that can be used for offsetting. This means either claims which are pending for recovery from the Danish Arrears Collection Authority (i.e. the Customs and Tax Administration as the Arrears Collection Authority), cf. Section 2 of the Order on the recovery of public liabilities, cf. Section 2(1) of the Debt Collection Act), cf. Section 7(1) no. 2 of the Debt Collection Act, or claims registered in the Arrears Collection Authority's claim register for the purpose of offsetting during the collection phase, cf. Section 7(1) no. 3 of the Debt Collection Act. The distribution shall take place with respect to any transport or garnishment of claims for payments from the Customs and Tax Administration.

As before, it is the Debt Collection Agency that decides on offsetting with claims under collection, while the Arrears Collection Authority decides on offsetting with regard to claims under recovery. The Arrears Collection Authority informs the recipient of a claim made, a payment to the rightsholder or a payment to the recipient of the sum, when the amount of the payment has been transferred to the Arrears Collection Authority.

When the Customs and Tax Administration pays out excess amounts after offsetting has been carried out, the Customs and Tax Administration is considered to be the paying agent, cf. Section 4a(4) of the Act on Public Payments, etc. Payment is made to the beneficiary's NemKonto or to an account reported to the Customs and Tax Administration.

Part of the automatic offsetting solution consists of a connection between the NemKonto and the recovery systems of the Arrears Collection Authority. This connection is to support the system so that no payments are made from the public authorities if there can be set-off in claims registered with the Arrears Collection Authority.

The automatic offsetting solution takes into account claims during recovery and claims under collection registered in the recovery systems of the Arrears Collection Authority including the debt register of the Arrears Collection Authority, which are part of the recovery systems. The Collection Authorities must therefore register and regularly update claims during collection that are to be used for offsetting in the debt registry of the Arrears Collection Authority.

Today, offsetting against child and youth benefits, agricultural aid and a number of the Customs and Tax Administration's claims are supported, including excess tax, excess labour contributions, credit balance from the tax account and with the Arrears Collection Authority, refunds, cost reimbursement and compensation for property taxes.

Both transports and seizures of payments from the Tax Agency can be registered with the Arrears Collection Authority. The registration shall be made in the recovery systems of the Arrears Collection Authority. The Arrears Collection Authority takes into account any transport and seizures made in claims for payments from the Customs and Tax Administration before a decision on set-off or payment is made.

The system can be outlined as follows: After any implementation of internal offsetting, the paying authority a residual payment to NemKonto. The NemKonto system sorts out whether the payment can be used for offsetting purposes.

The examination in the NemKonto system of whether the person entitled to a payment has debts to the public authorities is made on the basis of information from the recovery systems of the Arrears Collection Authority, which contains information on claims during recovery and claims under collection that are to be used for offsetting.

The information disclosed from the recovery systems of the Arrears Collection Authority to the NemKonto System is only information on the debtor's identity in the form of a CPR number, CVR number, SE number or P number and, in some cases, which authority is the creditor and which type of benefit (nature of benefit) can be offset. However, information is not disclosed about the amount and nature of the debt. The disclosure of information is done within the framework of the General Data Protection Regulation, the Danish Data Protection Act and the Public Administration Act.

If the investigation shows that a payment from a public authority to a payment recipient can be used for offsetting against debts to the public sector or payment to rightsholders who have rights in claims for payments from the Customs and Tax Administration, the amount of the payment and information on this are transmitted to the Customs and Tax Administration. The information disclosed from the NemKonto system to the Tax and Customs Administration's recovery systems is the bene-

ficiary's identity in the form of a CPR number, CVR number, SE number or P number, paying authority, type of benefit, amount, and the payee's NemKonto, specific account, or other account to which the payment should otherwise have been made. The Customs and Tax Administration must use this account number to transfer any excess amount after offsetting, etc. has been carried out.

2.5.2 Considerations of the Ministry of Digital Affairs and the proposed scheme

The Ministry of Digital Affairs is of the opinion that the current scheme, whereby information is exchanged between the NemKonto System and the Customs and Tax Administration and the payment is transferred to the Customs and Tax Administration with a view to offsetting them with debts to the public sector and paying out to rightsholders who have rights in claims for payments from the Customs and Tax Administration, is a well-functioning, efficient and resource-saving way to handle debt settlement, etc., and that the scheme shall therefore be continued.

However, the Ministry of Digital Affairs considers it appropriate that rules on the exchange of information between the NemKonto system and the Customs and Tax Administration be deleted from the provision on offsetting and instead become part of the provisions proposed to be laid down on information about private persons and legal entities in Sections 25 and 26 of the draft Act or rules laid down pursuant to the proposed Section 25(4).

In addition, the Ministry of Digital Affairs considers it appropriate to specify that transfers of payment amounts to the Customs and Tax Administration can be made both for offsetting with debts to the public sector and for the purpose of payment to rightsholders who have rights in claims for payments from the Customs and Tax Administration.

Against this background, Section 17 of the draft Act proposes that payment to the payee's NemKonto, benefit-specific account, or other account should not take place if the Customs and Tax Administration has requested the transfer of the payment amount for the purpose of offsetting against the payment amount or for the purpose of payment to rightsholders who have rights in claims for payment from the Customs and Tax Administration. The transfer of a payment amount from a public payer to the Customs and Tax Administration is carried out in discharge of the public payer's obligations.

The Customs and Tax Administration then handles the distribution of amounts to the authorities which have registered claims in the recovery systems of the Arrears Collection Authority that can be used for offsetting. In relation to withdrawals from the Customs and Tax Administration, offsetting and payments are made with respect to any transport and garnishment.

It is the Debt Collection Agency that decides on offsetting with claims under collection, while the Arrears Collection Authority decides on offsetting with regard to claims under recovery.

The Customs and Tax Administration's payment of any excess amount after offsetting has been carried out or payment to rightsholders' claims is treated as the paying authority. Payment is made to the beneficiary's NemKonto, beneficiary-specific account or other account.

Currently, a system-supported deduction from child and youth benefits, agricultural aid and a number of the Customs and Tax Administration's claims, including excess tax, excess labour contributions, credit balance from the tax account and with the Arrears Collection Authority, refunds, cost reimbursement and compensation for property taxes, are supported. It is possible to extend the system support for offsetting to other benefit types.

2.6 Private payers, private account intermediaries and operators of financial digital infrastructures

2.6.1 Legislation currently in force

Private payers may, in return for payment and under specified conditions, use the NemKonto Registry and the NemKonto system for the intermediation of payments to the payee's NemKonto, cf. Section 5a(1) of the Public Payments Act, etc.

It is apparent from the preparatory work for the provision that the use of the NemKonto register by private payers is carried out by submission of payment orders to the system administrator. The system administrator shall make the payments to the account number via the NemKonto register. Thus, private payers do not have access by post or by other means to the register itself. Payments by private payers will be systematically registered (logged) in the NemKonto system, cf. the Official Record of Danish Parliamentary Proceedings 2006-07, Appendix A, L 186 as set out, page 6680). 'Private payers' means natural and legal persons who make payments and are not covered by Section 12 of the Act or are public authorities, cf. Section 5a(2) of the Act.

It is further stated in the preparatory work for the provision that it would be appropriate for the circle of private payers to be as broad as possible. The delimitation of private payers vis-à-vis public authorities shall be decided by whether the payer is subject to the Public Access and Administration Act or Section 12 of the Act.

Applicable law may give the impression that private payers can make payments through the NemKonto system. In practice, the private individual issues a request with information on their payee's CPR number, CVR number, SE number or P number to the NemKonto system through a private payment service provider and receives a response with information on the payee's NemKonto from the NemKonto system. The private investor then implements the payment outside the NemKonto system. A private payment service provider will often be one that already handles payments – either on their own behalf or on behalf of other legal entities, and often assists private payers in the execution of payments.

The private payment service provider is to be connected to the NemKonto system via a connection agreement and associated connection conditions with the Agency for Digital Government. The connection agreement and the associated connection conditions constitute the conditions that the private payment service provider must accede to before application of the NemKonto system and form the basis for the private payers' ability to forward queries to the NemKonto system. The affiliation agreement also regulates the conditions for the use of the NemKonto system by private payers, even if they are not a party to the agreement, by requiring the private payment service provider to continue the conditions for use of the NemKonto system in subsequent agreements between the private payment service provider and the private payers.

It is primarily insurance companies, financial institutions and operators of financial digital infrastructures (formerly joint data centres) that are connected to the NemKonto system as private payment service providers today. In the case of financial digital infrastructure operators, they have entered into agreements with a number of financial institutions which have in turn entered into agreements with private payers. Here, the terms for the private payers' use of the NemKonto system have been continued in both agreements.

The terms stipulate, inter alia, that the private payer must inform the payee that payments will in future be paid to the recipient's NemKonto prior to the first payment, that there must be a temporal relationship between the request for account information in the NemKonto system and the payment, as well as deadlines for the use of account information for payment.

Section 5a(3) of the Act provides that the payee may at any time notify a private payer that the payouts are not intended to be deposited in the NemKonto of the recipient.

The preparatory work on the provision states that the form of such a message and the deadline by which the message must have arrived is merely a question between the payer and the payee and should appear on the payer's terms and conditions, cf. the Official Record of Danish Parliamentary Proceedings 2006-07, Appendix A, L 186 as set out, page 6680.

A private payer may, for the purpose of arranging payouts, use the payee's CPR number if the private payer under other legislation has a right to process CPR numbers or if the payee has given consent to the use of his or her CPR number, cf. Section 5a(4) in the Public Payments Act, etc.

The preparatory work on the provision states that, in order to be able to send payments via the NemKonto register, payees who are natural persons must be identified by their CPR numbers. The proposed provision extends the right to use a CPR number if the private party pays out pursuant to other legislation and has a right to use a CPR number, cf. the Official Record of Danish Parliamentary Proceedings 2006-07, Appendix A, L 186, as set out, pages 6680-6681.

The term 'other legislation' shall be understood to mean that there need not be any link between the specific payment and the legal basis for processing CPR numbers. It is sufficient that the private payer has the legal basis for processing the payees' CPR numbers in the comprehensive legal basis

for its business. Such access exists, for example, where the payer has a reporting obligation to the tax authorities.

In addition, information on CPR numbers may be processed if a payee consents to their CPR number being used by the private payer in order for the payment to be entered in their NemKonto. A consent shall meet the requirements for consent under the provisions thereof in the Data Protection Act and the Financial Business Act with respect to giving consent to a company covered by this Act. In addition, the Data Protection Act's requirements for professionalism and proportionality mean that a private data controller who only justifies his or her desire for processing CPR numbers for the possibility of using the NemKonto system may only collect and register information on CPR numbers for that purpose, cf. the Official Record of Danish Parliamentary Proceedings 2006-07, Appendix A, L 186, as set out, page 6681.

The Minister for Digital Government shall lay down detailed conditions for private payers to make payments to the payee's NemKonto in accordance with (1), cf. Section 5a(5) of the Public Payments Act, etc.

It is clear from the preparatory work that the connection to and use of the NemKonto register by private persons shall be carried out under conditions laid down by the Minister for Finance, cf. the Official Record of Danish Parliamentary Proceedings 2006-07, Appendix A, L 186 as set out, p. 6681.

Thus, conditions for connection are currently laid down, which regulate, inter alia, the price for use, requirements for technical connection, provisions on liability, time limits and termination of the connection agreement. The payment by private payers for the use of the NemKonto system has been set according to the cost principle and thus reflects the private payers' share of the average costs in part for establishing access to the register and in part for its ongoing use.

2.6.2 Considerations of the Ministry of Digital Affairs and the proposed scheme

The Ministry of Digital Affairs considers that private payers must still be able to search the accounts in the NemKonto system via a private payment service provider in order to make payments to the payee's NemKonto.

In the Ministry's view, this will continue an efficient and resource-saving payment administration for the business community. The scheme also entails a service to private persons and legal entities, who no longer need to submit extensive reports of their account changes to the private payers who use NemKonto, in that they automatically pay to the most recently updated NemKonto when NemKonto is the correct place of payment.

However, the Ministry of Digital Affairs also estimates that there is a need to regulate the private payers to a greater extent than hitherto, and to regulate the private payment service providers, in-

cluding so that the various actual modes of connection to perform account searches in the NemKonto system are reflected in the legislation. In the proposed scheme, the term private payment service provider will not be used, but will be replaced in part by a private account intermediary and in part by a financial digital infrastructure operator, in order to clarify the roles of these actors.

Against this background, it is proposed that a private payer can, under specified conditions, via a private account intermediary, perform account searches in the NemKonto system when the account details are to be used for a payment to a payee and the payee's NemKonto is the correct place of payment.

It is proposed that private persons and legal entities with a residence or registered office in Denmark, another EU/EEA country or the Faroe Islands can look up accounts as private investors.

The intention of allowing the definition of who may be private payers to include private persons and legal entities residing or having their registered office in an EU/EEA country is to comply with the principle of the free movement of services of the TFEU. Private persons and legal persons in the Faroe Islands are covered by the definition, since the Faroe Islands are part of the Danish Realm, and the European Commission has determined that the Faroe Islands have an adequate level of protection within the meaning of Article 45 of the General Data Protection Regulation for transfers of personal data to take place between EU countries and the Faroe Islands.

The proposed geographical delimitation of where the private payer may have residence or registered office is a limitation in relation to applicable law that does not contain a geographical demarcation. A transitional rule is therefore proposed which allows any private payers who do not comply with the new delimitation to remain private payers for a 1-year period from 1 July 2025 until and including 30 June 2026.

By account searching in the NemKonto system, it is understood that the private account intermediary sends a request to the NemKonto system on behalf of a private payer. The query will have to contain a CPR number, CVR number, SE number or P number of the payee, so that the NemKonto system can identify the payee and, on that basis, return information on the payee's NemKonto to the private account intermediary on behalf of the private payer. The payment transaction from the private payer to the payee will then be made outside the NemKonto system as before.

The current rule in Section 5a(4) of the Public Payments Act, etc., which has granted extended access to use CPR numbers if the private party pays under other legislation has access to the use of CPR numbers, is not continued. The Ministry of Digital Affairs thus does not consider that there is a need to lay down rules on the processing of personal data by private payers in connection with account searches in the NemKonto system, as this processing is regulated by the data protection rules of the General Data Protection Regulation and the Danish Data Protection Act.

In order to be able to perform account notices concerning private persons in the NemKonto system, it will be a prerequisite that these are identified by CPR numbers. CPR number information

may be processed, for example, if a payee consents to their CPR number being used by the private payer in order for the payment to be made to their NemKonto.

It is assumed that, at the request of a private payer via a private account intermediary, the Agency for Digital Government can generally assume that the private payer has the right to process the payee's CPR number and account information, as the recipient warrants that there is a basis for processing in accordance with the General Data Protection Regulation, e.g. consent. Thus, the Agency for Digital Government does not have an obligation to carry out a prior check of whether the private payer has a basis for processing the personal data that the Agency transmits to the private payer. However, in accordance with the general rules on the right to object in Article 21 of the General Data Protection Regulation, the Agency for Digital Government will be obligated to consider and process an objection from a payee that a private payer may not obtain personal data relating to him or her.

It is proposed that the payee may at any time notify a private payer that the payments are not to be made to the recipient's NemKonto. The payee's right not to have the payment amount included in his or her NemKonto cannot be derogated from by agreement.

The form of the payee's message and the deadline by which the message must have arrived to the private payer are merely a matter between the payee and the private payer and may, for example, appear in the private payer's terms of business or the like.

Furthermore, it is proposed that the Minister for Digital Government may lay down rules on private paying agents' account searches, including rules on when and how private paying agents can look up accounts via a private account intermediary.

The Minister for Digital Government will thus be able to lay down detailed rules on the possibility for private payers to carry out account searches via a private account intermediary in the NemKonto system by means of an order. However, it is not a requirement that the conditions for the possibility for private payers to carry out account searches via private account intermediaries in the NemKonto system are laid down by order, and it will thus also be possible to lay down the conditions for the provision of account searches, etc. in the NemKonto system on the basis of contract law. The Agency for Digital Government will, for example, also be able to lay down a number of standard conditions for the creation of account searches, etc. in the NemKonto system or enter into agreements with the private parties for the creation of account searches, etc. It is assumed that a breach of contractual terms or conditions could lead to the exclusion from the use of the NemKonto system.

The Minister for Digital Government will also be able to lay down rules on the notification obligation of private payers. For example, it could be stipulated that private payers shall, before the first account searching in the NemKonto system is made and before the first payment is made to the payee, have notified the payee that the payee will at any time be able to notify a private payer that the payments are not to be placed in the recipient's NemKonto.

Rules could also be laid down stipulating that private payers, before the payment of protected amounts covered by Section 513 of the Administration of Justice Act is paid to the payee, are obliged to inform the payee of the possibility of creditor protection whose amount is deposited in a separate account. Rules may also be laid down stipulating that the private payer shall store documentation for notifications as long as the payment relationship remains and that the private payer shall present it at the request of the Agency for Digital Government or the payee.

It is also proposed that the Minister for Digital Government may lay down rules on the liability of the Agency for Digital Government, system and operation providers, public payers and account reporting institutions, and restrictions thereof towards private payers as a result of the unavailability of the NemKonto system, system errors in the NemKonto system, and for errors in payees' account information, etc.

The Minister for Digital Government will also be able to lay down rules on the Agency for Digital Government's communication to private parties of indictments, injunctions and exclusion from making account searches via a private account intermediary for non-compliance with rules, agreements or conditions for account searches in the NemKonto system. Such exclusion decisions may be made for a fixed duration or be permanent.

It is proposed that a private account intermediary, under specified conditions, on behalf of a private payer, may carry out account searches in the NemKonto system for the purpose of making payments. Private account intermediaries will also be able to display accounts on behalf of themselves as private paying agents.

It is proposed that the following companies, in agreement with the Agency for Digital Government, can be connected to the NemKonto system as private account intermediaries:

- 1) A financial institution with an authorisation under the Financial Business Act or Decree on entry into force for the Faroe Islands of the Financial Business Act.
- 2) A payment or electronic money institution authorised under the Payments Act, Decree on the entry into force for the Faroe Islands of the Payments Act or an EU/EEA payment or electronic money institution authorised under the national law of the relevant EU/EEA country, implementing Directive 2015/2366/EU of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, as amended (PSD2) or Directive of the European Parliament and of the Council on the taking up, pursuit of and prudential supervision of the business of electronic money institutions, as amended (EMD).
- 3) An EU/EEA credit institution authorised under the national legislation of the respective EU/EEA country which implements Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the supervision of use of credit institutions, as amended (CRD).

- 4) An insurance company authorised under the Insurance Business Act or an insurance company authorised to conduct insurance business in the EU under national law implementing Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II).

The inclusion of EU/EEA countries in the proposed provision includes, inter alia, branches established in Denmark by EU/EEA countries' credit institutions that are not authorised as Danish financial institutions under the Financial Business Act, but which carry out activities in Denmark similar to Danish financial institutions.

It is hereby proposed that the companies which are connected to the NemKonto System as private account intermediaries have all undergone the comprehensive approval that follows in the granting of the licences and that the companies are subject to supervision by the relevant EU/EEA country's national competent supervisory authority. However, Danish branches of EU/EEA credit institutions are subject to supervision by the Danish Financial Supervisory Authority.

Ten private payment service providers are currently connected to the NemKonto system, and as it is not all of them who fulfil the requirement for the type of company in the proposed scheme, the draft Act contains a transitional rule. The transitional rule allows private payment service providers to remain connected and to be a private account intermediary for a one-year period from 1 July 2025 to and including 30 June 2026. Once the transitional period has expired, a company which is subject to the transitional rule will no longer be able to be affiliated as a private account intermediary unless during the transitional period the company has become a type of company fulfilling the conditions for being a private account intermediary.

It is proposed that the Minister for Digital Government can lay down further regulations on which companies can be connected to the NemKonto system as private account intermediaries. It is intended that the authorisation may be used, inter alia, for the Minister for Digital Government to be able to lay down further rules for private account intermediaries in line with ongoing developments in the area, so that up-to-date requirements can be imposed on private account intermediaries.

It is also proposed that the Minister for Digital Government may lay down rules on the use of and connection to the NemKonto system by private account intermediaries, including rules on fees and conditions.

Among other things, the authorisation may be used to lay down rules stipulating that private account intermediaries must be connected to the NemKonto system in agreement with the Agency for Digital Government. Among other things, the Agency for Digital Government will be able to lay down agreement requirements in the agreement for the connection to the NemKonto system that is required to ensure authentication and authorisation for network infrastructure and the technical parameters that are to be used when setting up the data transmission software used. In addition, the

Agency for Digital Government will also be able to lay down general contractual terms for the use of the system, etc.

The authorisation may also be used, among other things, to lay down detailed rules for the use of the NemKonto system by private account intermediaries, including rules on when and how private account intermediaries can perform account searches in the NemKonto system on behalf of a private payer.

The Minister for Digital Government will thus be able to lay down detailed rules on the use of and connection to the NemKonto system by private account intermediaries by Order. However, it is not a requirement that the conditions for the use of and connection to the NemKonto system by private account intermediaries shall be laid down by Order and it will thus also be possible to lay down conditions for this on the basis of contract law. The Agency for Digital Government will, for example, also be able to lay down a number of standard conditions for the use of and connection to the NemKonto system or conclude agreements with the private account intermediaries on this. It is assumed that breach of contractual terms or conditions could lead to exclusion from use of the NemKonto system.

It is assumed that rules are issued on the payment of a fee by private account intermediaries for the use of the NemKonto system. The fee will be determined in a cost-reflective manner and shall ensure the coverage of all costs associated with the connection to and use of the NemKonto system by private account intermediaries and financial digital infrastructure operators, including costs for the proposed compensation scheme. Private account intermediaries themselves will be responsible for collecting the costs associated with searching the NemKonto system from the private payers.

In addition, it is proposed that rules may be laid down on the procurement by private account intermediaries of additional assistance from the Agency for Digital Government that are settled on flat rates that are cost-based.

It is also proposed that the Minister for Digital Government may lay down rules on the liability of the Agency for Digital Government, system and operation providers, public payers, and account reporting institutions, and restrictions thereof to private account intermediaries due to the unavailability of the NemKonto system, system errors in the NemKonto system, and for errors in payees' account information, etc.

It is also proposed that the Minister for Digital Government may lay down rules to the effect that the Agency for Digital Government may issue indictments, injunctions, or exclusion from using the NemKonto private account intermediaries if they fail to comply with rules, agreements, or conditions for use or connection to the NemKonto system. Such decisions on exclusion may be made for a fixed duration or be permanent.

It is proposed that an operator of financial digital infrastructure, under specifically defined conditions and in agreement with the Agency for Digital Government on behalf of a private account intermediary, may be connected to the NemKonto system.

It is thus proposed that a private account intermediary may be connected to the NemKonto system via an operator of financial digital infrastructure that fulfils the conditions for operators of financial digital infrastructures and has concluded an agreement with the Agency for Digital Government to that effect. The financial digital infrastructure operator, via its connection to the NemKonto system, will be responsible for the administration of the use of the NemKonto system by the connected private account intermediaries.

It is proposed that an operator of financial digital infrastructure must be designated by the Danish Financial Supervisory Authority under Section 333(1) no. 2 of the Financial Business Act as an operator of financial digital infrastructure in order to be connected to the NemKonto system.

It is also proposed that an EU/EEA-based operator of financial digital infrastructures that comply with the national legislation of the EU/EEA country in question that corresponds to Section 333(1) no. 2 of the Financial Business Act and that is subject to supervision by the competent supervisory authority of the EU/EEA country in question, which is equivalent to the Danish Financial Supervisory Authority's supervision of an operator of financial digital infrastructures' compliance with Section 333m of the Financial Business Act, may be connected to the NemKonto system as an operator of financial digital infrastructure. The Agency for Digital Government will have to make a specific assessment of the national legislation of the EU/EEA country in question, including the supervision of the competent supervisory authority in the EU/EEA country in question and, in case of doubt, seek advice and clarification from the Danish Financial Supervisory Authority.

It is proposed that the Minister for Digital Government may lay down further regulations on which companies can be connected to the NemKonto system as an operator of financial digital infrastructure. The Minister for Digital Government may also lay down rules on the use of and connection to the NemKonto system by financial digital infrastructure operators, including rules on fees and conditions.

It is intended that the authorisation may be used, inter alia, for the Minister for Digital Government to be able to lay down further rules for financial digital infrastructure operators in line with ongoing developments in the area, so that up-to-date requirements can be imposed on financial digital infrastructure operators.

It is also proposed that the authorisation may also be used to lay down rules on conditions for the technical connection to the NemKonto system by, for example, technical standards or the like.

The Minister for Digital Government will thus be able to lay down detailed rules for the connection to and use of the NemKonto system by Order for financial digital infrastructure operators. However, it is not a requirement that the conditions for the connection to and use of the NemKonto

system by operators of financial digital infrastructure shall be laid down by Order and it will thus also be possible to determine the conditions for this on the basis of contract law. The Agency for Digital Government will, for example, also be able to lay down a number of standard conditions for connection to and use of the NemKonto system or conclude agreements with operators of financial digital infrastructures for this. It is assumed that breach of contractual terms or conditions could lead to exclusion from use of the NemKonto system.

It is assumed that regulations are issued on the payment by operators of financial digital infrastructure of a fee for the connection to and use of the NemKonto system. The fee will be determined in a cost-reflective manner and shall ensure the coverage of all costs associated with the connection to and use of the NemKonto system by financial digital infrastructure operators and private account intermediaries, including costs of the proposed compensation scheme. Operators of financial digital infrastructures will themselves be responsible for collecting costs associated with the use of the NemKonto system from private account intermediaries. Similarly, the private account intermediaries will themselves be responsible for collecting the costs of account searches in the NemKonto system from the private payers.

In addition, it is proposed that rules may be laid down on the procurement by operators of financial digital infrastructure of additional assistance from the Agency for Digital Government that are settled on flat rates that are cost-based.

It is also proposed that the Minister for Digital Government may lay down rules on the liability of the Agency for Digital Government, system and operation providers, public payers and account reporting institutions, and restrictions thereof against operators of financial digital infrastructures due to the unavailability of the NemKonto system, system errors in the NemKonto system, and for errors in payees' account information, etc.

It is also proposed that the Minister for Digital Government may lay down rules to the effect that the Agency for Digital Government may issue indictments, injunctions, or exclusion from use of the NemKonto operators of financial digital infrastructures in the event of non-compliance with rules, agreements, or conditions for use or connection to the NemKonto system. Such decisions on exclusion may be made for a fixed duration or be permanent.

2.7 Public service obligations of institutions

2.7.1 Legislation currently in force

Section 35(1) of the NemKonto Order states that financial institutions that have entered into a sector agreement on reporting NemKontos shall assist citizens and enterprises to designate or amend information on NemKontos for accounts that are already held with the financial institution in question to the NemKonto register.

In 2005, a sector agreement was concluded between KMD A/S as the provider of the NemKonto System and the Financial Institutions Payment Service (PBS), now Mastercard Payment Services Denmark A/S, on the reporting of NemKontos. By entering into the agreement, financial institutions can report accounts maintained in the relevant financial institution as NemKontos for citizens and businesses. The sectoral agreement imposes a number of obligations on financial institutions, including providing for the possibility of reporting an existing domestic account with the financial institution concerned as a NemKonto via the financial institution. In addition, the sector agreement lays down guidelines on the remuneration of financial institutions for the fulfilment of the obligations arising from the sector agreement.

It follows from Section 35(2) of the NemKonto Order that the financial institutions specified in Section 35(1) receive information on the registered NemKontos of citizens and enterprises in accordance with an agreement with the private supplier. Thus, it will always be possible for a financial institution to inform an account holder of which account is registered as his or her NemKonto with the financial institution.

2.7.2 Considerations of the Ministry of Digital Affairs and the proposed scheme

The financial institutions are currently responsible for most of the reports of instructions and changes to NemKontos to the NemKonto system. In doing so, the institutions contribute to increasing the efficiency of payment administration for both the public and private sectors. Cooperation with the financial sector is currently formalised through the sector agreement from 2005, and the Agency for Digital Government wishes to continue cooperation with the financial sector. The 2005 sector agreement means that it is the State that pays the actors in the financial sector to enter or change information on NemKontos. It is proposed that future cooperation with the financial sector shall be organised as a public service scheme within the framework of EU State aid rules.

Under the proposed scheme, the Minister for Digital Government will be able to lay down regulations to the effect that institutions referred to in Section 5(1) nos. 1-6 can agree to public service obligations in relation to the NemKonto system.

The institutions that can voluntarily agree to public service obligations in relation to the NemKonto system are specified in Section 5(1) nos. 1-6 and include Danish financial institutions, payment institutions and e-money institutions, EU/EEA credit institutions, EU/EEA payment institutions, EU/EEA e-money institutions, Faroese and Greenlandic financial institutions, and Faroese payment institutions and e-money institutions.

The proposed provision will mean that, if the authorisation is used, Danish as well as foreign institutions will have the opportunity to join the scheme and thereby commit to perform public service obligations in relation to the NemKonto system. It is expected that rules will be laid down stipulating that the foreign institutions in question can be connected on the same terms as Danish institutions, unless the terms need to be adapted to take the specific circumstances of the institutions in question into account.

It is also proposed that the Minister for Digital Government may lay down regulations requiring that the institutions referred to in Section 5(1) nos. 1 and 2 shall agree to public service obligations in relation to the NemKonto system. The institutions that can be required to connect to public service obligations in relation to the NemKonto System are specified in Section 5(1) nos. 1 and 2 and include Danish financial institutions, payment institutions, and e-money institutions. Rules can be laid down to specify which institutions are covered by it, e.g. on the basis of which products they offer, the number of payment accounts or customers.

The purpose of the provision is to ensure that Danish institutions can be required to carry out public service obligations in relation to the NemKonto system, if it turns out that there are not a sufficient number of institutions that voluntarily join the system to ensure that the information in the NemKonto system is up-to-date, in order for the public sector payment administration to function effectively.

It is also proposed that the Minister for Digital Government may lay down rules on which public service obligations institutions subject to rules laid down pursuant to (1) and (2) shall perform in relation to the NemKonto system, including reporting accounts maintained at the institution in question, as NemKontos to the NemKonto system according to the instructions of private persons and legal entities and updating the NemKonto system with correct information. The Minister for Digital Government may also lay down regulations on safety and technical requirements when reporting to the NemKonto system, etc.

The Ministry of Digital Affairs considers that institutions covered by rules laid down pursuant to Section 21(1) and (2) of the draft Act will need to process information from the NemKonto system that is necessary to carry out their public service obligations under Section 21(3) of the draft Act, including account information, names, CPR numbers, CVR numbers, SE numbers, or P numbers, and information in connection with the reporting and registration of the NemKonto.

The Ministry of Digital Affairs considers that the processing, including the transfer of personal data from the NemKonto system to the institutions, complies with Article 6(1) subpara. e of the General Data Protection Regulation, according to which processing of non-sensitive personal data is lawful, if processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the data controller. The institutions' legal basis for processing will be Article 6(1) subpara. c of the General Data Protection Regulation, according to which the processing of non-sensitive personal data shall be lawful if the processing is necessary in order to comply with a legal obligation to which the data controller is subject. It is therefore the case that the processing of personal data by the institutions takes place in the context of the performance of the tasks that could be assigned to the institutions under the draft Act. The processing of CPR numbers by the institutions may take place in accordance with Section 11(2) no. 1 of the Data Protection Act, according to which private individuals may process CPR number data when such processing follows from the legislation.

In addition, it is proposed that the Minister for Digital Government may lay down rules to the effect that the Agency for Digital Government may provide support to institutions for the performance of public service obligations in relation to the NemKonto system.

It is expected that the support to operators in the financial sector in isolation could remain within the threshold set out in Article 3(2) of Commission Regulation (EU) 2023/2832 of 13 December 2023 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest. In connection with the payment of aid, it will be up to the individual institution to declare how much de minimis aid they receive in addition to the aid from this scheme. De minimis aid might be aid in accordance with Commission Regulation (EU) 2023/2831 of 13 December 2023 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union mode of functioning for de minimis aid.

The Minister for Digital Government – possibly in combination with a de minimis scheme – will be able to lay down rules on a scheme for those institutions that exceed the de minimis threshold. The scheme will comply with Commission Decision of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (2012/21/EU), cf. the Official Journal of the European Union 2012 L 7/3.

As part of the proposed scheme, the Minister for Digital will be able to lay down rules on standardised rates for specific services performed by institutions in relation to imposed public service obligations, as well as the modalities and conditions for institutions to receive such support. The Minister for Digital Government will, for example, be able to set standardised rates for services such as reporting instructions, amendment, and deletion of accounts in the NemKonto system on behalf of payees and for reporting error messages.

In addition, the Minister for Digital Government will be able to lay down rules on the calculation, setting and payment of additional support to institutions in relation to imposed public service obligations, as well as the modalities and conditions for institutions to receive such support.

The Minister for Digital Government will also be able to lay down rules on applications, deadlines, information and documentation requirements, as well as requirements for a statement by the auditor. In particular, rules could be laid down stipulating that institutions are required to document the net costs associated with the imposed public service obligations, including the requirement to submit separate accounts and a statement from the auditor.

The Minister for Digital Government will also be able to lay down rules on the institutions' obligation to assist the Agency for Digital Government in the Agency's compliance with the data subjects' rights under the General Data Protection Regulation and the Personal Data Protection Act. The Minister for Digital Government will thus be able to lay down rules to the effect that, in connection with the reporting of accounts to the NemKonto system according to the instructions of pri-

vate persons and legal entities, the institutions will assist the Agency for Digital Government in informing the private person or legal entity concerned about the Agency for Digital Government's processing of personal data in the NemKonto system.

It is a prerequisite that the payment of aid to the institutions does not result in overcompensation and the proposed authorisation will therefore not be used to lay down rules which involve overcompensation of the institutions. It will also be possible to lay down rules that only partial compensation of the institutions' net costs takes place.

If there is overcompensation, the Agency for Digital Government is obligated under EU law to recover it. It will thus also be possible to lay down rules for the repayment of overpaid aid and the claim for interest thereon.

It is assumed that the scheme will initially run for a maximum period of 10 years. The Ministry of Digital Affairs will then assess whether there is still a need for the scheme.

2.8 Provision of the NemKonto system

2.8.1 Legislation currently in force

Under the current Section 5(1) of the Act on Public Payments, etc., the Minister for Digital Government appoints a system administrator who is tasked with administering the account information. A system administrator can be appointed a public authority or a private company or the like.

It follows from the preparatory work on the provision that the system administrator has the task of administering the register and information about designated accounts, including receiving the information from the group of persons referred to in Section 1 of the Act and to ensure that public authorities that are required to make payments to citizens and enterprises, etc., have access to the information, cf. the draft Act on Public Payments, etc., cf. the Official Record of Danish Parliamentary Proceedings 2003-04, Appendix A, page 1098.

It is also clear from the preparatory work on the provision that both public authorities and private companies, etc. can be appointed as system administrators and that it is the intention that only one system administrator shall be appointed. Prior to the appointment of the system administrator, the Minister for Digital Government should ensure that the system administrator has the necessary experience and competence to perform the task of system administrator. There is a possibility that the task will be carried out separately or as an integral part of a major renewal of the public payment infrastructure.

It follows from Section 5(2) of the Act on Public Payments, etc. that the Minister for Digital Government lays down detailed rules for the activities of the system administrator, including on the supervision of the system administrator's activities and the right of appeal.

It is clear from the drafting history for Section 5(2) of the Act on Public Payments, etc. that the authority to lay down detailed rules for the operation of the system administrator, including on the supervision of the activities of the system administrator, applies in particular if a private undertaking or the like is designated as the system administrator. The rules may, for example, aim to limit the abuse opportunities for persons who have access to the register. This can be done, for example, by drawing up security procedures, by security clearances for employees who must have access to the register and by ensuring that only a narrow circle has direct access to the register. Rules may also be laid down stipulating that it shall be possible to verify who has drawn information from the register and what specific information the individual employee has drawn. See the comments on the draft Act on Public Payments, etc., cf. the Official Record of Danish Parliamentary Proceedings 2003-04, Appendix A, pages 1098-1099.

It is also stated in the preparatory work on the provision that rules on professional secrecy may also be laid down for the employees of the company responsible for the system who have access to the register. This will be relevant in particular if the company responsible for the system is a private company or the like. Pursuant to the rules, rules may also be laid down stipulating that the undertaking responsible for the system shall take out insurance to cover any losses associated with misuse of the information.

According to the preparatory work for the provision, it is the intention that only employees who are employed in positions where there is a special need to extract information from the register are 'cleared' to access the register. The information that becomes known to these employees will be covered by professional secrecy in accordance with the general rules on the confidentiality of public employees.

According to the preparatory work on the provision, rules could also be laid down stipulating that an appeal may be lodged with a public authority against the company responsible for the system. The provision does not provide a legal basis for laying down rules that limit the Danish Data Protection Agency's ability to carry out supervision under the Data Protection Act. To the extent that regulations are laid down in accordance with Section 5(2) of the Act on Public Payments, etc. which have an impact on the protection of privacy in connection with the processing of data, in accordance with Section 57 of the Data Protection Act an opinion shall be obtained from the Danish Data Protection Agency.

On the basis of Section 5(2), the Minister for Digital Government has issued the NemKonto Order, which states in Section 2(2) that the Agency for Digital Government appoints a private provider as system administrator for the NemKonto system in order to manage the system's development and operation. In accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and the Data Protection Act. The Agency for Digital Government has appointed KMD as system administrator for the NemKonto system.

It also follows from Section 15 of the Order that the private supplier develops, operates and maintains the NemKonto system. Under Section 33(2) of the Order, the Agency for Digital Government incurs expenses for the private provider in connection with the establishment and operation of the NemKonto system, including for the addition of account information to payment orders and the provision of support. In addition, the Agency for Digital Government defrays the expenses associated with the updating of NemKontos via the systems of the financial institutions.

Under the current Section 5(b) of the Public Payments Act, etc., the Minister for Digital Government may make the NemKonto system available to Greenlandic authorities.

It is clear from the preparatory work on provision that in practice the NemKonto system will be made available by the Agency for Digital Government. The provision only gives a legal basis for the Agency for Digital Government to equate Greenlandic authorities with Danish authorities in with regard to connection to the NemKonto system. The legal basis does not change the territorial scope of the Act, as it only provides the legal basis to make the NemKonto system available. The substantive rules on public payments, including for citizens, businesses and public authorities, are drawn up by the Government of Greenland. See the special comments the draft Act amending public payments, etc., preparatory work for the Official Record of Danish Parliamentary Proceedings 2020-21, Appendix A, L 108 as set out, page 5. The provision in Section 5(b) of the Act therefore only provides for Greenlandic authorities to be connected to the NemKonto system under the same conditions as Danish authorities are connected to. Reference is made to the general remarks in the draft Act amending public payments, etc., the preparatory work for the Official Record of Danish Parliamentary Proceedings 2020-21, Appendix A, L 108 as set out, page 2.

It should be noted that Greenland has laid down rules on the Greenlandic User Account scheme with Inatsisartut Act no. 10 of 19 November 2020 on public payments etc. and Order no. 14 of 14 February 2022 of the Government on the entry into force of the Inatsisartut Act on Public Payments etc. has laid down rules on the Greenlandic NemKonto scheme.

In addition, the Agency for Digital Government and the Greenlandic authorities have entered into a legally binding instrument. The legally binding instrument has been concluded, as Greenland has a different level of data protection than Denmark, and the Agency for Digital Government must therefore provide the necessary safeguards in connection with the transfer of personal data between Denmark and Greenland, cf. Article 46(1) of the General Data Protection Regulation.

2.8.2 Considerations of the Ministry of Digital Affairs and the proposed scheme

The NemKonto system is a central and critical public digital infrastructure, which is used by public authorities to effectively and securely make payments to payees in Denmark. In order to achieve this objective and to achieve the other purposes underlying the draft Act, it is proposed that the new NemKonto system shall be owned by the Agency for Digital Government and that the Agency for Digital Government shall be assigned the regulatory task of making the NemKonto system available to public payers and to private account intermediaries acting on behalf of private payers.

With the proposed scheme, it will be the Agency for Digital Government that procures and develops the new NemKonto system, which is why, in the view of the Ministry of Digital Affairs, it should also be the Agency for Digital Government that shall be the system owner and perform the tasks that result from ownership. In addition, the Agency for Digital Government's ownership of the NemKonto system will provide the Agency with better opportunities to handle further development of the system and ensure that the system can meet the business needs of users to a greater extent than is currently the case. The Agency for Digital Government's procurement of the NemKonto system takes place in compliance with the procurement rules in force at any time.

It is therefore proposed that the Agency for Digital Government shall be the system owner of the NemKonto system and shall make the NemKonto system available to public payers and to private account intermediaries acting on behalf of private payers. The term 'system owner' means that the Agency for Digital Government owns and is responsible for the NemKonto system. It is thus the Agency for Digital Government's responsibility to ensure the development, operation, maintenance, and management of the NemKonto system and that the system is continuously developed so that it is up-to-date and at all times complies with current rules and standards for public IT systems, including requirements on security.

The draft Act means that the Agency for Digital Government, as the system owner on behalf of the Danish State, shall make the NemKonto system available to public payers and private account intermediaries acting on behalf of private payers, thereby allowing public payers and private account intermediaries to use the NemKonto system. The Agency for Digital Government therefore has a special status as an instrument and technical service for the entire public sector, and the Agency for Digital Government must accommodate all public payers' requests for connection in accordance with the provisions of this Act. In this respect, the procurement law relationship between the Agency for Digital Government and the public payers is of an internal nature, characterised by the Agency for Digital Government's subordination to and dependence on the public payers when they submit their request for connection pursuant to the Act.

Public payers' procurement of the NemKonto system from the Agency for Digital Government is carried out in accordance with the Act and without public payers being able to negotiate conditions for the use and remuneration of the NemKonto system. Public payers have an obligation to acquire the NemKonto system by the Agency for Digital Government. Public payers pay for connection to the NemKonto System, while use of the NemKonto system is free of charge for public payers, as the costs for doing so are financed from the total appropriation for the NemKonto system, which is part of the Agency for Digital Government's budget appropriation under the Finance Act.

The acquisition obligation gives the Agency for Digital Government an exclusive right and aims to uphold public policy and security, including in relation to the socio-economic considerations regarding joint procurement of IT solutions in the State. The obligation for public payers to acquire the NemKonto system from the Agency for Digital Government broadens the use of the NemKonto system as a common public payment solution, which ensures awareness of the solution in Danish society. Awareness of the NemKonto system is crucial for the use, security, and trust in public digi-

tal self-service, which is a prerequisite for the public policy. Considerations of public security are also addressed through this obligation, ensuring overall State control over social-critical IT infrastructure. It will thus be possible for the NemKonto system to be continuously and efficiently updated on pace with technological developments and shifts in the digital threat scenario. Greater security is thus achieved when public payers are obligated to use this IT infrastructure solution.

The obligation to make the system available to public payers entails an obligation to make the system available for use by public payers of the NemKonto system to submit payment orders for payment via the system. If, for a longer period, the NemKonto system is not available to public payers, for example when there is scheduled downtime as a result of maintenance or operation interruptions or breakdowns, the Agency for Digital Government has an obligation to ensure that the system's functions are available as soon as possible so that payments can be made via the system. In the event of prolonged or unforeseen breakdowns, the Agency for Digital Government will inform relevant public payers of their obligation to provide information in some other way outside the NemKonto system. The assessment of when public payers shall pay in another way outside the NemKonto system will depend on a concrete assessment by the Agency for Digital Government based on the duration and nature of the downtime. In these cases, the individual public payer will themselves have the obligation to ensure that payments to payees can be made by other means if the NemKonto system is not available. In cases where the public payer shall pay by means other than via the NemKonto system, the Agency for Digital Government will enter into dialogue and provide guidance to the public payers on the stopping of any initiated payment orders, with a view to preventing double payment. The assessment of who bears any responsibility for any double payment will depend on a specific assessment. The Agency for Digital Government will, to the extent possible, assist public payers with access to payment information on payees from the NemKonto system, if this is assessed proportionately and adequately. However, the primary obligation of the Agency for Digital Government for the unavailability of the system will be to ensure that the system is made available again.

As the system owner, the Agency for Digital Government will be responsible for ensuring that incorrect account numbers will not be linked to a payment order due to an error in the NemKonto system. However, the Agency for Digital Government is not responsible if the error is due to circumstances outside the NemKonto system, e.g. in the case where the payee provides incorrect account information or a case officer at a public payer pays enters an error in an account in the NemKonto system.

It is proposed that the Agency for Digital Government shall be obligated to make the system available to private account intermediaries acting on behalf of private payers. The draft Act thus gives private account intermediaries who act on behalf of private payers the right, in agreement with the Agency for Digital Government, to use the NemKonto system in compliance with contractual terms and the rules on, inter alia, making available and use, which can be laid down by the Minister for Digital Government. The obligation entails an obligation to make it possible, against payment, for private account intermediaries to carry out account notices on behalf of private payers with account information on the NemKonto of the payee. If the NemKonto system is not available for pri-

vate account intermediaries for a period of time, for example at scheduled downtime as a result of maintenance or operation interruptions or breakdown, the Agency for Digital Government has no obligation to assist private account intermediaries in providing account information by other means. This means that individual private account intermediaries or private providers, depending on the underlying contractual arrangements, will themselves have to provide the account information by other means if the NemKonto system is not available.

When the provision of the NemKonto system takes place centrally as part of a regulatory task, the foundation for a joint public IT infrastructure is ensured. A prerequisite for such provision is that the Agency for Digital Government ensures the development, operation, maintenance and management of the NemKonto system.

The development concerns the Agency for Digital Government's responsibility to ensure that the NemKonto system is established, commissioned, and put into service so that the system can be made available to public payers and private account intermediaries who act on behalf of private payers.

Operation of the NemKonto system relates to the Agency for Digital Government's responsibility to ensure efficient, secure, and stable operation of the NemKonto system, including that the system is accessible to public payers and private account intermediaries.

Maintenance concerns the Agency for Digital Government's responsibility to ensure that the NemKonto system is maintained on an ongoing basis in order to ensure safe and stable operation, as well as to maintain the functionality and commercial value of the NemKonto system.

Administration concerns the responsibility for ensuring the correct administration of the NemKonto system, including the administration of the NemKonto system's data and processes for payment orders, as well as for providing a support function to system users.

The proposed solution thus means that the Agency for Digital Government is given an exclusive right, as referred to in Section 17 of the Procurement Act, to the NemKonto system for public payers, which is subject to the obligation to use the solutions. In this context, the Act and its associated Orders constitute a unilateral administrative legal instrument that only establishes conditions for the Agency for Digital Government. Since all rules on provision and application result from the Act, there will not be a bilateral contract on reciprocal obligations, cf. Section 24 no. 24 of the Public Procurement Act, and public payers can thus acquire the NemKonto system from the Agency for Digital Government by virtue of the Act without having to carry out a tender, cf. also preamble recitals no. 5 and no. 34 of Directive no. 2014/24 of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (hereinafter the Procurement Directive). It is proposed that the Agency for Digital Government may appoint other public authorities or private enterprises to carry out tasks related to the development, operation, maintenance, and administration of the NemKonto system on behalf of the Agency for Digital Govern-

ment, and that the Agency for Digital Government may lay down rules for the performance of such tasks.

It is proposed that the Agency for Digital Government may appoint one or more public or private providers to perform tasks that otherwise will be the responsibility of the Agency for Digital Government to system owner. If the Agency for Digital Government appoints a provider, the agreement may lay down rules on the provider's performance of tasks, including, for example, requirements for standards on task performance or rules on the use of subcontractors by the designated public authority or private enterprise.

The agreement could also, for example, aim to limit the abuse opportunities for the persons who have access to the NemKonto system. This can be done, for example by drawing up security procedures, by security clearances for employees who are to have access to the NemKonto system and by ensuring that only a narrow circle has direct access to information in the NemKonto system. It can also be agreed that it shall be possible to check who has drawn information from the NemKonto system and what specific information the individual employee has drawn.

It should only be employees who are employed in positions where there is a particular need to extract information from the NemKonto system, who are cleared for access to the system. The information that becomes known to these employees will be covered by professional secrecy in accordance with the general rules on the confidentiality of public employees. In addition, public payers and anyone carrying out tasks under the draft Act will be obliged to observe professional secrecy with regard to unauthorised persons with regard to information on the technical and security configuration and on processes for maintaining, maintaining and operating security in the NemKonto system, cf. the proposed Section 24 and the comments thereto.

The Agency for Digital Government will have overall responsibility for the NemKonto system and shall ensure that the designated provider or providers are competent and that they will be able to adequately and in the best possible way perform the assigned tasks, including fulfilment of the legal requirements to which the Agency for Digital Government is subject in connection with development, operation, maintenance and administration of the NemKonto system.

It is proposed that the Minister for Digital Government may lay down rules on the provision to public payers and private account intermediaries. It is expected that the authorisation will be used to lay down rules that determine how the Agency for Digital Government makes the NemKonto system available, as well as the service that the public payers will receive. In addition, it is expected that rules will be laid down for handling error reports, the possibility of receiving support, etc.

In addition, it is proposed that the Agency for Digital Government may make the NemKonto system available to the Greenlandic authorities. The Agency for Digital Government will thus be able to equate Greenlandic authorities with Danish authorities regarding connection to the NemKonto system. The legal basis does not change the territorial scope of the Act, as it only provides the legal basis to make the NemKonto system available. The substantive rules on public payments, including

for private individuals, legal entities and public payers, shall be drawn up by the Government of Greenland. The Act therefore only provides for Greenlandic public payers to be connected to the NemKonto system under the same conditions as Danish public payers are connected to.

However, it will be a necessary prerequisite for the Greenlandic authorities to have access to the payee's CPR number, CVR number, SE number or P number in order to be able to use the NemKonto system, as the payee is identified through these numbers when a payment order is sent through the NemKonto system.

2.9 Professional secrecy

2.9.1 Legislation currently in force

Under Section 7(1) of the Access to Public Administration Files Act, anyone may require to be aware of documents that have been concluded to or created by an authority, etc. as part of administrative case processing in connection with its activities. The right of access to documents includes the exceptions referred to in Sections 19-35 1) all documents relating to the case in question and 2) entries in books, registers and other records relating to the documents of the case in question, cf. Section 7(2) of the Access to Public Administration Files Act.

The right of access to documents under Section 7(1) of the Access to Public Administration Files Act is limited by the exceptions resulting from the provisions of Sections 19-35 of the Access to Public Administration Files Act. Under Section 31 of the Access to Public Administration Files Act, the right of access to documents may thus be restricted to the extent that it is of significant importance for the security of the State or the defence of the realm. It follows from the preparatory work on the Access to Public Administration Files Act that the provision may exempt information relating to, inter alia, the IT security of a ministry, cf. Report no. 1510/2009 on the Access to Public Administration Files Act, page 664).

In the statement by the Ombudsman of the Danish Parliament of 9 May 2007 (Doc. no. 2007-0333-801) the Ombudsman has recognised that the Prime Minister's Office, with regard to the Ministry's IT security, could refuse access to the name of a specific IT company. To justify this, the Prime Minister's Office had referred to the fact that the company concerned and its products played a decisive role in the IT security of the Prime Minister's Office and that disclosure of the company's name would weaken the IT security of the Prime Minister's Office. The refusal was notified pursuant to Section 13(1) no. 1 of Act no. 572 of 19 December 1985 on Access to Public Administration Files, which is carried over with Section 31 of the current Public Administration Act.

However, it is not always the case that considerations of security of an IT system can justify an exception to the information from access to documents under the rules of the Access to Public Administration Files Act (see the Ombudsman's opinion in FOB 2013-17), where the Ombudsman found that information on NemID [now MitID] could not be exempted from access on the grounds of national security.

The obligation to provide information is also limited by special provisions on professional secrecy laid down by law or on the basis of law for persons acting in public service or assignments, cf. Section 35 of the Access to Public Administration Files Act.

The legal effect of the existence of a special obligation of professional secrecy is that the matters covered by the provision are not subject to access to documents under the Access to Public Administration Files Act. If only part of the information contained in a document is subject to a special obligation of professional secrecy, the authority will have to grant access to the other contents of the document, cf. the Access to Public Administration Files Act with comments by Mohammad Ahsan, third edition, 2022, p. 841.

Furthermore, a special obligation of professional secrecy has the consequence that the managing authority will be prevented from giving additional access at its own discretion, unless the authority itself is unsure of the interest which is intended to be protected by the obligation of professional secrecy.

Under Section 152(1) of the Penal Code, anyone who acts or has worked in a public service or an office and who unlawfully discloses or uses confidential information to which the person concerned has become aware shall be punished with a fine or imprisonment of up to 6 months. A piece of information is confidential when it has been described as such by law or other valid provision, or when it is otherwise necessary to keep it secret in order to protect essential considerations of public or private interests, cf. Section 152(3) of the Penal Code.

Section 152a of the Penal Code states that the provision in Section 152 applies *mutatis mutandis* to anyone who is or has been engaged in tasks carried out in agreement with a public authority. The same applies to those who work or have worked in telephone installations recognised by the public authorities.

Section 27(1) to (4) of the Public Administration Act specifies a number of considerations of public and private interests which may – after a specific assessment in each individual case – lead to the information being confidential and thus subject to professional secrecy. The provision is designed in such a way that there is a great overlap between, on the one hand, the information that is exempted from the right of access to documents pursuant to Sections 30-33 of the Access to Public Administration Files Act and, on the other hand, the information that is considered confidential pursuant to the provision on professional secrecy in Section 27 of the Public Administration Act.

2.9.2 Considerations of the Ministry of Digital Affairs and the proposed scheme

Information that is of significant importance for State IT security is covered by the general professional secrecy in Section 152 of the Criminal Code and Section 27(2) sentence 1 of the Public Administration Act. However, the assessment of the Ministry of Digital Affairs is that the nature of the NemKonto infrastructure means there is a need for all information on the technical and security

arrangements and on processes for development, operation, maintenance, and administration of security in the NemKonto system to be covered by professional secrecy.

Therefore, in the assessment of the Ministry of Digital Affairs, there is a need to introduce a special professional secrecy that is broader than Sections 152–152 f of the Criminal Code. The proposed special professional secrecy provision corresponds to Section 19 of the MitID and NemLogin Act.

As the system owner, the Agency for Digital Government will be responsible for development, operation, maintenance, and administration of the NemKonto system. The duty of confidentiality will thus extend, in addition to the employees of the Agency for Digital Government and the provider of the NemKonto system, to public payers, affiliated institutions, private account intermediaries and anyone carrying out tasks in accordance with the Act or otherwise providing assistance for this.

The proposed scheme implies that professional secrecy with regard to information on the technical and security configuration and on processes for developing, operating, maintaining, and managing security in the NemKonto system applies as a matter of course, i.e. without needing to make a specific assessment of whether disclosure or provision of the information would entail a security risk. This includes, inter alia, information on the design of the NemKonto system. The professional secrecy shall apply to all information of the aforementioned nature.

In addition, the proposed provision means that the information covered by professional secrecy cannot be disclosed to unauthorised persons, i.e. private parties who do not perform tasks under the proposed scheme. As far as disclosure to other administrative authorities is concerned, the issue is regulated by the general rules in particular Sections 28 and 31 of the Public Administration Act. The special secrecy obligation is also superseded by the disclosure obligation that may be laid down in other legislation, e.g. Section 9 of the Act on Research and Investigation Commissions, and Section 19(1) of the Act on the Ombudsman of the Danish Parliament. Thus, the proposed provision does not prevent public authorities from disclosing information, etc. to other public authorities to the extent that this is necessary for them to carry out the tasks assigned to them or to the extent that such obligation follows from other legislation.

The special obligation of professional secrecy provision will entail, inter alia, a restriction on the possibility of access to documents under the Access to Public Administration Files Act, as the matters covered by the provision may be exempted with reference to Section 35 of the Access to Public Administration Files Act.

In addition, the special obligation of professional secrecy will mean that the authority for which access is sought will be prevented from providing additional access at its own discretion in information covered by the professional secrecy, cf. Section 14 of the Access to Public Administration Files Act, cf. the Access to Public Administration Files Act with comments by Mohammed Ahsan, third

edition, 2022, p. 357.

2.10 Data processing and controllership

2.10.1 Legislation currently in force

Under Section 4(1) of the Public Payments Act, the Minister for Digital Government lays down rules on the establishment of a register containing information on accounts specified in Sections 1 and 2 of the Act.

The preparatory work on the provision states that the purpose of the establishment of the register is to gather information on the accounts that citizens and businesses report to the system administrator as NemKontos. In addition, it is stated that the setting up of the NemKonto scheme is based on the central collection of information on the accounts registered as NemKonto and from which information can be obtained in connection with the payment of money. The proposed NemKonto scheme is therefore based on a necessary premise that such a register is established, since the scheme would otherwise not be able to work in practice, cf. the Official Record of Danish Parliamentary Proceedings 2003-04, Appendix A, page 1097.

It is further stated in the preparatory work that, in cooperation between the Ministry of Digital Affairs and the Danish Data Protection Agency, it is determined how the register is established in practice, cf. the Official Record of Danish Parliamentary Proceedings 2003-04, Appendix A, page 1086. The Danish Data Protection Agency has pointed out that a deletion deadline should be laid down, i.e. a deadline for how long information on financial institution accounts can be registered. The Danish Data Protection Agency has hereby referred to the fact that unused account information should be deleted in order to avoid an unnecessary data accumulation, pointing out that the deletion deadline can be appropriately set at 5 years. However, the Danish Data Protection Agency has stated that it is willing to consider another deletion deadline if this is deemed necessary, cf. the Official Record of Danish Parliamentary Proceedings 2003-04, Appendix A, page 1098.

The Minister for Digital Government, on the basis of Section 4(1), has issued the NemKonto Order. Section 1 of the Order provides that, in order to facilitate payments to citizens and enterprises who receive payments, including wage payments, from public authorities, and to improve the efficiency of payment handling and account administration by the public authorities responsible for the payments, a single public register is established containing information on to which account with a financial institution the public authorities with legal discharge are to pay.

Furthermore, it follows from Section 10 of the NemKonto Order that the NemKonto system in the NemKonto register contains two types of registrations of information on bank account accounts, in part the registration of NemKontos and in part the registration of specific accounts. Under Section 11 of the Order, the NemKonto register contains information on NemKonto, which is a bank account designated by a citizen or undertaking as a NemKonto. Specific accounts in the

NemKonto register contain information on a banking institution account different from the NemKonto of a citizen or undertaking, to which a specific benefit from a specific public authority must be paid.

It also follows from Section 16(1) and (2) of the NemKonto Order that the current updating of NemKonto is primarily assumed to have been carried out as follows:

- 1) reporting by the financial institutions on behalf of citizens and businesses, and
- 2) reporting by citizens via the self-service solution of the NemKonto system.

In addition, public authorities may, on behalf of citizens and businesses, carry out continuous updates of NemKontos and specific accounts.

In this context, the public authority is responsible for disclosing information to the Agency for Digital Government related to specific accounts associated with that authority. This means that the authority is responsible, *inter alia*, for ensuring that the information transmitted is correct and up-to-date at all times, cf. Section 26 of the NemKonto Order.

Under Section 30 of the NemKonto Order, public authorities are obliged to use the NemKonto system in connection with payments to citizens and enterprises. In the NemKonto system, a payment order from a public authority will be completed, i.e. information will be provided from the NemKonto system on to which the monetary institution account the specified amount shall be transferred cf. Section 14 of the NemKonto order.

Furthermore, Section 17 of the NemKonto Order states that the public authorities cannot find the full NemKonto of a citizen or company from an entry in the NemKonto register, as the last four digits of the account number are hidden. However, a specific public authority has access in the NemKonto register, which contains specific accounts, access to information on the full account number of citizens or businesses related to benefits provided by that authority. In addition, a given public authority only has access to information on its own payment orders and executed payments in the NemKonto system.

Under Section 5a(1) of the Public Payments Act, etc., private payers may, in return for payment and under specified conditions, use the established account register and, pursuant to it, the developed NemKonto system for the transmission of payments to the payee's NemKonto. It follows from the preparatory work for the provision that the use of the register by private payers is carried out by sending payment orders to the system administrator, cf. Section 5 of the Act. The system administrator shall enter the account number via the NemKonto register. Thus, private payers do not have access by post or by other means to the register itself. Payments by private payers will be systematically registered (logged) in the NemKonto system, cf. the Official Record of Danish Parliamentary Proceedings 2006-07, Appendix A, L 186 as set out, page 6680).

Under Section 2(3) of the Public Payments Act, etc., the information on a designated account in the NemKonto register, which is established under Section 4 of the Act, is deleted upon death, upon termination of legal persons, or if a natural person ceases to be an employer or self-employed person.

The preparatory work on the provision states that the obligation to delete is the responsibility of the system administrator appointed by the Minister for Digital Government in accordance with Section 5 of the Act. This obligation arises when the probate court has completed the estate after a deceased person. In the case of legal persons, this obligation arises from the date on which the probate court has completed the insolvency proceedings relating to a company that has been declared bankrupt, the legal person is compulsorily dissolved, liquidation has commenced or it has otherwise been definitively established that the legal person has ceased to exist, cf. the Official Record of Danish Parliamentary Proceedings 2003-04, Appendix A, page 1096.

If a natural person who has been assigned a CVR number as an employer or self-employed person, cf. Section 1(2), second sentence of the Act, is declared bankrupt, the information about their NemKonto will be deleted from the register. However, they will typically also be covered by Section 1(1) of the Act. The information on a NemKonto designated pursuant to this provision should not, however, be deleted as the person concerned needs this account for other future activities, cf. the Official Record of Danish Parliamentary Proceedings 2003-04, Appendix A, page 1096.

If the person declared bankrupt is a person or a personally run undertaking and it is necessary for the bankruptcy estate to have a new NemKonto, it is the responsibility of the bankruptcy court and the liquidator to ensure that the bankruptcy estate reports a NemKonto. This may be the case, for example, where there is payment of money from the public authority to the bankruptcy estate and the person declared bankrupt has other activities that require a NemKonto cf. the Official Record of Danish Parliamentary Proceedings 2003-04, Appendix A, page 1096.

It is also stated in Section 16(3) of the NemKonto Order that, in the event of the death of citizens, the private supplier changes CPR numbers or upon the termination of an enterprise, the related NemKonto and specific accounts may not be used after a specified period.

The Public Payments Act, etc. does not explicitly lay down rules for data protection in the processing of personal data in the NemKonto system, which is why the rules and principles resulting from the General Data Protection Regulation and the Danish Data Protection Act apply.

Information from the NemKonto system on payments from public authorities can be disclosed to a recovery system administered by the Customs and Tax Administration, cf. Section 4a(1) of the Act on Public Payments, etc. It is clear from the preparatory work for the provision that the information that can be disclosed relates, inter alia, to the identity of the payee, the amount, the paying authority and the nature of the payment, etc., cf. the Official Record of Danish Parliamentary Proceedings 2008-09, Appendix A, L 21, as set out, page 308.

The Act on Public Payments, etc. does not lay down any additional rules on the disclosure of personal data or other information in the NemKonto system to private or public entities in addition to the disclosure of citizens and enterprises' account numbers to private payers and public authorities, cf. Section 5a(1) of the Act on Public Payments, etc. and Section 14 of the NemKonto Order. The disclosure by the Agency for Digital Government of information other than citizens' and enterprises' account numbers in connection with payments by private payers and public authorities to the citizens and enterprises in question is thus governed by the rules of the Public Administration Act, the General Data Protection Regulation and the Data Protection Act.

Under Section 33(1) of the NemKonto Order, the Agency for Digital Government is the data controller for NemKonto register, including information on specific accounts in accordance with Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (the General Data Protection Regulation) and Act no. 502 of 23 May 2018 on supplementary provisions to the Regulation on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (the Data Protection Act).

Furthermore, it is stated in Section 2(2) sentence 2 of the NemKonto Order that the private provider designated by the Agency for Digital Government is the data processor in accordance with the General Data Protection Regulation and the Danish Data Protection Act.

According to Section 1(7) of the Public Payments Act, etc., the Minister for Digital Government may lay down rules stipulating that in connection with registration or amendment of a registration in the Central Person Register, in the Central Business Register or in the Customs and Tax Administration's register of economic operators, notification of a designated NemKonto must take place.

The preparatory work on the provision states that the Minister for Digital Government may lay down rules to the effect that, in connection with registration or amendment of a registration in the Central Person Register, in the Central Business Register or the Customs and Tax Administration's register of economic operators, a designated NemKonto shall be notified to the system administrator in accordance with Section 5 of the Act, cf. the Official Record of Danish Parliamentary Proceedings 2003-04, Appendix A, page 1095.

Furthermore, it is stated that it is the account holder's obligation to make the notification, but is not proposed that failure to do so be penalised. The reason for the proposed authorisation is that, for practical reasons, it may be appropriate for the designation of a NemKonto to take place in connection with the registration or amendment of a registration in the Central Person Register, in the Central Business Register or the Customs and Tax Administration's Register of Economic Operators, cf. the Official Record of Danish Parliamentary Proceedings 2003-04, Appendix A, page 1095.

The authorisation does not intend that there may be any changes to the conditions for registration in said registers. A breach of the obligation to issue a designation may therefore not mean that a cit-

izen or an undertaking cannot be registered if the conditions for registration are otherwise met, cf. the Official Record of Danish Parliamentary Proceedings 2003-04, Appendix A, page 1095.

On the basis of Section 1(7) of the Act on Public Payments, etc., the Minister for Digital Government has issued the NemKonto Order, which states in Section 34 that the CPR authority makes information from the CPR register available, so that the NemKonto register can be updated with changes in the list of CPR numbers. Furthermore, it states that the CVR authority shall make information from the CVR register available, so that the NemKonto register can be updated with changes to the list of CVR numbers and P numbers. The same applies to the Customs and Tax Administration, which must make SE information from the Business System available, so that the NemKonto register can be updated with changes to the list of SE numbers.

2.10.2 The considerations of the Ministry of Digital Affairs and the Ministry of Environment and Gender Equality and the proposed regulation

2.10.2.1 Processing of information for the development, operation, maintenance and administration of the NemKonto system

Like the existing NemKonto system, the primary functions of the new NemKonto system will be to add account information to payment orders and to transfer payment orders to public payers, and to respond to account information queries (account searches) for private payers.

In order for these functions to be performed, the NemKonto system will contain information on private persons and legal entities.

The NemKonto system will contain information on accounts designated as NemKonto or benefit-specific accounts. The accounts will be designated via the account institution of the respective beneficiary if the institution is subject to public service obligations in accordance with rules issued pursuant to Section 21 of the draft Act, via public payers covered by rules issued pursuant to Section 12 of the draft Act, or via the NemKonto support. The legal entities and public payers who report data for the NemKonto system will be responsible for ensuring that the information transmitted is correct and up to date. It is also proposed that the Minister for Digital Government lays down rules stipulating that private persons will also be able to submit reports themselves via a digital self-service solution.

Information on accounts related to the payee will include details of the account designated as NemKonto, benefit-specific account or other account to which the public payer is to pay. Information on accounts in the NemKonto system will include, for example, IBAN number, BIC code, bank code, account number and similar information which must be used to identify the account and determine whether the account can be used as a NemKonto under the proposed Section 5(1) and rules issued pursuant to the proposed Section 5(2). In addition, the information is passed on to users of the NemKonto system so that payments can be made.

For the NemKonto system to operate, there must be a clear and unambiguous indicator of the payee so that the NemKonto system can identify the account to which payment is to be made.

In Denmark, CPR numbers are used for the secure identification of natural persons and Central Business Register numbers, SE numbers and/or P numbers for the secure identification of legal entities. It is therefore the assessment of the Ministry of Digital Affairs that it will be necessary to identify private persons via their CPR numbers in order to ensure that public payers will be able to make correct payments to the right place of payment. With regard to legal entities, the Ministry proposes the use of unique identifiers in the form of CVR number, SE number and/or P number.

Information on the name, address and guardianship will also be treated in the System, in order to ensure, inter alia, the correct identification of the payee by instructions of public payers, by activation of accounts in accordance with rules issued pursuant to Section 6, by sending letters concerning matters of the NemKonto System, of which the payee must be informed and other similar cases, where it is necessary to identify the payee.

According to the Ministry, it is therefore a necessary prerequisite for the functioning and security of the system that personal data are processed for private individuals as an identifier by private individuals.

The NemKonto system will also contain information relating to the individual instructions, such as the date when an account has been activated and registered as a NemKonto in the NemKonto system, and how the account has been designated to the NemKonto system.

In connection with the development, operation, maintenance, and administration of the NemKonto system, the rules and principles resulting from the General Data Protection Regulation and the Act will have to be observed. The Ministry of Digital Affairs will involve the Danish Data Protection Agency as necessary.

2.10.2.2 The Agency for Digital Government's Data Responsibility

With the proposed scheme, the Agency for Digital Government will be the data controller for the processing of personal data in the NemKonto system. In the event that the Agency for Digital Government is dissolved or amended, the Minister for Digital Government may appoint another data controller.

It is thus proposed that the Agency for Digital Government will be the data controller for all processing operations in the NemKonto system.

As the data controller, the Agency for Digital Government will be responsible for complying with the data controller's obligations under the General Data Protection Regulation and the Danish Data Protection Act. This includes ensuring data protection by design and by default in the NemKonto system, cf. Article 25 of the General Data Protection Regulation (GDPR), establishing

the necessary security measures on the basis of a risk assessment, cf. Article 32 of the GDPR, and carrying out a data protection impact assessment, cf. Article 35 of the GDPR, if necessary. The Agency for Digital Government will also have to carry out the obligation to provide information and process requests received from the data subjects to exercise their rights under the General Data Protection Regulation.

It is assumed that the Agency for Digital Government, as data controller, will be able to process the information, including personal data, which is necessary to make the NemKonto system available to public payers and private account intermediaries. This will also include personal data necessary for the establishment of the proposed NemKonto system, including in connection with, inter alia, the migration of information from the existing system to the new system upon the transition from the old system to the new system.

The processing carried out by the Agency for Digital Government in the NemKonto system as the data controller will include, among other things, the registration of payment orders from public payers, the addition of the payee's NemKonto or benefit-specific account to the payment order, the comparison of information about the payee and the type of benefit with information on debtors received from the Customs and Tax Administration, and the recording of return responses by the payment settlement institution in relation to the execution of the payment transaction.

In addition, the processing carried out by the Agency for Digital Government in the NemKonto system will also include the processing of a query sent to the NemKonto system (account searches) by a private account intermediary on behalf of a private payer. In this case, the Agency for Digital Government will be the data controller for the processing of the query that is carried out in the NemKonto system. After processing in the NemKonto system, the Agency for Digital Government will disclose the payee's account information to the private payer via the private account intermediary and the private payer will be the data controller for any further processing.

If the Agency for Digital Government chooses to appoint public authorities or legal entities to carry out tasks assigned to the Agency for Digital Government as system owner on behalf of the Agency, the designated public authorities or legal entities will act as data processors on behalf of the Agency for Digital Government. The designated public authorities or legal entities will thus only process the personal data in question on behalf of the Agency for Digital Government on instructions and pursuant to a written data processing agreement in accordance with the rules on this in Articles 28–29 of the General Data Protection Regulation. For a detailed description of the Agency for Digital Government's tasks as system owner, please refer to Section 22 of the draft Act and the comments thereto.

As in the current scheme, migration of data, including personal data, in the NemKonto system can take place from one designated public authority or legal entity to another on the Agency for Digital Government's instructions. A designated public authority or legal entity will act as a data processor exclusively for the Agency for Digital Government. This is thus an agreement basis,

where the Agency for Digital Government can choose to terminate the agreement and take back or move data.

It is the assessment of the Ministry of Digital Affairs that the Agency for Digital Government's retrieval, processing and transferring of personal data in the NemKonto system complies with Article 6(1) subpara. e of the General Data Protection Regulation, according to which processing of non-sensitive personal data is lawful, if processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the data controller. Thus, this means that the Agency for Digital Government's retrieval, processing, and transfer of personal data will be done in connection with the performance of the tasks that will be assigned to the Agency by the draft Act. The Agency for Digital Government's processing of CPR numbers may take place in accordance with Section 11(1) of the Data Protection Act, according to which public authorities may process information on CPR numbers for the purpose of unique identification.

The Agency for Digital Government will also be able to process information on private persons and legal entities in the NemKonto system for statistical purposes. The processing will serve to form an overall and general picture of the risk of NemKonto fraud. The result of these statistical purposes could, for example, be used in the effort to prevent fraud and reduce the risk of financial crime. Statistical purposes means processing required for statistical surveys or the production of statistical results that can show fraud patterns in the NemKonto system. The treatment for statistical purposes will follow the fraud case characteristics and the statistical investigations will therefore be dynamic. The Agency for Digital Government will, for example, be able to investigate the number of NemKontos in 'high-risk countries' on the basis of information that a country has a high risk of terrorist financing, money laundering, fraud, or the like. The processing of personal data may be carried out in accordance with the general rules of the General Data Protection Regulation based on Article 6(1) subpara. e of the Regulation and Section 10(2) of the Data Protection Act. The result or personal data will not be used to support measures or decisions affecting specific natural persons. In case of possible publication of the results of the processing, personal data will be anonymised or pseudo-anonymised so that specific natural persons cannot be identified.

2.10.2.3 Processing of information in the interest of users of the control and supervisory tasks of the NemKonto system

The Ministry of Digital Affairs wants to strengthen the application of the NemKonto system to carry out better control and prevent financial crime, including fraud and abuse with NemKontos and benefit-specific accounts. The Ministry therefore assesses that the draft Act shall also make it possible for the Minister for Digital Government to lay down rules allowing the Agency for Digital Government to process personal data in the NemKonto system on private persons and legal entities when this is necessary for users of the NemKonto's control and supervisory tasks.

'Control and supervision tasks' means tasks intended to reduce the risk of unintended errors, fraud and misuse of payees' and users' of the NemKonto's means.

‘Users of the NemKonto System’ means the actors who directly or indirectly use the NemKonto System and who are covered by this draft Act. This will include, for example, public payers, payment settlement institutions, private payers and institutions that keep accounts that can be designated to the NemKonto system.

By virtue of the authorisation, the Minister for Digital Government will thus be able to lay down rules to the effect that the Agency for Digital Government will be able to process information on private persons and legal entities in the NemKonto system in other cases than when the processing is necessary in order to make the NemKonto system available to public payers and private persons.

It is the Ministry’s assessment that detailed rules on the Agency for Digital Government’s processing of information on private persons and legal entities, when necessary in the interest of users of the NemKonto system’s control and supervisory tasks, are most appropriately laid down at Order level. The reason for this is to ensure as concrete and agile regulation as possible. At the same time, it will be possible to ensure that new tools, information, etc., which the Agency for Digital Government will be able to use within the framework established by the draft Act, can be taken into account and further regulated on an ongoing basis. In addition, it will be possible to ensure that the technological possibilities for processing large quantities of data are accompanied by detailed rules on security of processing, including on access to data.

It is assumed that the Minister for Digital Government will be able to lay down rules on which control and supervision tasks are used. The Agency for Digital Government will be able to process information on private persons and legal entities, including rules on which private payers can receive information. The individual user will have to request information from the Agency for Digital Government and be responsible for ensuring that the specific request is based on a control or supervisory task.

It is also assumed that, under the authorisation, the Minister for Digital Government will be able to lay down rules to the effect that the Agency for Digital Government will be able to process information on, for example, the date when an account has been activated and registered as a NemKonto in the NemKonto system for a payee, how many payees who currently have a given account registered as a NemKonto in the NemKonto system and the relevant payees’ CPR numbers, CVR numbers, SE numbers or P numbers, and information on how the account has been designated to the NemKonto system.

Note that the Agency for Digital Government’s processing of personal data shall also be carried out within the framework of the current rules of the General Data Protection Regulation and the Danish Data Protection Act. The draft Act does not change this situation.

The draft Act does not derogate from the rules relating to professional secrecy or other specific national and EU law restrictions on the processing of data. Information on private persons and legal entities that are subject to the rules of special professional secrecy provisions will therefore be ad-

ministered in accordance with the conditions resulting from the individual provisions of professional secrecy and will comply with the rules on the same.

Pursuant to Section 25(3) of the draft Act and within the framework of Article 23 of the General Data Protection Regulation, the Minister for Digital Government will lay down detailed rules stipulating that the Agency for Digital Government may process personal data for purposes other than those for which the data were originally collected, regardless of whether there is compatibility between these purposes and the purpose for which they are used, when this is necessary for the sake of users of the NemKonto's control and supervision tasks.

In concrete terms, this means that the Agency for Digital Government is given access to process personal data of private persons that could be used to assist users of the NemKonto system in connection with their control and supervisory tasks with a view to misuse and fraud of NemKontos and benefit-specific accounts. The same will apply to information about legal entities that do not constitute personal data.

It is apparent from Report No 1565/2017 of the Ministry of Justice on the General Data Protection Regulation (GDPR), pages 396-399, that such an approach, whereby the legislation makes derogations from the GDPR, is in accordance with the GDPR if the derogation meets the requirements laid down in Article 23 of the GDPR. Thus, it follows from Article 23 of the GDPR that a Member State's national law may restrict the scope of the obligations and rights referred to in, inter alia, Article 5 when such a restriction respects the essence of the fundamental rights and freedoms and is a necessary and proportionate measure in a democratic society to safeguard, inter alia, the monitoring, inspection or regulatory functions connected with the exercise of official authority in the cases referred to in subparagraphs a to e and g. This includes, inter alia, an important economic or financial interest of a Member State, including budgetary and tax matters.

The purpose of the limitation of the purpose limitation principle is, for the purpose of control, to enable users of the NemKonto system to detect and prevent abuses and crimes with their or beneficiary's financial means, so that no undue payments are made to designated NemKontos or benefit-specific accounts.

It should be noted that the general requirements of proportionality and data minimisation remain applicable to the processing of the personal data. Access to process personal data in connection with the use of the controlling and monitoring tasks of the NemKonto will thus not be able to be used to a greater extent than is necessary to ensure that the Agency for Digital Government will, as intended, be able to assist the use of the NemKonto with these control and monitoring tasks.

The information will be compiled and passed on to users and then only shown in the system log of the NemKonto, which will be deleted on an ongoing basis.

Pursuant to the proposed scheme, the Agency for Digital Government will become the data controller for the processing of the data in the NemKonto system, and users of the NemKonto system will become data controllers upon receipt of the data.

Notwithstanding the limitation of the principle of purpose laid down in Article 23 of the GDPR, the restriction shall respect the essence of the fundamental rights and freedoms referred to in Article 5 of the GDPR and the derogation shall be based on overriding reasons relating to society with regard to control and combating abuse, inter alia, in the financial area.

In connection with the Agency for Digital Government's processing of data to users of the NemKonto system's control and supervisory tasks, the rules and principles resulting from the General Data Protection Regulation and the Act will have to be complied with, including laying down the necessary security measures on the basis of a risk assessment, cf. Article 32 of the General Data Protection Regulation and, if necessary, carrying out a data protection impact assessment. The Ministry of Digital Affairs will involve the Danish Data Protection Agency as necessary.

2.10.2.4 Laying down rules on processing, including retrieval and disclosure

It is the assessment of the Ministry of Digital Affairs that it will be necessary to lay down additional rules on the processing of information, including personal data, in the NemKonto system, so that the Agency for Digital Government, as system owner of the NemKonto system, can make the NemKonto system available to public payers and private payers.

The authorisation to lay down rules will have to be used, inter alia, to lay down new and adapted provisions on information that is collected and processed in the NemKonto system. In this way, the NemKonto system can be easy and flexible to adapt to a digital development or a general social development.

The Minister for Digital Government will also have to lay down rules on the disclosure of personal data to the Customs and Tax Administration, in connection with the performance of tasks pursuant to Section 17 of the draft Act on offsetting. The Minister for Digital Government will also have to lay down rules on which personal data the Agency for Digital Government can pass to public payers and private payers. It is proposed, for example, that the Agency for Digital Government will only be able to disclose personal data in connection with a public payer's payment of sums of money to a payee or a private payer's account search.

Furthermore, it is assumed that rules will have to be laid down stipulating that the Agency for Digital Government may disclose personal data to the public payer's payment settlement institution, and that the Agency for Digital Government will be able to disclose personal data to institutions covered by the public service scheme. It is assumed that regulations are issued stipulating that users of the NemKonto system will have to pay a fee for the receipt of information on private persons and legal entities when the information is received as part of the users' control and supervision tasks.

The fee will be set in a cost-reflected manner and shall ensure coverage of all costs associated with the Agency for Digital Government's processing and disclosure of the information.

In connection with the Agency for Digital Government's disclosure of personal data to others, the recipient of the personal data will become the data controller. The Customs and Tax Administration, the public payer, the payment settlement institution, institutions subject to public service regime or the private payer will also be able to process the transferred personal data for other purposes if this follows from the general processing rules of the General Data Protection Regulation and the Data Protection Act. For example, the payment settlement institution could have an accounting obligation, which is why the institution will be able to process personal data independently for this purpose.

It is also assumed that rules will have to be laid down on the storage of data, including personal data in the NemKonto system. The Ministry of Digital Affairs is of the opinion that rules should be laid down that, for example, the information on a specified account in the NemKonto system is ultimately deleted after the account is registered as deleted in the NemKonto system in connection with a private person's death, upon the termination of a legal entity, or if a natural person ceases to be an employer or self-employed person. It is expected that the obligation to finally delete the information from the NemKonto system will arise no later than 2 years after the Agency for Digital Government has registered the designated account as deleted from the NemKonto system. It is expected that this will lead to final deletion of such information no later than 5 years after the death of a private person, upon termination of a legal entity, or if a natural person ceases to be an employer or self-employed person.

Finally, it is envisaged that the Minister for Digital Government will have to lay down rules on the retention of information on previously designated accounts, payments from public payers and account searches. The Ministry considers that a deletion deadline could be set appropriately to 10 years, calculated from the registration in the NemKonto system, in order to meet the needs of payees or liquidators to document previously designated NemKontos, information on payments made by public payers or private payers' account searches. However, the Ministry of Digital Affairs, in consultation with the Agency for Digital Government, will consider a different deletion period if this is deemed necessary. If the information on a designated account is definitively deleted due to the death of the private person or the termination of the legal entity, information on previously designated accounts, payments from public payers and account searches are deleted at the same time.

The obligation to perform final deletion will in all cases be the responsibility of the Agency for Digital Government as data controller.

2.10.2.5 Retrieval of information from central registers

It is the assessment of the Ministry of Digital Affairs that it will be necessary to obtain information from central registers for the NemKonto system to function. It is proposed that the Agency for Digital Government from the Customs and Tax Administration, the Central Person Register, and the

Central Business Register can obtain the information necessary to ensure the development, operation, maintenance, and administration of the NemKonto system.

It is thus proposed that the Agency for Digital Government, as part of carrying out the task of system owner of the NemKonto system, can obtain information from central authorities and registers when it is necessary for the NemKonto system. This also includes personal data.

It is the assessment of Ministry of Digital Affairs that it will be necessary to obtain information on payees from the Customs and Tax Administration, the Central Person Register and the Central Business Register in order to be able to ensure the payee's identity in the NemKonto system. The Agency for Digital Government will thus be able to obtain information from the Central Person Register on private persons' CPR numbers, name and address information, guardianship and status codes, as well as information on legal entities' CVR and P numbers, name and address information, company form and status from the Central Business Register and SE numbers, from the Customs and Tax Administration.

In addition, the relevant registers may provide the Agency for Digital Government with ongoing updates so that the Agency for Digital Government can, for example, receive information on this when a payee moves away from Denmark, a legal entity terminates or otherwise changes in a payee's identification.

Furthermore, in the assessment of the Ministry of Digital Affairs, it will also be necessary to obtain information, including personal data, from the Customs and Tax Administration so that the NemKonto system can carry out an assessment on behalf of the public payers of whether there are grounds for debt settlement, cf. the proposed Section 17 and the comments thereto.

The NemKonto system will have to validate and control CPR numbers and CVR numbers upon instructions, on payment orders received and upon receipt of information from the Customs and Tax Administration. It is the assessment of the Ministry of Digital Affairs that, in order for this functionality to function, it is necessary to process information from the Central Person Register and the Central Business Register on private persons and legal entities, regardless of whether they have designated an account to the NemKonto system or not.

The NemKonto system will have to process a large amount of payment orders on a point-by-point basis within a short period of time in order to ensure that the payment orders can be sent in time to the settlement institution required to execute the payment transaction. In order to ensure the operational security of the NemKonto system, by being able to operate independently of external networks and data sources, it is proposed that information from the Customs and Tax Administration, the Central Person Register and the Central Business Register will be stored in the NemKonto system. This will also ensure that validation, assessment of the debt settlement and control can be carried out immediately, so that the large volumes of data can be processed quickly without overloading the system. In the role of data controller, the Agency for Digital Government will assess

whether information on certain groups of persons can be deleted immediately after receipt based on the fact that the proportion of persons who have designated a NemKonto is low.

It is not intended that there may be any changes to the conditions for registration in the registers from which information is obtained. The collection of information by the Agency for Digital Government cannot, therefore, mean that a payee cannot be registered if the conditions for registration are otherwise met.

2.11 Compensation scheme

2.11.1 Legislation currently in force

Under Section 6a(1) of the Public Payments Act, etc., the Minister for Digital Government may lay down rules on financial compensation for natural persons covered by Section 1(1) who have not received legitimate payment due to fraud or error when designating or amending NemKonto.

The compensation scheme is established in order to strengthen citizens' legal position and trust in the public systems, cf. the Official Record of Danish Parliamentary Proceedings 2021-22, Appendix A, L 165, as set out, page 4.

With the compensation scheme, the State compensates citizens who have lost a justified payment when the citizen has not voluntarily received it due to errors or fraud with information in the NemKonto system.

In relation to errors, the compensation scheme only includes errors that occur in the NemKonto system itself. The compensation scheme thus covers cases where errors occur in the NemKonto system, which result in a payment being entered into an incorrect NemKonto. This may be both technical errors or errors when entering a NemKonto, cf. the Official Record of Danish Parliamentary Proceedings 2021-22, Appendix A, L 165 as set out, p. 4).

On the other hand, errors that occur outside the NemKonto system are not covered by the compensation scheme. This may be the case, for example, if a case officer enters an incorrect CPR number in connection with a payment, as a result of which the payment is made to the wrong person. Only after a CPR number has been entered will the NemKonto system be activated, which is why such an error is not covered by the compensation scheme. In the event of an error outside the NemKonto system, the citizen will have to contact the authority that should repay to the citizen, cf. the Official Record of Danish Parliamentary Proceedings 2021-22, Appendix A, L 165 as set out, p. 4.

In relation to cases concerning fraud, the compensation scheme will cover cases of fraud in which persons have unjustifiably made changes in the NemKonto system. This may be fraudsters who have changed the citizens' NemKonto or changes in other parts of the NemKonto system, cf. the

Official Record of Danish Parliamentary Proceedings 2021–22, Appendix A, L 165, as submitted, page 4.

Fraud with information in the NemKonto system can, for example, take place following an identity theft, after which a fraudster makes a change to the account of the victim of the identity theft has recorded as his or her NemKonto by swapping the victim's with the fraudster's own account, or an account accessible to the fraudster, whereby transfers of funds to the payee carried out through the NemKonto will end up in the fraudsters' account, cf. the Official Record of Danish Parliamentary Proceedings 2021-22, Appendix A, L 165 as set out, page 9.

The financial compensation will be the same amount that the citizen has lost, so that the citizen is kept claim-free, cf. the Official Record of Danish Parliamentary Proceedings 2021-22, Appendix A, L 165, as set out, page 9.

The compensation scheme does not cover fraud covered by the contract law grounds for invalidity, such as fraudulence or coercion, cf. the Official Record of Danish Parliamentary Proceedings 2021-22, Appendix A, L 165, as set out, p. 4.

If a fraudster obtains a citizen's NemID/MitID and then enters into an agreement with a third party, this agreement will be invalid and therefore not covered by the compensation scheme. Such invalid agreements may include, among other things, agreements on the payment of an overnight loan to a citizen's NemKonto. Thus, if there has been fraud involving the citizen's NemKonto, the loan will be paid to another account, cf. the Official Record of Danish Parliamentary Proceedings 2021-22, Appendix A, L 165 as set out, page 4.

The compensation scheme also does not cover agreements concluded by means of coercion. These cases may occur where a person forces a citizen, for example, to obtain a bank loan, and then payments are made to a fraudulent NemKonto cf. the Official Record of Danish Parliamentary Proceedings 2021-22, Appendix A, L 165, as set out, page 4).

In all cases of coercion or fraudulence, the circumstances will have to be decided in accordance with the rules of obligations and contract law. This means that it is the citizen who must object to an invalid agreement when the citizen becomes aware of the agreement. If there is fraudulence or violent coercion, this will be a strong ground for invalidity and the third party cannot invoke the agreement against the citizen. Thus, the citizen is not liable for e.g. payouts that were made when the fraudster unjustifiably used the citizen's data, cf. the Official Record of Danish Parliamentary Proceedings 2021–22, Appendix A, L 165 as submitted, page 4.

Any disputes concerning the validity of agreements or clarification of grounds for invalidity must be settled before the courts, cf. the Official Record of Danish Parliamentary Proceedings 2021-22, Appendix A, L 165 as set out, p. 4.

The Public Payments Act, etc. does not affect the applicable rules under the Payment Act and the rules elaborated therein on liability conditions, such as unauthorised payment transactions via on-line bank, cf. Sections 97 and 99 of the Act, unauthorised use of payment instruments, cf. Section 100 of the Act, and the purchase of goods over the internet with payment cards, cf. Section 112 of the Act, cf. the Official Record of Danish Parliamentary Proceedings 2021-22, Appendix A, L 165 as set out, page 4.

Nor does the provision have any impact on the general contract law, which regulates, for example, the taking out of loans, etc., where the citizen is not in principle liable in connection with any misuse of a digital signature, including in connection with fraudulence or coercion. See also the Supreme Court's order of 17 November 2021 (case 11/2021), cf. the Official Record of Danish Parliamentary Proceedings 2021-22, Appendix A, L 165, as set out, page 4.

It is apparent from the comments on Section 6a that an implementation of the provision means an opportunity to derogate from general contract law and the law of obligations regarding decisions on who shall financially compensate the citizen for the lost lawful payment, irrespective of other rules that may apply to the matter, cf. the Official Record of Danish Parliamentary Proceedings 2021-22, Appendix A, L 165 as set out, page 9.

Under Section 6a(2) of the Act on Public Payments, etc., the Minister for Digital Government may lay down rules on compensation to natural persons under (1) where the circumstances were committed before 1 August 2022.

Pursuant to Section 1(2) of Order no. 351 of 28 March 2023 on the payment of financial compensation in the event of fraud or designation error, or amendment of NemKonto, compensation for loss may be granted for payments made on or after 1 August 2012.

Under Section 6a(3) of the Public Payments Act, etc., the Minister for Digital Government may lay down rules to the effect that compensation under Section 6a(1) cannot be paid to natural persons who have acted negligently or intentionally, are fully compensated or have subsequently received the amount by other means.

It is clear from the preparatory work on the provision that the authorisation is also expected to be implemented by the Minister laying down rules stipulating that compensation will be paid for failure to make payments concerning public and private benefits that do not result from other Act or Agreement, if the citizen has not acted negligently, cf. the Official Record of Danish Parliamentary Proceedings 2021-22, Appendix A, L 165 as set out, page 9.

In this context, detailed regulations are expected to be laid down on the assessment of negligence, including that as part of the assessment of negligence it is included, inter alia, in what circumstances a third party has come into possession of the holder's information (user name, password or key card for NemID), whether the holder was aware that the third party had come into possession of the information in question and whether the holder had done what was possible to prevent misuse, e.g. by

blocking its NemID or MitID as soon as possible cf. the Official Record of Danish Parliamentary Proceedings 2021-22, Appendix A, L 165, as set out, page 9).

On the basis of Section 6a(1) to (3), the Minister for Digital Government has issued Order no. 351 of 28 March 2023 on the payment of financial compensation in the event of fraud or error when ordering or amending NemKonto.

Section 1(3) of the Order states that compensation to natural persons covered by the scheme cannot be awarded if the applicant has, by gross negligence or wilful act, contributed to fraud or errors in ordering or amending NemKonto having caused the applicant not to have received a legitimate payment. The action is assessed on the basis of the conditions for possession of a digital identity and associated electronic means of identification, cf. the Order on MitID for private persons and the Order on the issuing and blocking of NemID [now MitID] with a public digital signature.

Furthermore, Section 1(4) sentence 1 of the Order states that, notwithstanding Section 1(3), compensation may be granted if the applicant, due to mental illness, reduced mental functional capacity or similar condition, has not been able to act prudently. However, this depends on a specific assessment taking into account the person's mental condition, the nature of the action or the circumstances in general. Section 1(4) sentence 1 of the Order does not apply, however, if the applicant has temporarily put himself or herself in a similar state as a result of consuming means of intoxication, narcotics or the like, or if the applicant had the intention of causing the damage, cf. Section 1(4) sentence 2.

It is further stated in the preparatory works to Section 6a(3) that the authorisation is expected to be implemented by the Minister laying down rules stipulating that compensation will not be paid to citizens who are compensated in other ways, e.g. by an employer or public authority, cf. the Official Record of Danish Parliamentary Proceedings 2021-22, Appendix A, L 165 as set out, page 9.

Under Section 6a(4) of the Act on Public Payments, etc., it is a condition for payment of compensation under Section 6a(1) that the relationship is reported to the police as an immediate follow-up of knowledge of the criminal relationship. The police notification will have to be forwarded to the investigating authority when submitting a request for compensation, cf. the Official Record of Danish Parliamentary Proceedings 2021-22, Appendix A, L 165 as set out, page 9.

Under Section 6b(1) of the Public Payments Act, etc., the Minister for Digital Government may lay down rules to the effect that a request for compensation under Section 6a must be submitted within a specified period, including that this must be done digitally.

Thus, it follows from Section 4 of Order no. 351 of 28 March 2023 on the payment of financial compensation in the event of fraud or error in designating or amending NemKonto, that the application for compensation must be submitted as soon as possible after the applicant has found that the correct payment has not been received, and no later than 13 months after the payment in question has taken place.

Furthermore, Section 3(1) of the Order states that applications for compensation shall be submitted digitally to the Agency for Digital Government using the solution indicated by the Agency for Digital Government. It follows from Section 3(2) of the Order that the Agency for Digital Government may grant exemption from the requirement for digital application under Section 3(1) if there are special circumstances, such as a physical or mental disability or lack of IT competences, which mean that the applicant must not be expected to be able to digitally submit an application in accordance with (1).

Pursuant to Section 6b(2) of the Act on Public Payments, etc., the Minister for Digital Government can lay down rules on which authority is to handle the case processing.

It follows from Section 2(1) of the Order that the Agency for Digital Government makes decisions on the award of compensation.

Under Section 6b(3) of the Public Payments Act, the Minister for Digital Government may lay down rules to the effect that decisions on compensation cases may not be appealed to any other administrative authority.

Rules may thus be laid down stipulating that the investigating authority makes a final administrative decision in cases concerning applications for compensation in relation to errors or payment fraud via NemKonto. Thus, appeals may not be lodged against either compensation being paid or the amount of any compensation. It is still possible to bring an action before the courts, cf. the Official Record of Danish Parliamentary Proceedings 2021-22, Appendix A, L 165 as set out, p. 10.

Thus, it follows from Section 2(1) of the Order on the payment of financial compensation when exposed to fraud or designation error, or amendment of NemKonto, that the Agency for Digital Government's decision on granting compensation cannot be appealed to any other administrative authority.

Under Section 6b(4) of the Public Payments Act, etc., the Minister for Digital Government may lay down rules on the State's entry into the victim's claims against the person who caused the damage, to the extent that compensation is paid to the victim.

It follows from the preparatory work on the provision that in cases of fraud, money has been stolen from a citizen, which may, inter alia, be a wage or a public benefit. Against this background, the citizen has a compensation claim against the offender, and in the course of any criminal proceedings, may file a claim for compensation. If the State provides compensation to the citizen, the citizen's loss will be covered, which is why the Minister for Digital Government can lay down rules stipulating that the State will be able to take the place of the victim, so that the State will be able to recover the money if the person causing the damage is subsequently identified, cf. the Official Record of Danish Parliamentary Proceedings 2021-22, Appendix A, L 165 as set out, page 10.

Thus, it follows from Section 5 of the Order on the payment of financial compensation in the event of exposure to fraud or designation error, or amendment of NemKonto that, to the extent that compensation is granted, the State may intervene in the claims of the injured party against the offender.

2.11.2 Considerations of the Ministry of Digital Affairs and the proposed scheme

The Ministry of Digital Affairs assesses that the existing compensation scheme functions as intended and that the Ministry therefore believes that the current scheme should basically be continued. The purpose of the compensation scheme will, as in the past, be to strengthen the legal position and trust of private persons in the public systems.

Payments via the NemKonto system to private persons include, among other things, wages, pension or compensation, which is often important for the person's private economy. Against this background, the Ministry of Digital Affairs assesses that a failure to make payments in a lawful manner as a result of a criminal offence or as a result of an error in designating or amending accounts in the NemKonto system is burdensome for the private individual concerned and should therefore be able to be compensated.

The compensation scheme will enable the State to compensate private persons who have lost a justified payment when the private person has not voluntarily received it as a result of a criminal offence or as a result of an error in designating or amending an account in the NemKonto system.

Legal entities must present documentation by instructing NemKonto, which is more extensive than what private individuals must present. In addition, manual case processing is required in order to be able to verify that it is the authorised signatory who designates a NemKonto on behalf of the legal entity. The self-service solution can therefore only be used by private persons to designate NemKontos.

Legal entities will not be covered by the proposed compensation scheme and questions on the compensation of legal entities will therefore, as hitherto, have to be assessed under the general agreement and the law of obligations.

As in the current compensation scheme, it is proposed that the compensation scheme shall cover payments from both public and private payers to private individuals.

In relation to payments from public payers, the current compensation scheme only includes payments made to the NemKonto of private persons. However, the Ministry of Digital Affairs considers that payments to the benefit-specific accounts of private individuals should also be covered by the compensation scheme, as amounts paid to these accounts may also be important for the private economy of individuals.

The Ministry of Digital Affairs assesses that it is most appropriate that there is only one administrative authority to manage the allocation and payment of compensation under the compensation scheme, so that private persons applying for financial compensation should only have recourse to one place to have their case assessed, while also ensuring that experience is built up and uniform practice developed in this area. It is therefore proposed that the Agency for Digital Government, which also currently administers the compensation scheme, shall become the competent authority to decide on compensation.

It is thus proposed that the Agency for Digital Government may, upon application, grant and pay financial compensation to private persons who have not received a lawful payment as a result of a criminal offence or as a result of errors in the designation or amendment of an account in the NemKonto system.

In relation to errors, it is proposed that the compensation scheme, as before, will only cover errors that occur in the NemKonto system itself. The compensation scheme thus covers cases where errors occur when designating or amending an account in the NemKonto system, which result in a payment being entered into an incorrect account. This can be both technical errors or mistakes when entering a NemKonto or benefit-specific account in connection with assignment or amendment.

On the other hand, errors that occur outside the NemKonto system will not be covered by the compensation scheme. This could, for example, be the case where a case officer enters an incorrect CPR number in connection with a payment, as a result of which the payment is made to the wrong private person. Only after a CPR number has been entered will the NemKonto system be activated, which is why such an error will not be covered by the compensation scheme. In the event of an error outside the NemKonto system, the private person will have to contact the public payer or private payer, who should repay to the private person and claim reimbursement of the amount mispaid from the person who has wrongly received it.

In relation to cases concerning criminal offences, the compensation scheme will cover cases in which private persons have unjustifiably made changes in the NemKonto system, and this constitutes a criminal offence. This may be cases where changes have been made to the private person's designated NemKonto or benefit-specific accounts.

Criminal offences covered by the compensation scheme could include, among other things, identity theft-related crimes, whereby the offender makes a change to the account registered as his or her NemKonto as the victim of identity theft, by swapping the victim's account with the perpetrator's own account or an account to which the offender has access, whereby transfers of funds to the payee carried out through the NemKonto system will not be paid out to the payee.

Under the proposed scheme, it will be a condition for awarding and paying compensation as a result of a criminal offence that the circumstances have been reported to the police immediately following the private person's knowledge of the criminal offence. It is not a requirement that the private person shall have submitted the police report herself or himself, but it will be the private person

who will have to prove that the condition is met. The police notification or receipt that the matter has been reported will thus have to be submitted to the Agency for Digital Government in connection with the application for compensation.

In addition, it is proposed that no compensation can be awarded to private individuals who have acted with gross negligence or intentionally. The action will have to be assessed, *inter alia*, on the basis of the conditions for possession of a digital identity and associated electronic means of identification cf. the Order on MitID for private persons. As part of the assessment of negligence, it will, among other things, include the circumstances in which a third party has come into possession of the holder's identification data or has accessed the holder's MitID, whether the holder was aware that a third party was in possession of the data in question or the holder's MitID and whether the holder had done what was possible to prevent misuse, e.g. by blocking its MitID as soon as possible.

The assessment of negligence and intention includes both the change to the NemKonto and subsequent actions that have led to a payment via the NemKonto system. Thus, if a payee has acted with gross negligence or intentionally as part of the payment process, his or her loss will not be covered by the compensation scheme. For example, if a payee has been simply negligent in the context of the fact that a third party acquired possession of the person's MitID and made a change to the person's NemKonto, but the payee has been grossly negligent in the context, for example, of taking out a loan that makes her or him liable to a bona fide acquirer of the agreement, the loss will not be covered by the compensation scheme.

However, it is proposed that compensation may be awarded if the private person, due to mental illness, reduced mental functional capacity or similar condition, has not been able to act prudently. This depends on a specific assessment taking into account the person's mental condition, the nature of the action or the circumstances in general. This does not apply, however, if the person has temporarily put himself or herself in a similar condition as a result of consuming means of intoxication, narcotics or the like, or if the person had the intention of causing the damage.

The compensation scheme will only cover legitimate payouts. A legitimate payout will be a payout of which the private person is the rightful recipient. Examples of legitimate payments include pension benefits or housing benefits that the private person is entitled to receive and has requested. On the other hand, the compensation scheme will not include payouts which the payee is not the rightful recipient of, such as a loan taken out by another party in the name of the payee. The compensation scheme will thus also not cover contracts covered by the contractual grounds for invalidity, such as fraudulence or coercion. If a person appropriates another person's MitID and then enters into an agreement with a third party, he or she will not be covered by the compensation scheme. Such fraudulent agreements may include, among other things, agreements on the payment of cash loans to a private person's NemKonto. Thus, if fraud has occurred with the private person's NemKonto, the loan will be paid to another account. The compensation scheme will also not cover agreements concluded by means of coercion. These cases may arise where one person forces an-

other to, for example, take out a bank loan and then payments are made to an impostor's NemKonto.

In all cases of coercion or fraudulence, the circumstances will have to be decided in accordance with the rules of obligations and contract law. This means that it is a private person who must object to an invalid agreement when they become aware of the agreement. If there is fraud or violent coercion, this will be a strong ground for invalidity and the third party cannot invoke the agreement against the private individual. Thus, the private person is not liable for e.g. payouts, which were made when the fraudster wrongly used the private person's information. Any disputes concerning the validity of agreements or the clarification of grounds for invalidity must be settled in the courts.

The draft Act will not affect the applicable rules under the Payment Act, and the rules laid down therein on liability conditions, such as unauthorised payment transactions via online banking, cf. Sections 97 and 99 of the Payment Act, unauthorised use of payment instruments cf. Section 100 of the Payment Act and the purchase of goods over the internet with payment cards, cf. Section 112 of the Payment Act).

The draft Act will also not have an impact on the general contract law, which regulates, for example, the taking out of loans, etc., where the private person is not, as a rule, liable in connection with the possible misuse of a digital signature, including in connection with fraudulence or coercion. In this respect, see the Supreme Court's order of 17 November 2021 (case 11/2021).

The draft Act only involves a possibility to derogate from the general agreement and obligation regulation on who shall financially compensate the private person for the lost legitimate payment, irrespective of other rules that may apply to the matter.

With the proposed scheme, the Agency for Digital Government will be able to award financial compensation equivalent to the amount of the relevant legal payment. The compensation shall be reduced or terminated if the private person has received the amount in whole or in part by other means. This may include, for example, cases where the private person is compensated by an employer or a public payer.

Similarly, a private person who has been compensated by the Agency for Digital Government will have to repay the compensation in whole or in part to the Agency for Digital Government to the extent that they otherwise have coverage of their losses.

The financial compensation will thus have to be calculated as the same amount that the private person has not lawfully received via the NemKonto system, regardless of whether the private person has suffered other financial losses as a result of the error or criminal offence.

Providing false or misleading information or concealing information of significance to a matter's decision to grant financial compensation or if the private person has received compensation in another way for one or more lost payments will be covered by Section 289a of the Criminal Code.

It is proposed that the application for compensation be submitted digitally to the Agency for Digital Government using the solution indicated by the Agency for Digital Government. The Agency for Digital Government may grant exemption from the digital application requirement if there are special circumstances, such as a physical or mental disability or lack of IT competences, which mean that the private person cannot be expected to be able to digitally submit an application. The Agency for Digital Government's case processing of applications for exemptions from the digital application requirement will follow the general principles of administrative law, including rules on case information and the provision of factual information necessary to clarify the case.

Under the proposed scheme, it is a condition for compensation that the application for compensation is submitted as soon as possible after the private person has found that a legitimate payment has not been received and no later than 13 months after the payment in question has taken place.

The Agency for Digital Government's case processing of compensation cases will follow the general principles of administrative law, including rules on case information and the provision of actual information necessary to properly illuminate the case. For example, log information from the NemKonto system, bank details and proof of entitlement to the benefit will be relevant factual information. A decision may be made on the existing basis where it is not possible to provide the information necessary to clarify the case, in accordance with the general principles of administrative law. If new information of significant importance for the decision of the case is obtained after the decision is made, the decision on the payment of compensation may be rectified, also in accordance with the principles of administrative law.

It is proposed that the Agency for Digital Government's decisions on compensation cannot be appealed to any other administrative authority. The rule is a continuation of Section 2(2) of the Order on the payment of financial compensation in the event of exposure to fraud or error when designating or amending NemKonto, and is established for resource-related reasons. The Agency for Digital Government will thus make a final administrative decision in cases concerning applications for compensation. It will therefore not be possible to file an appeal against either compensation being paid or the amount of any compensation. It will be possible to bring the decision of the Agency for Digital Government before the courts.

A claim for compensation against the person who has committed a criminal offence shall constitute a civil claim. The requirement may be brought in a separate civil case or as part of criminal proceedings if the civil claim results from the criminal offences pursued during the proceedings, cf. Section 685 of the Administration of Justice Act. The court's assessment of the question of liability follows the general basis of liability of Danish law on culpa.

In cases of compensation as a result of a criminal offence, money has been stolen from a private person, which may be, inter alia, salary or a public benefit. Against this background, the private person has a compensation claim against the offender and, in the event of criminal or civil proceedings, will be able to make a claim for compensation. If the Agency for Digital Government provides compensation to the private person, the loss will be covered, which is why the Agency for Digital

Government, under the proposed provision, will be able to take the place of the injured party, so that the Agency for Digital Government will be able to recover the money from the offender.

It is proposed that the Agency for Digital Government may refrain from pursuing claims that have not been established by judgement, or if the costs of pursuing the claim are likely to be incommensurate with the expected outcome by pursuing the claim.

Finally, it is proposed that the Minister for Digital Government may lay down rules on the compensation scheme, including further requirements for compensation, rules on the submission of applications, and the examination of cases for compensation.

The proposed scheme provides for the possibility of laying down new and adapted provisions that follow new knowledge of misuse of the NemKonto system or additional requirements for documentation of applications for compensation. In addition, requirements may be laid down for the Agency for Digital Government's handling of applications for compensation under the proposed scheme.

2.12 Abolition of the state holding account

2.12.1 Legislation currently in force

Section 3(1) of the Public Payments Act, etc. includes an authorisation for the Minister for Digital Government according to which the Minister may lay down rules on the right of public authorities to make payments to natural and legal persons covered by Section 1 who have not designated a NemKonto.

Upon the creation of the enabling provision, it was assumed that a scheme should be established whereby authorities in full discharge, effectively could provide public benefits to citizens and enterprises who did not specify a NemKonto by transferring the amount to either an account created by the State, which the payee owned, or a State-owned account to which the payee had immediate and direct right of withdrawal. The assumed solution was referred to in the preparatory work as 'Nem-Betaling' [easy payment].

However, it turned out in connection with the invitation to tender for the NemKonto solution that it was not possible to get a solution for 'NemBetaling'. Since the NemKonto was commissioned in 2005, payment to payees without a NemKonto had to be made by cheques, account-to-account transfers or cash in the municipalities.

In 2012, in agreement with the Danish Customs and Tax Administration at the time, a 'holding account solution' was established in the NemKonto system. The holding account solution as a whole is based on the fact that payments from public authorities connected to this solution are made to a State-owned account ('the holding account') if the beneficiary of the payment has not designated a NemKonto. The holding account has also been used for payouts, even if the recipient is not

included in the obligation to make a designation. The person entitled to payment will generally receive a letter with information on his or her claim, including guidance on the possibility of payment by designating a NemKonto. Amounts in the holding account are automatically transferred to the beneficiary of the payment if he or she designates a NemKonto later.

The holding account solution was introduced by Order no. 195 of 24 February 2012 amending the Order on the NemKonto scheme. With the amending Order, which was issued pursuant to the authorisation in, inter alia, Section 3(1) of the Public Payments Act, a new provision was added to Section 36(2) of Order no. 766 of 5 July 2006 on the NemKonto scheme. The provision in Section 36(2) stated that payment could also be made in another way by the paying authority automatically ensuring, through the NemKonto system, that the payment institution transferred the citizen's or company's receivable to a State-owned holding account. Payment was then considered to be in full discharge of the paying authority's duties. When the recipient of funds subsequently designated a NemKonto, the receivable is automatically transferred from the holding account to the designated NemKonto. By Order no. 647 of 13 April 2021 on the NemKonto scheme (the NemKonto Order), Order no. 766 of 5 July 2006 on the NemKonto scheme was repealed, and its provision in Section 36(2), on the holding account solution was continued in Section 32(1) of the new Order, and at the same time a minor adjustment was made in the wording of the provision, adding that the paying authority must notify the payee before payment is made.

It follows from the current Section 32(1) of the NemKonto Order that a way that public authorities can assign a receivable to citizens and enterprises who have not designated a NemKonto or created a specific account is to transfer the amount to a State-owned account created by the Agency for Digital Government. The provision further states that this is done in full discharge of liabilities if the paying authority notifies the payee before the payment is made.

Payment processing in this way presupposes that the paying authority has concluded an agreement with the Agency for Digital Government on connection to the State-owned account. There are currently two authorities (the Customs and Tax Administration and the Ministry of Defence) connected to the State-owned account.

It is envisaged in Section 32(1) of the NemKonto Account Order that the legal effects of the transfer of amounts by the paying authorities to the State-owned account (the holding account) are the release of the authority from the payment obligation and thereby the termination of the debt relationship between the paying authority and the payee.

The solution with the State-owned holding account deviates from the solution described as an example in the preparatory work for the authorisation in Section 3 of the Act on Public Payments, etc., cf. the Official Record of Danish Parliamentary Proceedings 2003-04, Appendix A, L 38, as set out, page 1096 et seq. According to the solution described in the preparatory work, citizens who had not themselves opened a bank account with a financial institution could obtain a direct withdrawal access to the funds through the scheme by registering themselves with a financial institution with relevant identification. In the drafting of the enabling provision, emphasis has been placed on the inter-

ests of citizens who find themselves unable to obtain a bank account or who do not wish to have one. Finally, in the preparatory work on Section 3 of the Act on Public Payments, etc. — though only later in the wording of Section 32(1) of the NemKonto Order — it was stated as a precondition for payment settlement that the payee received notification of the transfer.

For most private persons and legal entities, the creation and designation of an account as NemKonto will not be more cumbersome or entail more costs than the utilisation of a right of withdrawal from a credit balance held by a State-owned account via a financial institution (as provided for in the ‘NemBetaling’ scheme). For these citizens and enterprises, this simple access to designate a NemKonto is considered in practice to be equivalent to a right of withdrawal. Paying authorities therefore, in the opinion of the Ministry of Digital Affairs, could possibly be considered to be released from the amounts of the holding account to citizens or businesses which, without disproportionate disadvantages and costs, could designate a NemKonto, and which have also received notification of the transfer of their receivable to the holding account.

However, it cannot be ruled out that some of the payees who have a holding account receivable have, however, experienced being prevented from obtaining a bank account or have experienced that this entailed significant disadvantages or costs. In addition, there are a number of payees with a pending account receivable in which the payee has not received information about their receivable, for example where the payee does not have a current address registered. This issue is deemed to be particularly widespread in cases where connected authorities have made a payment attempt to a payee who is not included in the obligation to issue assignments in Section 1 of the Act on Public Payments, etc., e.g. citizens leaving the country or foreign employees with administrative CPR numbers, as these groups of persons are also not obligated to keep contact and address information updated in the CPR register.

As stated above, it must be assumed that most private persons and legal entities have or have had the opportunity to obtain a NemKonto, which is why the starting point must be that these payments to the holding account have been made in full discharge of liabilities, unless no notification has been made to the private person or legal entity.

In the opinion of the Ministry of Digital Affairs, however, there is some uncertainty as to whether amounts transferred to the holding account can be considered to have been paid in full discharge of liabilities in the cases where a citizen or enterprise does not have immediate access to a NemKonto and in the cases where the payee has not received information about the transfer to the holding account.

These doubts on the legal effects of the transfer of amounts by authorities to the holding account mean that it is not possible to determine with certainty when obsolescence regarding the beneficiaries’ claims occurs, how any third-party rights in the requirements are to be handled and whether (and, if so, how) the interest is to be paid to the claims.

In this context, it is noted that in the assessment of the Ministry of Digital Affairs, citizens' and enterprises' claims for payment of the amounts placed in the holding account are expressions of claims and not property rights, as the beneficiaries of the payment do not have access to the amounts, and the amounts are not kept separate from each other in such a way that the individual amounts can be attributed to individual payees. According to the assessment of the Ministry of Digital Affairs, debt rights are considered to be outstanding, regardless of whether or not the amounts on the holding account are to be regarded as paid in full discharge of liabilities, and regardless of the State authority that shall manage the practical part of the payment.

Claims for payment of the amounts will therefore, in the view of the Ministry of Digital Affairs, generally be subject to a three-year limitation period which is calculated from the date when the claims could be required to be paid, i.e. from the last timely payment date of the claims, cf. Section 2(1) and (2) of the Danish Limitation Act.

However, there are a number of amendments to the starting point of the 3-year limitation period, including in the tax legislation. Furthermore, in the assessment of the Ministry of Digital Affairs, the payment deadline for the claims, and thus the starting point of the limitation period, will in certain cases be deferred as a result of the detention by the Arrears Collection Authority pursuant to Section 8b(3) of the Debt Collection Act. Finally, there may be cases where the commencement of the limitation period is exceptionally deferred pursuant to Section 3(2) of the Limitation Act, and where limitation therefore occurs only later than three years from assignment to the holding account.

It is currently difficult for the Agency for Digital Government to establish when the individual claims on the holding account are time-barred, as the Agency for Digital Government generally does not have all the actual information on the amounts. The information is necessary to determine the starting point for the calculation of the time limit.

In relation to the uncertainty as to how any third-party rights in the requirements are to be handled, so far in practice there have not been any recorded transports involving sums in the holding account and there have therefore been de facto no payments from the holding account to any transport holders.

The legal doubt about the amounts of the holding account also raises questions in relation to the payment of interest, as amounts not paid in full discharge of liabilities will potentially have to accrue interest. Under Section 31(2) of Order no. 647 of 13 April 2021 on the NemKonto scheme (hereinafter the 'NemKonto Order'), the risk of late payment as a result of infringement of the obligation to make a designation is borne by the citizen or undertaking. The it is the opinion of the Ministry of Digital Affairs that, pursuant to Section 31(2), interest will most likely not have to be paid in the event of late payment due to the fact that the payee – contrary to the designation obligation laid down in Section 1 of the Act on Public Payments, etc. – has not designated a NemKonto.

For those payees that are not included in the obligation to make designations in Section 1 of the Act on Public Payments, etc., e.g. citizens who are registered as having exited Denmark or have an administrative CPR number and who are therefore not covered by the provision in Section 31(2) of the NemKonto Order, the interest obligation will, in the view of the Ministry of Digital Affairs, generally be similarly suspended in accordance with the general rules on creditor mora in Section 4(1) of the Interest Payment Act if the payment cannot be made and this is only due to the recipient of the payment. If the recipient of the payment has thus not provided an account number to which payment could be made, the obligation to pay interest will normally be suspended, unless special rules apply to the specific type of payment, or if the obstacle to payment is not solely due to the circumstances of the recipient of the payment, e.g. if the payee has provided the paying authority or the Agency for Digital Government with a valid account number by telephone, physical contact or letter.

Under Section 32(1) of the NemKonto Account, a sum shall be paid from the holding account to the recipient of funds when she or he designates a NemKonto. This payment is made by an automated process and the amount is not in practice imputed to interest on payment.

2.12.2 Considerations of the Ministry of Digital Affairs and the proposed scheme

The Ministry of Digital Affairs assesses that payments from public payers should be implemented in a standardised and efficient manner, where it is clear when the public payment obligation is fulfilled and where a large amount of money does not accumulate in an account with the Agency for Digital Government. The Ministry of Digital Affairs therefore proposes to discontinue the holding account scheme, which, in the Ministry's view, has proven not to be an appropriate scheme for payment of amounts to payees.

The implementation is proposed so that, as of 1 July 2025, public payers will no longer be able to conclude an agreement with the Agency for Digital Government on connecting to the holding account, and that the current agreement on the transfer of amounts to the holding account between the Agency for Digital Government and the Ministry of Defence is revoked. The agreement between the Agency for Digital Government and the Customs and Tax Administration will continue until the Customs and Tax Administration has established legislation and system support for the handling of the missed payments currently being transferred to the holding account.

2.12.2.1 *Amount transferred to the holding account before the entry into force of the Act*

The proposed termination of the holding account scheme and the abolition of the state holding account will mean that, in the future – as all other debtors – public payers who cannot make a payment via the NemKonto system will themselves be responsible for terminating the debt situation, cf. also the proposed Section 14 and the comments thereto. Under the proposed scheme, a public payer who attempts to make a payment to a payee who has not designated an account in the NemKonto system or where, for other reasons, the amount cannot be transferred to the payee's designated ac-

count will automatically have the amount returned from the NemKonto system, so that the public payer can manage the payment itself by other means.

In connection with the abolition of the holding account, it is proposed that for claims for payment of sums of money transferred to the holding account no later than 30 June 2025, the payee's claims should be time-barred on 1 July 2028 at the earliest. In this way, the payee is generally given a better legal position than is the case currently, since most of the claims in the holding account are already obsolete or would be obsolete earlier than 1 July 2028. The payee thus has a period of at least 3 years from the entry into force of the Act to have a claim for money paid to the holding account by either creating a NemKonto or contacting the Agency for Digital Government with information on another account to which payment shall be made. The payee will also be able to contact the relevant public payer, who can pay the amount directly to the payee, after which the Agency for Digital Government can, at the request of the public payer, return the amount to them. It is expected that virtually all claims transferred to the holding account, without prejudice to the proposed Section 33(2), which are not previously paid to the recipient of payment, will be time-barred on the date of expiry of the 3-year period on 1 July 2028.

It is proposed that, irrespective of the limitation date of 1 July 2028, claims for payment of money in the holding account will be used to cover overdue debts covered by the Act on the recovery of debts to the public sector and otherwise will be recorded as income in the treasury.

It is thus proposed that if a payee has not, by 30 June 2028, made a claim for the payment of amounts from the holding account and designated an account for the payment, and has overdue debts covered by the Debt Collection Act, the amount shall be transferred to the systems of the Arrears Collection Authority, which uses the amount to cover that public debt in accordance with the coverage sequence laid down in Section 7(1) nos. 2 and 3 of the Debt Collection Act. Any excess amounts may be returned to the Agency for Digital Government prior to revenue accounting. Write-down of the payee's debt will thus follow the general recovery order in the Debt Collection Act. The proposed provision allows the offsetting of an outdated main claim. Regardless of the type of claim to which the original amount of the holding account relates, the amount may be used to offset all debts covered by the Debt Collection Act. All the payee's public liabilities registered in the systems of the Arrears Collection Authority — including both debt registered for recovery and debt under collection registered for offsetting — will be covered up to the amount of the revenue that has been recognised. There will not be so-called 'internal offsetting' cf. Section 7(1) no. 1 of the Debt Collection Act, but only offsetting under Section 7(1) nos. 2 and 3.

It should be noted in this context that if the payee has had a debt covered in connection with the settlement of the holding account on 1 July 2028, it will not be possible for the payee to contact the Agency for Digital Government to have the amount paid, even if the claim is not time-barred upon the payee's request.

If the payee does not have overdue debts covered by the Act on the recovery of public debt, the amount will be recorded as income in the treasury and removed from the holding account. The term

‘revenue is recognised’ does not mean that claims which may still be legally enforceable cease to exist, but that the amounts are no longer in the holding account, so that the Agency for Digital Government can then, on 1 July 2028, close the holding account system for others than the Customs and Tax Administration.

It is also proposed that, following the revenue accounting, the Agency for Digital Government will not have to carry out investigations of its own accord in order to assess whether revenue-led amounts are out of date.

The proposal implies that if a payee specifies a NemKonto on or after 1 July 2028, its balance, if any, will not be paid to the designated NemKonto. The provision therefore means that, in principle, payees wishing to claim amounts credited as income will have to apply to the Agency for Digital Government themselves, and the Agency for Digital Government will in this connection have to assess, with the assistance of the public payer, whether the payee’s claims against the public payer have been barred by statute. In principle, the assessment of the limitation question will require that the Agency for Digital Government obtains information from the public payer, and the processing of such cases thus necessitates manual case processing, and cannot be automated. This also concerns information that is not available to the Agency for Digital Government currently.

It is proposed that claims for payment of sums of money assigned to the holding account should not accrue interest from 1 July 2025. The proposal involves a continuation of the existing practice whereby the Agency for Digital Government’s payment of amounts from the holding account takes place without the addition of interest. In principle, the payees will not have any claim to interest on the deposit for the period prior to 1 July 2025, as payees who believe that they have such an interest claim will, however, be able to contact the Agency for Digital Government to this effect, after which the Agency will have to assess whether the payee has an exceptional claim to interest, and under which rules this should be calculated. It is assumed that the public payer who has transferred the amount will assist the Agency for Digital Government in disclosing the case.

It is also proposed that monetary amounts transferred to the holding account may not be transferred or subject to prosecution from 1 July 2025.

The Agency for Digital Government has tried to inform all payees with outstanding amounts on the holding account in connection with the original payment to the holding account from the public payer. The information is sent to the payee’s Digital Post, alternatively the payee’s registered address in the Danish Customs and Tax Administration’s Business System, CPR, or CVR, respectively, if the payee is exempted from Digital Post. If the payee is exempted from Digital Post and does not have a registered address, a letter with this information has not been sent.

As far as possible, the Agency for Digital Government will ensure that payees with deposits of more than DKK 200 are informed again. The information will describe the legal position of the deposited amounts, in particular the possibility for the payee to have any deposited amounts paid, as well as the expected commencement of the obsolescence of the payee’s claims on 1 July 2028. The

information will be sent to the payee via Digital Post, alternatively to the payee's registered address in the Danish Customs and Tax Administration's Business System, CPR, or CVR, respectively.

The Agency for Digital Government will not try to inform payees that have one or more deposited amounts in the holding account for a total value of DKK 200 or less. The introduction of such a de minimis threshold is integrated in the interest of the burden imposed on the payees by dealing with formal State communication on a potential de minimis amount, as well as the general criticism of the State administration created when sending information about very small amounts. As of 1 January 2025, there was a total of 44,171 deposits of less than DKK 10 in the holding account, while 34,464 deposits were between DKK 10 and DKK 200. The limit of DKK 200 is consistent with the applicable de minimis threshold for payments of excess tax, cf. the Withholding Tax Act, as well as payments from the arrears authority, cf. the Tax Collection Act. When payments are made from the holding account, the total amount owed to the payee will be paid. Therefore, it will also be the total amount that is decisive for whether the payee's deposit is above or below the de minimis threshold. In addition, it will still be possible for payees, with deposits below the de minimis threshold, to have the amounts paid under the same conditions as amounts above the de minimis threshold. Among relevant examples of why the introduction of such a de minimis threshold is necessary, it can be highlighted that one payee has 27 deposits with a total value of DKK 99.71, while another has 19 deposits with a total value of DKK 0.46.

The Agency for Digital Government will give a public warning in the Official Gazette with the names of payees who continue to hold amounts in the holding account no later than 30 June 2027, i.e. no later than one year before revenue accounting.

2.12.2.2 Amount transferred to the holding account after the entry into force of the Act

It is proposed that the Agency for Digital Government's agreement with the Customs and Tax Administration be maintained in accordance with existing practice, so that the Customs and Tax Administration can continue transferring payments to the holding account from 1 July 2025, since the Customs and Tax Administration needs a longer period to ensure a different handling of payments to payees that have not registered a NemKonto.

For claims for payment of sums of money transferred to the holding account including from 1 July 2025, it is proposed that obsolescence occurs when 3 years have passed after the transfer to the holding account and that sums of money accrue to the State if the claim for payment is out of date. The provision implies that the rules of the Act on limitation periods on suspension, etc. are waived.

As far as possible, the Agency for Digital Government will ensure that the payee is informed that the amount has been transferred to the holding account as of 1 July 2025. However, this will only be possible if the payee is either registered with Digital post or registered with a valid address in the Customs and Tax Administration's Business System, CPR or CVR register. In other cases, the payee does not receive notification from the Agency for Digital Government of a transfer to a hold-

ing account. It will not have any legal significance whether the Agency for Digital Government provides information to the payee.

Claims for money transferred to the holding account from 1 July 2025 shall not be subject to interest. Claims for payment of sums of money transferred to the holding account from 1 July 2025 may not be transferred or subject to prosecution.

The Agency for Digital Government shall pay the deposited amount of money transferred to the holding account after 1 July 2025 to the payee by his or her designation of a NemKonto or another account, to which payment shall be made, if the claim is not time-barred. If the Customs and Tax Administration has paid or will pay the amount of money to the payee, the Customs and Tax Administration may request that the Agency for Digital Government pay the deposited amount of money to the holding account to the Customs and Tax Administration.

3. Economic impact and implementation impact on the public sector

3.1 Importance to public payers

The draft Act contains requirements for public payers (both State, municipal and regional) to use the NemKonto system to make payments to payees. The obligation is a continuation of legislation currently in force from the Public Payments Act, etc., which is why the obligation will not have economic or implementation consequences. With the NemKonto system, public payers can pay to citizens and legal entities by their CPR number, CVR number, SE number or P number. This administrative gain for the public sector is continued with the new NemKonto system and the draft Act and means that public payers shall not create and maintain local account registers of their payees, which facilitates administration as well as makes payments to payees with a NemKonto more efficient and effective.

In addition, the obligation of public payers to ensure that citizens or legal entities are assigned their receivable in another way if the payee has not designated a NemKonto or benefit-specific account. If the NemKonto system were not found, it would also be the responsibility of the public payer to pay by other means to payees who, for example, do not have an account. The obligation to pay out in another manner may entail financial costs for public payers. This is due, among other things, to the fact that cheques have been phased out and that there are markedly fewer branches of financial or credit institutions in Denmark that have cash. However, these are not costs arising from this draft Act.

The draft Act contains an authorisation to lay down rules on which public payers who, at the request of payees, shall report the designation, amendment or deletion of accounts as NemKontos. It is expected that rules shall be laid down for public payers to report NemKontos to the NemKonto system, as instructed by payees, for the payees to whom they are required to pay. In addition, rules are expected to be laid down stipulating that the municipalities shall continue to report NemKontos

on instruction from all payees, regardless of whether or not the municipality pays to the payee. It should be noted that most of the instructions for NemKontos are carried out by the financial institutions and the NemKonto support, under the auspices of the Agency for Digital Government. In the five-year period from 2019 to 2023, approximately 4,200 NemKontos of 96 public payers have been jointly designated, of which one major public payer accounts for approximately 40% of these. Thus, the rules on assisting payees to report NemKontos are expected to lead to a marginal, negative financial impact on the public payers, who shall continue to be able to designate for all. In addition, the draft Act will continue the obligation of public payers to specify, amend or delete benefit-specific accounts for the payees to which they are to pay. Benefit-specific accounts currently make up less than 0.4 per cent of the total account stock in the NemKonto system.

3.2 Settlement of the State-owned holding account

The draft Act has a financial and implementation impact on the public payers who are currently connected to the State-owned holding account under the auspices of the Agency for Digital Government. The bill settles the State-owned holding account, with which the connected public payers shall take back the handling of the public payments that fail to accrue as a result of the payee's failure to designate a NemKonto. Currently, the Ministry of Defence and the Danish Customs and Tax Administration are affiliated with the State-owned holding account. The overall financial impact on society in the settlement of the State-owned holding account is deemed to be marginal, as the financial consequences for the affected public payers will, in the long term, be offset by the reduced expenses for the administration of the holding account under the auspices of the Agency for Digital Government.

The draft Act introduces a transitional period during which the Customs and Tax Administration can continue to transfer payments to the holding account. This gives the Customs and Tax Administration time to prepare and organise administrative processes for the handling of payouts to payees without NemKonto after the State-owned holding account is held. During the transitional period, the Agency for Digital Government will incur costs for cleaning up and processing the holding account, which is expected to be equivalent to DKK 18.1 million. (2024-pl). Funding has been allocated corresponding to DKK 5.1 million in 2025. In the period up to the final settlement of the holding accounts, the Agency for Digital Government will in addition perform tasks with the current holding account, such as communication to the payees, case processing of requests and manual payments, so that as many citizens and legal entities as possible are paid any deposited. After the final settlement of the holding account, any balances on the existing holding account will be credited to the treasury.

3.3 Economic consequences for Agency for Digital Government

The Minister for Digital Government is authorised to lay down regulations on compensation of monetary, payment and electronic money institutions that perform public service obligations in relation to the NemKonto system. It is expected that the public service compensation in relation to the NemKonto system, taken in isolation, will be able to be withheld within the threshold laid down in

Article 3(2) of Commission Regulation (EU) 2023/2832 of 13 December 2023 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest. If, contrary to expectations, there will be institutions that exceed the de minimis threshold, the Minister for Digital Government, possibly in combination with a de minimis scheme, will be able to lay down rules on a scheme that complies with the Commission Decision of 20 December 2011 on the application of the provisions of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (2012/21/EU), cf. the Official Journal of the European Union 2012 L 7/3. The Agency for Digital Government will administer the scheme, which is expected to cost approximately DKK 8 million annually in compensation costs.

Under the draft Act, the Agency for Digital Government will continue to handle cases and decide on financial compensation for citizens in cases of non-payment to NemKonto (national account) that have occurred due to criminal offences or as a result of errors in the designation or amendment of an account in the NemKonto system. In such cases, the Agency for Digital Government will have to repay on behalf of the public payer. It is expected to be able to be included in the Agency for Digital Government's existing licence until 2026. The compensation scheme is a continuation of existing law. Based on historical data for the Agency for Digital Government's payment of compensation, there have been on average approximately 20 cases per year and the overall average payment of compensation has been approximately DKK 250,000 per year. It is not expected that the number of cases will increase and on this basis it is estimated that the average annual payment of compensation after the entry into force of the Act will follow historical data.

3.4 Principles for legislation ready for digitalisation

The draft Act is deemed to live up to the seven principles for digital-ready legislation and has been subject to consultation by the Agency for Digital Government's Secretariat for digital-ready legislation. Principles 1, 2, 4, 5, 6 and 7 are considered particularly relevant and are described below.

With the draft Act on NemKonto, the rules on NemKonto are separated from the Act on Public Payments, etc. in a main Act, as are rules transferred from the NemKonto Order and Order no. 351 of 28 March 2023 on the payment of financial compensation in the event of exposure to fraud or error when designating or amending NemKonto. The draft Act clarifies the obligations and rights of citizens, legal entities, public payers and private payers in accordance with Principle 1, to provide greater clarity about the legal position of individuals through simple and clear rules. The provisions have also been drafted with a clear position on the concepts used cf. the proposed Section 1.

In relation to principle 2 on digital communication, reference is made to the fact that provisions relating to applications for compensation are proposed to be continued, which is why, under the proposed, it continues to apply that applications must in principle be submitted digitally to the

Agency for Digital Government by applying for a solution instructed by the Agency, unless exemption from this requirement is granted on the basis of special circumstances.

In addition, the proposed scheme is based on the reuse of data and existing concepts in accordance with Principle 4. For example, the obligation to specify a NemKonto is linked to regulation in the Central Person Register Act and the Central Business Register Act cf. para. 2.1.2 for more details. In addition, concepts are reused from the Payments Act and the Financial Business Act. Data from, for example, the Central Person Register and the Central Business Register are also used. By extension, the draft Act assumes that the new NemKonto system will use existing public infrastructure in line with principle 6, including MitID and NemLog-in and Digital Post.

For Principle 5 on safe and secure data processing, see Section 2.10.2 on the legal basis for the processing of data and data protection aspects. With regard to the disclosure of information for monitoring and supervision tasks of users, it is noted that no sensitive personal data covered by Article 9 or 10 of the General Data Protection Regulation are disclosed.

With regard to Principle 7 on fraud and error prevention, the draft Act responds to this intention by exchanging information for users' control and monitoring tasks, which aim to prevent fraud with NemKonto, cf. para. 2.10.2 for more details. In addition, in connection with the reporting of the designation or amendment of an account in the NemKonto system, rules may be laid down on an activation process for payees as well as rules on the need for a different case officer than the one who is reporting to a public payer to approve the report. This is intended to reduce the risk of payments to a NemKonto that has been exposed to fraud.

4. Economic and administrative consequences for trade and industry, etc.

The Danish Business Authority's Office for Better Regulation [Erhvervsstyrelsens Område for Bedre Regulering] (OBR) has received the draft Order as part of a pre-consultation. OBR estimates that the draft Act entails administrative consequences in the form of costs for business that do not exceed the de minimis threshold for submission to the Government's Committee on Economic Affairs of DKK 4 million, which is why they are not quantified.

With regard to the Innovation and Entrepreneur Check, OBR notes that the draft Act opens up the possibility for several companies to offer accounts that can be designated as NemKontos as well as to join the public service obligations and designate NemKontos. The draft Act promotes business opportunities for several Danish companies that support innovation and the development of new business models.

4.1 Consequences for legal entities as payees

The draft Act will maintain existing law on the obligation for companies to designate a NemKonto if the company has been assigned a CVR number under the Act on the Central Business

Register or is registered as an economic operator with the Customs and Tax Administration with an SE number and shall receive payments from a public payer. The transition to the new NemKonto system is not expected to affect the legal entities as payees, as the information from the existing NemKonto system is transmitted to the new one.

In addition, the draft Act will make it possible to designate accounts in payment and electronic money institutions as NemKontos, which increases the number of account providers who may potentially lower prices for payees due to increased competition.

4.2 Consequences for private account intermediaries and private payers

Under the draft Act, private payers can continue to connect to the NemKonto System and perform account searches via a private account intermediary. With the NemKonto system, private payers can pay to citizens and legal entities by means of their CPR numbers, CVR numbers, SE numbers or P numbers. This means that private payers do not have to set up and maintain local account registers of their payees, which provides an administrative gain. In 2023, approximately 2,300 private payers were connected to the current NemKonto system. It is assumed that the option for private payers to use the NemKonto system will result in a noticeable cost saving, which will continue with the new NemKonto system. For private payers and private account intermediaries not currently using the NemKonto system, it may imply IT transition consequences and potentially smaller organisational transition consequences (e.g. in-house training) to join the NemKonto system depending on their technical and organisational maturity. In addition, the Minister for Digital Government in the draft Act is authorised to lay down rules on the payment of fees by private account intermediaries for the use of the NemKonto system.

The draft Act lays down rules on which types of companies can join as a private account intermediary. The rules are introduced with a view to ensuring that companies that can join the NemKonto system as private account intermediaries are under the supervision of the Danish Financial Supervisory Authority (FSA), as they exercise a central role in relation to the NemKonto system. These rules have an impact on the business opportunities for companies that have hitherto carried out activity as a private account intermediary under the Public Payments Act, etc. Therefore, a transitional provision is introduced under which companies that are currently private payment service providers can switch over so that they either meet the new requirements to become a private account intermediary or settle that part of their business within one year. There are currently 10 private payment service providers (PSPs) connected to the NemKonto system, and it is assessed that one of them is currently not meeting the requirements under the draft Act as a private account intermediary. It is noted that the affiliated private paying agents will be able to use another private account intermediary in the future and thereby continue to use the NemKonto system, but this may involve conversion costs. They cannot be estimated, as it depends on which private account intermediary they will use and their technical set-up, which is not known to the Agency for Digital Government.

The draft Act also lays down rules to the effect that only private persons and legal entities residing or having their registered office in the EU/EEA area or the Faroe Islands may be privately pay-

ing. This geographical limitation may have an impact on the business opportunities for entities that have hitherto been private payers under the Public Payments Act, etc. A transitional provision is introduced under which private individuals and legal entities, who are currently private payers but cannot be so in the future, can change so that they can find another way to obtain account information within one year. The Agency for Digital Government is not aware of private payers who do not live up to the new requirements.

4.3 Consequences for the finance sector

The draft Act authorises the Minister to lay down rules to the effect that payment, electronic money and financial institutions can voluntarily commit to public service in relation to the NemKonto system. The institution will then be able to report, based on instructions from a customer, an account maintained at that institution as a NemKonto.

The scheme shall in principle be a connection scheme under which Danish payment, electronic money and financial institutions as well as EU/EEA credit institutions, EU/EEA payment and electronic money institutions can join voluntarily. The authorisation in the Act replaces a sector agreement on the reporting of NemKontos via a financial institution. As a safeguard for a well-functioning NemKonto system, the Minister for Digital Government is also authorised to be able to impose public service obligations on institutions in relation to the NemKonto system. The authorisation may be implemented if broad coverage in the sector is not achieved via the voluntary connection scheme. It is not expected to be necessary to implement the provision, but since the connection of the institutions is essential for the smooth and efficient settlement of payments, the provision has been included so that an obligation to connect is introduced as soon as possible if necessary.

Currently, the vast majority of Danish financial institutions can designate NemKonto, which is why the draft Act simply continues the current practice for these. A new feature is that, after the Act enters into force, payees can also designate a NemKonto in an e-money and payment institution, and e-money and payment institutions will be able to connect to the public service obligations and then designate NemKonto on behalf of the payee. The possibility for e-money and payment institutions to join the public service obligations has become possible after the introduction of the Payment Services Directive (PSD2) and the Electronic Money Directive (EMD). With a view to increasing competition and innovation in the field of payment in the EU, the Directive has opened up the possibility for e-money and payment institutions to also be account servicing institutions. The possibility of joining public service obligations in relation to the NemKonto system could, by extension, increase innovation and competition in the financial sector in Denmark.

Four cost items have been identified for the institutions for which the draft Act continues current practice: 1) connection to the NemKonto system (current cost), 2) integration into the institutions' core systems (one-off cost), 3) integration into network and mobile bank (one-off cost) and 4) costs for employees reporting NemKontos (current cost). On the basis of current expenditure and dialogue with the sector, it is expected that the total expenditure per institution will not exceed DKK 1.8 million annually. Overall, the scheme is expected to cost the State approximately DKK 8 mil-

lion annually. It should be noted that it is currently not possible to estimate the cost task of e-money and financial institutions, as there is no established market. However, the cost tasks listed above are assumed to apply *mutatis mutandis* to the new operators. In addition, the possibility of designating NemKonto for new players will also have to be incorporated into the other business.

The costs for institutions that are obligated to the public service are expected to be compensated by the State. It is expected that the compensation for this scheme, taken in isolation, may be withheld within the threshold laid down in Article 3(2) of Commission Regulation (EU) 2023/2832 of 13 December 2023 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid granted to undertakings providing services of general economic interest. Special rules will apply to the compensation of institutions that exceed relevant thresholds for State aid, cf. the EU regulation. In these cases, the receipt of compensation will follow the applicable State aid rules, cf. the Commission Decision of 20 December 2011 on the application of the provisions of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (2012/21/EU), cf. the Official Journal of the European Union 2012 L 7/3.

The compensation for carrying out the obligations associated with the scheme entails requirements for documentation, as the institutions are responsible for providing correct information on how much *de minimis* aid the institution has received within the previous two financial years and the current year. The Agency for Digital Government shall check that the compensation does not result in the total *de minimis* aid amount granted to the institution during the period will not exceed the monetary threshold of EUR 750,000. For those institutions that exceed *de minimis* aid thresholds, there will be stricter documentation requirements vis-à-vis the Agency for Digital Government for the costs associated with compliance with the services.

It is expected that institutions will be compensated once a year.

4.4 Possibility of exchange of information for control and supervisory tasks

The draft Act enables the transfer of information from the NemKonto system to the control and supervisory tasks of certain financial institutions and certain private payers. If they choose to receive and process this information, switching costs can be purely technical as well as fees for receiving the information from private account intermediaries when connecting to another interface, in order to be able to pass on the information to the private payers who are connected to the NemKonto system via the private account intermediary. However, private account intermediaries may choose to increase the costs of the private payers who use this information in order to recover some of these costs. For the financial institutions and private payers, this will entail an implementation impact in order to be able to distribute and use this information. In addition, depending on the practices of financial institutions and private payers, there may be a need to establish or revise workflows for processing the data.

4.5 Settlement of the state-owned holding account

Legal entities can, at any time, have deposits in the holding account paid by designating a NemKonto, whereby the amount is automatically transferred to the NemKonto of the payee. In addition, legal entities with deposits in the holding account may continue to contact the Agency for Digital Government with a view to payment to an account other than NemKonto. An attempt has been made to contact all legal entities that have received amounts paid into the holding account before the entry into force of the Act via individual communications to the legal entity's Digital Post, or alternatively by physical mail, if the legal entity was exempted from Digital Post at the time of payment.

With the settlement of the holding account, a new legal position will be introduced for the amounts paid into the State-owned holding account until the entry into force of the Act. The new legal position will ensure, inter alia, that all amounts deposited, irrespective of any previous limitation period, are reinstated with a new three-year limitation period before the amounts are credited back. In addition, the deposited amounts in the holding account will follow existing, applicable rules for claims against the State.

There are currently approximately 100,000 amounts deposited in the holding account for legal entities. 94 per cent of the amounts deposited relate to sole proprietorships, entrepreneur companies, personally owned small enterprises, partnerships and private limited companies. The remaining approximately 6 per cent is for other associations and types of enterprises, both domestic and foreign.

For amounts transferred to the holding account before the entry into force of the Act, the Agency for Digital Government will inform legal entities with one or more deposited amounts with a total value of more than DKK 200 about their deposited amounts in the holding account via Digital Post, alternatively physical post for the legal entities exempt from Digital Post. For the legal entities that do not respond to the individual communication efforts, the names will be announced in the Official Gazette by 30 June 2027.

For legal entities that receive a transfer of amounts to the holding account after the entry into force of the Act, the Agency for Digital Government will inform them thereof at the time of payment via Digital Post, alternatively physical post for the legal entities that are exempted from Digital Post.

5. Administrative consequences for citizens

The draft Act maintains existing law from the Act on Public Payments, etc., under which citizens who have been assigned a CPR number under the Act on the Central Person Register and reside in Denmark must continue to designate a NemKonto. The transition to the new NemKonto system is not expected to have an impact on citizens, as the information from the existing NemKonto system is transferred to the new system.

Similarly, citizens will continue to have the possibility of having their receivable paid in another way, if the citizen does not have an account that payment can be made to. In addition, citizens' rights to have their benefits paid to a benefit-specific account or an account other than their NemKonto continue.

5.1 Settlement of the State-owned holding account

Citizens can, at any time, have a holding on the holding account paid by designating a NemKonto, whereby the amount is automatically transferred to the NemKonto of the payee. In addition, citizens who hold the holding account may still contact the Agency for Digital Government with a view to payment to an account other than the NemKonto. An attempt has been made to contact all citizens that have received amounts paid into the holding account before the entry into force of the Act via individual communications to the citizen's Digital Post, or alternatively by physical mail, if the citizen was exempted from Digital Post at the time of payment.

With the settlement of the holding account, a new legal position will be introduced for the amounts paid into the state-owned holding account until the entry into force of the Act. The new legal position will ensure, inter alia, that all amounts deposited, irrespective of any previous limitation period, are reinstated with a new three-year limitation period before the amounts are credited back. In addition, the deposited amounts in the holding account will follow existing, applicable rules for claims against the State.

There are currently approximately 210,000 deposited amounts on the holding account for citizens, of which there are approximately 110,000 unique payees. 20 per cent of the deposited amounts relate to citizens with permanent residence in Denmark. Approximately 40 per cent of the sums deposited are for citizens who have an administrative CPR number during the processing of the case by the Customs and Tax Administration, while approximately 34 per cent of the sums deposited are for citizens who have had a permanent residence in Denmark but have subsequently left. The remaining approximately 6% is for citizens who have disappeared or whose CPR number is either cancelled, deleted or changed.

For amounts transferred to the holding account before the entry into force of the Act, the Agency for Digital Government will inform citizens with one or more deposited amounts with a total value of more than DKK 200 about their deposited amounts in the holding account via Digital Post, alternatively physical post for citizens who are exempt from Digital Post. Citizens who do not respond to the individual communications efforts will be announced in the Official Gazette by name no later than on 30 June 2027.

For citizens who, after the entry into force of the Act, receive amounts transferred to the holding account, the Agency for Digital Government will inform them thereof at the time of payment via Digital Post, alternatively physical post for the legal entities that are exempted from Digital Post.

Against this background, the draft Act is considered to only have a minor administrative impact on citizens who have deposited amounts in the holding account.

6. Consequences for the climate

The draft Act has no climate impact.

7. Consequences for the environment and nature

The draft Act has no impact on the environment and nature

8. Relationship to EU law

The draft Act has taken a position on the TFEU's rules on the free movement of services by continuing the payees' option to designate a NemKonto at a credit institution in the EU/EEA, as well as by enabling payees in future to designate a NemKonto at a payment or electronic money institution in the EU/EEA.

Under the public service regime, credit institutions in the EU/EEA and payment and electronic money institutions in the EU/EEA will in future be able to report instructions on NemKontos to the NemKonto system for their customers in accordance with the rules on the free movement of services of the TFEU. The compensation granted to financial institutions under the public service regime shall be assessed in accordance with the rules on State aid and competition.

The Public Payments Act, etc. does not regulate which private payers and private account intermediaries can be connected to the NemKonto. For this reason, the draft Act specifies that private payers and private account intermediaries with a registered office in other EU/EEA countries may be connected to the NemKonto System in accordance with the rules of the TFEU on the free movement of services.

Against this background, the draft Act is deemed to be in compliance with the TFEU rules on the free movement of services.

9. Consulted government authorities and organisations, etc.

In the period from 5 November 2024 to 6 December 2024 (31 days), a draft Act was submitted for consultation with the following authorities and organisations, etc.:

[...]

10. Summary table

	Positive consequences/reduction in expenditures (if yes, please specify extent/if no, enter 'None')	Negative impact/additional expenditures (if yes, state the extent/if no, enter 'None')
Economic impact on the State, municipalities and regions	None	The draft Act is expected to involve expenses for the Agency for Digital Government in connection with the processing of the State-owned holding account. The expenditure is expected to amount to DKK 38.3 million for operations, administration, interest and depreciation (2024-pl). Funding has been allocated corresponding to DKK 5.1 million in 2025.
Implementation impact on the State, municipalities and regions	None	<p>The draft Act will mean that the Agency for Digital Government will have to handle case processing, communication, etc. in connection with the processing of deposits in the State-owned holding account.</p> <p>In the case of the public payers connected to the State-owned holding account, these will, after the holding account is wound up, have to handle payments to payees who have not designated a NemKonto.</p>
Financial consequences for trade and industry, etc.	The draft Act will mean that account servicing payment institutions and electronic money institutions will in future be able to offer NemKontos to their customers.	The draft Act will lead to a delimitation of business types that can be connected to the NemKonto system as a private account intermediary. The delimitation could lead to some

		<p>private account intermediaries not being able to assume the role in future.</p> <p>For the institutions that join the public service scheme in relation to the NemKonto system, in addition to expenditure on system integrations, there will be administrative costs for employees who report NemKonto. The costs for this are expected to be compensated by the state.</p>
Administrative consequences for trade and industry, etc.	None	The draft Act will mean that for the institutions which join the public service scheme in relation to the NemKonto system and which have not previously designated a NemKonto, new business procedures will have to be incorporated.
Administrative consequences for citizens	None	None
Consequences for the climate	None	None
Consequences for the environment and nature	None	None
Relationship to EU law	The draft Act does not contain any aspects of EU law other than those stated in (8), according to which it is the assessment of the Ministry of Digital Affairs that the draft Act complies with EU law.	
Contravenes the five principles for the implementation of professional EU regulation (which, where relevant, also applies to the implementation of non-professional EU regulation) (put X)	Yes	<p>No</p> <p>X</p>

Explanatory notes on the individual provisions of the draft Act

Re Section 1

Order no. 647 of 13 April 2021 on the NemKonto scheme (the NemKonto Order) contains, in Chapter 2, a number of definitions of the concepts of citizens, company, NemKonto, specific account, the NemKonto system, public authority, reporting, complete payment and incomplete payment.

The proposed Section 1 specifies a number of central definitions in the draft Act on the concepts of NemKonto system, payee, private person, legal entity, NemKonto, benefit-specific account, type of benefit, designation, payment order, full payment order and account searches.

It is proposed to insert as *no. 1* a provision under which ‘NemKonto system’ is defined as a system of information on NemKonto accounts and benefit-specific accounts and functions for the designation of accounts by private persons and legal entities, the addition of account information to a payment order, transfers of payment orders and account listings.

It is thus proposed that ‘NemKonto system’ means the total system covered by the proposed scheme.

The NemKonto system contains, *inter alia*, information on NemKontos and benefit-specific accounts of private persons and legal entities.

The related functions refer to the functions that 1) will allow the designation, amendment and deletion of accounts in the NemKonto system, 2) will have to add account information to a specific payment order made by a public payer, 3) will allow public payers to submit payment orders via the NemKonto system, and 4) will allow private account intermediaries to perform account searches in the NemKonto system on behalf of private payers. This is not an exhaustive list of the functions of the NemKonto system.

It is proposed to insert as *no. 2* a provision under which ‘payee’ is defined as a private person or legal entity who is the intended recipient of the monetary amounts involved in a payment transaction.

It is proposed that a payee be defined as the person who will be required to receive a payment from a public or private payer. The payee will thus be the rightful recipient of a payment made via the NemKonto system or by account searches in the NemKonto system.

It is proposed to insert as *no. 3* a provision under which ‘private person’ is defined as a natural person who acts solely on behalf of himself or herself without connection to a legal entity.

The term ‘private person’ thus includes natural persons when they act in a private context and on their own behalf, as opposed to when they act in a capacity such as an employer or self-employed person.

It is proposed that a provision shall be inserted as *no. 4*, according to which ‘legal entity’ shall be defined as a natural person in his or her capacity as an employer or self-employed person, a Danish or foreign legal person or a branch of a foreign legal person, a trust or a legal arrangement similar to a trust, a state administrative entity, a region, a municipality or a municipal community.

It is proposed that the term ‘legal entity’ shall be defined on the basis of Section 3 of the CVR Act, according to which the term ‘legal entities’ shall include the following:

- 1) A natural person in his or her capacity as an employer or self-employed person.
- 2) A legal person or a branch of a foreign legal person.
- 3) A trust or a legal arrangement similar to a trust.
- 4) A state administrative entity.
- 5) A region.
- 6) A municipality.
- 7) A municipal community.

In relation to Section 3, no. 2 of the CVR Act, foreign legal persons have been added to the definition in Section 1(4) of the draft Act, whereby the definition covers both Danish and foreign legal persons. This is because foreign legal persons as well as foreign natural persons in their capacity as an employer or independent trader shall also designate a NemKonto if they are subject to VAT in Denmark and as a result are subject to registration with the Customs and Tax Administration and have an SE number, but do not have a place of business in Denmark and are therefore not subject to registration in the CVR.

It is proposed to insert as *no. 5* a provision under which a ‘NemKonto’ is defined as an account of an account servicing institution that has been designated by the payee as the account to which public payers may pay amounts of money.

NemKonto will be the account to which public payers make payment to a payee if the person in question has not designated a benefit-specific account or another account to which payment is to be made, cf. the proposed Section 14.

When a private payer, through a private account intermediary, performs account searches in the NemKonto system, information on the payee's NemKonto will also be provided.

It is proposed to insert as *no. 6* a provision under which a 'benefit-specific account' is defined as an account of an account holding institution to which a specific public payer can pay benefits of a specific kind to the payee.

A benefit-specific account has the character of a NemKonto, but is only linked to payments to the payee for a specific type of benefit from a specific public payer. The payee can thereby ensure that only the associated benefit type will be paid in the payee's benefit-specific account.

The payee may specify a benefit-specific account by requesting the public payer who pays benefits of a certain kind to him to report an account as a benefit-specific account to the NemKonto system, cf. the proposed Sections 4 and 12 and the comments thereon.

It is proposed to insert as *no. 7* a provision according to which a 'type of benefit' is defined as the categorisation of the benefits paid to payees by public payers.

'Type of benefit' thus means a categorisation of the benefits that the public payer may pay to payees. Examples include salary, excess tax, SU [the Education Grant and Loan Scheme in Denmark], cash benefits, social pension or the like. The types of benefits may be used by several public payers and it is the public payer who determines the benefits covered by a type of benefit.

It is proposed to insert as *no. 8* a provision under which 'designation' is defined as the payee's designation of the account the payee wishes to be registered as a NemKonto or benefit-specific account in the NemKonto system.

It is proposed to insert as *no. 9* a provision according to which a 'payment order' is defined as an instruction by a public payer, sent through the NemKonto system, to the payment-settlement financial institution or credit institution to execute a payment transaction to a payee.

A payment order is the instruction which a public payer transmits to the NemKonto system, after which the NemKonto system forwards the payment order to the public payer's settlement institution, which makes the payment transaction to the payee.

It is proposed that as *no. 10*, a provision shall be inserted, according to which a 'full payment order' shall be defined as a payment order in the NemKonto system, to which account information has been added by the public payer on the location to which the payment shall be transferred, and account information shall therefore not be provided from the NemKonto system.

Thus, a full payment order will be a payment order for which the public payer has himself or herself specified the account to which the payment is to be paid. The NemKonto system will therefore not provide such a payment order with information on the payee's NemKonto or benefit-specific account from the NemKonto system.

It is proposed that a provision shall be inserted as *no. 11*, by which 'account searching' is defined as a search carried out by a private payer through a private account intermediary in the NemKonto system with the aim of obtaining the details of a payee's account.

An account search will include details of the beneficiary's NemKonto. It will therefore not be possible to provide account information relating to a benefit-specific account.

Please also refer to point 2.3.2, 2.4.2 and 2.6.2 of the general comments of the draft Act.

Re Section 2

Under Section 1(1) of the Act on Public Payments, etc., persons over 18 years of age who have been assigned a CPR number in accordance with the CPR Act and who have not been registered as having left Denmark must designate an account with a financial institution (a 'NemKonto') to which public authorities may, in discharge of their obligations, make payment of monetary amounts. The same applies to persons under 18 years of age who have been assigned a CPR number in accordance with the CPR Act and who receive payments from public authorities. According to Section 1(6) of the Public Payments Act, the designation of a NemKonto must be made no later than in connection with the first payment from a public authority.

It is proposed that as (1) a provision shall be inserted by which private persons who are assigned a CPR number in accordance with Section 3(1) no. 1 of the Central Person Register Act because they are listed in the central person register in this country due to birth or arrival from abroad and who are not registered as having left Denmark must, at the latest in connection with the first payment from a public payer, designate an account as NemKonto to which public payers can make payments of monetary amounts.

It is thus proposed that the existing obligation for virtually all natural persons residing in Denmark to designate an account as NemKonto for the receipt of payments of money from public payers shall be retained. The obligation to designate a NemKonto will still have to be understood only as an invitation and not as an injunction.

The obligation to issue instructions shall continue to apply only to persons resident in Denmark. Against this background, it is proposed that the existing residence criterion shall be retained so that the obligation to issue instructions will continue to apply only to those private persons who, pursuant to Section 3(1) no. 1 of the CPR Act, are assigned a CPR number because they are registered in this country due to birth or relocation from abroad and who are not registered as having exited from Denmark.

If a private person who has designated a NemKonto in accordance with (1) no longer resides in Denmark, the NemKonto will continue to be active and may be used for payouts, unless the person in question changes or deletes their NemKonto in the NemKonto system.

It is proposed that, contrary to the Act on Public Payments, etc., an age criterion should not be inserted in the provision, since the time of assignment time is practically the same for all private persons regardless of age. It is therefore proposed that the obligation to issue instructions be simplified in such a way that the obligation arises no later than in connection with the first payment from a public payer. The private person will thus have to designate an account as a NemKonto in the NemKonto system before the first payment from a public payer is due for payment.

With regard to persons under guardianship, according to Section 24 of the Guardianship Act, it is incumbent upon the guardian, within the scope of the duty, to defend the interests of the person under guardianship. This may, depending on the circumstances, mean that the guardian must ensure that a NemKonto is specified under the proposed scheme.

See the general comments in para. 2.4.2 in relation to when a designated NemKonto or benefit-specific account with the proposed scheme is to be considered the correct place of payment.

It is proposed that a provision shall be inserted as (2) *sentence 1*, by which private persons who are not covered by (1) may designate a NemKonto if they are assigned a CPR number in accordance with the Central Person Register Act.

Persons who have been assigned a CPR number because they are registered in this country on account of birth or relocation from abroad but are registered as having exited (Section 3(1) no. 1 of the CPR Act) or have an administrative CPR number, for example because they are included under ATP (CPR Section 3(1) no. 2 of the CPR Act) or because, according to the tax authorities, they must have a CPR number in connection with tax processing in this country (Section 3(1) no. 3 of the CPR Act), will thus be able to choose voluntarily whether they will designate a NemKonto to receive payments from public payers.

It is proposed in (2) *sentence 2* that the use of the NemKonto for persons covered by sentence 1 must, however, have agreed with the public payer if, prior to the designation, the payee receives payments from the public payer in question to another account. The intention of this is to ensure that the public payer is informed of the change of the desired payment location and can in future pay to the designated NemKonto. When payees covered by (1) contact a public payer in order to receive all payments to their NemKonto in the future, the public payer will have to ensure that in the future all benefits are paid to the payee's NemKonto. This is relevant, for example, to Udbetaling Danmark, which implements disbursements in several areas of benefits.

It is proposed to insert as (3) a provision under which a private person can only designate one NemKonto.

Thus, it will not be possible for private individuals to have more NemKontos. This is because the purpose of the NemKonto scheme is to make it simple to make payments to the correct place of payment and to prevent doubts from being raised as to which account a payment is to be made. A private person will be able to change his or her NemKonto on an ongoing basis and will also have the possibility of assigning benefit-specific accounts to payments of specific benefits from specific public payers in accordance with the proposed rules on this, cf. the proposed Sections 4 and 12 and the comments thereto.

Reference is also made to para. 2.1.2 of the general explanatory notes of the draft Act.

Re Section 3

According to Section 1(2) of the Act on Public Payments, etc., legal persons to whom a CVR number has been assigned under the Central Business Register Act shall designate an account with a financial institution to which public authorities in discharge of their obligations may make payment of amounts of money. This also applies to a natural person who, as an employer or self-employed person, and has been assigned a Central Business Register (CVR) number and to enterprises registered as traders with the Customs and Tax Administration. Furthermore, Section 1(3) states that legal persons who have not been assigned a CVR number under the CVR Act in order to receive payments from a public authority must (1) be registered in the Central Business Register in accordance with the rules on voluntary registration and (2) designate a NemKonto in accordance with the rules laid down in (2). According to Section 1(6) of the Public Payments Act, the designation of a NemKonto must be made no later than in connection with the first payment from a public authority.

It is proposed to insert as (1) a provision according to which legal entities which have been assigned a CVR number under Section 5, cf. Section 3 of the CVR Act, shall, at the latest in connection with the first payment from a public payer, designate an account as NemKonto to which public payers may make payments of amounts of money. The same applies to legal entities registered with the Customs and Tax Administration with an SE number.

It is proposed with the provision that all legal entities which have been assigned a CVR number under Section 5 cf. Section 3 of the CVR Act will be included in the designation obligation under the proposed scheme. It is also proposed that all legal entities registered with the Tax Administration with an SE number will have to designate a NemKonto. The obligation to designate a NemKonto will still have to be understood only as an invitation and not as an injunction.

Under (1) the obligation to designate will cover the legal entities referred to in Section 3 of the CVR Act that have been assigned a CVR number pursuant to Section 5 of the CVR Act. In Section 3 of the CVR Act, 'legal entities' means:

- 1) A natural person in his or her capacity as an employer or self-employed person.

- 2) A legal person or a branch of a foreign legal person.
- 3) A trust or a legal arrangement similar to a trust.
- 4) A state administrative entity.
- 5) A region.
- 6) A municipality.
- 7) A municipal community.

It follows from Section 5(2) of the CVR Act that the Danish Business Authority assigns a CVR number to the legal entities specified in Section 3, nos. 1, 2, 3 and 7 and which are notified for registration pursuant to other legislation. It further follows from Section 5(3) that Statistics Denmark assigns the CVR number to the legal entities listed in Section 3, nos. 4–6, i.e. state administrative entities, regions and municipalities.

Under the proposed scheme, public payers who have been assigned a CVR number under Section 5(3) of the CVR Act will have to designate a NemKonto. This is justified, among other things, by the fact that it is considered appropriate that public payers will be able to transfer payments to other public payers without first having to receive their account information. In addition, payments between public payers provide better return responses and explanations in the event of errors in the payment information when made through the NemKonto system than through other payment systems. However, it should be noted that public payers are not covered by the provisions of the Act to the extent that, in other legislation, rules on payment administration are not compatible with the Act or rules laid down by the Act.

In addition, under the *sentence 2*, the designation obligation will cover the legal entities, cf. the definition in Section 1(4) of the draft Act, that do not have a CVR number but are registered with the Customs and Tax Administration with an SE number in the Business System. A company is automatically assigned an SE number by the Customs and Tax Administration upon registration of the company.

The legal entities that are subject to the provision will have to designate a NemKonto no later than at the time of the first payment by a public payer. The legal entity will thus need to have designate an account as a NemKonto in the NemKonto system before a payout from a public payer is due

for payment. Legal entities will have to designate a NemKonto using the entity's CVR number (Central Business Register number) or, in the absence thereof, the entity's SE number.

It is proposed to insert as (2) a provision according to which legal entities that are not covered by (1), but which fulfil the conditions for voluntary registration in the Central Business Register under the CVR Act or rules laid down pursuant thereto, in order to be able to receive payments from a public payer, shall 1) be entered in the Central Business Register under the rules on voluntary registration and 2) designate a NemKonto in accordance with the rules in (1).

As before, the proposed provision is mainly aimed at associations that receive subsidies from public payers under the Access to Public Administration Files Act and other similar associations. The proposal intends to maintain the current easier administration for public payers when making payments to these subsidy recipients by maintaining the requirement to register with a CVR number and create a NemKonto, so that payments can still be processed through the NemKonto system, rather than manual processing of the payments. These subsidy recipients will typically not have a CVR number assigned under Section 5(2) of the CVR Act because they are not, as a rule, liable for tax or excise duty under the applicable rules. However, it is possible for associations to make a voluntary registration, and this registration does not entail any costs for the associations. The rules on voluntary registration of legal entities are in Order No 1243 of 29 August 2022 on the Central Business Register and data.virk.dk. There is no requirement as to who registers an association. A public payer will therefore, in agreement with the association, be able to make the report on behalf of the association. In addition to the obligation to specify a NemKonto as a condition for receiving public payments, the allocation of a CVR number does not entail any other obligations for an association. However, the obligation to prescribe a NemKonto must be understood as an invitation and not as an injunction.

The proposed provision does not apply to legal entities that do not meet the conditions for voluntary registration in the Central Business Register under the CVR Act or rules established pursuant to the CVR Act. This means that registration in the CVR register will not be a condition for receiving payments from a public payer for legal entities which do not meet the conditions for voluntary registration in the Central Business Register.

It is proposed to insert as (3) a provision under which a legal entity can only designate one NemKonto. However, legal entities may designate separate NemKontos to underlying P numbers or SE numbers. The use of NemKontos for underlying P numbers must be agreed with the public payer.

Thus, under the proposed scheme, it will not be possible for legal entities to have several NemKontos associated with the same CVR number. This is because the purpose of the NemKonto scheme is to make it simple to make payments to the correct place of payment and to prevent doubts from being raised as to which account a payment is to be made. A legal entity will be able to change its NemKonto on an ongoing basis and will also have the possibility of designating benefit-specific

accounts to payments of specific benefits from specific public payers in accordance with the proposed rules in this regard, cf. the proposed Sections 4 and 12 and the comments thereto.

However, it is proposed that legal entities will be able to designate separate NemKontos to underlying P numbers or SE numbers. However, only one NemKonto per underlying P number or SE number can be assigned. This ensures that there is the necessary unique identification of the correct payee, while at the same time proposing that the payout to NemKontos of underlying P numbers must be agreed with the public payer. This is because not all public payers' systems can handle P numbers.

Reference is also made to para. 2.1.2 of the general explanatory notes of the draft Act.

Re Section 4

It follows from Section 23, cf. Section 5(2) of the NemKonto Order, that private persons and legal entities may contact a public authority and be designated on one or more specific accounts to which that public authority may pay a specific benefit in discharge of its obligations.

It is proposed to insert as *Section 4* a provision under which payees covered by Section 2 or Section 3 may designate an account as a benefit-specific account to which a particular public payer may make payment of a sum of money of a specific kind.

The proposed provision would transfer the current scheme under which the payee can register an account in the NemKonto system as a benefit-specific account for the payment of a specified type of benefit from a specified public payer.

A benefit-specific account is different from a NemKonto.

A benefit-specific account will have the character of a NemKonto, but will only be linked to payouts to the payee for one particular type of benefit and one specific public payer. In this way, the payee will be able to ensure that only the associated benefit will be paid on the payee's defined benefit account.

It is payees covered by Section 2 or Section 3 who are able to specify benefit-specific accounts. This means that it is only payees who are either obliged to, or able to voluntarily designate, a NemKonto who can also designate one or more benefit-specific accounts.

'Type of benefit' means a categorisation of the benefits that the public payer will be able to pay to payees, cf. the proposed Section 1(7). Examples include salary, excess tax, SU [the Education Grant and Loan Scheme in Denmark], cash benefits, social pension or the like. It is up to the public payer to determine which benefits are to be covered by a given kind of benefit, cf. the proposed Section 12(1) sentence 2.

Where a public payer makes a payment of a given kind of benefit, in agreement with the payee, through the NemKonto system, the NemKonto system will, under the proposed scheme, automatically add the payment order-specific benefit account of the payee for the benefit in question. Payments of the given kind of benefit will thus be paid to the recipient's benefit-specific account instead of their NemKonto. As in the past, the payee will be able to indicate to the public payer in question that a specific payment is to be made to another account, cf. the proposed Section 14 and the comments thereon.

There is no restriction on the number of benefit-specific accounts per payee. Payees will thus be able to designate several benefit-specific accounts to the same public payer or to several different public payers. The assignment of the benefit-specific accounts shall be linked to a given kind of benefit.

Reference is also made to para. 2.2.2 of the general explanatory notes of the draft Act.

Re Section 5

Under Section 1(1) and (2) of the Public Payments Act, payees shall designate an account to a financial institution as their NemKonto. It follows from the preparatory work on the provision that the decisive factor is that the account may be used by public authorities to make payments, cf. the Official Record of Danish Parliamentary Proceedings 2003-04, Appendix A, page 1094). It follows from Section 10(2) of the NemKonto Order that the Agency for Digital Government shall lay down the requirements for formats, etc. for accounts that are intended to be used as NemKontos and specific accounts. The Agency for Digital Government has stipulated on NemKonto.dk that the payee shall be able to provide the account number of domestic accounts to be used as NemKontos and specific accounts. For foreign accounts reported by the payee, such as NemKontos and specific accounts, 1) IBAN number, 2) BIC/SWIFT code, 3) the bank name, 4) the bank address, 5) the city, 6) postal code, 7) the country, and 8) the currency of the bank account must be provided. If the account is not identified by an IBAN number, the account number and bank code/routing number of the account shall be provided instead.

It is proposed to insert as (1) a provision under which accounts with a Danish or internationally recognised account identification maintained in the following institutions can be designated as NemKontos or benefit-specific accounts:

- 1) Danish financial institution: An undertaking authorised by the Danish Financial Supervisory Authority to operate as a financial institution in accordance with the Financial Business Act.
- 2) Danish payment or electronic money institution: An undertaking authorised by the Danish Financial Supervisory Authority to carry out activities as a payment institution or e-money institution under the Payments Act that is an account-servicing payment account provider.

- 3) EU/EEA credit institution: An undertaking authorised by the financial supervisory authority of an EU/EEA country to carry out the activities of credit institutions pursuant to the national legislation of that EU/EEA country implementing Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the supervision of use of credit institutions, as amended (CRD).
- 4) EU/EEA payment or electronic money institution: An undertaking authorised by the financial supervisory authority of an EU/EEA country to carry out activities as a payment or electronic money institution under the national law of that EU/EEA country implementing Directive 2015/2366/EU of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, as amended (PSD2), or Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up and pursuit of the business of electronic money institutions and the supervision of such an undertaking, as amended (EMD) and is an account servicing payment account provider.
- 5) Faroese or Greenlandic financial institution: An undertaking authorised by the Danish Financial Supervisory Authority to operate as a financial institution in accordance with the Decree on the entry into force for the Faroe Islands of the Financial Business Act or the Decree on the entry into force for Greenland of the Financial Business Act.
- 6) Faroese payment or e-money institution: An undertaking authorised by the Danish Financial Supervisory Authority to carry out activities as a payment institution or e-money institution in accordance with the Decree on the entry into force for the Faroe Islands of the Payments Act, which is an account-servicing payment account provider.
- 7) Third-country credit institution: An undertaking established in a country outside the EU/EEA which has authorisation from the financial supervisory authority of that country to carry out activities consisting in taking deposits from the public as well as in granting loans for its own account which are linked to accounts maintained by that undertaking in its own name.

It is thus proposed that the payee shall designate an account as a NemKonto or benefit-specific account with a Danish or internationally recognised account identification.

It is the individual payee who is responsible for identifying the account designated as NemKonto or benefit-specific account. The account may be, for example, a basic payment account, a basic deposit account or a basic business account. What is essential is that public payers can make payments to the account. The draft Act does not require the payee herself or himself to be the owner of the account designated as NemKonto or benefit-specific account, but there may be other legislation or other circumstances which, for example, mean that a payment cannot be made in cases where the payee does not own the designated account himself or herself. From experience, this may in particular be the case when the assigned account is foreign. A Danish recognised account identification

may be the account and registration number, and an internationally recognised account identification may be, for example, International Bank Account Number (IBAN), Basic Bank Account Number (BBAN), and Bank Identifier Code (BIC). The proposed arrangement enables a public payer's payment settlement institution to make a payment transaction to that institution.

The Minister for Digital Government will be able to lay down rules on account types and account identification under the proposed (2).

The proposed scheme will not change the fact that the creation and terms of an account at an institution will continue to be a matter of private law between the individual client and his or her institution.

The proposed scheme also does not contain rules that will change or supplement rules in other legislation on the relationship between the customer and the institution. The same applies with regard to the general principles of the law of obligations, which regulate the relationship between the individual client and the individual institution. For example, the power for institutions to set off deposit accounts will not be extended or impaired by the proposed scheme. Similarly, the general rules on the relocation, termination and deletion, etc. of accounts apply, even if there is a move, termination and deletion, etc. of an account designated as a NemKonto or benefit-specific account.

The proposed provision in (1) no. 1 concerns Danish financial institutions and addresses the possibility that a payee may designate an account with an enterprise that is authorised as a financial institution under Section 7(1) sentence 1 of the Financial Business Act. The authorisation is granted to entities that engage in activities consisting of receiving deposits or other repayable funds from the public.

The purpose of the proposed provision is to include Danish financial institutions, including banks, savings banks, etc., in relation to the designation of a NemKonto or benefit-specific account.

The proposed provision in (1) no. 2 concerns Danish payment and electronic money institutions and addresses the possibility that a payee may designate an account in an undertaking that is respectively authorised as a payment institution under Section 9 of the Act on payments or as an electronic money institution under Section 8 of the Act on payments, although it will be a prerequisite that the institution is an account servicing provider for payment accounts. On the other hand, an account may not be designated in a company that has a so-called limited authorisation under Section 50 or Section 51 of the Payments Act as a NemKonto.

Authorisation as a payment institution will be necessary in order to lawfully carry out payment services, including payment transactions such as those referred to in Annex 1, no. 3, to the Payments Act, transfers of funds from a payment account to a payment account held by the payment institution itself or by another provider.

Under Section 3(1) of the Payments Act, an undertaking with authorisation as an electronic money institution may provide payment services in accordance with Annex 1 to the Payments Act without being required to have separate authorisation as a payment institution.

The purpose of the proposed provision is to allow payees to designate an account as a NemKonto or benefit-specific account in entities that do not have full authorisation as a financial institution under the Financial Business Act but carry out payment services in the form of payment transactions under the Payments Act.

The proposed provision requires the payment or e-money institution to be the account servicing provider of payment accounts so that it is possible for the payee to make payment transactions in accordance with Section 7(1) no. 4 of the Act on Payments, including being able to deposit, transfer or withdraw funds from the payment account. Account servicing provider, payment account and funds shall be understood in accordance with the definitions laid down in Section 7(1) nos. 9, 16 and 17 of the Payments Act.

The proposed provision in (1) no. 3 concerns EU/EEA-based credit institutions and addresses the possibility that a payee may designate an account in an enterprise that is established in another EU/EEA country and which is authorised as a credit institution under the national law of that country.

The purpose of the proposed provision is to allow payees to designate an account as NemKonto or benefit-specific account in EU/EEA credit institutions, which is the EU/EEA-based equivalent to Danish financial institutions. It is therefore essential that the EU/EEA credit institution is authorised under national law, which implements Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the supervision of credit institutions, as this ensures that the institution has obtained authorisation on the basis of conditions equivalent to a Danish financial institution, including to be subject to supervision by the competent supervisory authority in the EU/EEA country concerned.

Thus, the purpose is furthermore to give payees who only have an account with a credit institution in an EU/EEA country the possibility to specify an account as a NemKonto or benefit-specific account.

The proposed provision in (1) no. 4 concerns EU/EEA payment and electronic money institutions and deals with the possibility for a payee to specify an account in an enterprise in an EU/EEA country other than Denmark which is authorised as a payment or electronic money institution under national law implementing Directive 2015/2366/EU of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, as amended (PSD2), or Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit of and prudential supervision of the business of electronic money institutions with later changes (EMD).

The purpose of the proposed provision is to enable payees to designate an account as a NemKonto or benefit-specific account at a payment and electronic money institution from EU/EEA countries other than Denmark. Payees that do not have an account at a Danish money, payment or electronic money institution will therefore not be prevented from being able to designate an existing account at a payment and electronic money institution from an EU/EEA country other than Denmark.

The proposed provision contains a requirement for the EU/EEA payment or e-money institution to be an account servicing payment account provider, so that it will be possible for the payee to make payment transactions corresponding to payment transactions under Article 4(5) of the Payment Services Directive, including being able to deposit, transfer or withdraw funds from the payment account. Payment account, account servicing provider and funds must be understood in accordance with the definitions set out in Article 1(12), (17) and (25) of the Payment Services Directive.

The proposed provision in (1) no. 5 concerns Faroese and Greenlandic financial institutions and provides for the possibility for a payee as NemKonto or benefit-specific account to designate an account of an enterprise which, respectively, is authorised as a Faroese financial institution in accordance with Decrees for the entry into force of the Financial Enterprise Act for the Faroe Islands, or is authorised as a Greenlandic financial institution with accordance with Decrees for the entry into force of the Financial Enterprise Act for Greenland. The Financial Business Act is brought into force for the Faroe Islands by Decree no. 245 of 16 March 2012, as last amended by Decree no. 547 of 23 May 2023, and put into force for Greenland by Decree no. 1252 of 15 December 2004, as last amended by Decree no. 921 of 26 June 2023.

Authorisation as a financial institution According to Decree on the entry into force for the Faroe Islands of the Financial Business Act and Decree on the entry into force for Greenland of the Financial Business Act has been deemed equivalent to authorisation as a Danish financial institution under the Financial Business Act, and the Danish Financial Supervisory Authority is also the competent supervisory authority for Faroese and Greenlandic financial institutions.

Payees that have an account at a Faroese or Greenlandic financial institution will, with the proposed provision, have the option to designate this account as a NemKonto or benefit-specific account.

The proposed provision in (1) no. 6 concerns Faroese payment and electronic money institutions and addresses the possibility for a payee to specify an account in an enterprise which is respectively authorised as a payment institution under Section 9 of Decree for the entry into force of the Act on payments in the Faroe Islands, or as an electronic money institution under Section 8 of Decree for the entry into force in the Faroe Islands of the Act on payments, cf. Decree no. 1223 of 4 June 2021 on the entry into force in the Faroe Islands of the Act on payments.

Authorisation as a payment or e-money institution in accordance with the Decree on entry into force for the Faroe Islands of the Act on payments has been fully equated to authorisation as a Dan-

ish payment or e-money institution, respectively, under the Payments Act, and the Danish Financial Supervisory Authority is also the competent supervisory authority for Faroese payment and e-money institutions.

The proposed provision contains a requirement for a Faroese payment or e-money institution to be account servicing payment account provider, so that it will be possible for the payee to make payment transactions corresponding to payment transactions in accordance with Section 7(1) no. 4 of the Act on payments, including the ability to deposit, transfer or withdraw funds from the payment account.

The proposed provision concerns Faroese payment and e-money institutions, since the Payments Act is in force by Royal Decree for the Faroe Islands, but not for Greenland.

The proposed provision in (1) no. 7 concerns credit institutions in third countries and addresses the possibility that a payee who does not have an account in an enterprise within the EU/EEA may designate an account in a credit institution from a third country. A third-country credit institution is a counterpart to Danish financial institutions or EU/EEA-based credit institutions.

The purpose of the proposed provision is to include credit institutions outside EU/EEA countries which comprise third countries' counterparts to Danish financial institutions. It is therefore essential that the third-country credit institution is authorised under national law which corresponds to Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the supervision of credit institutions (CRD), as this ensures that the institution has obtained authorisation on terms equivalent to a Danish financial institution or an EU/EEA credit institution, including that the institution is subject to supervision by the competent supervisory authority in the third country concerned.

Payees that have an account with a credit institution outside the EU/EEA area will, with the proposed provision, have the option to designate this account as a NemKonto or benefit-specific account. This will be the case, for example, for payees who only have an account with a credit institution in the United Kingdom or the United States.

It is proposed to insert as (2) a provision under which the Minister for Digital Government can lay down rules on the conditions for accounts maintained in institutions covered by (1) to be used as NemKontos or benefit-specific accounts. Furthermore, the Minister may lay down requirements as to the types of accounts that may be designated as NemKontos or benefit-specific accounts, and requirements as to which account identifiers an account must have in order to be designated as NemKontos or benefit-specific accounts.

The opportunity is thereby given to the Minister to lay down new and adapted regulations that follow the dynamic developments that take place in the area of the institutions contained in the provision as well as the types of accounts that may be used as NemKonto and account identification.

The possibility is also provided that the Minister will be able to take account of the adaptation of other legislation, including its development, and continuous possibility of adapting European standards and industry and sector specifications is ensured. For example, rules could be laid down stipulating that an account maintained at a penalty-affected institution may not be assigned or cannot be maintained a NemKonto, including rules on when a designated account can be deleted as a NemKonto, e.g. because it is held at a sanction-affected institution.

The Minister for Digital Government will be able to set requirements for the institutions referred to in (1) for accounts maintained in those institutions to be used as NemKontos or benefit-specific accounts. These requirements could be based, inter alia, on the recommendations of the Financial Action Task Force (FATF), the Danish Financial Supervisory Authority, or similar recommendations of Danish or international organisations active in the fight against money laundering, the financing of terrorism, the financing of weapons of mass destruction, or other financial crime.

The Minister will also be able to lay down rules on the types of accounts that may be used as NemKonto or benefit-specific accounts. For example, rules could be laid down stipulating that only payment accounts or deposit accounts can be designated as NemKonto or benefit-specific accounts. Alternatively or in addition, the Minister will be able to lay down rules on which benefits are to be linked to the account so that it can be designated as a NemKonto or benefit-specific account. This will be benefits related to the fact that the account is suitable to serve as NemKonto or benefit-specific account, for example that public payers can make payments to the account.

The Minister will also be able to lay down rules on requirements as to which account identifiers an account must have in order to be used as a NemKonto or benefit-specific account. Account identifiers are the information necessary to identify the payee's account for the execution of the payment transaction. This could, for example, include information such as the registration and account number, the International Bank Account Number (IBAN), the Basic Bank Account Number (BBAN), the Bank Identifier Code (BIC).

Reference is also made to para. 2.3.2 of the general explanatory notes of the draft Act.

Re Section 6

Under Section 2(2) sentence 2 of the Public Payments Act, etc. and Section 22(1) and (2) sentence 2 of the NemKonto Order, amendments to a NemKonto shall have legal effect at the latest from the fifth business day following the date of notification, which is the date on which the new NemKonto is registered in the NemKonto system. Section 22(3)(1) of the Order states that NemKontos and specific accounts assigned or modified by public authorities on behalf of citizens or enterprises shall not be registered in the NemKonto system until they are activated by the citizen or enterprise in question. In these cases, payment shall be made no later than the fifth business day following the activation date, cf. Section 22(3) sentence 2 of the Order.

It is proposed to insert a provision according to which the payee's designation, amendment or deletion of an account to the NemKonto system Account shall take effect at the latest on payments available on the payee's account on the fifth business day after the account is registered as an asset or terminated NemKonto or benefit-specific account in the NemKonto system. However, for payments to foreign accounts, the date of effect may be later than the fifth business day after the account is registered as active or terminated as a result of the total turn-around time of foreign payments being longer.

The reported NemKonto or benefit-specific account may take effect before the fifth business day following the registration of the account as an asset or terminated NemKonto or benefit-specific account in the NemKonto system, but, under the proposed provision, it will take effect at the latest for payments available in the account of the payee on the fifth business day after the account is registered as an asset or terminated NemKonto or benefit-specific account in the NemKonto system.

The reason why the registration of a NemKonto or benefit-specific account as asset or terminated in the NemKonto system will first with certainty affect payments from the fifth business day after registration is that it could take up to four business days from a payment order is made to add account information in the NemKonto system until payment is transferred to that account. Especially for monthly shifts, where many payouts of, for example, pension and salary will be made, there will be a need for a payment order to be added to account information in plenty of time to ensure that all payments can be implemented on time. Since the total time for the processing of foreign payments may be longer than for domestic payments, the date of effect of payments to foreign accounts may be later than the fifth business day.

This means that it will be possible for an account to be registered as active or terminated for payouts through the NemKonto system immediately after registration, but that the payee will only be able to expect the registration to be used for payouts through the NemKonto system from the fifth business day after the account is registered as active or terminated. Thus, it may be the case that payment is made to the previous NemKonto or benefit-specific account for up to four days after the new account is registered as an asset or the previous account has been registered as having ceased.

Since the total time for the processing of foreign payments may be longer than for domestic payments, the date of effect of payments to foreign accounts may be later than the fifth business day.

A 'business day' is a day on which a bank is open, i.e. a regular business day, unless there is a public holiday or bank holiday. For example, if an account is registered as an active NemKonto in the NemKonto system on a Monday, it will therefore take effect no later than the following Monday. If an account is registered as an asset NemKonto in the NemKonto system on a Friday, a Saturday or a Sunday, it will take effect no later than the following Friday.

When NemKonto or benefit-specific Account is to be registered as an asset in the NemKonto system, it is taken into account that some instructions and changes to accounts will be registered in the NemKonto system immediately after reporting has been completed, whereby the respective

NemKonto or benefit-specific Account will be active immediately, while other reports require a correct activation process to be carried out before the respective NemKonto or benefit-specific Account is registered as an asset in the NemKonto system. In relation to the activation process, please refer to the comments on Section 7.

When a NemKonto or benefit-specific account is deleted from the NemKonto system, the NemKonto or benefit-specific account in question shall be recorded as ceased immediately after the report of the deletion to the NemKonto system has been made.

Reference is also made to para. 2.3.2 of the general explanatory notes of the draft Act.

Re Section 7

It follows from Sections 23-24 of the NemKonto Order how and to which a payee designates, modifies or deletes a NemKonto or benefit-specific account. It follows from Section 22(3) of the Order that NemKontos and specific accounts designated or amended by public authorities on behalf of citizens or enterprises shall not be registered in the NemKonto system until they are activated by the citizen or enterprise in question.

It is proposed that a provision shall be inserted as *Section 7*, by which the Minister for Digital Government shall lay down rules on how and to which a payee can designate, amend, or delete an account as a NemKonto or benefit-specific account, including requirements for certain designated or modified accounts to be activated by the payee in order to be registered as a NemKonto or benefit-specific account in the NemKonto system. It is also proposed that the Minister for Digital Government can lay down rules as to when a NemKonto or benefit-specific account can be deleted by the Agency for Digital Government in the NemKonto system.

The term ‘designate’ means the payee’s designation of the account that the payee wishes as a NemKonto or benefit-specific account, cf. Section 1(8) of the draft Act.

The term ‘amend’ means the change by the payee of the account registered as NemKonto or benefit-specific account in the NemKonto system.

The term ‘delete’ means the deletion by the payee of the account registered as NemKonto or benefit-specific account in the NemKonto system. This means that the account is registered as terminated in the NemKonto system.

It is expected that the Minister for Digital Government will lay down rules to the effect that reports to the NemKonto system can be made either via the account institution, provided that the institution has undertaken or is subject to public service obligations in accordance with rules issued pursuant to Section 21 of the draft Act, via public payers covered by rules issued pursuant to Sec-

tion 11 of the draft Act, or via the NemKonto support. It is also proposed that the Minister lays down rules to the effect that reports to the NemKonto system can be made via a digital self-service solution for private persons.

It is thus proposed that rules will be laid down according to which it will be possible for payees to designate or amend a NemKonto in the NemKonto system by contacting the institution that holds the account reported to the NemKonto system, if the institution has taken on or is subject to public service obligations in accordance with rules issued pursuant to Section 21 of the draft Act.

It is also proposed that rules will be laid down according to which it will be possible for payees to designate, amend or delete a NemKonto as well as a benefit-specific account in the NemKonto system upon contacting the public payer, who shall arrange a payment to the payee. In addition, it is proposed that the Minister for Digital Government will be able to lay down rules allowing payees to, in general, designate, amend or delete a NemKonto to the NemKonto system via certain public payers, such as the payee's home municipality.

It is also proposed that rules will be laid down under which payees can designate, amend or delete a NemKonto in the NemKonto support system. The user account support will be an offer for individuals and legal entities to contact to designate, amend or delete a NemKonto. Under the proposed scheme, NemKonto support will be carried out by the Agency for Digital Government, which, as system owner, will have to administer the NemKonto system. However, the Agency for Digital Government may appoint a public authority or legal entity to perform the task in whole or in part, cf. the proposed Section 22(3).

In addition, it is proposed that rules will be laid down according to which private individuals will be able to designate, change, or delete a NemKonto as well as change or delete an unlocked benefit-specific account in the NemKonto system via a digital self-service solution. With the proposed scheme, the digital self-service solution will be made available by the Agency for Digital Government, which as system owner will have to manage the NemKonto system, cf. the proposed Section 22 and the comments thereon.

Proxy holders and guardians may designate, amend, or delete a NemKonto or unlocked benefit-specific account for the principal or person under guardianship, by contacting an institution that is subject to rules laid down pursuant to Section 21 of the draft Act, to the NemKonto support office or the public executor that will take charge of the payment in accordance with the above-mentioned rules that are expected to be issued on notification of designation, amending and deletion of accounts. In the long term, it is expected that proxy holders and guardians will be able to use the self-service solution of the NemKonto when it becomes possible to use digital proxies.

Furthermore, it is proposed that the Minister for Digital Government may, inter alia, issue regulations requiring certain designated and amended accounts to be activated by the payee in order to be registered as active in the NemKonto system.

It is expected that the authorisation is used to issue rules stipulating that when a payee makes a report on the instruction or amendment of an account by contacting a public payer, the NemKonto support, or via the digital self-service solution, an activation process will have to be carried out before the instruction or amendment is registered as an asset in the NemKonto system.

The activation process aims to ensure correct payment information in the NemKonto system and, at the same time, to help prevent fraud. The activation process thus increases the security of the NemKonto system and is also required by the existing NemKonto system.

The activation process is expected to involve the reported account information being temporarily saved separately in the NemKonto system, where it is awaiting the payee's activation. The reported account information is thus only registered as an active NemKonto in the NemKonto system once the activation process has been completed. The activation process is expected to mean that the Agency for Digital Government sends a physical post letter to the payee with a PIN code that shall be entered by phone. The expected activation process thus means that there will be a time lag between the reporting of account information and the receipt of the activation code in order to increase security. This activation process is used in the existing NemKonto system. Once the activation process has been completed, the reported account information will be registered in the NemKonto system.

The Minister for Digital Government will also be able to lay down regulations on other forms of activation processes, including, for example, a possibility for reports to be digitally activated to the NemKonto system, e.g. by use of MitID. The rules will be able to be adapted so that they follow technological developments and changes in the fraud scenarios.

When a guardian designates a NemKonto on behalf of the private person under guardianship, the activation letter, cf. the activation process, is sent to the address of the guardian. This presupposes that the guardianship is registered in the CPR register. When a proxy holder designates a NemKonto on behalf of the private person who has given the power of attorney to the proxy holder, the activation letter is sent to the address of the proxy holder, as power of attorney is not supported by system support today. If power of attorney conditions are system supported in the longer term in the new NemKonto system, it must be clarified how the activation process is organised most appropriately.

The Minister for Digital Government will also be able to use the authorisation to lay down rules to the effect that the usual activation process for the designation of a NemKonto or a benefit-specific account may, in exceptional cases, be waived by the payee's instruction or amendment of a NemKonto via a public payer. This could be the case, for example, where the payee does not have access to his or her physical letter box at his own address, so that the payee is unable to activate the account in the NemKonto system through the prescribed usual activation process. This may be the case, for example, where there is evidence that the payee cannot be located at his or her registered address, e.g. because the person concerned is admitted to a hospital for a long period of time or is in custody. Similarly, the usual activation process may be deviated from if the person concerned is homeless or has no permanent residence. It is assumed that rules shall be laid down stipulating that

by way of derogation from the usual activation process, the public payer will have to comply with an alternative activation process, which consists of appropriate control measures that provide an equivalent level of assurance as to the accuracy of reporting.

Under the proposed scheme, reporting instructions or amendment of the NemKonto in the NemKonto system via the payee's account servicing institution will not be subject to a subsequent activation process, which is due to the fact that the institutions in question are, inter alia, obliged under the Act on Measures to Prevent Money Laundering and Financing of Terrorism to implement a customer due diligence procedure, which means that institutions must obtain identity information from the customer and verify this information on the basis of documents, data or information obtained from a reliable and independent source. This customer due diligence procedure is deemed to currently be able to replace an activation process and provide equivalent assurance as to the accuracy of reporting, although it cannot be ruled out that reports from certain or all institutions may in the long term be subject to an activation process.

The Minister for Digital Government is also authorised to lay down rules on when a NemKonto or benefit-specific account can be deleted by the Agency for Digital Government in the NemKonto system. This means that the NemKonto or the benefit-specific account is registered as terminated in the NemKonto system.

The authorisation may be used to lay down rules to the effect that the Agency for Digital Government may, for example, delete a designated account at a specified time after a private person's death, the bankruptcy of a legal entity, or termination.

The deletion may occur when the probate court has completed the estate after a deceased person, when the probate court has completed the insolvency proceedings relating to a company that has been declared bankrupt, the legal entity is forcibly dissolved, liquidation has occurred or it is otherwise definitively established that the legal entity has ceased to exist. It is proposed that if a natural person who has been assigned a CVR number as an employer or self-employed person is declared bankrupt, the information on their NemKonto as legal entity in the NemKonto system will be deleted. However, they will typically also be registered as private individuals. However, the information on a NemKonto designated as a private individual will not have to be deleted, as the individual will need this account for other future activities. It is assumed that a solution can be established where the Agency for Digital Government can obtain information on when the above circumstances have occurred.

If this cannot be established, a fixed time limit for deletion may be laid down in such a way that the information on a designated account is deleted no later than 3 years after the death of a private person, the termination of a legal entity or a natural person to whom a CVR number has been assigned as an employer or self-employed person is declared bankrupt.

The authorisation may also be used to lay down rules to the effect that a designated account is deleted from the NemKonto system when it has not been used for a number of years or that a desig-

nated account can be deleted from the NemKonto system on the basis of information from the account servicing institution that the account in question has been closed.

It should be noted that the Agency for Digital Government's deletion will have the same effect as when a payee deletes a NemKonto or benefit-specific account, i.e. the account is recorded as having ceased in the NemKonto system. Final deletion of information in the NemKonto system is described in the general comments on para. 2.10.2.4 and the comments on Section 25(4).

Reference is also made to para. 2.3.2 of the general explanatory notes of the draft Act.

Re Section 8

The public payers who shall be connected to and use the NemKonto in making payments are specified in Section 12 of the Public Payments Act, etc., and in Section 7(1) of the NemKonto Order.

It follows from Section 7(2) of the NemKonto Order that the Minister for Digital Government, after discussion with the Danish Parliament's management and the Danish Auditor General, may decide that the Danish Parliament and institutions under the Danish Parliament are covered by the Order. It is thus determined that the Danish Parliament, the Parliamentary Ombudsman and the National Audit Office are covered by the rules of the Order on the use of NemKonto.

It is proposed that a provision shall be inserted as (1), according to which 'public payers' means:

- 1) Public administration authorities.
- 2) The courts.
- 3) Institutions, associations, foundations, etc. whose expenses or accounting deficit are covered by state subsidy or by contributions, tax, or other income in accordance with the Act.
- 4) Institutions, associations, foundations, etc. that receive capital injections, grants, loans, guarantees or other support from the State or an institution, etc. covered by no. 3, if the capital injection, etc. is of significant importance to the recipient.
- 5) Autonomous institutions whose operating budget has been included in the Appropriation Act.
- 6) Autonomous institutions etc. with which a municipality or region has entered into an operation agreement.

With the proposed scheme, the term ‘public payers’ will include the same legal entities that are currently connected to or can be connected to the NemKonto system as public authorities.

With the proposed (1) no. 1, public payers will include authorities in the area of public administration. The term ‘public administration authorities’ refers to the customary concept of the authority of the administrative court, i.e. a delimitation corresponding to the authorities covered by Access to Public Administration Files Act and the Public Administration Act. The provision will thus cover all activities of all managing authorities, regardless of whether they belong to the state, regional or municipal administration, and regardless of whether they are ordinary managing authorities, special boards or councils, e.g. parochial church councils, or special administration entities, e.g. the Danish Central Bank or Section 60 company of the Municipal Council Act. The concept also includes administrative bodies, even if they designate themselves as ‘courts’, e.g. the National Tax Tribunal.

With the proposed (1) no. 2, public payers will include the courts. ‘Courts’ means the ordinary courts such as the Supreme Court, the high courts, the district courts and the Maritime and Commercial Court and the special courts, such as the Labour Court, the housing courts and the Civil Service Court.

With the proposed (1) no. 3, public payers will include Institutions, associations, foundations, etc., whose expenses or accounting deficit are covered by state subsidies or by contributions, tax or other income in accordance with the Act. This will include, for example, unemployment insurance funds.

With the proposed (1) no. 4, public payers will include institutions, associations, foundations, etc., which receive capital injections, grants, loans, guarantees or other support from the State or an institution, etc. covered by the proposed Section 8(1) no. 3, if the capital injection, etc. is of significant importance to the recipient. The Ministry of Digital Affairs is of the opinion that it is appropriate that the institutions, associations, foundations, etc. in question continue to be covered by the NemKonto scheme and that the efficiency gains that the NemKonto system entails for public authorities can similarly be implemented for institutions that can be covered by the State accounting rules, cf. Section 2(2) of Act no. 131 of 28 March 1984 on the State Accounting System, as amended. The delimitation in (1), nos. 3 and 4 is thus proposed to be the same as in Act no. 321 of 26 June 1975 on the audit of the accounts of the State, etc.

With the proposed (1) nos. 5 and 6, public payers will include autonomous and private institutions with which a municipality has entered into an operation agreement, and autonomous institutions, etc., that receive coverage for expenses or other support from the State. These institutions are included in the concept, as they are in practice to be regarded as ordinary municipal institutions and they should therefore have access to use the NemKonto system.

It is proposed that as (2), a provision shall be inserted by which the Minister for Digital Government, after discussion with the Danish Parliament’s management and the Danish Auditor General,

can decide that the Danish Parliament and institutions under the Danish Parliament are public payers.

With the proposed scheme, the Minister for Digital Government will thus, after discussion with the Danish Parliament's management and the Danish Auditor General, be able to determine that the Danish Parliament and institutions under the Danish Parliament will be covered by the concept of public payers. Institutions under the Danish Parliament are understood to be the Ombudsman of the Danish Parliament, the Danish Parliament's National Audit Office and the State Auditors.

The proposed scheme will make it possible to continue the current scheme, where the Danish Parliament, the Ombudsman of the Danish Parliament and the Danish Parliament's National Audit Office use the NemKonto system to make payments.

Reference is also made to para. 2.4.2 of the general explanatory notes of the draft Act.

Re Section 9

Under Section 12(4) of the Public Payments Act, etc., certain autonomous institutions and foundations, etc. are not required to use the NemKonto system to the extent that other legislation contains rules on payment administration that are not compatible with the Act or rules laid down by the Act. Under Section 12(5), the relevant municipality or region may exempt self-governing institutions referred to in Section 12(2) from the provisions of Sections 1-7, and under Section 12(6), the Minister concerned may, after negotiation with the Minister of Finance, exempt institutions, associations, and funds, etc. referred to in Section 12(3) from the provisions of Sections 1-8.

It is proposed to insert as (1) a provision under which public payers covered by the proposed Section 8 are not covered by the provisions of the Act to the extent that other legislation contains rules that are not compatible with the Act or rules laid down by the Act.

With the proposed provision, public payers will therefore not be subject to the provisions of the Act to the extent that other legislation is incompatible with the rules laid down in the draft Act, as the proposed scheme for NemKonto is not intended to replace other legislation to which public payers are subject.

It is proposed that a provision shall be inserted as (2) by which the municipality or region concerned may decide that Section 12(1)–(4), Section 13(1) and (2), Sections 14–17 and rules laid down pursuant to Section 10, Section 11 and Section 12(5) do not apply to a public payer covered by Section 8(1) no. 6.

With the proposed provision, it will be possible for municipalities and regions to decide that autonomous institutions, etc. with which a municipality or region has entered into an operating agreement shall not use the NemKonto system as public payer. It is assumed that the municipalities and regions will only use the proposed provision when there is an objective and proportional basis for

exempting the autonomous institution in question. This may be the case, for example, if the costs associated with adapting the IT systems of the autonomous institution clearly exceed the need for use of the NemKonto system to implement individual payouts.

If a public payer is in this way exempted from the obligation to use the NemKonto system for the execution of payments to payees, the public payer in question will no longer be able to use the NemKonto system for the execution of payment orders. In these cases, the public payer will instead have the option in the NemKonto system and be responsible for ensuring a subsequent account transfer, cf. the proposed Section 18. Where appropriate, the rules applicable to private payers in Section 18 and rules laid down pursuant thereto shall apply, and not the rules in Chapter 3 or rules laid down pursuant thereto. Public payers who are exempted from the obligation to use the NemKonto system can also make payments completely outside the NemKonto system.

Public payers who are exempted from the obligation to use the NemKonto system shall continue to designate a NemKonto if they are included in the obligation to issue an authorisation under the proposed Section 3.

It is proposed to insert as (3) a provision by which the Minister concerned may, in agreement with the Minister for Digital Government, lay down rules to the effect that Section 12(1) to (4), Section 13(1) and (2), Sections 14 to 17 and rules laid down pursuant to Section 10, Section 11 and Section 12(5) do not apply to one or more public payers covered by Section 8(1) no. 3 and 4.

With the proposed provision, it will be possible for the relevant ministry responsible, in agreement with the Minister for Digital Government, to lay down rules stipulating that institutions, associations, foundations, etc. whose expenses or accounting deficit are covered by government subsidies or by contributions, taxes, or other income in accordance with the Act, are not to use the NemKonto system as public payer.

Similarly, the responsible minister in agreement with the Minister for Digital Government can lay down rules stipulating that institutions, associations, foundations, etc. that receive capital injections, grants, loans, guarantees or other support from the State or an institution, etc., whose expenses or accounting deficit are covered by State subsidies or by contributions, tax, or other income in accordance with the Act, if the capital injection, etc. is of significant importance to the recipient, shall not use the NemKonto system as public payer.

It should be noted that the establishment of such rules will largely depend on the initiative and assessment of the relevant responsible minister.

It is assumed that the ministers will only use the proposed provision when there is an objective and proportionate basis for exempting the institution in question, etc. This may be the case, for example, if the costs associated with adapting the institution's IT systems clearly exceed the need for use of the NemKonto system to make individual payments.

Similarly, this may be the case for smaller autonomous institutions with limited payment volumes and/or limited system support for the economy and accounting functions, such as educational institutions under the Act on free schools and private primary schools, etc., the Act on lower secondary education and free vocational schools, the Act on preparatory basic education, and the Act on private institutions for secondary education. Examples of institutions of a similar nature can be found in other areas of responsibility.

If a public payer is in this way exempted from the obligation to use the NemKonto system for the execution of payments to payees, the public payer in question will no longer be able to use the NemKonto system for the execution of payment orders. In such cases, the public payer will instead have the option of using a private account intermediary to carry out account searches in the NemKonto system in the payee's NemKonto and be responsible for securing the account transfer, cf. the proposed Section 18. In such a case, the rules on private payers in Section 18 and rules laid down pursuant thereto shall apply, and not the rules in Chapter 3 or rules laid down pursuant thereto. However, public payers who are exempted from the obligation to use the NemKonto system can also make payments completely outside the NemKonto system.

Public payers who are exempted from the obligation to use the NemKonto system in accordance with the rules laid down pursuant to (3) shall continue to designate a NemKonto if they are included in the obligation to issue an authorisation under the proposed Section 3.

Reference is also made to para. 2.4.2 of the general explanatory notes of the draft Act.

Re Section 10

Use of the NemKonto system is free of charge for the public authorities, etc. that can make payments via the NemKonto system, cf. Section 38(1) of the NemKonto Order. However, public authorities are obligated to carry out any system adaptations to their own systems that are necessary in order to be able to communicate with and use the NemKonto system cf. Section 29(4) sentence 1 of the NemKonto order. The public authorities, etc. shall themselves effect expenditure for any system adjustments in their own systems as a result of the connection to the NemKonto system and a minor connection cost to the private supplier, cf. Section 38(2) of the Order.

It is proposed that a provision shall be inserted as *Section 10*, by which the Minister for Digital Government shall lay down rules on the connection to and use of the NemKonto system by public payers, including rules on the payment of fees for connection, etc.

Public payers shall, as in the current NemKonto scheme, be obliged to use the NemKonto system to make payments to private persons and legal entities who have designated a NemKonto or benefit-specific account, cf. Section 13 of the draft Act. Public payers are expected to be able to use the NemKonto System in connection with all payments to private persons and legal entities that may be made as credit transfers, including the possibility for public payers to also carry out full payment orders in the NemKonto system, where the public payer provides himself or herself the payee's ac-

count information and thus does not use any NemKonto or benefit-specific accounts of the payee when this takes place under the instructions of the payee.

The Minister for Digital Government will, among other things, be able to lay down rules requiring public payers to make any system adaptations to their own systems that are necessary in order to communicate with and use the NemKonto system. Rules may also be laid down to the effect that the connection to and use of the NemKonto system is made in accordance with the conditions, technical standards and policies laid down by the Agency for Digital Government, and that connection, including the establishment of the necessary user rights to the NemKonto system, is made separately for each of the authority's payment systems.

Under the proposed scheme, the Minister for Digital Government will also be able to lay down rules on payment of charges by public payers to the Agency for Digital Government for connection to the NemKonto system, etc. The remuneration covers technical connection of a public payer's payment systems to the NemKonto System and connection testing. Charges for connection are currently settled using flat rates with the private provider of the NemKonto system. Once the new NemKonto system has been put into operation, fees are expected to be collected by the Agency for Digital Government and the size of the fees is set so that full coverage of the Agency for Digital Government's costs is sought, e.g. by payment according to fixed rates. The Agency for Digital Government will set the payments in accordance with the budget guidance and guidance on pricing. The Agency for Digital Government pays for the connection for all public payers upon the transition from the current NemKonto to the new NemKonto system. Thus, no remuneration will be charged for the technical connection of the public payers' systems when an existing connection is to be moved to the new NemKonto system.

Public payers shall themselves incur costs for any system adjustments in their own systems resulting from the connection to the NemKonto system. This also applies to the transition from the current to the new NemKonto system.

The authorisation is also expected to be used to lay down rules to the effect that the use of the NemKonto system itself is free of charge for the public payers, as the provision for public payers is financed from the total appropriation for the NemKonto system, which is part of the Agency for Digital Government's appropriation in the Finance Act.

In addition, the authorisation may be used to lay down rules on disconnection and suspension of public disbursements from the NemKonto system. This may be relevant, for example, in the event that a public payer can no longer be considered to be a public payer, or where the use of the NemKonto system by a public payer constitutes a breach of security or a security risk to private persons, legal entities or the NemKonto system as a whole. Since public payers are obliged to use the NemKonto system, it is expected that, in principle, any suspension or disconnection will be of temporary duration until the cause of the condition in question has been terminated or remedied.

Reference is also made to para. 2.4.2 of the general explanatory notes of the draft Act.

Re Section 11

In accordance with Section 23(1) no. 3, sentence 1 of the NemKonto Order, the citizen or enterprise may, by contacting a public authority to which the citizen or enterprise applies or receives payment from, request the authority to specify, amend or delete their NemKonto.

It is proposed that a provision shall be inserted as *Section 11* by which the Minister for Digital Government shall lay down rules on which public payers who, at the request of payees, shall report designations, amendment or deletion of accounts as a NemKonto in the NemKonto system, including rules on the documentation requirements of public payers, administration of NemKontos, etc.

With the proposed provision, the Minister for Digital Government will be able to lay down rules requiring public payers to report the designation, amendment or deletion of NemKontos for the payees to which they pay benefits.

In addition, with the proposed scheme, the Minister for Digital Government will be able to lay down rules requiring specified public payers to assist payees with the reporting of the designation, amendment or deletion of NemKonto. Rules may thus be laid down stipulating that, for example, the municipalities will have to assist payees with the reporting of the designation, amendment or deletion of NemKonto.

With the proposed provision, the Minister for Digital Government will also be able to lay down rules stipulating that the public payer is, inter alia, responsible for ensuring that the information transmitted is correct and up-to-date at all times. It may also entail laying down rules requiring, inter alia, the documentation that the public payers will have to collect when reporting to the NemKonto system on behalf of a payee, and that the public payer must ensure that there is the necessary security to ensure that the correct payee is responsible for ordering, etc. the account. In this context, the presentation of, for example, a passport or other identification document may be required.

Furthermore, under the proposed scheme, the Minister for Digital Government will be able to lay down rules to the effect that when a public payer reports in the NemKonto system, the report will have to be approved by another authorised case officer of the public payer than the person making the report. The proposed scheme will also make it possible to lay down rules to the effect that the reporting may be carried out by observing other control measures that provide the same assurance of the correctness of the update.

The Minister for Digital Government may also lay down rules with the proposed scheme that appropriate control measures will have to be set up in cases where the public pays out disallowing the payee to subsequently carry out activation through the proposed activation process, cf. more details in the proposed Section 6 and the comments thereon.

In addition, the proposed scheme will enable the Minister for Digital Government to lay down rules on how public payers will have to administer reports in the NemKonto system and deadlines for reports. For example, the Minister for Digital Government will be able to lay down rules requiring public payers to make the report to the NemKonto system as soon as possible upon request from a payee.

Reference is also made to para. 2.4.2 of the general explanatory notes of the draft Act.

Re Section 12

In accordance with Section 27 of the NemKonto Order, the relevant public authority, on behalf of citizens and enterprises, must specify, amend, block, or delete information on specific accounts in the NemKonto register, which relate to the authority's types of benefits.

It is proposed to insert as (1) a provision requiring public payers to report, at the request of a payee, the instruction, amendment or deletion of accounts in the capacity of benefit-specific accounts in the NemKonto system for benefits paid by themselves, without prejudice to the proposed (2) sentence 2. The public payer shall determine the benefits covered by a type of benefit.

If the payee requests the payment of several different types of benefits to a benefit-specific account, a benefit-specific account shall be designated for each type of benefit. It should be noted that the same account number may be designated to several benefit-specific accounts.

Under the proposed scheme, the public payer must indicate the type of benefit covered by the payment to the benefit-specific account.

Under the proposed scheme, the public payer will be responsible for ensuring that the information disclosed in the NemKonto system regarding benefit-specific accounts is correct and up to date at all times. The public payer is not liable for updates made by the payee himself or herself via a self-service solution.

When a benefit-specific account is deleted, any future payments of that kind from the public payer in question will be paid to the payee's NemKonto.

If a public payer who has designated a benefit-specific account is no longer responsible for paying a benefit to a payee, the payee shall request the new public payer of that benefit to specify a new benefit-specific account. Alternatively, future payments of the specified benefit will be paid out to the payee's NemKonto. This will be the case, for example, where a payee receives a benefit from a municipality and they move to another municipality.

It is proposed to insert as (2) a provision under which a public payer can, at the request of the payee, lock a benefit-specific account in the NemKonto system, so that the payee cannot immediately make any changes to it.

Under the proposed arrangement, a public payer, at the request of the payee or his or her guardian or proxy holder, will be able to lock a benefit-specific account so that the payee cannot directly make any changes to it. This will be relevant, for example, in situations where a payee and the municipality have agreed that the municipality must administer the payee's pension under Section 36(2) of the Social Pension Act. In connection with the agreement, the payee may give power of attorney to the municipality to request other public payers to designate and lock benefit-specific accounts for the payee.

Under the proposed scheme, it will be optional for public payers whether they will lock a benefit-specific account at the request of a payee.

It is proposed to insert as (3) a provision to the effect that if a public payer can determine, under other legislation, the way in which the payment of a benefit to a payee shall be made, the public payer may specify and lock a benefit-specific account, irrespective of the payee's failure to request it.

If the payee has not requested the locking of a benefit-specific account, the public payer may instruct and lock a benefit-specific account if the public payer can determine under other legislation the way in which the payment is to be made. As an example, under Section 36(1) of the Social Pension Act, the municipal council may decide in which way a payee's pension shall be paid if it considers that a pensioner cannot administer their pension. Reference can also be made to Section 90(1) of the Active Social Policy Act.

The payee will be able to appeal against a decision involving the locking of a benefit-specific account pursuant to the rules in accordance with which the public payer has made a decision. The appeal body will thus also follow the legislation on which the public payer made the decision. If the decision is made under the Act on Social Pension, the appeal body will be the National Social Appeals Board, cf. Section 50 of the Act on Social Pension. If the decision has been made under the Active Social Policy Act, the appeal body will be the Appeals Board Employment Committee, cf. Section 98 of the Active Social Policy Act.

It is proposed to insert as (4) a provision stating that when a public payer can lock a benefit-specific account under (2) and (3), the public payer in question can similarly instruct the person making the payments to carry out this action and report designations, change, or deletion of locked benefit-specific accounts in the NemKonto system.

With the proposed provision, a public authority that has determined how the payment is to be made will be able to instruct and subdelegate the power to carry out the designation, amendment or cancellation of a locked benefit-specific account in the NemKonto system to the body that implements the payment of the benefit. However, the competence to decide whether to designate, amend or delete an account cannot be subdelegated and, accordingly, the decision to cancel a lock cannot be subdelegated. It will only be the practical implementation of the decision in the NemKonto system, which can be subdelegated.

As an example, under the proposed scheme, a municipality will be able to instruct Udbetaling Danmark to designate, amend or delete a locked benefit-specific account when Udbetaling Danmark executes payments of the benefit in question and the municipality has entered into an agreement with the payee or made a decision that includes payment of the benefit to a locked benefit-specific account.

It is proposed to insert as (5) a provision by which the Minister for Digital Government can lay down rules on the public payers' documentation requirements, reporting, administration of benefit-specific accounts, etc.

The provision could thus be used to lay down rules on the processing and process for benefit-specific accounts.

With the proposed provision, the Minister for Digital Government will, for example, be able to lay down rules on documentation requirements for the authorisation of benefit-specific accounts, requirements for reports in the NemKonto system, including requirements for the identification of the payee, requirements for security procedures related to reports in the NemKonto system, and ensure that correct performance types are associated with the designated benefit-specific accounts. The Minister for Digital Government will also be able to lay down rules on public payers' information obligations by instructing benefit-specific accounts, including the obligation to inform the payee of the account, as well as the process and options to make changes to the account.

Reference is also made to para. 2.4.2 of the general explanatory notes of the draft Act.

Re Section 13

Public authorities are obligated to use the NemKonto system for payments to citizens and enterprises, cf. Section 30 of the NemKonto Order).

It is proposed to insert as (13) a provision requiring public payers to use the NemKonto system to make payments to payees with a NemKonto or benefit-specific account, cf., however, (3), Section 9(1) and Section 14(1) and rules laid down pursuant to Section 9(2).

The purpose of the provision is to ensure that public payers use the NemKonto system to pay payees to a NemKonto or benefit-specific account. This ensures a uniform method of payments across the public sector.

The provision will mean, inter alia, that public payers shall ensure that they have an agreement with a settlement-of-payments institution which, in agreement with the Agency for Digital Government or a person appointed by the Agency for Digital Government, can receive payment orders from the NemKonto system. This means, among other things, that the relevant settlement-of-payments institution must be technically able to receive payment orders from the NemKonto system

and be able to make a secure exchange of data. It should be noted that payment orders from the NemKonto system are in standard bank format.

However, the requirement to use the NemKonto system does not apply to the extent that the public payer is subject to other regulations that are not compatible with the Act, regulations laid down pursuant to the Act or the requirement to use the NemKonto system when paid, cf. the proposed (3) and Section 9. Furthermore, the requirement to use the NemKonto system does not apply in cases where the payee has designated an account other than NemKonto or a benefit-specific account for which the payment is to be made, cf. Section 14(2).

It is proposed in (2) that the NemKonto system shall be acquired from the Agency for Digital Government.

According to the proposed provision the NemKonto system shall be acquired from the Agency for Digital Government.

The Act means that the Agency for Digital Government, as system owner on behalf of the Danish State, shall make the NemKonto system available to public payers and thus allow public payers to use the NemKonto system. In this context, the Agency for Digital Government has a special status as an instrument and technical service for the entire public sector and shall accommodate the orders of all public authorities and bodies governed by public law in accordance with the provisions of the Act. In this respect, the procurement law relationship between the Agency for Digital Government and the public payers is of an internal nature, characterised by the Agency for Digital Government's subordination to and dependence on the public payers when they submit their request for connection pursuant to the Act.

Public payers' procurement of the NemKonto system from the Agency for Digital Government is carried out in accordance with the Act and without public payers being able to negotiate conditions for the use and remuneration of the NemKonto system. The economics of the solutions are based on a model by which the collection of payment for use of the solutions is always adjusted to reflect the actual costs of the solutions. Public payers have an obligation to acquire the NemKonto system by the Agency for Digital Government.

The proposed scheme thus gives the Agency for Digital Government an exclusive right, within the meaning of Section 17 of the Act on public procurement, to provide the NemKonto system to public payers and imposes an obligation to use the solution. Since all rules on provision and application will result from the Act, there will not be a bilateral contract on reciprocal obligations, cf. Section 24 no. 24 of the Public Procurement Act, and public payers can thus acquire the NemKonto system from the Agency for Digital Government pursuant to the Act, without having to carry out a tender, cf. also preamble recitals no. 5 and 34 of Directive no. 2014/24 of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (hereinafter the Procurement Directive).

The acquisition obligation gives the Agency for Digital Government an exclusive right and aims to uphold public policy and security, including in relation to the socio-economic considerations regarding joint procurement of IT solutions in the State. The obligation of public payers to acquire the NemKonto system propagates the use of the NemKonto system, ensuring knowledge of the solution in Danish society. Awareness of the solutions is crucial for the use, security, and trust in public digital self-service, which is a prerequisite for maintaining public order. Considerations of public security are also addressed through this obligation, ensuring overall State control over social-critical IT infrastructure. It will thus be possible for the NemKonto system to be continuously and efficiently updated on pace with technological developments and shifts in the digital threat scenario. Greater certainty is thus achieved when public payers are obligated to use the NemKonto system.

It is proposed to insert in (3) a provision under which public payers are not obliged to use the NemKonto system to the extent that other legislation contains rules that are not compatible with the Act or rules laid down by the Act.

It is thus proposed that, for example, public payers subject to rules on a Public Payment Service (OBS account) and State Group Payments, cf. Sections 8-11 of the Public Payments Act, etc., are not obliged to use the NemKonto system for the types of payments set out in the provisions.

Reference is also made to para. 2.4.2 of the general explanatory notes of the draft Act.

Re Section 14

It follows from the current scheme that public payers may make payments in discharge of their obligations to the NemKonto and benefit-specific accounts, cf. Section 1(1) and (2) of the Act on Public Payments, etc., unless the payee has designated another account to which the payment is to be made, cf. Section 1(5) of the Act on Public Payments, etc. Section 31 of the Order states that if, in connection with a payment from a public authority, a citizen or an undertaking has not designated a NemKonto or has a specific account set up, the public authority shall ensure that the citizen or undertaking has their receivable assigned by other means. The risk of late payment due to failure to comply with the obligation to issue an authorisation shall be borne by the citizen or enterprise.

It is proposed to insert as (1) a provision under which the payee's designated NemKonto or benefit-specific account is the correct place of payment for public payers, unless the payee has designated, to the public payer in question, another account to which payment is to be made. If it follows from another Act that payment must be made to the payee's designated NemKonto, this will always be the correct payment point.

The proposed provision implies that public payers will not be obliged to inquire from payees how they wish to receive sums of money due where the payee has instructed a NemKonto or benefit-specific account that may be used for payment. It is thus proposed that when a public payer has in this way made a payment to a NemKonto or benefit-specific account, the payee will not be able to argue

that the person in question has not received the amount of money due at the correct place of payment.

If the payee has specifically designated another account to the public payer in question, to which the payee will have the amount due, it is proposed that the public payer shall pay the amount to that account, cf. also (2) of the provision and the comments below.

However, it is proposed that public payers may always use the payee's NemKonto to make payments if the legislation stipulates that the payment of monetary amount must be made to the NemKonto. Examples of this include, for example, Sections 4 and 5 of Act no. 455 of 2 May 2023 on additional financial support for recipients of old-age cheques and lump sums for student following a course of further education who receive an additional grant due to a disability or as one-parent families and Section 5 of Act no. 1267 of 13 September 2022 on additional financial support for recipients of 'ældrechecken' [old-age cheques], lump sums for beneficiaries who have withdrawn from the labour market and lump sums for students following a course of further education who receive an additional grant due to a disability or as one-parent families.

It is proposed to insert as (2) a provision stating that if the payee has instructed an account other than his or her NemKonto or benefit-specific account to which payment is to be made, the public payer may make this payment as a full payment order in the NemKonto system.

With the proposed provision, public payers will be able to use the NemKonto system to make so-called full payments, where the public payer itself enters the account information on payees before the payment order is transmitted to the NemKonto system, after which the payment is transferred there without the use of data from the NemKonto system.

The proposed provision will allow public payers to use the NemKonto system to make all payments, whether the transfer is made to a NemKonto, a benefit-specific account or other account, cf. the proposed Section 13 and the comments thereon.

In addition, it is proposed to insert as (3) a provision stating that if, in connection with a payment from a public payer, the payee has not designated a NemKonto, a defined benefit account, or another account, the public payer shall ensure that the payee is paid her or his receivable by other means. The same applies when the public payer receives information that payment cannot be made.

With the proposed provision, public payers will, as before, be obliged to ensure that the payee receives his or her payment in another way, if the payee has not reported an account in the NemKonto system, or otherwise contacted the public payer about an account to be paid to. The public payer will thus have a general the law of obligations obligation to terminate the debt situation, including where payees have not designated a NemKonto.

Payout in another way could be, for example, a down payment in cash, cf. also Section 8 of the Act on the National Bank of Denmark, cf. Act no. 116 of 7 April 1936, as amended, which provides

that the banknotes issued by the bank ‘are legal tender from man to man and with payments and payouts made by public funds’.

Thus, the draft Act implies that public payers cannot make payments of benefits as a condition for the payee to have a NemKonto or otherwise hold a bank account or other type of account, unless otherwise provided for by other legislation. Examples of other legislation are Section 62 C(3) of the Withholding Tax Act and Section 16(4) of the Recovery Act. Section 34 of the draft Act stipulating that the Agency for Digital Government pays out deposited claims for money in the holding account to the payee according to his or her designation of a NemKonto or another account, means that payments from the holding account can only be made to a NemKonto or another account specified by the payee.

The draft Act also does not provide a legal basis for public payers to order a payee to have his or her benefits paid to the beneficiary’s monetary institution account if the payee does not wish to do so. Thus, the public payer cannot make a condition for payment that the payee provides an account number, but will be obliged to ensure that the payment can be made by other means, such as in cash.

Reference is also made to para. 2.4.2 of the general explanatory notes of the draft Act.

Re Section 15

Under Section 32(2) of the NemKonto Order, the risk of late payment as a result of infringement of the obligation to issue designation is borne by the citizen or undertaking.

It is proposed to insert in (15) a provision according to which a payee who is required to designate a NemKonto in accordance with Section 2(1) or Section 3(1) or (2) bears the risk of late payment by a public payer arising from the payee’s failure to designate a NemKonto, a benefit-specific account, or another account to which payment may be made, or the payee’s failure to contribute to ensuring that the payment of the receivable can be made by other means. Similarly, the payee will bear the risk of late payment in other cases from a public payer, if payment to the designated NemKonto, benefit-specific account or other account or payment by other means cannot be made for reasons beyond the control of the NemKonto system or the public payer.

Under the proposed scheme, it will be the payee who bears the risk of late payment by a public payer when the payee has failed to designate a NemKonto, a benefit-specific account, or another account to which payment may be made, and the payee has failed to contribute to the payment being made by other means. This means in cases where the payee has completely failed to assist in finding a solution as to how the payment can be made by other means. Similarly, the payee will bear the risk of late payment by a public payer, if payment to the designated NemKonto, benefit-specific account or other account or payment by other means cannot be made for reasons not attributable to the NemKonto system or the public payer. This may be the case, for example, where the designated account cannot be used as a NemKonto or benefit-specific account because the account is closed or

because the account is a children's savings account or pension savings account, or because the payee's involvement has been insufficient, for example because it was too late for the public payer to be able to make the payment on time.

The proposed provision does not suspend the public payer's obligation to pay the amount of money due to payees until a NemKonto, a defined benefit account or another account is designated or payment is made in any other way. Thus, public payers shall ensure the timely payment of amounts, but the risk of delay, including increased costs due to the failure to designate a NemKonto, a benefit-specific account, another account, or helping to ensure that the payment can be made in another way, shall be borne by the payee. The proposal thus implies that no interest will accrue on the late payment in cases where the payee has failed to specify a NemKonto, a benefit-specific account, or other account, or has failed to provide sufficient support for payment to be made by other means. This will be *mora creditoris*. This will also apply regardless of the fact that, in other legislation related to the monetary amount in question, there is a provision on interest in the event of late payment.

The risk of late payment imposed on the payee does not include a delay exceeding the time that the public payer has reasonably been required to take to obtain clarification as to whether the payee wishes and is able to specify a NemKonto, benefit-specific account or other account, or otherwise ensure that payments are made by other means. Thus, in the Ombudsman's opinion of 20 December 2023, the Ombudsman found that a municipality could not require that a citizen, as a condition for receiving his cash assistance, was given a NemKonto or designated another person's account to which the benefit could be transferred. Instead, immediately after the municipality became aware that the citizen no longer had a NemKonto, the municipality should have taken the initiative to clarify whether the citizen was setting up a new NemKonto or whether the citizen wanted their cash assistance to be paid to another account – possibly another person's account. And because it was clear to the municipality that this was not the case, the municipality should within a short period of time have paid the cash assistance in another way, cf. FOB 2023-40.

The proposed provision only governs who bears the risk of a late payment by a public payer upon the payee's failure to designate a NemKonto or other means of payment. If the late payment is due to other circumstances, the general rules and principles of the law of obligations shall apply.

The proposed provision thus applies only in relation to payees who are to designate a NemKonto pursuant to Section 2(1) or Section 3(1) or (2), while the general rules and principles of the law of obligations apply in relation to other payees.

Reference is also made to para. 2.4.2 of the general explanatory notes of the draft Act.

Re Section 16

It follows from Section 2a of the Public Payments Act, etc., that payments to banking accounts abroad are regarded as having been made in due time by the public authorities, regardless of

whether they have received them at a later date than equivalent domestic payments, if 1) they are processed on the same day as corresponding payments to domestic accounts and 2) the corresponding domestic payments are received by the recipient on time. In addition, Section 23(3) of the NemKonto Order states that amounts designated to NemKontos abroad may be deducted from the additional costs to which the transfers are associated.

It is proposed to insert as (1) a provision according to which a payment by a public payer to the payee's designated foreign account shall be deemed to have been made by the public payer in due time, irrespective of the fact that the payment has been received by the recipient at a later date than equivalent domestic payments, if 1) the payment is dispatched on the same day as equivalent payments to domestic accounts and 2) the payment of the corresponding domestic payments has been received by the recipients in due time.

The provision proposes that payments to a payee's account abroad are considered timely if the delay is not due to the public payer's situation. This means that the payment can be considered timely even if the payee receives the amount at a later date than equivalent domestic payments processed on the same date, provided that the domestic payments are received on time by the payees.

The proposed scheme implies that when the payee designates an account abroad, this implies an implicit acceptance that the payment is considered timely, even if the payee receives the amount at a later time than equivalent domestic payments processed on the same date, provided that domestic payments are received in due time by the payees.

With the proposed scheme, it will be the public payer who indicates the date of processing of a payment order. The paying authority will not be aware of whether the account is domestic or foreign, nor will the NemKonto system itself differentiate between domestic and foreign accounts. The date of processing of a payment order will therefore not take into account whether the payment should be transferred to an account at an institution in Denmark or abroad. However, due to the institutions' business procedures, payments to foreign accounts will often take longer (typically 1 to 2 days) in the financial system than payments to domestic accounts.

The proposed scheme thus aims to relieve public payers of any liability for delays attributable to the payee's choice of institution and the institutions' business procedures in connection with the transfer of amounts to foreign accounts.

The proposed scheme does not otherwise intend to regulate when a payment is timely.

It is proposed to insert as (2) a provision under which public payers can offset in the payment the additional costs associated with a transfer of amounts to a designated NemKonto or benefit-specific account abroad.

The amount paid by the payee to an account outside Denmark may be deducted from the additional costs associated with paying to a foreign account, unless other legislation provides otherwise.

The proposed scheme implies that, when the payee arranges an account abroad as a NemKonto, this implies an implicit acceptance that the payee herself or himself incurs the additional costs associated with it.

The proposed scheme thus aims to relieve public payers of any cost attributable to the payee's choice of institution and the institutions' business procedures in connection with the transfer of amounts to foreign accounts.

Reference is also made to para. 2.4.2 of the general explanatory notes of the draft Act.

Re Section 17

Under Section 4a of the Act on Public Payments, etc., information from the NemKonto system of payments from public authorities may be disclosed to a recovery system administered by the Customs and Tax Administration. If the Customs and Tax Administration has requested the transfer of the payment for the purpose of offsetting in whole or in part in the payment amount, payment to the payee's NemKonto or another account does not take place. Transfer to the Customs and Tax Administration is carried out in full discharge of the paying agent's liabilities. When the Customs and Tax Administration pays out excess amounts after offsetting has been carried out, the Customs and Tax Administration is considered to be the paying authority.

It is proposed to lay down as (1) a provision according to which payment to the payee's NemKonto, benefit-specific account or to another account does not take place if the Customs and Tax Administration has requested the transfer of the payment amount for the purpose of offsetting into the payment amount or for the purpose of payment to rightsholders who have rights in claims of payment from the Customs and Tax Administration.

The provision provides a legal basis for a payment from a public payer to a payee to be redirected and made to the Customs and Tax Administration instead of to the payee when he or she is registered as the debtor with the Arrears Collection Authority, including in relation to claims under collection registered in the claim register of the Arrears Collection Authority. The transfer of payment amounts to the Customs and Tax Administration is carried out with a view to offsetting with debts to the public sector or payment to rightsholders.

The provision implies that if the offsetting conditions are met, a payment amount will not be paid to the payee's NemKonto, any benefit-specific account or other account, but will instead be transferred to the Customs and Tax Administration. The provision also implies that if there is registered transport or seizure of a payment from the Customs and Tax Administration that is transferred to the recovery systems of the Arrears Collection Authority through the NemKonto system, a payment amount will not be paid to the payee's NemKonto, any benefit-specific account or other account, but will instead be transferred to the Customs and Tax Administration.

It is proposed in (2) that in the case of a transfer of a payment amount to the Customs and Tax Administration in accordance with (1), payment is considered to have been made in full discharge of liabilities to the public payer. This means that the public payer is released from its payment obligation in relation to the payee.

Recovery systems at the Customs and Tax Administration then automatically arrange the distribution of amounts to the authorities which have registered claims in the recovery systems of the Arrears Collection Authority that can be used for offsetting. In relation to payouts from the Customs and Tax Administration, offsetting and payments are made in respect of any transport and garnishments.

It is the Debt Collection Agency that decides on offsetting with claims under collection, while the arrears recovery authority decides on offsetting with regard to claims under recovery. The Arrears Collection Authority informs the recipient of a claim made, a payment to the rightsholder or a payment to the recipient of the sum, when the amount of the payment has been transferred to the Arrears Collection Authority.

It is proposed in (3) that in the case of payment of surplus amounts after implemented offsetting or payment to rightsholders, the Customs and Tax Administration is considered to be a public payer. Payment is made to the payee's NemKonto, benefit-specific account or to another account.

Reference is also made to 2.5.2 of the general explanatory notes of the draft Act.

Re Section 18

Private payers may, in return for payment and under specified conditions, use the NemKonto registry and the NemKonto system for the dissemination of payments to the payee's NemKonto, cf. Section 5a(1) of the Public Payments Act, etc. Private payers are currently connected to the NemKonto System via private payment providers.

Section 5a(3) of the Act on Public Payments, etc. provides that the payee may at any time notify a private payer that the payouts are not intended to be placed in the recipient's NemKonto. A private payer may, for the purpose of arranging payouts, use the payee's CPR number if, under other legislation, the private payer has a right to process CPR numbers or if the payee has given consent to the use of his or her CPR number, cf. Section 5a(4) of the Act.

It is proposed to insert as (1) a provision under which a private payer can, under specified conditions, through a private account intermediary, perform account searches in the NemKonto system when the account details are to be used to make a payment to a payee and the payee's NemKonto is the correct place of payment.

By account searching in the NemKonto system, it is understood that the private account intermediary sends a request to the NemKonto system on behalf of a private payer. The query will have to contain a CPR number, CVR number, SE number or P number of the payee, so that the NemKonto system can identify the payee and, on that basis, return information on the payee's NemKonto to the private payer through the private account intermediary. The payment transaction from the private payer to the payee will then be made outside the NemKonto system as before.

It is a prerequisite for being able to look up accounts relating to private persons in the NemKonto system that these are identified by CPR numbers. A CPR number information can for example be processed if a payee consents to their CPR number being used by the private payer in order for the payment to be entered in their NemKonto. Consent must meet the requirements for consent in accordance with the provisions for this in the Danish Data Protection Act and the General Data Protection Regulation.

It is assumed that, by a private payer's request via a private account intermediary, the Agency for Digital Government can generally assume that the private payer has the right to process the payee's CPR number and account information, as the recipient warrants that there is a basis for processing in accordance with the General Data Protection Regulation, e.g. consent. Thus, the Agency for Digital Government does not have an obligation to carry out a prior check of whether the private payer has a basis for processing the personal data that the Agency transmits to the private payer. However, in accordance with the general rules on the right to object in Article 21 of the General Data Protection Regulation, the Agency for Digital Government will be obligated to consider and process an objection from a payee that a private payer may not obtain personal data relating to him or her.

It is proposed that the right of private payers to carry out account searches via a private account intermediary must be granted under certain conditions. It is assumed that the private payers' access to account searches in the NemKonto system via a private account intermediary will be further regulated by agreement, conditions or order issued pursuant to the proposed (4).

It is proposed that a provision shall be inserted as (2), by which private persons and legal entities with a domicile or registered office in Denmark, in another EU/EEA country or in the Faroe Islands, can run account notices as private investors in accordance with (1). However, this does not apply to legal entities which are public payers in accordance with Section 8, unless the public payer is exempted under Section 9(2) or rules laid down pursuant to Section 9(3).

The intention of allowing the definition to cover private persons and legal entities residing or having their registered office in an EU/EEA country is to comply with the principle of the free movement of services of the TFEU. Private persons and legal persons in the Faroe Islands are covered by the definition, since the Faroe Islands are part of the Danish Realm, and the European Commission has determined that the Faroe Islands have an adequate level of protection within the meaning of Article 45 of the General Data Protection Regulation for transfers of personal data to take place between EU countries and the Faroe Islands.

With the proposed definition, private persons and legal entities with a residence or registered fiscal domicile outside Denmark, EU/EEA area or the Faroe Islands will not be able to carry out account searches in the NemKonto system via a private account intermediary. This means, for example, that private persons and legal entities residing or having their registered office in Greenland, the United Kingdom or the United States will not be able to use this function.

The proposed geographical delimitation of where the private payer can have residence or registered fiscal domicile is a limitation in relation to the current Section 5a(2) of the Public Payments Act, etc. that does not contain a geographical demarcation. The draft Act therefore provides for a transitional rule that allows any private payers who do not meet the new definition to remain private payers for a 1-year period from 1 July 2025 until and including 30 June 2026. Once the transitional period has ended, a private intermediary who is subject to the transitional rule will no longer be able to perform account searches via a private account intermediary in the NemKonto system. Please refer to the proposed Section 36(2) and the comments thereto.

Legal entities that are public payers may not, in principle, be private payers, as they are obliged to use the NemKonto system in accordance with the rules for public payers. However, it is proposed that public payers who are exempted under the proposed Section 9(2) or rules laid down pursuant to the proposed Section 9(3) may be privately paid. Where appropriate, the rules applicable to private payers in Section 18 and rules laid down pursuant to Section 18(4) to (6) shall apply, and not the rules applicable to public payers in Chapter 3 or rules laid down by virtue thereof.

It is proposed to insert as (3) a provision under which the payee can at any time notify a private payer that payments are not to be made to the recipient's NemKonto. The payee's right not to have the payment amount included in his or her NemKonto cannot be derogated from by agreement.

As before, the payee will be free to choose whether to pay out to an account other than his or her NemKonto from a private payer.

The form of the payee's message and the deadline by which the message must have arrived to the private payer are merely a matter between the payee and the private payer and should be specified in the payer's terms of business or the like.

It is proposed that a provision shall be inserted as (4) by which the Minister for Digital Government may lay down rules on private paying users' account searches, including rules on when and how private paying agents can perform account searches via a private account intermediary and the notification obligation of private paying agents.

The authorisation could be used to lay down detailed rules for when a private payer can and may perform an account search in the NemKonto system, including rules on the availability of the NemKonto system and rules requiring there to be a temporal association with the execution of the payment to the payee.

It will also be possible to lay down rules on how a private payer carries out account searches via a private account intermediary, including requirements as to number and form.

The Minister for Digital Government will thus be able to lay down detailed rules on the possibility for private payers to carry out account searches via a private account intermediary in the NemKonto system by means of an order. However, it is not a requirement that the conditions for the possibility for private payers to carry out account searches via private account intermediaries in the NemKonto system are laid down by order, and it will thus also be possible to lay down the conditions for the provision of account searches, etc. in the NemKonto system on the basis of contract law. The Agency for Digital Government will, for example, also be able to lay down a number of standard conditions for the creation of account searches, etc. in the NemKonto system or enter into agreements with the private parties for the creation of account searches, etc. It is assumed that a breach of contractual terms or conditions could lead to the exclusion from the use of the NemKonto system.

The Order may thus stipulate that a private payer may only look for accounts via a private account intermediary when the private payer is to make a concrete and imminent payment to a specific payee, and the payee's NemKonto must be used as the correct place of payment.

The Minister for Digital Government will also be able to lay down rules on the notification obligation of private payers. For example, it could be stipulated that private payers shall, before the first account searching in the NemKonto System is made and before the first payment is made to the payee, have informed the payee that, as before, the payee will be able to notify a private payer, as before, at any time that the payments are not to be placed in the recipient's NemKonto.

Rules could also be laid down to the effect that private payers, before the payment of protected amounts covered by Section 513 of the Administration of Justice Act, are paid to the payee, are obliged to inform the payee of the possibility of creditor protection whose amount is deposited in a separate account.

Rules may also be laid down stipulating that the private payer shall store documentation for notifications as long as the payment relationship exists and shall present it upon request by the Agency for Digital Government or the payee.

It is proposed that a provision shall be inserted as (5) by which the Minister for Digital Government may lay down rules on the liability of the Agency for Digital Government, system and operation providers, public payers, and account reporting institutions, and restrictions thereof towards private payers as a result of the unavailability of the NemKonto system account, system errors in the NemKonto system account and for errors in payees' account information, etc.

With the proposed enabling provision, the Minister will be able to lay down rules on liability and restrictions thereto vis-à-vis the private payers, who the private payers will automatically be considered to have accepted when choosing to use the NemKonto system via a private account intermedi-

ary. The use of the NemKonto system by private payers therefore entails acceptance of the terms and rules that apply to the use of the system, including rules on limitations in liability for damages.

The Minister for Digital Government will be able to use the authorisation to lay down rules to the effect that the Agency for Digital Government, system and operation providers, public payers and account reporting institutions are not liable for compensation to private payers, or that compensation is limited to special types of losses or cannot exceed a monetary limit or percentage of a loss. The Minister may also lay down rules stipulating that private payers cannot pursue recovery claims.

The enabling provision may, for example, be used to regulate liability for liability in the event of non-availability of the NemKonto system, system errors in the NemKonto system and for errors in the payee's account information and other errors. 'Unavailability' means, in part that the NemKonto system is not available at all for account searches, but also that operation is unstable, or the processing of account searches in the NemKonto system is delayed.

Rules may also be laid down on limitations of liability for damages for all types of errors, including e.g. unexplained errors, accidental errors, negligence and intentional errors.

Rules on liability restrictions, etc. could mean that private payers cannot make claims for compensation against, inter alia, the Agency for Digital Government, and instead the private payers will, for example, have to seek reimbursement of amounts wrongly paid back from the incorrect recipients.

Alternatively, liability limitations may be regulated, or additional to laying down rules in an Order, in the agreements concluded between the Agency for Digital Government and the private account intermediaries.

It is proposed that a provision shall be inserted as (6) by which the Minister for Digital Government may lay down rules on the Agency for Digital Government's communication to private parties of indictments, injunctions and exclusion from making account searches via a private account intermediary for failure to comply with rules, agreements or conditions for account searches in the NemKonto system. Exclusion from being able to search accounts may take place both in the event of non-compliance with rules, agreements or conditions and, depending on the situation, may take place on the basis of contract law or following a decision under administrative law.

The authorisation may be used to lay down rules to the effect that the Agency for Digital Government may issue injunctions or orders to private parties in cases of breach of rules, terms or agreements, and exclusion from use of the NemKonto system. This may be the case, for example, if the private payer does not comply with the rules, agreement or conditions for when and how account searches can be carried out via a private account intermediary in the NemKonto system. Such exclusion decisions may be made for a fixed duration or be permanent.

Rules could also be laid down to the effect that the Agency for Digital Government may exclude private parties by temporarily interrupting access to the NemKonto system if the Agency for Digital Government considers that this is necessary to ensure the stability, security, and operation of the NemKonto system or if there is suspicion of misuse of the NemKonto system or information contained therein. Such an instant termination of access to the NemKonto system can take place without individual consultation when essential considerations of public or private interests so warrant, cf. Section 19(2) no. 3 of the Public Administration Act).

Reference is also made to para. 2.6.2 of the general explanatory notes of the draft Act.

Re Section 19

Private payers may, in return for payment and under specified conditions, use the NemKonto registry and the NemKonto system for the dissemination of payments to the payee's NemKonto, cf. Section 5a(1) of the Public Payments Act, etc. Private payers are currently connected to the NemKonto System via private payment providers. The private payment service providers, which in the draft Act are referred to as private account intermediaries or operators of financial digital infrastructures, cf. the proposed Sections 19-20, are not currently regulated in the Act on Public Payments, etc. or rules laid down pursuant to the Act, but only on a contractual basis.

It is proposed to insert as (1) a provision by which a private account intermediary, under specified conditions, on behalf of a private payer, can run account searches in the NemKonto system for the purpose of making payments, cf. Section 18.

Under the proposed provision, a private payer will be able to perform account searches in the NemKonto system under specified conditions via a private account intermediary, after which information on the payee's NemKonto will be returned to the private account intermediary. The payment transaction from the private payer to the payee will then be made outside the NemKonto system as before. Private account intermediaries will also be able to display accounts on behalf of themselves as private paying agents.

'Account entry in the NemKonto system' means that the private account intermediary forwards a request to the NemKonto system on behalf of a private payer. Each inquiry will have to contain the CPR number, CVR number, SE number or P number of the payee, so that the NemKonto system can identify the payee and, on that basis, return information on the payee's NemKonto.

It is assumed that the private account intermediaries' access to perform account searches on behalf of a private payer in the NemKonto system will be further regulated by agreement, conditions and/or order issued pursuant to the proposed Section 19(3).

It is proposed that as (2) a provision shall be inserted by which the following enterprises may, upon agreement with the Agency for Digital Government, be connected to the NemKonto system as private account intermediaries:

- 1) A financial institution with an authorisation under the Financial Business Act or Decree on entry into force for the Faroe Islands of the Financial Business Act.
- 2) A payment or electronic money institution authorised under the Payments Act, Decree on the entry into force for the Faroe Islands of the Payments Act or an EU/EEA payment or electronic money institution authorised under the relevant EU/EEA State's national legislation, implementing Directive 2015/2366/EU of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, as amended (PSD2), and Directive of the European Parliament and of the Council on the taking up, pursuit of and prudential supervision of the business of electronic money institutions (EMD).
- 3) An EU/EEA credit institution authorised under the national law of the respective EU/EEA country implementing Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the supervision of credit institutions, as amended (CRD).
- 4) An insurance company authorised under the Insurance Business Act or an insurance company authorised to conduct insurance business in the EU under national law implementing Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II).

The inclusion of EU/EEA countries in the proposed provision includes, inter alia, branches established in Denmark by EU/EEA countries' credit institutions that are not authorised as Danish financial institutions under the Financial Business Act, but which carry out activities in Denmark similar to Danish financial institutions. Financial institutions, payment and electronic money institutions in the Faroe Islands are covered by the provision because the Faroe Islands are part of the Danish Realm and institutions in the Faroe Islands are subject to the same financial legislation as Danish institutions. Transfers of personal data between any Faroese private account intermediaries and the NemKonto system may take place, as the European Commission has determined that the Faroe Islands have an adequate level of protection within the meaning of Article 45 of the General Data Protection Regulation.

It is hereby proposed that the companies which are connected to the NemKonto System as private account intermediaries have all undergone the comprehensive approval that follows in the granting of the licences and that the companies are subject to supervision by the EU/EEA country's national competent supervisory authority. However, Danish branches of EU/EEA credit institutions are subject to supervision by the Danish Financial Supervisory Authority.

It is thus proposed that a private account intermediary that fulfils the requirements to be considered as private account intermediary may, in agreement with the Agency for Digital Government, be connected to the NemKonto system and act as a private account intermediary on behalf of a pri-

vate payer, including on behalf of herself or himself as private payer. Under (3), the Minister for Digital Government can lay down, inter alia, rules on the use of and connection to the NemKonto system by private account intermediaries. Pursuant to this provision, rules may be laid down to the effect that private account intermediaries can be connected to the NemKonto system through their own systems or via an operator of financial digital infrastructure, including rules can be laid down that the agreement with the Agency for Digital Government can be concluded via the private account intermediary's technical operator.

The proposed (2) does not take a position on whether companies that can be connected to the NemKonto System as private account intermediaries may be subject to other rules that prevent them from carrying out activity as private account intermediaries for others than themselves as private payers.

The task that private account intermediaries will have to carry out under the proposed Section 19 is currently performed by private payment service providers that are not regulated by the Act on Public Payments, etc. or rules laid down pursuant to the Act but regulated exclusively on a contractual basis. Ten private payment service providers are currently connected to the NemKonto system, but as it is not all of them who fulfil the requirement for the type of company in the proposed provision, the draft Act contains a transitional rule. The transitional rule allows any private payment service provider that does not meet the requirements under the proposed Section 19 to remain connected and to be a private account intermediary for a one-year period from 1 July 2025 to and including 30 June 2026. Once the transitional period has expired, a company which is subject to the transitional rule will no longer be able to be affiliated as a private account intermediary unless during the transitional period the company has become a type of company fulfilling the conditions for being a private account intermediary. Please refer to the proposed Section 36(3) and the comments thereto.

It is proposed that a provision shall be inserted as (3) by which the Minister for Digital Government can lay down further regulations on which companies can be connected to the NemKonto system as private account intermediaries. The Minister for Digital Government may also lay down rules on the use of and connection to the NemKonto system by private account intermediaries, including rules on fees and conditions.

It is intended that the authorisation may be used, inter alia, for the Minister for Digital Government to be able to lay down further rules for private account intermediaries in line with ongoing developments in the area, so that up-to-date requirements can be imposed on private account intermediaries. The authorisation may be used, inter alia, to lay down rules restricting the undertakings covered by Section 19(2), nos. 1-4 that may be connected to the NemKonto system as a private account intermediary on the basis of, for example, technical or security standards, including as a result of the fact that changes in the regulation of the undertakings concerned entail a need to lay down rules to the effect that only undertakings that are subject to certain rules on, for example, security or supervision may be connected to the NemKonto system.

The authorisation may also be used, among other things, to lay down rules that private account intermediaries must be connected to the NemKonto system in agreement with the Agency for Digital Government and possibly through an operator of financial digital infrastructure. Among other things, the Agency for Digital Government will be able to lay down agreement requirements in the agreement for the connection to the NemKonto system that is required to ensure authentication and authorisation for network infrastructure and the technical parameters that are to be used when setting up the data transmission software used. In addition, the Agency for Digital Government will also be able to lay down general contractual terms for the use of the system, etc.

The authorisation could also be used, among other things, to lay down rules that private account intermediaries can be connected to the NemKonto system through their own systems or via an operator of financial digital infrastructure. Rules could be laid down to the effect that, for example, the financial digital infrastructure operator may be responsible for the technical use of the NemKonto system by private account intermediaries connected to the NemKonto system via the operator and that the operator can handle the administration of the use of the NemKonto system by private account intermediaries, including that the connection agreement with and payment of fees to the Agency for Digital Government can be made by the operator of the private account intermediary.

The authorisation could also be used, among other things, to lay down detailed rules for the use of the NemKonto system by private account intermediaries, including rules on when and how private account intermediaries can perform account searches in the NemKonto system.

The Minister for Digital Government will thus be able to lay down detailed rules on the use of and connection to the NemKonto system by private account intermediaries by Order. The authorisation may be used, among other things, to lay down detailed rules for the use of the NemKonto system by private account intermediaries, including rules on when and how private account intermediaries can perform account searches in the NemKonto system, including requirements on number and form. Rules may also be laid down stipulating that private account intermediaries shall disclose information and conditions for the use of the NemKonto system to private payers or limit or exclude private payers' access to run account searches by the Agency for Digital Government's communication thereof.

However, it is not a requirement that the conditions for the use of and connection to the NemKonto system by private account intermediaries shall be laid down by Order and it will thus also be possible to lay down conditions for this on the basis of contract law. The Agency for Digital Government will, for example, also be able to lay down a number of standard conditions for the use of and connection to the NemKonto system or conclude agreements with the private account intermediaries on this. It is assumed that breach of contractual terms or conditions could lead to exclusion from use of the NemKonto system.

It is assumed that, with the proposed authorisation, the Minister for Digital Government will lay down rules on the payment of fees by private account intermediaries for the use of the NemKonto system. The fee will be determined in a cost-reflective manner and shall ensure the coverage of all

costs associated with the connection and use of the NemKonto system by private account intermediaries, including costs of the proposed compensation scheme. Private account intermediaries themselves will be responsible for collecting the costs associated with account notices in the NemKonto system from the private payers. Rules may be laid down on the procurement by private account intermediaries of additional assistance from the Agency for Digital Government that are settled on flat rates that are cost-based.

It is proposed that a provision shall be inserted as (4) by which the Minister for Digital Government may lay down rules on the liability of the Agency for Digital Government, system and operation providers, public payers, and account reporting institutions, and restrictions thereof, towards private account intermediaries due to the unavailability of the NemKonto system, system errors in the NemKonto system, and for errors in payees' account information, etc.

The private payment service providers who, under this draft Act, become private account intermediaries have hitherto been connected to the NemKonto system on the basis of a standard agreement concluded and with associated connection conditions, which has regulated and limited the liability situation when using the system.

With the proposed enabling provision, the Minister will be able to lay down rules on liability and limitations thereof vis-à-vis private account intermediaries, which the private account intermediaries will automatically be considered to have accepted when they choose to connect to and use the NemKonto system. The connection to and use of the NemKonto system by private account intermediaries thus entails acceptance of the terms and rules that apply to the use of the system, including rules on limitations in liability for damages.

The Minister for Digital Government will be able to use the authorisation to lay down rules to the effect that the Agency for Digital Government, system and operation providers, public payers, and account reporting institutions are not liable for damages to private account intermediaries, or that compensation is limited to special types of losses or cannot exceed a monetary limit or percentage of a loss. The Minister may also lay down rules stipulating that private account intermediaries cannot pursue refund claims.

The enabling provision may, for example, be used to regulate liability for liability in the event of non-availability of the NemKonto system, system errors in the NemKonto system and errors in the payee's account information and other errors.

'Unavailability' means, in part that the NemKonto system is not available at all for account searches, but also that operation is unstable, or the processing of account searches in the NemKonto system is delayed.

Rules may also be laid down on limitations of liability for damages for all types of errors, including, for example, inexplicable errors, accidental errors, unintentional errors and intentional errors.

Alternatively, liability restrictions may be regulated, or additional to laying down rules in an Order, in the agreements concluded between the Agency for Digital Government and the private account intermediaries.

It is proposed that a provision shall be inserted as (5) by which the Minister for Digital Government may lay down rules on the Agency for Digital Government's notification to private account intermediaries of injunctions and exclusion from use of the NemKonto system for non-compliance with rules, agreements or conditions for use of or connection to the NemKonto system.

Exclusion may take place both in the event of non-compliance with rules, agreements or terms and, depending on the situation, may take place on the basis of contract law or following a decision under administrative law.

The authorisation may be used to lay down rules to the effect that the Agency for Digital Government may issue injunctions or indictments to private account intermediaries if rules, terms or agreements are violated, as well as exclusion from the use of the NemKonto system. This may for example be the case if a private account intermediary does not comply with the rules, agreement or conditions under which when and how account searches can be made in the NemKonto system. Decisions on exclusion may be made time-bound or permanent.

Rules could also be laid down stipulating that the Agency for Digital Government may exclude private account intermediaries by temporarily interrupting access to the NemKonto system if the Agency for Digital Government considers that this is necessary to ensure the stability, security, and operation of the NemKonto system or if they are suspected of misuse of the NemKonto system or information contained therein. Such an instant termination of access to the NemKonto system can take place without individual consultation when essential considerations of public or private interests so warrant, cf. Section 19(2) no. 3 of the Public Administration Act).

Reference is also made to para. 2.6.2 of the general explanatory notes of the draft Act.

Re Section 20

Private payers are currently connected to the NemKonto system via private payment service providers that are connected to the NemKonto system. The private payment service providers, which in the draft Act are referred to as private account intermediaries or operators of financial digital infrastructures, cf. the proposed Sections 19-20, are not currently regulated in the Act on Public Payments, etc. or rules laid down pursuant to the Act, but only on a contractual basis.

It is proposed that as (1) a provision shall be inserted stating that an operator of financial digital infrastructure can be connected to the NemKonto system under certain specified conditions and in agreement with the Agency for Digital Government on behalf of a private account intermediary.

The proposed provision will allow a private account intermediary to be connected to the NemKonto system via an operator of financial digital infrastructure that meets the conditions for connection to the NemKonto system and that has entered into an agreement with the Agency for Digital Government to that effect.

The financial digital infrastructure operator will have to be in charge of connecting to the NemKonto system and its adaptations. The financial digital infrastructure operator, via its connection to the NemKonto system, will be responsible for the administration of the use of the NemKonto system by the connected private account intermediaries.

It is assumed that operators of financial digital infrastructures' access to be connected to the NemKonto system on behalf of one or more private account intermediaries will be further regulated by agreement, terms and/or order issued pursuant to the proposed Section 20(3).

It is proposed that a provision shall be inserted as (2), according to which an operator of financial digital infrastructure must be designated by the Danish Financial Supervisory Authority pursuant to Section 333(1) no. 2 of the Financial Business Act as an operator of financial digital infrastructures or be an EU/EEA-based undertaking that fulfils the national legislation of the EU/EEA country in question corresponding to Section 333(1) no. 2 of the Financial Business Act and which is subject to supervision by the competent supervisory authority in the EU/EEA country in question, corresponding to the Danish Financial Supervisory Authority's supervision of a Danish operator of financial digital infrastructures' compliance with Section 333m of the Financial Business Act in order to be connected to the NemKonto system.

The designation as an operator of a financial digital infrastructure under Section 333(1) no. 2 of the Financial Business Act presupposes that the enterprise in question belongs to one of the subsectors under sentence 8 (digital infrastructure) or sentence 9 (manager of IT services) of Annex I to Directive (EU) 2022/2555 of the European Parliament and of the Council of 14 December 2022 on measures for a high common level of cybersecurity across the Union (NIS 2 Directive). In addition, the main activities of the enterprise must consist in operating, managing or developing services necessary for critical and important business functions of the enterprises covered by Regulation (EU) 2022/2254 of the European Parliament and of the Council of 14 December 2022 on digital operational resilience for the financial sector (the DORA Regulation).

Operators of financial digital infrastructures will not be subject to full financial supervision by the Danish Financial Supervisory Authority, as they will only be subject to limited supervision regarding compliance with the provisions of Section 344(1) sentence 2, see Section 333m of the Financial Business Act. The supervision will include the Danish Financial Supervisory Authority's general supervision in the area of IT and cybersecurity, according to Regulation (EU) 2022/2254 of the European Parliament and of the Council of 14 December 2022 on digital operational resilience for the financial sector (the DORA Regulation).

It is also proposed that EU/EEA-based operators of financial digital infrastructures that comply with the national legislation of the EU/EEA country in question that corresponds to Section 333(1) no. 2 of the Financial Business Act and that are subject to supervision by the competent supervisory authority of the EU/EEA country in question, equivalent to the Danish Financial Supervisory Authority's supervision of an operator of financial digital infrastructures' compliance with Section 333m of the Financial Business Act, may be connected to the NemKonto system as an operator of financial digital infrastructure. The Agency for Digital Government will have to make a specific assessment of the national legislation of the EU/EEA country in question, including the supervision of the competent supervisory authority in the EU/EEA country in question and, in case of doubt, seek advice and clarification from the Danish Financial Supervisory Authority.

It is proposed that a provision shall be inserted as (3) by which the Minister for Digital Government can lay down further regulations on which companies can be connected to the NemKonto system as an operator of financial digital infrastructure. The Minister for Digital Government may also lay down rules on the use of and connection to the NemKonto system by financial digital infrastructure operators, including rules on fees and conditions.

It is intended that the authorisation may be used, inter alia, for the Minister for Digital Government to be able to lay down further rules for financial digital infrastructure operators in line with ongoing developments in the field, so that up-to-date requirements can be imposed. The authorisation may be used, inter alia, to lay down rules restricting the companies covered by Section 20(2), which will be able to connect to the NemKonto system as operators of financial digital infrastructures, on the basis of, for example, technical or security standards, including as a result of the fact that changes in the regulation of the companies covered entail a need to lay down rules to the effect that only companies covered by certain rules, for example on security or supervision, can be connected to the NemKonto system.

The authorisation may also be used to lay down requirements for the connection to the NemKonto system required for secure authentication and authorisation for network infrastructure and the technical parameters to be used for setting up the data transmission software used.

The authorisation could also be used, among other things, to lay down rules requiring financial digital infrastructure operators to be responsible for the administration of the use of the NemKonto system by private account intermediaries.

The authorisation may also be used to lay down rules requiring operators of financial digital infrastructures to disclose information and conditions for the use of the NemKonto system to private account intermediaries or to limit or exclude private account intermediaries' access to perform account searches by the Agency for Digital Government's communication thereon.

The Minister for Digital Government will thus be able to lay down detailed rules for the connection to and use of the NemKonto system by Order for financial digital infrastructure operators. However, it is not a requirement that the conditions for the connection to and use of the NemKonto

system by operators of financial digital infrastructure shall be laid down by Order and it will thus also be possible to determine the conditions for this on the basis of contract law. The Agency for Digital Government will, for example, also be able to lay down a number of standard conditions for connection to and use of the NemKonto system or conclude agreements with operators of financial digital infrastructures for this. It is assumed that breach of contractual terms or conditions could lead to exclusion from use of the NemKonto system.

It is assumed that regulations are issued on the payment of fees by operators of financial digital infrastructures for the connection to and use of the NemKonto system. The fees will be set in a cost-reflective and manner shall ensure the coverage of all costs associated with the connection to and use of the NemKonto system by financial digital infrastructure operators and private account intermediaries, including costs of the proposed compensation scheme, cf. para. 2.11.2. of the general comments on the draft Act. Operators of financial digital infrastructures will themselves be responsible for collecting costs associated with the use of the NemKonto system from private account intermediaries. Similarly, the private account intermediaries will themselves be responsible for collecting the costs of account searches in the NemKonto system from the private payers.

It is proposed that a provision shall be inserted as (4) by which the Minister for Digital Government may lay down rules on the liability of the Agency for Digital Government, system and operation providers, public payers and account reporting institutions, and restrictions thereof towards operators of financial digital infrastructures due to the unavailability of the NemKonto system, system errors in the NemKonto system, and for errors in payees' account information, etc.

The group of private payment service providers that becomes operators of financial digital infrastructures under this draft Act has so far been affiliated to the NemKonto system on the basis of a concluded standard agreement and associated connection conditions, which has regulated and limited the relationship of responsibility when using the system.

With the proposed enabling provision, the Minister will be able to lay down rules on liability and restrictions on liability vis-à-vis operators of financial digital infrastructures that financial digital infrastructure operators will automatically be considered to have accepted when they choose to join the NemKonto system. The connection to and use of the NemKonto system by operators of financial digital infrastructures thus entails acceptance of the terms and rules that apply to the use of the system, including rules on limitations in liability for damages.

The Minister for Digital Government will be able to use the authorisation to lay down rules to the effect that the Agency for Digital Government, system and operation providers, public payers and account reporting institutions are not liable for damages to operators of financial digital infrastructures, or that compensation is limited to special types of losses or cannot exceed a monetary limit or percentage of a loss. The Minister may also lay down rules stipulating that operators of financial digital infrastructures cannot rely on recovery claims.

The enabling provision may, for example, be used to regulate liability for liability in the event of non-availability of the NemKonto system, system errors in the NemKonto system and for errors in the payee's account information and other errors.

'Unavailability' means, in part, that the NemKonto system is not available at all in connection to the NemKonto system, but also that operation is unstable, or the processing of account searches in the NemKonto system is delayed.

Rules may also be laid down on limitations of liability for damages for all types of errors, including e.g. unexplained errors, accidental errors, negligence and intentional errors.

Alternatively, or in addition to laying down rules in an Order, liability restrictions may be regulated in the agreements concluded between the Agency for Digital Government and the operators of financial digital infrastructures.

It is proposed that a provision shall be inserted as (5) by which the Minister for Digital Government may lay down rules on the Agency for Digital Government's notice to operators of financial digital infrastructures of exclusion from using the NemKonto system for non-compliance with rules, agreements or conditions for the use of or connection to the NemKonto system.

Exclusion may take place both in the event of non-compliance with rules, agreements or terms, and may, depending on the situation, take place on the basis of contract law or following a decision under administrative law.

The authorisation may be used to lay down rules to the effect that the Agency for Digital Government may issue injunctions to operators of financial digital infrastructures in case of violation of rules, terms or agreements, as well as exclusion from connection to the NemKonto system. This may be the case, for example, if an operator of financial digital infrastructure does not comply with the rules, agreement or conditions under which and how account notices can be published in the NemKonto system. Decisions on exclusion may be made time-bound or permanent.

Rules may also be laid down to the effect that the Agency for Digital Government may exclude the operators of financial digital infrastructures by temporarily interrupting connection to the NemKonto system if the Agency for Digital Government considers that this is required to ensure the stability, security, and operation of the NemKonto system or if they are suspected of misuse of the NemKonto system or information contained therein. Such an instant termination of the connection to the NemKonto system can take place without individual consultation when essential considerations of public or private interests so warrant, cf. Section 19(2) no. 3 of the Public Administration Act.

Reference is also made to para. 2.6.2 of the general explanatory notes of the draft Act.

Re Section 21

Section 35(1) of the NemKonto Order states that financial institutions that have acceded to a sector agreement on NemKonto shall assist citizens and undertakings in specifying or amending information on NemKontos for accounts that are already held in the financial institution concerned to the NemKonto Register. It follows from Section 35(2) of the Order that the financial institutions specified in Section 35(1) receive information on the registered NemKontos of citizens and enterprises in accordance with an agreement with the private supplier. Thus, it will always be possible for a financial institution to inform an account holder of which account is registered with the financial institution as his or her NemKonto.

It is proposed that a provision shall be inserted as (1) by which the Minister for Digital Government can lay down regulations to the effect that institutions referred to in Section 5(1), nos. 1-6 can connect to public service obligations in relation to the NemKonto system in accordance with regulations laid down pursuant to (3).

Under the proposed provision, the Minister for Digital Government will be able to lay down rules allowing Danish financial institutions, payment institutions and e-money institutions, EU/EEA credit institutions, EU/EEA payment institutions, EU/EEA e-money institutions, Faroese and Greenlandic financial institutions, as well as Faroese payment institutions and e-money institutions, to voluntarily join public service obligations in relation to the NemKonto system.

The proposed provision will thus mean that, if the authorisation is used, Danish as well as foreign institutions will have the opportunity to join the public service regime described in para. 2.7.2 of the general comments on the draft Act. It is expected that rules will be laid down that the foreign institutions can be connected on the same terms as Danish institutions, unless the terms need to be adapted to take the specific circumstances of the institutions in question into account.

It is proposed that a provision shall be inserted as (2) by which the Minister for Digital Government can lay down regulations to the effect that institutions referred to in Section 5(1) nos. 1 and 2 shall connect to public service obligations in relation to the NemKonto system in accordance with regulations laid down pursuant to (3). With the proposed provision, the Minister for Digital Government will be able to lay down rules requiring Danish financial institutions and Danish payment institutions and e-money institutions that are account servicing providers of payment accounts to perform services in relation to the NemKonto system. Rules may be laid down to specify in greater detail which institutions are subject to the obligation, for example on the basis of the institution's business model and product offerings or its number of payment accounts or customers. Thus, rules may be laid down to define which institutions are subject to the obligation or, where appropriate, upon application – make it possible to exempt institutions which, for example, due to their product range, would be disproportionate to impose the public service obligation.

The purpose of the provision is to ensure that Danish institutions can be required to carry out public service obligations in relation to the NemKonto system, if it turns out that there are not a suf-

ficient number of institutions that voluntarily join the system pursuant to (1) to ensure that the public sector payment administration functions effectively.

It is proposed that a provision shall be inserted as (3) by which the Minister for Digital Government can lay down rules on the public service obligations that institutions subject to rules laid down pursuant to (1) and (2) shall perform in relation to the NemKonto system, including reporting accounts maintained at the institution in question, such as NemKontos to the NemKonto system according to the instructions of private persons and legal entities and updating the NemKonto system with correct information. The Minister for Digital Government may also lay down regulations on security and technical requirements when reporting to the NemKonto system, etc.

The Minister for Digital Government will thus be able to lay down detailed rules in the proposed provision on which public service obligations can be imposed on Danish financial institutions and Danish account-servicing payment and e-money institutions, EU/EEA credit institutions, EU/EEA payment institutions, EU/EEA e-money institutions, Faroese and Greenlandic financial institutions, as well as Faroese payment and e-money institutions to perform as public service obligations.

‘Public service obligation’ means services which are so burdensome that commercial undertakings operating under normal market conditions will not, by themselves, offer services on these terms.

The obligations that could, for example, be laid down are rules requiring institutions to offer customers to report accounts maintained at the relevant institution as NemKontos through the institution and that this is incorporated into the relevant working and business procedures of the institution, as well as to provide the customers of the institution with insight into which account at that institution is registered as NemKonto. The obligations may also include that, in connection with the reporting of accounts to the NemKonto system according to the instructions of private persons and legal entities, the institutions will have to assist the Agency for Digital Government in informing the private person or legal entity concerned about the Agency for Digital Government’s processing of personal data in the NemKonto system, cf. Articles 13-14 of the General Data Protection Regulation. This will mean that the Agency for Digital Government, as data controller, will not independently have to inform the registered persons again when the personal data are disclosed from the institutions to the Agency for Digital Government. Furthermore, it may also be obligations to report to and receive information from the NemKonto system on relevant conditions, including designations and changes to NemKontos and on accounts that cannot be used as NemKontos, for example because they are closed, and time limits for reports may be laid down.

The term ‘security requirements’ means requirements relating to the security of the interface of the NemKonto system. This could include, for example, requirements for encryption as security against hacking, malware and viruses, as well as requirements to secure data.

The term ‘technical requirements’ means requirements on institutions that are intended to ensure the correct connection and use of the NemKonto system. This may, for example, be a requirement

on how the institutions in question integrate into the NemKonto system in order to be able to fulfil the public service obligations and requirements to assist the Agency for Digital Government in resolving any technical errors.

Rules may also be laid down stipulating that the costs associated with technical and security requirements will have to be borne by the institutions concerned themselves.

It is proposed to insert as (4) a provision by which the Minister for Digital Government can lay down rules stipulating that the Agency for Digital Government can provide support to institutions to perform public service obligations in accordance with rules laid down pursuant to (1)-(3) and on the processing and supervision of such cases, including rules on applications, deadlines, information and documentation requirements, and requirements for a statement by an approved auditor.

It is expected that aid to operators in the financial sector, taken in isolation, may be contained within the threshold laid down in Article 3(2) of Commission Regulation (EU) 2023/2832 of 13 December 2023 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest. This de minimis aid could possibly be supplemented with support in accordance with Commission Regulation (EU) 2023/2831 of 13 December 2023 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid. In connection with the payment of compensation, it will be up to the individual institution to declare how much de minimis aid they receive in addition to the aid from this scheme.

The Minister for Digital Government – possibly in combination with a de minimis scheme – will be able to lay down rules on a scheme for those institutions that exceed the de minimis threshold. The scheme will comply with Commission Decision of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (2012/21/EU), cf. the Official Journal of the European Union 2012 L 7/3.

As part of the proposed scheme, the Minister for Digital Government will be able to lay down rules on standardised rates for specific services performed by the institutions in connection with the scheme, as well as the detailed terms and conditions that institutions can receive payment for such services, including requirements for application, verification, and documentation. This could, for example, include standardised services for, inter alia, reporting the designation, amendment and deletion of accounts in the NemKonto system on behalf of payees and for reporting error messages.

In addition, rules may be laid down on the calculation, determination, and payment of other support to the institutions, as well as the detailed terms and conditions for the institutions to receive such support, including requirements for application, verification, and documentation. Among other things, rules could be laid down stipulating that the Agency for Digital Government can supervise compliance with the rules and that the institutions are obligated to document the net costs associated with the imposed public service obligations, including requirements for the submission of separate

accounts. It will also be possible to lay down rules on checks on the accuracy of submitted information, such as by an auditor's statement.

It is a prerequisite that the payment of aid to the institutions does not result in overcompensation and the proposed authorisation will therefore not be used to lay down rules which involve overcompensation of the institutions. It will also be possible to lay down rules that only partial compensation of the institutions' net costs takes place.

If there is overcompensation, the Agency for Digital Government is obligated under EU law to recover it. It will thus also be possible to lay down rules for the repayment of overpaid aid and the claim for interest thereon.

It is assumed that the scheme will initially run for a maximum period of 10 years. The Ministry of Digital Affairs will then assess whether there is still a need for the scheme.

Reference is also made to para. 2.7.2 of the general explanatory notes of the draft Act.

Re Section 22

Under Section 5(1) of the Act on Public Payments, etc., the Minister for Digital Government appoints a system administrator who is tasked with managing the account information. A system administrator can be appointed a public authority or a private company or the like. The Minister for Digital Government shall lay down detailed rules for the activities of the system administrator, including on the supervision of the system administrator's activities and the right of appeal, cf. Section 5(2) of the Act on Public Payments, etc.

It is proposed that as (1), a provision shall be inserted by which the Agency for Digital Government is the system owner of the NemKonto system and makes the NemKonto system available to public payers and private account intermediaries.

The NemKonto system is a central and critical public digital infrastructure, which is used by public authorities to effectively and securely make payments to payees in Denmark. In order to carry out this intention and to achieve the other purposes underlying the draft Act, the NemKonto system shall be owned by the Agency for Digital Government and the Agency for Digital Government shall be tasked with as an authority task to make the NemKonto system available to public payers and private account intermediaries acting on behalf of private payers.

With the proposed scheme, the Agency for Digital Government will purchase and develop the new NemKonto system, which is why, in the opinion of the Minister for Digital Government, it should also be the Agency for Digital Government that shall be the system owner and perform the tasks that follow. In addition, the Agency for Digital Government's ownership of the NemKonto system will provide the Agency with better opportunities to handle further development of the system and ensure that the new system can meet the business needs of users to a greater extent than is

currently the case. The Agency for Digital Government's procurement of the NemKonto system takes place in compliance with the procurement rules in force at any time.

It is therefore proposed that the Agency for Digital Government shall be the system owner of the NemKonto system and shall make the NemKonto system available to public payers and to private account intermediaries acting on behalf of private payers. The term 'system owner' means that the Agency for Digital Government owns and is responsible for the NemKonto system. It is thus the Agency for Digital Government's responsibility to ensure the development, operation, maintenance, and administration of the NemKonto system and that the system is continuously developed so that it is up-to-date and at all times complies with current rules and standards for public IT systems, including requirements on security

As the system owner, the Agency for Digital Government shall make the NemKonto system available to public payers and private account intermediaries acting on behalf of private payers, thereby allowing public payers and private account intermediaries to use the NemKonto system. The Agency for Digital Government therefore has a special status as an instrument and technical service for the entire public sector and shall accommodate all public payers' request for connection in accordance with the provisions of this Act. In this respect, the procurement law relationship between the Agency for Digital Government and the public payers is of an internal nature, characterised by the Agency for Digital Government's subordination to and dependence on the public payers when they submit their request for connection pursuant to the Act.

Public payers' procurement of the NemKonto system from the Agency for Digital Government is carried out in accordance with the Act and without public payers being able to negotiate conditions for the use and remuneration of the NemKonto system. The economics of the solutions are based on a model by which the collection of payment for use of the solutions is always adjusted to reflect the actual costs of the solutions. Public payers have an obligation to acquire the NemKonto system by the Agency for Digital Government, cf. Section 13(2).

The obligation of the Agency for Digital Government to make the system available to public payers entails an obligation to make the system available to the public payers' use of the NemKonto system to submit payment orders for payment via the system. If the NemKonto system is not available for a period of time, including not fully available, to the public payers, for example at scheduled downtime due to maintenance, instability, disruption of service, reduced capacity, or breakdowns, the Agency for Digital Government has an obligation to ensure that the system's functions are available as soon as possible so that payments can be made via the system. The individual public payer itself will have an obligation to ensure that payments to payees can be made by other means if the NemKonto system is not available. The Agency for Digital Government will, to the extent possible, assist public payers with access to payment information on payees from the NemKonto system, if this is assessed proportionately and adequately. In this context, the Agency for Digital Government may choose to prioritise the Agency's available assistance, so that only certain public payers get access to payees' payment information from the NemKonto system and for defined payouts, while other public payers do not receive corresponding assistance. However, the

primary obligation of the Agency for Digital Government for the unavailability of the system will be to ensure that the system is made available again.

As the system owner, the Agency for Digital Government will be responsible for ensuring that incorrect account numbers will not be linked to a payment order with public payers due to an error in the NemKonto system. However, the Agency for Digital Government is not liable if the error is due to circumstances outside the NemKonto system, e.g. in cases where the payee provides incorrect account information or a case officer at a public payer of error entering an account number in the NemKonto system.

The obligation to make the system available to private account intermediaries acting on behalf of private payers entails an obligation to make it possible for private account intermediaries to search the account on behalf of private payers in exchange for payment. If the NemKonto system is not available for private account intermediaries for a period of time, for example at scheduled downtime as a result of maintenance or operation interruptions or breakdown, the Agency for Digital Government has no obligation to assist private account intermediaries in providing account information by other means. Depending on the underlying contractual relationship, each private account intermediary or private payer will have to provide the account information by other means if the NemKonto system is not available. Rules on this will be laid down pursuant to the proposed Section 22(4).

It is a prerequisite that the Agency for Digital Government's liability towards private payers and private account intermediaries is to be governed by the Order issued pursuant to the proposed provisions of Section 18(5) and Section 19(4).

It is proposed that a provision shall be inserted as (2) by which the Agency for Digital Government ensures the development, operation, maintenance, and administration of the NemKonto system.

The term 'development' of the NemKonto system means the responsibility for ensuring that the NemKonto system is set up, commissioned and put into service so that the system can be made available to public payers and private account intermediaries acting on behalf of private payers. With the proposed provision, the Agency for Digital Government will be responsible for ensuring that the NemKonto system complies with the current rules and standards for public IT systems and the requirements placed on the NemKonto system in the proposed scheme. The Agency for Digital Government will also be responsible for new components or new functionality of the NemKonto system as a result of e.g. a change in the business basis, new needs or new regulatory basis. The Agency for Digital Government will be responsible for both defining a need for new development and ensuring that the new development is implemented in the NemKonto system. To the extent that it is required to withdraw the NemKonto system fully or partially from operation in order to perform development, the Agency for Digital Government may make the system inaccessible to users.

The term ‘operation’ of the NemKonto system means responsibility for ensuring the efficient, secure, and stable operation of the NemKonto system. With the proposed provision, the Agency for Digital Government will be responsible for ensuring that the NemKonto system functions securely and stably and is accessible to public payers and private account intermediaries. In this way, public payers may use the system to add account information to a payment order and transmit it to the payment settlement institution of the public payer concerned, as well as that private account intermediaries may use the system to conduct account searches.

The Agency for Digital Government shall, among other things, ensure that agreements are concluded with the public payers’ payment settlement institutions or their operators of financial digital infrastructures that perform tasks related to the receipt and processing of payment orders by the public payers from the NemKonto system.

The term ‘maintenance’ means the activities that maintain the functionality and commercial value of the NemKonto. With the proposed provision, the Agency for Digital Government will be responsible for ensuring that the NemKonto system is maintained on an ongoing basis, with a view to ensuring safe and stable operation. To the extent that it is required to withdraw the NemKonto system wholly or partially from operation in order to carry out maintenance, the Agency for Digital Government may make the system inaccessible to users.

The term ‘administration’ means the responsibility for ensuring proper administration of the NemKonto, including the administration of the NemKonto’s data and payment order processes. With the proposed provision, the Agency for Digital Government will be responsible for ensuring a correct and up-to-date register in accordance with the reported instructions, amendments, deletions, and information in the NemKonto system. The Agency for Digital Government is also responsible for providing support functions to users of the system, which can, among other things, assist with instructing, changing and deleting accounts and handle enquiries about incorrect registrations and processing of information in the NemKonto system.

It is proposed that a provision shall be inserted as (3), by which the Agency for Digital Government may appoint public authorities or legal entities to carry out tasks pursuant to (2) on behalf of the Agency for Digital Government.

It is proposed that the Agency for Digital Government may appoint other public authorities or private enterprises to carry out tasks related to the development, operation, maintenance, and administration of the NemKonto system on behalf of the Agency for Digital Government and that the Agency for Digital Government may lay down rules for the performance of such tasks.

It is proposed that the Agency for Digital Government may appoint one or more public or private providers to perform tasks that otherwise will be the responsibility of the Agency for Digital Government to system owner. If the Agency for Digital Government appoints a provider, the agreement may lay down rules on the provider’s performance of tasks, including, for example, requirements

for standards on task performance or rules on the use of subcontractors by the designated public authority or private enterprises.

The agreement could also, for example, aim to limit the abuse opportunities for the persons who have access to the NemKonto system. This can be done, for example by drawing up security procedures, by security clearances for employees who are to have access to the NemKonto system and by ensuring that only a narrow circle has direct access to information in the NemKonto system. It can also be agreed that it shall be possible to check who has drawn information from the NemKonto system and what specific information the individual employee has drawn.

It should also be stated in the Agency for Digital Government's agreement with a provider that the designated public authority or private enterprise shall have or take out insurance to cover any losses associated with misuse of the information. In this respect, it is noted that only employees who are employed in positions where there is a particular need to extract information from the NemKonto system are approved to access the system. The information that becomes known to these employees will be covered by professional secrecy in accordance with the general rules on the confidentiality of public employees. In addition, public payers and anyone carrying out tasks under the draft Act will be obliged to observe professional secrecy with regard to unauthorised persons with regard to information on the technical and security configuration and on processes for maintaining, maintaining and operating security in the NemKonto system, cf. the proposed Section 24 and the comments thereto.

The agreement should also contain rules on the Agency for Digital Government's supervision of the designated public authority or private enterprise. The Agency for Digital Government will have overall responsibility for the NemKonto system and shall ensure that the designated providers are competent and that they will be able to perform the assigned tasks in an appropriate and best way, including compliance with the legal requirements to which the Agency for Digital Government is subject in connection with development, operation, maintenance, and administration of the NemKonto system.

It is proposed to insert as (4) a provision by which the Minister for Digital Government can lay down rules on the provision to public payers and private account intermediaries, cf. the proposed provision in (1).

It is expected that the authorisation will be used to lay down rules that determine how the Agency for Digital Government makes the NemKonto system available, as well as the service that the public payers will receive. In addition, it is expected that rules will be laid down for handling error reports, the possibility of receiving support, etc.

Rules on the connection and use of the NemKonto system by public payers pursuant to the proposed Section 10 may be laid down.

The authorisation also allows laying down rules on the provision of the NemKonto system to private account intermediaries. Such rules may establish how the Agency for Digital Government makes the NemKonto system available to private account intermediaries and the services that the private account intermediaries can receive. It is assumed, in accordance with the comments on the proposed Section 22(1), that rules will be laid down to the effect that if the NemKonto system is not available for private account intermediaries for a period of time, the Agency for Digital Government has no obligation to provide account information by other means. Similarly, rules may be laid down stipulating that the Agency for Digital Government is not obligated to assist private account intermediaries with assistance if the NemKonto system is otherwise not fully available to private account intermediaries. Each private account intermediary or private payer will, depending on the underlying contractual relationship, be required to provide the account information by other means if the NemKonto system is not available.

Rules may be laid down on the connection and use of the NemKonto system by private account intermediaries pursuant to the proposed Section 19(3).

Reference is also made to para. 2.8.2 of the general explanatory notes of the draft Act.

Re Section 23

Pursuant to Section 5b of the Act on Public Payments, etc., the Minister for Digital Government may make the NemKonto system available to Greenlandic authorities.

It is proposed to insert as (23) a provision by which the Minister for Digital Government can make the NemKonto system available to the Greenlandic authorities.

It is thus proposed that the Agency for Digital Government will be able to equate Greenlandic authorities with Danish authorities with regard to connection to the NemKonto system. The legal basis does not change the proposed territorial scope of the Act, as it only provides the legal basis to make the NemKonto system available. The substantive rules on public payments, including for private individuals, legal entities and public payers, shall be drawn up by the Government of Greenland. The Act therefore only provides for Greenlandic public payers to be connected to the NemKonto system under the same conditions as Danish public payers are connected to.

However, it will be a necessary prerequisite for the Greenlandic authorities to have access to the payee's CPR number, CVR number, SE number or P number in order to be able to use the NemKonto system, as the payee is identified through these numbers when a payment order is sent through the NemKonto system.

Reference is also made to para. 2.8.2 of the general explanatory notes of the draft Act.

Re Section 24

It follows from Section 152(1) of the Penal Code that a person who acts or has worked in a public service or an office and who unlawfully discloses or uses confidential information to which the person concerned has become aware is punishable by a fine or imprisonment of up to 6 months. It also follows from Section 152(3) of the Penal Code that a piece of information is confidential when it is described as such by law or other valid provision, or when it is otherwise necessary to keep it secret in order to protect essential considerations of public or private interests.

Section 152a of the Penal Code states that the provision in Section 152 applies *mutatis mutandis* to anyone who is or has been engaged in tasks carried out in agreement with a public authority. The same applies to those who work or have worked in telephone installations recognised by the public authorities.

Section 27(1) to (4) of the Public Administration Act specifies a number of considerations of public and private interests which may – after a specific assessment in each individual case – lead to the information being confidential and thus subject to professional secrecy. The provision is designed in such a way that there is a great overlap between, on the one hand, the information that is exempted from the right of access to documents pursuant to Sections 30-33 of the Access to Public Administration Files Act and, on the other hand, the information that is considered confidential pursuant to the provision on professional secrecy in Section 27 of the Public Administration Act.

Section 31 of the Access to Public Administration Files Act states that the right of access may be restricted to the extent that it is of significant importance for the security of the State or the defence of the right of defence. The provision assumes that restrictions on the right of access can only be invoked if it is information of significant importance for the security of the State or the defence of the right of defence. It is therefore not in all cases that the consideration of the security of an IT system can justify an exception to information from access to documents pursuant to Section 31 of the Access to Public Administration Files Act. As a result, it is therefore not all information on, *inter alia*, the technical and security configuration of a public authority's IT system that is covered by professional secrecy in Section 27(2) sentence 1 of the Public Administration Act.

It is proposed to insert as (24) a provision under which public payers and anyone carrying out tasks under this Act or rules laid down pursuant thereto, and anyone who otherwise provides assistance thereto, are subject to the responsibility under Sections 152–152f of the Criminal Code obliged to observe professional secrecy with regard to information on the technical and security design and on processes for development, operation, maintenance and administration of security in the NemKonto system. As the system owner, the Agency for Digital Government will be responsible for development, operation, maintenance, and administration of the NemKonto system. For a detailed description of the Agency for Digital Government's responsibilities as system owner, please refer to Section 22 of the draft Act and the comments thereto.

The proposal means that there are more subjects covered by the obligation of professional secrecy than by Sections 152–152f of the Criminal Code. The obligation of professional secrecy will thus, in addition to the Agency for Digital Government’s employees and the provider to the NemKonto system, include public payers, affiliated institutions, private account intermediaries and anyone carrying out tasks under the Act or otherwise providing assistance in this regard.

The proposed provision also implies that professional secrecy with regard to information on the technical and security configuration and on processes for development, operation, maintenance, and administration of security in the NemKonto system applies without further thought, i.e. without needing to make a specific assessment of whether disclosure or provision of the information would entail a security risk. The professional secrecy shall apply to all information of the aforementioned nature.

The proposed provision also means that the information covered by professional secrecy cannot be disclosed to unauthorised persons, i.e. private parties who do not perform tasks under this draft Act. As far as disclosure to other administrative authorities is concerned, the issue is regulated by the general rules in particular Sections 28 and 31 of the Public Administration Act.

The special secrecy obligation is also superseded by the disclosure obligation that may be laid down in other legislation, e.g. Section 9 of the Act on Research and Investigation Commissions, and Section 19(1) of the Act on the Ombudsman of the Danish Parliament. The proposed provision thus does not prevent public authorities from disclosing information, etc. to other public authorities to the extent that this is necessary for them to carry out the tasks assigned to them or to the extent that such an obligation arises from other legislation.

The special obligation of professional secrecy provision will entail, inter alia, a restriction on the possibility of access to documents under the Access to Public Administration Files Act, as the matters covered by the provision may be exempted with reference to Section 35 of the Access to Public Administration Files Act.

In addition, the special obligation of professional secrecy will mean that the authority for which access is sought will be prevented from providing additional access at its own discretion in information covered by the professional secrecy, cf. Section 14 of the Access to Public Administration Files Act, cf. the Access to the Public Administration Files Act with comments by Mohammed Ahsan, third edition, 2022, p. 357.

Reference is also made to para. 2.9.2 of the general explanatory notes of the draft Act.

Re Section 25

It follows from Section 10 of the NemKonto Order that the NemKonto system in NemKonto in the NemKonto register contains two types of registrations of information on bank account accounts, on the one hand the registration of NemKonto and on the other the registration of specific accounts.

Section 16(1) and (2) of the NemKonto Order states how the current update of NemKonto and specific accounts is primarily intended to be carried out in the NemKonto register. The Agency for Digital Government is the data controller for the NemKonto register, including information on specific accounts in accordance with the General Data Protection Regulation and the Danish Data Protection Act, cf. Section 33(1) of the NemKonto Order. Under Section 4a of the Act on Public Payments, etc., information from the NemKonto system of payments from public authorities may be disclosed to a recovery system administered by the Customs and Tax Administration. The Agency for Digital Government may disclose citizen and enterprise account numbers to private payers and public authorities, cf. Section 5a(1) of the Act on Public Payments, etc., and Section 14 of the NemKonto Order.

It is proposed that as (1), a provision shall be inserted by which the Agency for Digital Government can process information on private persons and legal entities, including information on NemKontos and benefit-specific accounts, and other matters, when such information is necessary for the development, operation, maintenance, and administration of the NemKonto system.

As the system owner, the Agency for Digital Government will be responsible for development, operation, maintenance, and administration of the NemKonto system, cf. Section 22 of the draft Act and the comments thereon. It is therefore proposed that the Agency for Digital Government in the NemKonto system will be able to establish and maintain records of information, including personal data, when such information is necessary for the development, operation, maintenance, and administration of the NemKonto system.

With the proposed scheme, the Agency for Digital Government will be able to establish and maintain records of information on private persons and legal entities' NemKontos and benefit-specific accounts, so that the NemKonto system can identify, via an identifier, the payee's account to which payment is to be made.

It is the assessment of the Ministry of Digital Affairs that the proposed NemKonto scheme is based on a necessary premise that information on beneficiary NemKonto and benefit-specific accounts is registered in the NemKonto system, since otherwise the scheme will not be able to work in practice.

The NemKonto system will have to contain account information in the accounts specified by the payees as NemKonto or benefit-specific accounts. The account information recorded in the NemKonto system will, for domestic accounts, be the account number. Where the payee specifies a foreign account, the account details will be 1) IBAN number, 2) BIC/SWIFT code, alternative bank code and account number if the account does not have an IBAN number, 3) the institution's name, 4) institution address, 5) country and 6) the currency of the account.

In addition, it is proposed that each payee must be registered with a secure and unique identifier in the form of a CPR number for private persons and a CVR number, SE number and/or P number for legal entities. The NemKonto system will thus contain the personal data of the natural persons

who have designated a NemKonto or benefit-specific accounts to the NemKonto system. The Ministry of Digital Affairs is of the opinion that it will be necessary to identify natural persons via their CPR numbers in order to ensure that public payers will be able to make payments to the correct payment location.

Furthermore, it is proposed that the Agency for Digital Government in the NemKonto system will be able to establish and maintain records of information on other matters, when such information is necessary for the development, operation, maintenance, and administration of the NemKonto system. This will include, for example, information on name, address and guardianship, as well as information relating to the individual instructions, such as the date when an account has been activated and registered as a NemKonto in the NemKonto system, and how the account has been designated to the NemKonto system.

In addition, other conditions may also include data from the Modular Register and data from the Financial Institutions Register (PI register) for validation of designated accounts in the NemKonto system.

The modular register is a register containing information on the ranges of accounts in which Danish financial institutions issue accounts and on which algorithm is used to calculate modular digits.

The PI register is a register of Danish financial institutions' registration numbers.

The NemKonto system will be able to use the Modulus and PI registers to perform a modular validation of designated accounts. Modular validation is the validation of whether a given domestic account and registration number complies with the rules for the modulus in relation to the records in question.

In connection with the development, operation, maintenance, and management of the NemKonto system, the rules and principles resulting from the General Data Protection Regulation and the Act will have to be complied with. The Ministry of Digital Affairs will involve the Danish Data Protection Agency as necessary.

It is proposed that as (2) a provision shall be inserted according to which the Agency for Digital Government is the data controller for the processing of personal data in the NemKonto system.

The Agency for Digital Government is hereby proposed to be the data controller for all processing operations in the NemKonto system.

As the data controller, the Agency for Digital Government will be responsible for complying with the data controller's obligations under the General Data Protection Regulation and the Danish Data Protection Act. This includes ensuring data protection by design and by default in the NemKonto system, cf. Article 25 of the General Data Protection Regulation (GDPR), establishing the necessary security measures on the basis of a risk assessment, cf. Article 32 of the GDPR, and

carrying out a data protection impact assessment, cf. Article 35 of the GDPR, if necessary. The Agency for Digital Government will also have to carry out the obligation to provide information and process requests received from the data subjects to exercise their rights under the General Data Protection Regulation.

It is assumed that the Agency for Digital Government, as data controller, will be able to process the information, including personal data, which is necessary to make the NemKonto system available to public payers and private account intermediaries. This will also include personal data necessary for the establishment of the proposed NemKonto system, including in connection with, inter alia, the migration of information from the existing system to the new system upon the transition from the old system to the new system.

The processing carried out by the Agency for Digital Government in the NemKonto system as the data controller will include, inter alia, recording the payment order, affixing the payee's NemKonto or benefit-specific account, comparing information on the payee and nature of the benefit with information on debtors received from the Debt Collection Agency, and registering return responses from the payment settlement institution in relation to the execution of the payment transaction.

A public payer's submission of a payment order to the NemKonto system will be a disclosure of personal data to the Agency for Digital Government. Under the proposed scheme as the data controller, the Agency for Digital Government will carry out the processing of the payment order in the NemKonto system before the payment order is passed to the payment-settlement institution, which will carry out the payment on behalf of the public payer.

When a private account intermediary on behalf of a private investor sends an inquiry to the NemKonto system, it will be a disclosure of personal data to the Agency for Digital Government which will be the data controller for the processing in the NemKonto system. After processing in the NemKonto system, the Agency for Digital Government will disclose the payee's account information to the private payer via the private account intermediary, who will be the data controller for any further processing.

In connection with the Agency for Digital Government's disclosure of personal data, the recipient of the personal data will become the data controller. The Customs and Tax Administration, the public payer, the settlement institution, the private payer or an institution subject to public service regime will be able to process the transferred personal data for other purposes if this follows from the general processing rules of the General Data Protection Regulation and the Data Protection Act. For example, the payment settlement institution could have an accounting obligation, which is why the institution will be able to process personal data independently for this purpose.

If the Agency for Digital Government chooses to appoint public authorities or legal entities to carry out tasks assigned to the Agency for Digital Government as system owner on behalf of the Agency, the designated public authorities or legal entities will act as data processor on behalf of the

Agency for Digital Government. The designated public authorities or legal entities will thus only process the personal data in question on behalf of the Agency for Digital Government on instructions and pursuant to a written data processing agreement in accordance with the rules on this in Articles 28–29 of the General Data Protection Regulation. For a detailed description of the Agency for Digital Government’s tasks as system owner, please refer to Section 22 of the draft Act and the comments thereto.

On the Agency for Digital Government’s instructions, migration of data, including personal data, into the NemKonto system will be possible from one designated public authority or legal entity to another. A designated public authority or legal entity will act as a data processor exclusively for the Agency for Digital Government. This is thus an agreement basis, where the Agency for Digital Government can choose to terminate the agreement and take back or move data.

It is the assessment of the Ministry of Digital Affairs that the Agency for Digital Government’s retrieval, processing and transferring of personal data in the NemKonto system complies with Article 6(1) subpara. e of the General Data Protection Regulation, according to which processing of non-sensitive personal data is lawful, if processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the data controller. Thus, this means that the Agency for Digital Government’s retrieval, processing, and transfer of personal data will be done in connection with the performance of the tasks that will be assigned to the Agency by the draft Act. Reference is made to Sections 22-23 of the draft Act and the comments thereon. In addition, it is the Minister for Digital Government’s assessment that the disclosure of personal data and other information to users of the NemKonto system’s control and supervisory tasks will take place as part of the fight against organised crime. The Minister believes that disclosure of the information could strengthen the effectiveness of controls carried out by users and reduce the burden of the control on users. The Agency for Digital Government’s processing of CPR numbers may take place in accordance with Section 11(1) of the Data Protection Act, according to which public authorities may process information on CPR numbers for the purpose of unique identification. In the NemKonto system, CPR numbers will be the private individuals’ identifier for both designated accounts in the NemKonto and for payment orders made by public payers or private providers’ account searches.

It is proposed that as (3) a provision shall be inserted by which the Minister for Digital Government can lay down rules to the effect that the Agency for Digital Government can process information on private persons and legal entities in the NemKonto system when this is necessary for users of the NemKonto’s control and supervisory tasks.

The Ministry of Digital Affairs wishes to strengthen the efforts of the NemKonto system operators to better control and prevent financial crime, including fraud and misuse of NemKontos. The NemKonto system will contain information that can be used to reduce the risk of payout to a NemKonto that has been subjected to fraud, which is considered to be in the interest of both the payer and the payee. The Ministry therefore considers that the draft Act shall also allow the Minister for Digital Government to lay down rules to the effect that the Agency for Digital Government can also

process information on private persons and legal entities when this is necessary for users of the NemKonto system's control and supervisory tasks.

It is primarily considered necessary to process information where necessary in the interest of users of the control and supervisory tasks of the NemKonto, which is why the provision is limited to this.

'Control and supervision tasks' means tasks which aim to reduce the risk of unintended errors, fraud and misuse with users of the NemKonto's funds.

'Users of the NemKonto system' means the actors who directly or indirectly use the NemKonto system and who are covered by this draft Act. This will include, for example, public payers, payment settlement institutions, private payers and institutions that keep accounts that can be designated to the NemKonto system.

By virtue of the authorisation, the Minister for Digital Government will be able to lay down rules to the effect that the Agency for Digital Government will be able to process data on private persons and legal entities in cases other than those specified in (1).

It is the Ministry's assessment that detailed rules on the Agency for Digital Government's processing of information on private persons and legal entities, when necessary in the interest of users of the NemKonto system's control and supervisory tasks, are most appropriately laid down at Order level. The reason for this is to ensure as concrete and agile regulation as possible. At the same time, it will be possible to ensure that new tools, information, etc., which the Agency for Digital Government will be able to use within the framework established by the draft Act, can be taken into account and further regulated on an ongoing basis. In addition, it will be possible to ensure that the technological possibilities for processing large quantities of data are accompanied by detailed rules on security of processing, including on access to data.

It is assumed that, with the authorisation, the Minister for Digital Government will be able to lay down rules on the applicable control and supervisory tasks. The Agency for Digital Government will be able to process information on private persons and legal entities, including rules on which private paying private account intermediaries can receive information. The individual user will have to request information from the Agency for Digital Government and be responsible for ensuring that the specific request is based on a control or supervisory task.

It is also assumed that, under the authorisation, the Minister for Digital Government will be able to lay down rules to the effect that the Agency for Digital Government will be able to process information on, for example, the date when an account has been activated and registered as a NemKonto in the NemKonto system for a payee, how many payees who currently have a given account registered as a NemKonto in the NemKonto system and the relevant payees' CPR numbers, CVR numbers, SE numbers or P numbers, and information on how the account has been designated to the NemKonto system.

The processing of personal data must also take place within the framework of the GDPR and the Danish Data Protection Act. The draft Act is not intended to change this.

The issue of notification and access to data, etc. must therefore be decided in accordance with the general rules of the General Data Protection Regulation and the Danish Data Protection Act.

In connection with the decision as to which information on private persons and legal entities the Agency for Digital Government will process, the Minister will make an assessment of whether it is objective and proportionate to process the type of information in question. This ensures that the type of information in question is processed only if it is necessary and does not go beyond what is required for the purpose.

The draft Act does not derogate from the rules relating to professional secrecy or other specific national and EU law restrictions on the processing of data. Information on private persons and legal entities that are subject to the rules of special professional secrecy provisions will therefore be administered in accordance with the conditions resulting from the individual provisions of professional secrecy and will comply with the rules on the same.

As stated under para. 2.10.2.3 of the general comments, the Minister for Digital Government will, pursuant to (3) and within the framework of Article 23 of the General Data Protection Regulation, lay down detailed rules to the effect that the Agency for Digital Government may further process personal data for purposes other than those for which they were originally collected, regardless of the compatibility of the purposes (purpose limitation principle).

In exercising the authorisation, the requirements set out in Article 23(2) of the Regulation must be met, which means that, by issuing a regulation restricting, inter alia, the purpose limitation principle, at least specific provisions, where applicable, must contain specific provisions relating to the provisions required by Article 23(2).

In concrete terms, the limitation of the purpose limitation principle means that the Agency for Digital Government is given access to process personal data in the NemKonto system for use by users of the NemKonto's control and supervisory tasks.

It follows from Report No 1565/2017 of the Ministry of Justice on the General Data Protection Regulation, page 158, that such an approach, whereby the legislation makes derogations from the Regulation, is in accordance with the General Data Protection Regulation, provided that the derogation meets the requirements laid down in Article 23 of the Regulation.

The limitation of the purpose limitation principle is deemed to be a necessary and proportionate measure in a democratic society in the interests of users of the controlling and supervisory tasks of the NemKonto system. Among other things, the purpose is to ensure the regulatory basis for the processing of personal data for control purposes that can be used by users of the NemKonto system to recognise patterns and signs of fraud across payees.

The information will be compiled and passed on to users and then only shown in the system log of the NemKonto, which will be deleted on an ongoing basis.

Pursuant to the proposed (2), the Agency for Digital Government will become the data controller for the processing of the data in the NemKonto system, and users of the NemKonto system will become data controllers upon receipt of the data.

It should be noted that the general requirements of, inter alia, proportionality and data minimisation remain applicable in respect of the use of the personal data. It is therefore assumed that the authority to lay down rules stipulating that information may be used for control and supervision tasks for users of the NemKonto system is not used to a greater extent than is necessary to ensure that the intended purpose of the draft Act is achieved. The Agency for Digital Government will also not carry out profiling of personal data, but will only collect data that may be relevant to the person in question using the NemKonto system.

It is proposed that a provision shall be inserted as (4), by which the Minister for Digital Government shall lay down rules on the processing of information in the NemKonto system, including retrieval and disclosure of information from the NemKonto system and on the collection of fees in connection with the disclosure of the information.

It is the assessment of the Ministry of Digital Affairs that it will be necessary to lay down additional rules on the processing of information, including personal data, in the NemKonto system, so that the Agency for Digital Government, as system owner of the NemKonto system, can make the NemKonto system available to public payers and private account intermediaries.

The authorisation to lay down rules will have to be used, inter alia, to lay down new and adapted provisions on information that is collected and processed in the NemKonto system. In this way, the NemKonto system can be easy and flexible to adapt to a digital development or a general social development.

It is proposed that the Agency for Digital Government will be able to obtain information for the NemKonto system when such information is necessary for the performance of tasks as a system owner.

For example, the Agency for Digital Government will be able to obtain information from public payers about benefit-specific accounts connected with the public payer in question. This will mean that public payers will be responsible for ensuring that the information transmitted is correct and up-to-date at all times, cf. the proposed Section 11 and the comments thereto.

The general rules of the Public Administration Act on the exchange of information between administrative authorities shall apply *mutatis mutandis* to the Agency for Digital Government's activities in relation to the NemKonto system.

The Agency for Digital Government will also be able to obtain other necessary data. For example, the Agency for Digital Government will be able to obtain the necessary information from the Modular Register and the PI register from Finance Denmark.

The Minister for Digital Government will also have to lay down rules on the Agency for Digital Government's disclosure of information to the Customs and Tax Administration in connection with the performance of tasks pursuant to Section 17 of the draft Act on offsetting. Relevant information will include, for example, information on the payee's identity in the form of a CPR number, CVR number, SE number, or P number, which apply to the public payer, the type of benefit (the nature of the benefit), the payment amount, as well as the payee's NemKonto, benefit-specific account or other account.

In addition, the Minister for Digital Government will have to lay down rules as to which personal data the Agency for Digital Government can disclose to public payers and private payers. It is proposed, for example, that the Agency for Digital Government will only be able to disclose personal data in connection with a public payer's payment of sums of money to a payee or a private payer's account search.

Furthermore, it is proposed that rules may be laid down allowing the Agency for Digital Government to disclose personal data to the public payer's payment-settlement institution in connection with a public payer's payment of sums of money.

In addition, it is proposed that rules may be laid down allowing the Agency for Digital Government to disclose information to institutions covered by public service schemes in connection with the performance of the tasks that will be assigned to the institutions under the draft Act.

It is also proposed that the authorisation may be used to lay down rules to the effect that the Agency for Digital Government will be able to disclose information on private persons and legal entities that the Agency for Digital Government can process in accordance with (3).

For example, it is proposed that rules may be laid down stipulating that the institution in which an account is designated as a NemKonto will be able to receive information on the payee who has the account registered as its NemKonto.

Furthermore, it is proposed that rules may be laid down to allow private payers via private account intermediaries to receive information on private persons and legal entities. In this context, it is assumed that rules shall be laid down stipulating that the Agency for Digital Government will only be able to disclose the information in question to certain private payers where there is a high likelihood of fraud and misuse. By way of example, consumer credit companies and lending companies that pay payday loans [quick loans] will be able to be covered.

Finally, it is proposed that rules may be laid down to the effect that public payers may receive information about private persons and legal entities in connection with payments to payees. It is as-

sumed that, in practice, the public payers' settlement institutions will have to receive the information from the Agency for Digital Government.

It should be noted that the proposed provision does not intend to change the public authorities' access to obtain the information that has been obtained by the Agency for Digital Government upon request. Furthermore, the proposed provision does not intend to change the extent to which the Agency for Digital Government, on the basis of a specific assessment, can disclose information to public authorities. These questions are decided in accordance with the general rules on the disclosure of data between public authorities, including the rules laid down in the Danish Data Protection Act, the General Data Protection Regulation and the Public Administration Act.

It is also assumed that rules will be laid down stipulating that information may only be disclosed to entities authorised to use it. This does not entail a requirement for explicit statutory authority in all cases, but may specifically be the case in relation to certain information, such as CPR number information.

It is assumed that rules shall be laid down stipulating that users of the NemKonto system will have to pay a fee for the receipt of information on private persons and legal entities when the information is received as part of the users' control and supervision tasks. The fee will be set in a cost-reflected manner and shall ensure coverage of all costs associated with the Agency for Digital Government's processing and disclosure of the information.

It is also assumed that rules will have to be laid down on the storage of data, including personal data in the NemKonto system. The Ministry of Digital Affairs is of the opinion that, for example, rules should be laid down stipulating that the information on a specified account in the NemKonto system is definitively deleted after the account has been registered as deleted in the NemKonto system upon the death of a private person, upon the termination of a legal entity, or if a natural person ceases to be an employer or self-employed person. It is expected that the obligation to finally delete the information from the NemKonto system will arise no later than 2 years after the Agency for Digital Government has registered the assigned account as deleted from the NemKonto system. It is expected that this will lead to final deletion of such information no later than 5 years after the death of a private person, upon termination of a legal entity, or if a natural person ceases to be an employer or self-employed person.

Finally, it is envisaged that the Minister for Digital Government will have to lay down rules on the retention of information on previously designated accounts, payments from public payers and account searches. The Ministry considers that a deletion period could be appropriately set at 10 years, calculated from the registration in the NemKonto system, in order to satisfy the needs of payees or liquidators to document previously designated NemKontos, information on public services received or private paying users' account searches. However, the Ministry of Digital Affairs, in consultation with the Agency for Digital Government, will consider a different deletion period if this is deemed necessary. If the information on an assigned account is definitively deleted due to the

death of the private person or the termination of the legal entity, information on previously designated accounts, payments from public payers and account searches are deleted at the same time.

The obligation to perform final deletion will in all cases be the responsibility of the Agency for Digital Government as data controller.

Reference is also made to para. 2.10.2 of the general explanatory notes of the draft Act.

Re Section 26

In accordance with Section 34 of the NemKonto Order, the CPR authority makes information from the CPR register available, so that the NemKonto can be updated with changes in the list of CPR numbers. Furthermore, it states that the CVR authority shall make information from the CVR register available, so that the NemKonto register can be updated with changes to the list of CVR numbers and P numbers. The same applies to the Customs and Tax Administration, which must make SE information from the Business System available, so that the NemKonto register can be updated with changes to the list of SE numbers.

It is proposed that a provision shall be inserted as *Section 26*, by which the Agency for Digital Government can obtain the information necessary for the development, operation, maintenance, and administration of the NemKonto system from the Customs and Tax Administration, the Central Person Register, and the Central Business Register.

It is thus proposed that the Agency for Digital Government, as part of carrying out the task of system owner of the NemKonto system, can obtain information from central authorities and registers when it is necessary for the NemKonto system. This also includes personal data.

For a detailed description of the Agency for Digital Government's tasks as system owner, please refer to Section 22 of the draft Act and the comments thereto.

It is the assessment of Ministry of Digital Affairs that it will be necessary to obtain information on payees from the Customs and Tax Administration, the Central Person Register and the Central Business Register in order to be able to ensure the payee's identity in the NemKonto system. The Agency for Digital Government will thus be able to obtain information from the Central Person Register on private persons' CPR numbers, name and address information, guardianship and status codes, as well as information on legal entities' CVR and P numbers, name and address information, company form and status from the Central Business Register and SE numbers, from the Customs and Tax Administration.

In addition, it is proposed that the relevant registers will be able to provide the Agency for Digital Government with ongoing updates, so that the Agency for Digital Government can, for example, receive information on this when a payee moves away from Denmark, a legal entity terminates or otherwise changes in a payee's identification.

Furthermore, in the assessment of the Ministry of Digital Affairs, it will also be necessary to obtain information, including personal data, from the Customs and Tax Administration so that the NemKonto system can carry out an assessment on behalf of the public payers of whether there are grounds for debt settlement, cf. the proposed Section 17 and the comments thereto. The information will only be information on the debtor's identity in the form of a CPR number, CVR number, SE number or P number and, in certain cases, which authority is the claimant and the type of benefit against which the claim may be offset (nature of benefit). It will not be necessary to obtain information on the size and nature of the debt.

The NemKonto system will have to validate CPR numbers and CVR numbers upon designation, on payment orders received and upon receipt of information from the Customs and Tax Administration. In order for validation to take place, data from the Central Person Register and the Central Business Register on private persons and legal entities will be processed, regardless of whether or not they have designated an account in the NemKonto system.

The NemKonto system will have to process a large amount of payment orders on a point-by-point basis within a short period of time in order to ensure that the payment orders can be sent in time to the settlement institution required to execute the payment transaction. In order to ensure the operational security of the NemKonto system, by being able to operate independently of external networks and data sources, it is proposed that information from the Customs and Tax Administration, the Central Person Register and the Central Business Register will be stored in the NemKonto system. This will also ensure that validation, assessment of the debt settlement and control can be carried out immediately, so that the large volumes of data can be processed quickly without overloading the system. In the role of data controller, the Agency for Digital Government will assess whether information on certain groups of persons can be deleted immediately after receipt based on the fact that the proportion of persons who have designated a NemKonto is low.

It is not intended that there may be any changes to the conditions for registration in the registers from which information is obtained. The collection of information by the Agency for Digital Government cannot, therefore, mean that a payee cannot be registered if the conditions for registration are otherwise met.

Reference is also made to para. 2.10.2.5 of the general explanatory notes of the draft Act.

Re Section 27

Under Section 6a(1) of the Public Payments Act, etc., the Minister for Digital Government may lay down rules on financial compensation for natural persons covered by Section 1(1) who have not received legitimate payment due to fraud or error when designating or amending NemKonto. It is a condition for payment of compensation under Section 6a(1) that the relationship has been reported to the police as an immediate follow-up of knowledge of the criminal relationship, cf. Section 6a(4) of the Act.

Section 1(3) and (4) of Order no. 351 of 28 March 2023 on the payment of financial compensation for the fraud or error of instruction or amendment of NemKonto states that compensation to natural persons covered by the scheme cannot be granted if the applicant, through a grossly negligent or intentional act, has contributed to fraud or error of designation or amendment of NemKonto having led to the applicant not having received a legitimate payment. The compensation can be granted if the applicant, due to mental illness, reduced mental functional capacity or similar condition, has not been able to act prudently. However, this is based on a specific assessment.

It is proposed that as (1) a provision shall be inserted by which the Agency for Digital Government may, upon application, grant and pay financial compensation to private persons who have not received a legitimate payment as a result of a criminal offence or as a result of errors in the designation or amendment of an account in the NemKonto system.

With the proposed scheme, the State will be able to compensate private persons who have lost a justified payment when the private person has not voluntarily received it as a result of a criminal offence or as a result of an error in designation or amending an account in the NemKonto system.

It is proposed that the compensation scheme only covers compensation of private persons, as legal entities in the proposed scheme will have to present documentation by instructing NemKonto, which is more comprehensive than that which must be provided by private persons. In addition, when instructed by legal entities to a public payer, manual case processing is required in order to verify that it is the authorised signatory who designates a NemKonto on behalf of the legal entity.

As legal entities will not be covered by the proposed compensation scheme, questions on the compensation of legal entities as hitherto have to be assessed under the general agreement and bond law.

It is proposed that the compensation scheme shall cover payments from both public and private payers to private individuals. Furthermore, it is proposed that the compensation scheme covers both payments to the NemKonto and benefit-specific accounts of private persons.

It is proposed that the Agency for Digital Government shall become the competent authority to decide on compensation, so that there is only one administrative authority to manage the allocation and payment of compensation under the proposed scheme.

It is thus proposed that the Agency for Digital Government may, upon application, grant and pay financial compensation to private persons who have not received a lawful payment as a result of a criminal offence or as a result of errors in the designation or amendment of an account in the NemKonto system.

In relation to errors, it is proposed that the compensation scheme will only cover if there have been errors in the NemKonto system itself. The compensation scheme thus covers cases where errors occur when designating or amending an account in the NemKonto system, which result in a

payment being entered into an incorrect account. This can be both technical errors or mistakes when entering a NemKonto or benefit-specific account in connection with designation or amendment.

On the other hand, errors that occur outside the NemKonto system will not be covered by the compensation scheme. This could be the case, for example, where a case officer enters an incorrect CPR number in connection with a payment, i.e. a CPR number belonging to a person other than the intended payee, whereby the payment is made to the wrong private person. In this case, there will be no errors in the intended payee's NemKonto data recorded in the NemKonto system, which is why such a error will not be covered by the compensation scheme. In the event of an error outside the NemKonto system, the private person will have to contact the public payer or private payer, who should repay to the private person and claim reimbursement of the amount mispaid from the person who has wrongly received it.

In relation to cases concerning criminal offences, the compensation scheme will cover cases in which private persons have unjustifiably made changes in the NemKonto system, and this constitutes a criminal offence. This may be cases where changes have been made to the private person's designated NemKonto or benefit-specific accounts.

Criminal offences covered by the compensation scheme could include, among other things, identity theft-related crimes, whereby the offender makes a change to the account registered as his or her NemKonto as the victim of identity theft, by swapping the victim's account with the perpetrator's own account or an account to which the offender has access, whereby transfers of funds to the payee carried out through the NemKonto system will not be paid out to the payee.

The compensation scheme will only cover legitimate payouts. A legitimate payout will be a payout of which the private person is the rightful recipient. Examples of legitimate payments include pension benefits or housing benefits that the private person is entitled to receive and has requested. On the other hand, the compensation scheme will not include payouts which the payee is not the rightful recipient of, such as a loan taken out by another party in the name of the payee. The compensation scheme will thus also not cover contracts covered by the contractual grounds for invalidity, such as fraudulence or coercion. If a person appropriates another person's MitID and then enters into an agreement with a third party, he or she will not be covered by the compensation scheme. Such fraudulent agreements may include, among other things, agreements on the payment of cash loans to a private person's NemKonto. Thus, if fraud has occurred with the private person's NemKonto, the loan will be paid to another account. The compensation scheme will also not cover agreements concluded by means of coercion. These cases may arise where one person forces another to, for example, take out a bank loan and then payments are made to an impostor's NemKonto.

In all cases of coercion or fraudulence, the circumstances will have to be decided in accordance with the rules of obligations and contract law. This means that it is a private person who must object to an invalid agreement when they become aware of the agreement. If there is fraud or violent coercion, this will be a strong ground for invalidity and the third party cannot invoke the agreement

against the private individual. Thus, the private person is not liable for e.g. payouts, which were made when the fraudster wrongly used the private person's information. Any disputes concerning the validity of agreements or the clarification of grounds for invalidity must be settled in the courts.

The draft Act will not affect the applicable rules under the Payment Act and the rules laid down therein on liability conditions, such as unauthorised payment transactions via online banking, cf. Sections 97 and 99 of the Payment Act), unauthorised use of payment instruments, cf. Section 100 of the Payment Act) and the purchase of goods over the internet with payment cards, cf. Section 112 of the Payment Act).

The draft Act will also not have an impact on the general contract law, which regulates, for example, the taking out of loans, etc., where the private person is not, as a rule, liable in connection with the possible misuse of a digital signature, including in connection with fraudulence or coercion. In this respect, see the Supreme Court's order of 17 November 2021 (case 11/2021).

The draft Act only means a possibility to derogate from the general agreement and obligation law regulations on who shall financially compensate the private person for the lost lawful payment, irrespective of other rules that may apply to the matter.

It is proposed that a provision shall be inserted as (2), under which it is a condition for granting and paying compensation as a result of a criminal offence that the matter has been reported to the police immediately following the private person's knowledge of the criminal offence.

Under the proposed scheme, it will not be a requirement that the private person shall have submitted the police notification herself or himself, but it will be the private person who will have to prove that the condition is met. The police notification or receipt that the matter has been reported will thus have to be submitted to the Agency for Digital Government in connection with the application for compensation.

It is proposed to insert in (3) a provision under which compensation cannot be granted to private persons who have acted grossly negligently or intentionally. Furthermore, it is proposed that compensation may be granted if the private person, due to mental illness, reduced mental functional capacity, or similar condition, has not been able to act prudently. This depends on a specific assessment taking into account the person's mental condition, the nature of the action or the circumstances in general. Subsection (2) shall not, however, apply if the person temporarily is in a similar condition as a result of consuming means of intoxication, narcotics or the like, or if the person had the intention to cause the damage.

It is thus proposed that no compensation can be awarded to private individuals who have acted grossly negligently or intentionally. The action will have to be assessed, inter alia, on the basis of the conditions for possession of a digital identity and associated electronic means of identification cf. the Order on MitID for private persons. As part of the assessment of negligence, it will, among other things, include the circumstances in which a third party has come into possession of the

holder's identification data or has accessed the holder's MitID, whether the holder was aware that a third party was in possession of the data in question or the holder's MitID and whether the holder had done what was possible to prevent misuse, e.g. by blocking its MitID as soon as possible.

The assessment of negligence and intention includes both the change to the NemKonto and subsequent actions that have led to a payment via the NemKonto system. Thus, if a payee has acted with gross negligence or intentionally as part of the payment process, his or her loss will not be covered by the compensation scheme. For example, if a payee has been simply negligent in the context of the fact that a third party acquired possession of the person's MitID and made a change to the person's NemKonto, but the payee has been grossly negligent in the context, for example, of taking out a loan that makes her or him liable to a bona fide acquirer of the agreement, the loss will not be covered by the compensation scheme.

However, it is proposed that compensation may be awarded if the private person, due to mental illness, reduced mental functional capacity or similar condition, has not been able to act prudently. This depends on a specific assessment taking into account the person's mental condition, the nature of the action or the circumstances in general. However, this does not apply if the person has temporarily put himself or herself in a similar condition as a result of consuming means of intoxication, narcotics or the like, or if the person had the intention of causing the damage.

Reference is also made to para. 2.11.2 of the general explanatory notes of the draft Act.

Re Section 28

Section 1(1) of Order no. 351 of 28 March 2023 on the payment of financial compensation in the event of exposure to fraud or error in designating or amending NemKonto states that natural persons under Section 1(1) of the Act on Public Payments, etc. who have not received a legitimate payment due to fraud or error in designating or amending NemKonto may, upon application, be granted financial compensation for the loss corresponding to the amount of the relevant payment.

Furthermore, Section 6a(3) of the Public Payments Act states that the Minister for Digital Government may lay down rules stating that compensation under Section 6a(1) cannot be paid to natural persons who have acted negligently or intentionally, are fully compensated or have subsequently received the amount by other means. It is clear from the preparatory work for Section 6a(3) that the authorisation is expected to be implemented by the Minister laying down rules stipulating that compensation will not be paid to citizens who are compensated in other ways, e.g. by an employer or public authority, cf. the Official Record of Danish Parliamentary Proceedings 2021-22, Appendix A, L 165 as set out, page 9. No rules have been laid down by Order to the effect that no compensation is paid to natural persons who have been fully compensated or subsequently received the amount by other means.

It is proposed that a provision shall be inserted as (1) by which the Agency for Digital Government awards financial compensation equivalent to the amount of the relevant legal payment. The

compensation shall be reduced or terminated if the private person has received the amount in whole or in part by other means.

It is proposed that the financial compensation should be calculated as the same amount that the private person has not lawfully received via the NemKonto system, regardless of whether the private person has suffered other financial losses as a result of the error or criminal offence.

The compensation is thus proposed to be reduced or refused if the private person has received the amount in whole or in part by other means. This may include, for example, cases where the private person is compensated by an employer or a public payer.

It is proposed that a provision shall be inserted as (2), according to which a private person who has been compensated by the Agency for Digital Government must repay the compensation in whole or in part to the Agency for Digital Government to the extent that they have otherwise covered their losses.

It is thus proposed that compensation already paid shall be repaid in whole or in part to the Agency for Digital Government if the private person has had the compensated amount covered in other ways. This will, for example, be paid compensation, sum insured, or other reimbursement.

Reference is also made to para. 2.11.2 of the general explanatory notes of the draft Act.

Re Section 29

Section 4 of Order no. 351 of 28 March 2023 on the payment of financial compensation in the event of fraud or error in designation or amending NemKonto states that the application for compensation must be submitted as soon as possible after the private person identified that a correct payment has not been received and no later than 13 months after the relevant payment has taken place. Furthermore, Section 3(1) of the Order states that applications for compensation shall be submitted digitally to the Agency for Digital Government using the solution indicated by the Agency for Digital Government. It follows from Section 3(2) of the Order that the Agency for Digital Government may grant exemption from the requirement for digital application under Section 3(1) if there are special circumstances, such as a physical or mental disability or lack of IT competences, which mean that the private person cannot be expected to be able to digitally submit an application in accordance with (1).

It is proposed that a provision shall be inserted as (1), by which applications for compensation are submitted digitally to the Agency for Digital Government using the solution indicated by the Agency for Digital Government. Furthermore, it is proposed that the Agency for Digital Government may grant exemption from the digital application requirement if there are special circumstances, such as a physical or mental disability or lack of IT competences, which mean that the private person cannot be expected to be able to digitally submit an application.

It is thus proposed that as the clear starting point, applications for compensation can only be submitted digitally to the Agency for Digital Government. Via their website, the Agency for Digital Government will specify the digital solution to apply for compensation to be used.

However, it is proposed that the Agency for Digital Government will be able to grant exemption from the requirement for digital application if there are special circumstances, such as a physical or mental disability or lack of IT competences, which mean that the private person cannot be expected to be able to digitally submit an application.

The Agency for Digital Government's case processing of applications for exemptions from the digital application requirement will follow the general principles of administrative law, including rules on case information and the provision of factual information necessary to clarify the case.

It is proposed to insert as (2) a provision according to which the application for compensation must be submitted as soon as possible after the private person has found that a legitimate payment has not been received, and no later than 13 months after the payment in question has taken place.

The Agency for Digital Government's case processing of compensation cases will follow the general principles of administrative law, including rules on case information and the provision of actual information necessary to properly illuminate the case. For example, log information from the NemKonto system, bank details and proof of entitlement to the service will be relevant factual information. A decision may be made on the existing basis where it is not possible to provide the information necessary to clarify the case, in accordance with the general principles of administrative law. If new information of significant importance for the decision of the case is obtained after the decision is made, the decision on the payment of compensation may be rectified, also in accordance with the principles of administrative law.

It is proposed to insert as (3) a provision under which the Agency for Digital Government's decisions on compensation cannot be appealed to any other administrative authority.

It is thus proposed that the Agency for Digital Government will make a final administrative decision in cases concerning applications for compensation. It will therefore not be possible to file an appeal against either compensation being paid or the amount of any compensation. It will be possible to bring the decision of the Agency for Digital Government before the courts.

Reference is also made to para. 2.11.2 of the general explanatory notes of the draft Act.

Re Section 30

Under Section 6b(4) of the Public Payments Act, etc., the Minister for Digital Government may lay down rules on the State's entry into the victim's claims against the person who caused the damage, to the extent that compensation is paid to the victim. It follows from the preparatory work on the provision that in cases of fraud, money has been stolen from a citizen, which may, inter alia, be

a wage or a public benefit. Against this background, the citizen has a compensation claim against the offender and may, in the course of any criminal proceedings, file a claim for compensation. If the State provides compensation to the citizen, the citizen's loss will be covered, which is why the Minister for Digital Government can lay down rules stipulating that the State will be able to take the place of the victim, so that the State will be able to recover the money if the person causing the damage is subsequently identified, cf. the Official Record of Danish Parliamentary Proceedings 2021-22, Appendix A, L 165 as set out, page 10.

It is proposed that a provision shall be inserted as *Section 30*, by which the Agency for Digital Government joins the private person's claims against tortfeasors to the extent that the Agency for Digital Government has paid compensation to the private person. The Agency for Digital Government may refrain from pursuing requirements that have not been established by judgement, or if the costs of pursuing the requirement are likely to be incommensurate with the expected outcome of pursuing the requirement.

In cases of compensation as a result of a criminal offence, money has been stolen from a private person, which may be, inter alia, salary or a public benefit. Against this background, the private person has a compensation claim against the offender and, in the event of criminal or civil proceedings, will be able to make a claim for compensation. It is proposed that, in cases where the Agency for Digital Government provides compensation to the private person, their losses will be covered, which is why the Agency for Digital Government, under the proposed provision, will be able to occur in the place of the injured party, so that the Agency for Digital Government will be able to recover the money from the person who caused the accident.

It is proposed that the Agency for Digital Government may refrain from pursuing claims that have not been established by judgement, or if the costs of pursuing the claim are likely to be incommensurate with the expected outcome by pursuing the claim.

Reference is also made to para. 2.11.2 of the general explanatory notes of the draft Act.

Re Section 31

Section 2(1) of Order no. 351 of 28 March 2023 on the payment of financial compensation in the event of fraud or error in designation or amending NemKonto states that the Agency for Digital Government shall decide on the granting of compensation pursuant to Section 1 of the Order. Furthermore, Section 2(2) of the Order states that appeals against the decision under (1) cannot be made to any other administrative authority.

It is proposed to insert as (31) a provision by which the Minister for Digital Government can lay down rules on the compensation scheme, including additional requirements for compensation, rules on the submission of applications, and the handling of cases for compensation.

The proposed provision provides for the possibility of laying down new and adapted provisions as a result of new knowledge of misuse of the NemKonto system or additional requirements for documentation of applications for compensation. In addition, requirements may be laid down for the Agency for Digital Government's handling of applications for compensation under the proposed scheme.

Reference is also made to para. 2.11.2 of the general explanatory notes of the draft Act.

Re Section 32

Under Section 3(1) of the Public Payments Act, etc., the Minister for Digital Government is authorised to lay down rules on the right of public authorities to make payments to natural and legal persons covered by Section 1 who have not designated a NemKonto. It follows from Section 32(1) of the NemKonto Order that a manner in which public authorities can assign a receivable to citizens and enterprises who have not designated a NemKonto or created a specific account is to transfer the amount to a State-owned account created by the Agency for Digital Government. The provision further states that this is done in full discharge of liabilities if the paying authority notifies the payee before the payment is made.

It is proposed that a provision shall be inserted as (1), according to which the holding account is the State-owned account set up by the Agency for Digital Government to which public payers by agreement with the Agency for Digital Government have been able to make payments to payees that have not designated a NemKonto since 6 March 2012.

The provision proposes that the State-owned account, as specified in Section 32(1) of the NemKonto Order, shall henceforth be defined as the holding account.

It is proposed to insert as (2) a provision under which, as of 1 July 2025, no amounts may be transferred from public payers to the holding account, cf., however, Section 33.

The provision proposes that, with the exception of the Customs and Tax Administration, as of 1 July 2025, public payers will no longer be able to direct a payment to the holding account when a payee has not designated a NemKonto or benefit-specific account in the NemKonto system.

The proposed termination of the holding account scheme and the abolition of the state holding account will mean that public payers who have so far been connected to the holding account and who cannot implement a payout via the NemKonto system will in the future – like all other debtors – be responsible themselves for terminating the debt relationship, cf. also the proposed Section 14 and the comments thereto. Under the proposed scheme, a public payer who has hitherto been connected to the holding account and who attempts to make a payment to a payee who has not designated an account in the NemKonto system or where, for other reasons, the amount cannot be transferred to the payee's designated account will automatically have the amount returned from the

NemKonto system, so that the public payer can manage the payment himself or herself by other means.

It is proposed to insert as (3) a provision stating that for claims for payment of sums of money transferred to the holding account no later than 30 June 2025, the payee's claims should be time-barred on 1 July 2028 at the earliest.

The proposed provision basically gives the payee a better legal position than today, as the majority of claims on the holding account are already obsolete or would be obsolete earlier than 1 July 2028.

The payee thus has a period of at least 3 years from the entry into force of the Act to have amounts paid to the holding account by either creating a NemKonto or contacting the Agency for Digital Government with information on another account, to which payment shall be made.

The payee will also be able to contact the relevant public payer, who can pay the amount directly to the payee, after which the Agency for Digital Government can, at the request of the public payer, return the amount to them.

It is expected that virtually all claims transferred to the holding account, which are not paid beforehand to the repayable payment, will be time-barred on the date of expiry of the 3-year period on 1 July 2028.

The fact that the time-bar applies to the payee's claims on 1 July 2028 at the earliest will not prevent the occurrence of a later time-barring of the payee's claims, if it follows from other legislation.

It is proposed to insert as (4) a provision under which claims for payment of money transferred to the holding account will not be subject to interest from 1 July 2025.

The provision proposes that claims for payment of sums of money assigned to the holding account should not bear interest from 1 July 2025.

The proposal involves a continuation of the existing practice whereby the Agency for Digital Government's payment of amounts from the holding account takes place without the addition of interest. In principle, the payees will not have any claim to interest on the deposit for the period prior to 1 July 2025, as payees who believe that they have such an interest claim will, however, be able to contact the Agency for Digital Government to this effect, after which the Agency will have to assess whether the payee has an exceptional claim to interest, and under which rules this should be calculated. It is assumed that the public payer who has transferred the amount will assist the Agency for Digital Government in disclosing the case.

It is proposed to insert as (5) a provision under which claims for payment of sums of money transferred to the holding account by 30 June 2025 cannot be transferred or prosecuted from 1 July 2025.

Thus, with the proposed arrangement, it will not be possible for the payee to transfer amounts of money transferred to the holding account to third parties from 1 July 2025, i.e. the payee will not be able to notify the amount of transport.

Similarly, the payee's amount transferred to the holding account will not be subject to prosecution from the entry into force of the Act, and it will thus not be possible to garnish it.

It is proposed that a provision shall be inserted as (6) whereby claims for payment of sums of money transferred to the holding account by 30 June 2025 may, unless the payee has claimed the payment by 30 June 2028 and designated an account for use for the payment, be recognised as revenue in the State on 1 July 2028, cf., however, (7). The Agency for Digital Government carries out public warnings in the Official Gazette on this matter no later than 30 June 2027.

The proposed provision will allow claims for the payment of amounts of money transferred to the holding account, regardless of the limitation period, to be income recognised in the treasury on 1 July 2028, unless they are used to cover debt, cf. (7). The term 'revenue is recognised' does not mean that claims which may still be legally enforceable cease to exist, but that the amounts are no longer in the holding account, so that the Agency for Digital Government can then, on 1 July 2028, close the holding account system for others than the Customs and Tax Administration.

It is also proposed that, following the revenue accounting, the Agency for Digital Government will not have to carry out investigations of its own accord in order to assess whether revenue-led amounts are out of date.

The proposal implies that if a payee designates a NemKonto after 1 July 2028, its balance, if any, will not be paid to the designated NemKonto. The provision therefore means that, in principle, payees wishing to claim amounts credited as income will have to apply to the Agency for Digital Government themselves, and the Agency for Digital Government will in this connection have to assess, with the assistance of the public payer, whether the payee's claims against the public payer have been barred by statute. In principle, the assessment of the limitation question will require that the Agency for Digital Government obtains information from the public payer, and the processing of such cases thus necessitates manual case processing and cannot be automated. This also concerns information that is not available to the Agency for Digital Government today.

As a result of the proposal, it is planned that the Agency for Digital Government will again seek to notify payees with one or more deposited amounts in the holding account with a total value of more than DKK 200. The information will be sent individually and physically to the address provided in the Danish Customs and Tax Administration's Business System, CPR or CVR register if the payee is exempt from Digital Post.

In cases where the payee does not respond to the individual information, the Agency for Digital Government will make a public warning in the Official Gazette with the name of payees with deposited amounts on the holding account by 30 June 2027, i.e. no later than 12 months before revenue is recognised. Attempts will thus be made to inform payers twice, individually and publicly, before the amount is recorded as revenue.

It is proposed that a provision shall be inserted as (7), according to which if a payee who has not made a claim for the payment of amounts referred to in (6) by 30 June 2028 and designated an account for the payment, has overdue debts on 1 July 2028, which are covered by the Debt Collection Act, the amount shall be transferred to the Arrears Collection Authority to cover those debts in accordance with the coverage sequence laid down in Section 7(1) nos. 2 and 3 of the Debt Collection Act.

It is thus proposed that if, on 1 July 2028, the payee has overdue debts covered by the Debt Collection Act, the amount shall be transferred to the Arrears Collection Authority in order to use the amount to cover that debt in accordance with the recovery sequence laid down in Section 7(1) nos. 2 and 3 of the Debt Collection Act. Write-down of the payee's debt will thus follow the general recovery order in the Debt Collection Act. Any excess amounts may be returned to the Agency for Digital Government prior to revenue accounting.

The proposed provision allows for the payment of the payee's debt with an outdated principal claim. Regardless of the type of claim to which the original amount of the holding account relates, the amount can be used to cover all debts covered by the Debt Collection Act. All the payee's public liabilities registered in the systems of the Arrears Collection Authority — including both debt registered for recovery and debt under collection registered for offsetting — will be covered up to the amount of the revenue that has been recognised. There will not be so-called 'internal offsetting' cf. Section 7(1) no. 1 of the Debt Collection Act, but only offsetting under Section 7(1) nos. 2 and 3.

It is proposed that a provision shall be inserted as (8), from which it follows that if a claim on an amount recognised as income in accordance with (6) is not time-barred, the Agency for Digital Government will, at the request of the payee, make payment of the amount, unless the amount was used to cover under (7).

The proposal means that, in principle, payees wishing to claim amounts credited to the public purse on 1 July 2028 will have to apply to the Agency for Digital Government themselves, and the Agency for Digital Government will in this connection have to assess, with the assistance of the public payer, whether the payee's claims against the public payer have been barred by statute.

At the same time, it is proposed that if the payee has had debts covered in connection with the settlement of the holding account on 1 July 2028, it will not be possible for the payee to contact the Agency for Digital Government to have the amount paid.

Reference is also made to para. 2.12.2 of the general explanatory notes of the draft Act.

Re Section 33

Under Section 3(1) of the Public Payments Act, etc., the Minister for Digital Government is authorised to lay down rules on the right of public authorities to make payments to natural and legal persons covered by Section 1 who have not designated a NemKonto. It follows from Section 32(1) of the NemKonto Order that a manner in which public authorities can assign a receivable to citizens and enterprises who have not designated a NemKonto or created a specific account is to transfer the amount to a state-owned account created by the Agency for Digital Government. The provision further states that this is done in full discharge of liabilities if the paying authority notifies the payee before the payment is made.

It is proposed to insert as (1) a provision under which the Customs and Tax Administration can continue to make payments to the holding account as from 1 July 2025.

The provision proposes that, from 1 July 2025, the Customs and Tax Administration may, as the sole public payer, continue to transfer money to the holding account where a payee does not have a NemKonto or benefit-specific account. The transfer by the Customs and Tax Administration of amounts of money to the holding account from 1 July 2025 will be governed by the rules in the proposed Section 33.

It is proposed that a provision shall be inserted as (2) whereby, for claims for sums of money transferred to the holding account from 1 July 2025, obsolescence occurs when 3 years have passed after the transfer to the holding account. Furthermore, it is proposed that sums of money accrue to the State if the claim for payment is out of date.

The provision establishes the limitation period for claims for money transferred to the holding account by the Customs and Tax Administration from 1 July 2025 as a 3-year limitation period that commences upon the transfer of the amount to the holding account. With the proposed provision, the limitation will therefore occur when the limitation period of 3 years has expired, i.e. 3 years and 1 day from the day of transmission.

The proposed provision implies that there is an ultimate limitation period of 3 years from the date of transfer and that the rules of the statute of limitations on suspension etc. are waived.

As far as possible, the Agency for Digital Government will ensure that the payee is informed that the amount has been transferred to the holding account. However, this will only be possible if the payee is either registered with Digital post or registered with a valid address in the Customs and Tax Administration's Business System, CPR or CVR register. In other cases, the payee does not receive notification from the Agency for Digital Government of a transfer to a holding account. It will not have any legal significance whether the Agency for Digital Government provides information to the payee.

It is proposed to insert as (3) a provision under which claims for payment of sums of money transferred to the holding account from 1 July 2025 onwards are not subject to interest.

The provision proposes that the payee will not have any interest for claims for money transferred to the holding account from 1 July 2025 onwards. It is thus proposed that claims transferred to the holding account from 1 July 2025 cannot be accrue interest, even if this may result from other legislation. However, any interest resulting from EU law will still have to be paid.

It is proposed to insert as (4) a provision under which claims for payment of sums of money transferred to the holding account as from 1 July 2025 may not be transferred or subject to prosecution.

Thus, with the proposed arrangement, it will not be possible for the payee to transfer amounts of money transferred to the holding account to third parties from the entry into force of the Act, i.e. the payee will not be able to notify the amount of transport.

Similarly, the payee's amount transferred to the holding account cannot be prosecuted from the entry into force of the act, and it will thus not be able to be garnished.

It is proposed that a provision shall be inserted as (5) by which the Minister for Digital Government in agreement with the Minister for Taxation may lay down rules to the effect that the Customs and Tax Administration can no longer authorise payments to the holding account under (1) from a specified date.

The provision proposes that the Minister for Digital Government in agreement with the Minister for Taxation may lay down rules to the effect that the Customs and Tax Administration can no longer authorise payments to the holding account from a specified date. As there will be a three-year limitation period for amounts transferred to the holding account, cf. the proposed Section 33(2), the Agency for Digital Government will continue to administer the holding account scheme and pay out any deposited amounts of money transferred to the holding account until the last amounts of money in the holding account have been paid or are out of date. The Agency for Digital Government will then be able to completely terminate the holding account scheme.

The abolition of the possibility to transfer sums of money to the holding account in the event of it not being possible to make a payment via the NemKonto system will mean that, in the future – as all other debtors – the Customs and Tax Administration will itself be responsible for terminating the debt relationship, cf. also the proposed Section 14 and the comments thereon. Under the proposed scheme, the Customs and Tax Administration will automatically get amounts returned from the NemKonto system when attempts are made to make a payment to a payee who has not designated an account in the NemKonto system, or where the amount cannot be transferred to the payee's designated account for other reasons, so that the Customs and Tax Administration itself can handle the payment by other means.

Reference is also made to para. 2.12.2 of the general explanatory notes of the draft Act.

Re Section 34

Under Section 32(1) of the NemKonto Order, a way that public authorities can assign a receivable to citizens and enterprises who have not designated a NemKonto or created a specific account is to transfer the amount to a State-owned account created by the Agency for Digital Government. The provision further states that when the recipient of funds subsequently designates a NemKonto, the receivable will be transferred from the State-owned account to the designated NemKonto.

It is proposed that a provision shall be inserted as *Section 34*, under which the Agency for Digital Government pays the outstanding amounts of money due to the holding account to the payee according to the payee's designation of a NemKonto or other account to which payment shall be made.

With the proposed provision, payees who are entitled to payment of amounts of money in the holding account will be able to have the amount of money paid out by designating a NemKonto in the NemKonto system or by contacting the Agency for Digital Government and providing information about an account to which payment is to be made.

As in the current scheme, it is proposed that the payee will automatically be paid the amount of money by designating a NemKonto in the NemKonto system. The payee will also be able to contact the Agency for Digital Government by designating an account to which the payment shall be made. The Agency for Digital Government's employees will then manually be responsible for the payment.

The proposed arrangement implies that Section 14(3) of the draft Act, stipulating that a NemKonto or another account may not be required as a condition for receiving a receivable, will not include payments of money from the holding account.

The proposed provision concerns only amounts of money that remain placed in the holding account, i.e. the provision does not concern amounts of money that have been recorded as income in the State pursuant to the proposed Section 32(6) used to cover debts pursuant to the proposed Section 32(7) or out of date.

Reference is also made to para. 2.12.2 of the general explanatory notes of the draft Act.

Re Section 35

Under Section 32(1) of the NemKonto Order, the receivable is transferred from the State-owned account to the designated NemKonto when the recipient of funds designates a NemKonto. Furthermore, it is stated in Section 32(2) that the paying authority may alternatively choose to make the

payment itself after receiving information from the NemKonto system that payment cannot be made due to a lack of account information.

It is proposed that a provision shall be inserted as *Section 35*, by which the Agency for Digital Government, on request, pays any deposited claims for monetary amounts to the holding account to the public payer, if the latter has paid or will pay the monetary amount to the payee.

Thus, under the proposed provision, a public payer will be able to have his or her transferred amount of money returned from the holding account, if the public payer himself or herself has arranged or will arrange the payment to the payee. It is a prerequisite that the public payer out itself sends a request to the Agency for Digital Government.

The proposed provision concerns only amounts of money that remain placed in the holding account, i.e. the provision does not concern amounts of money that have been recorded as income in the State pursuant to the proposed Section 32(6) used to cover debts pursuant to the proposed Section 32(7) or out of date.

Reference is also made to para. 2.12.2 of the general explanatory notes of the draft Act.

Re Section 36

It is proposed to insert as (1) a provision under which the Act enters into force on 1 July 2025.

The Agency for Digital Government has initiated a process for the acquisition of a new NemKonto system, and it is therefore expected that there will be a parallel operation period, during which both NemKonto systems will be in operation and used to implement payment orders and full payment messages. During the parallel period of operation, the Agency for Digital Government will be the system administrator for both the existing NemKonto system and the new NemKonto system. The Agency for Digital Government, as system administrator, will be responsible for the transition from the existing NemKonto to the new NemKonto system. It will thus be the Agency for Digital Government that manages the connection to and use of both systems by both the public payers and the private account intermediaries, including the transition from the existing system to the new system. The Agency for Digital Government can thus decide that public payers for a period of time will have to be connected to two systems.

It is proposed to insert as (2) a provision under which natural and legal persons who have been private payers under Section 5a of the Act on Public Payments, etc., and who have made account entries in the NemKonto system up to and including 30 June 2025 but who are not resident or have a registered office in Denmark, in another EU/EEA country or in the Faroe Islands and are not public payers under Section 8 may, notwithstanding Section 18(2), make account entries, cf. Section 18(1) up to and including 30 June 2026. In other words, the transitional rule applies for a 1-year period from 1 July 2025 to and including 30 June 2026.

The provision ensures that natural and legal persons who have been private payers under Section 5a of the Public Payments Act, etc., but who do not comply with the requirement laid down in Section 18(2) of the draft Act concerning residence or registered office in Denmark, another EU/EEA country or the Faroe Islands have time, with appropriate notice, to adapt to how payments are to be organised when their possibility, via a private account intermediary, to make account searches in the NemKonto system ceases on 30 June 2026.

Apart from Section 18(2) of the Act, during the transitional period from 1 July 2025 to and including 30 June 2026, the Act and rules laid down pursuant to the Act shall apply to private payers.

It is proposed to insert as (3) a provision according to which natural and legal persons who have been connected to the NemKonto system as private payment service providers up to and including 30 June 2025, but are not a type of company referred to in Section 19(2), by way of derogation from Section 19(2), may remain connected to the NemKonto system as a private account intermediary, cf. Section 19(1) up to and including 30 June 2026. In other words, the transitional rule applies for a 1-year period from 1 July 2025 to and including 30 June 2026.

The provision ensures that natural and legal persons who have been connected to the NemKonto system as private payment service providers, but will not be able to become a private account intermediary under Section 19(2), can terminate their business with appropriate notice.

It should be noted that there are financial digital infrastructure operators that are currently private payment service providers, but are not a type of company referred to in Section 19(2), which may remain connected to the NemKonto system, cf. the proposed Section 20 and the comments thereon.

Apart from Section 19(2) of the Act, the Act and rules laid down pursuant to the Act shall apply to private account intermediaries during the transitional period from 1 July 2025 to and including 30 June 2026.

It is proposed that a provision shall be inserted as (4), according to which Chapter 8 of the Act shall apply to decisions on compensation after the Order on the payment of financial compensation in the event of fraud or error in designating or amending NemKonto taken as of 1 July 2025.

The provision proposes that all decisions on compensation for fraud or error when designating or amending NemKonto will be made in accordance with applicable law at the time of the decision.

It is proposed to insert as (5) a provision under which rules laid down pursuant to Section 1(7) and (8), Section 3(1) and (5), Section 4(1) and Section 5(2) of the Act on Public Payments, etc., cf. Consolidation Act no. 494 of 4 May 2023, remain in force until they are repealed or replaced by rules issued pursuant to this Act. The same applies to rules laid down pursuant to Section 12(6) of the Act on Public Payments, etc. to the extent that the rules exempt institutions, associations and funds, etc. from the provisions of Sections 1-2 a, Section 3(1) and (5), Sections 4-5 c, Section 6a and Section 6b of the Act on Public Payments, etc.

Sections 1-2 a, Section 3(1) and (5), Sections 4-5 c, Section 6 a and Section 6 b of the Act on Public Payments, etc. are repealed by Section 37 of the draft Act. Rules issued pursuant to these provisions are also repealed, unless otherwise specified.

The purpose of (5) sentence 1 to continue Order 647 of 13 April 2021 on the NemKonto scheme shall remain in force until it is repealed or replaced by new rules. It is the intention that one or more new Orders will be issued, which will replace the Order on the NemKonto scheme, and that these can enter into force at the same time as the Act.

The provision does not provide a legal basis to continue rules issued pursuant to Sections 5c, 6a and 6b of the Public Payments Act, etc. Order no. 351 of 28 March 2023 on the payment of financial compensation in the event of fraud or error when ordering or amending NemKonto is therefore repealed by the Act. The Order is replaced by the rules in Sections 27-30 of the draft Act.

The purpose of (5) sentence 2 is to continue regulations from Orders issued pursuant to Section 12(6) of the Act on Public Payments, etc., which exempt a number of institutions, **associations and foundations**, etc. from Sections 1-7 of the Act with regard to connection to the NemKonto system.

Re Section 37

Re no. 1

Section 1 of the Public Payments Act, etc. contains rules on which natural and legal persons must designate a NemKonto to which public authorities in full discharge of liabilities may make payments of amounts of money, and that this must be done at the latest when the first payment is made by a public authority. However, no payment is to be made to NemKonto if a natural or legal person has designated another account to which a payment is to be made. The provision also contains authorisations for the Minister for Digital Government to lay down regulations on an obligation to issue assignments.

Section 2 of the Public Payments Act, etc. contains rules on where the designation of a NemKonto must take place, whether NemKonto can be changed, and when changes take effect as well as on the deletion of NemKonto upon death or upon the termination of an undertaking.

Under Section 2a of the Public Payments Act, etc., payments to accounts abroad are considered to have been made by the public authorities in due time, regardless of whether they have been received by the recipient at a later date than equivalent domestic payments.

It is proposed that *Sections 1-2a* of the Public Payments Act, etc. be repealed.

That which is proposed is a consequence of the fact that the regulation of matters relating to NemKonto is separated from the Public Payments Act, etc. by this draft Act.

Section 1 of the Act on Public Payments, etc. on the obligation to designation continues with adjustments in Sections 2, 3, 5 and Section 14(1) of the draft Act.

Section 2 of the Public Payments Act, etc. is partially replaced by Section 7 of the draft Act on when amendments and deletion of NemKontos take effect from and by Section 6 of the draft Act, according to which the Minister for Digital Government may lay down rules on the designation, amendment or deletion of NemKonto. The rule in Section 2(3) on the deletion of NemKonto in the event of death or upon the termination of an enterprise is not continued, but it is proposed in Section 7(2) of the draft Act that the Minister for Digital Government can lay down rules as to when a NemKonto or benefit-specific account can be deleted by the Agency for Digital Government in the NemKonto system. In addition, it is proposed in Section 25(4) that the Minister for Digital Government shall lay down rules on the processing of data in the NemKonto system. Pursuant to this authorisation, rules may be laid down to the effect that the information on a designated account in the NemKonto system is definitively deleted after the account has been registered as deleted in the NemKonto system in connection with the death of a private person, upon termination of a legal entity, or if a natural person ceases to be an employer or self-employed person. The obligation to delete will in all cases fall to the Agency for Digital Government as data controller.

Section 2a of the Public Payments Act, etc. continues with adjustments in Section 16(1) of the draft Act, on when payments to accounts abroad are considered to have been made in due time.

The draft Act proposes that the content of the provisions in Sections 1-2a be carried over to the stated provisions of the draft Act. Thus, the repeal of the provisions is not expected to have any effect.

See also the general comments, paras. 2.1 and 2.3, and the special comments on Sections 2, 3 and 5-7, Section 14(1) and Section 16(1).

Re no. 2

Section 3(1) of the Public Payments Act, etc. authorises the Minister for Digital Government to lay down rules on the right of public authorities to make payments to natural and legal persons who have not designated a NemKonto in full discharge of liabilities, while Section 3(5) authorises the Minister for Digital Government to lay down rules on access to several NemKontos.

It is proposed that *Section 3(1) and (5)* of the Public Payments Act, etc., be repealed. (2)-(4) subsequently become (1)-(3).

That which is proposed is a consequence of the fact that the regulation of matters relating to NemKonto is separated from the Public Payments Act, etc. by this draft Act.

Similar enabling provisions are not proposed in the draft Act.

On the basis of Section 3(3) of the Act on Public Payments, etc., Section 31 of the NemKonto Order stipulates that if a citizen or undertaking does not, in connection with a payment from a public authority, have designated a NemKonto or a specific account, the public authority must ensure that the citizen or undertaking has their receivable assigned by other means. The risk of late payment due to infringement of the obligation to designate shall be borne by the citizen or enterprise. Section 14(3) and Section 15 of the draft Act continue with adjustments to these rules from the NemKonto Order.

It follows from the current Section 32(1) of the NemKonto Order that a way that public authorities can assign a receivable to citizens and enterprises who have not designated a NemKonto or created a specific account is to transfer the amount to a State-owned account created by the Agency for Digital Government. The provision further states that this is done in full discharge of liabilities if the paying authority notifies the payee before the payment is made. It is proposed to discontinue the holding account scheme which, in the view of the Ministry of Digital Affairs, has proven not to be an appropriate scheme for payment of amounts to payees.

See also the general comments, para. 2.12, and the special comments on Sections 32-35.

The authorisation in Section 3(5) of the Act on Public Payments, etc. has been used to lay down rules stipulating that an enterprise identified by a CVR number can assign autonomous NemKontos to underlying P numbers or SE numbers in Section 20(2) of the NemKonto Order. In addition, the authorisation has been used to lay down rules on specific accounts in Sections 24 and 27 of the NemKonto Order. Section 3(4), Section 4 and Section 12 of the draft Act contain rules on the designation of NemKontos to underlying P and SE numbers of legal entities and on benefit-specific accounts, respectively, which will replace these rules in the NemKonto Order.

Please also refer to the general explanatory notes, paras. 2.1 and 2.2, Sections 3, 4 and 12 and the specific comments thereon.

Re no. 3

It is proposed that the reference to '(2)' in Section 3(3), which becomes (2) of the Public Payments Act, etc. be changed to: '(1)'.

This is a consequential amendment to no. 2, under which Section 3(1) and (5) are repealed and (2) therefore becomes (1).

Re no. 4

It is proposed that the references to '(2) and (3)' in Section 3(4), paras. 1 and 2 of the Act on Public Payments, etc. be changed to: '(1) and (2)'. This is a consequential amendment to no. 2, under which Section 3(1) and (5) are repealed and (2) therefore becomes (1).

Re no. 5

Section 4 of the Public Payments Act, etc. authorises the Minister for Digital Government to partly lay down rules on the establishment of a register containing information on NemKontos and partly to obtain information on the financial institution accounts of natural and legal persons from other public authorities and wage service agencies.

Section 4 a of the Public Payments Act contains rules on the disclosure of information on payments from public authorities from the NemKonto system of recovery to recovery systems administered by the Customs and Tax Administration with a view to offsetting debts to the public sector. If the Customs and Tax Administration requests that the payment be transferred to the Customs and Tax Administration for offsetting purposes, the payment to the payee's NemKonto does not take place.

According to Section 5 of the Act on Public Payments, etc., the Minister for Digital Government appoints a system administrator who is tasked with the administration of the account information. The Minister may lay down rules for the activities of the system administrator, including on the supervision of the activities of the system administrator and the right of appeal.

Section 5 a of the Public Payments Act, etc. allows private payers to use, against payment and under specified conditions, the NemKonto register and the NemKonto system for the intermediation of payments to the payee's NemKonto. The payee may at any time notify a private payer that the payouts are not intended to be placed in the NemKonto of the recipient. A private payer may, for the intermediation of payouts, use the payee's CPR number if, under other legislation, the private payer has access to process CPR numbers or if the payee has consented to the use of his or her CPR number.

Pursuant to Section 5b of the Public Payments Act, etc., the Minister for Digital Government may make the NemKonto system available to Greenlandic authorities.

Section 5c of the Public Payments Act, etc. authorises the Minister for Digital Government to lay down rules requiring private payers to pay a fee to cover the part of the costs of the compensation scheme under Section 6a that results from fraud or errors in private payments.

It is proposed that *Sections 4-5c* of the Act on Public Payments, etc. shall be repealed.

That which is proposed is a consequence of the fact that the regulation of matters relating to the NemKonto scheme is separated from the Act on Public Payments, etc. in this draft Act.

Section 4 of the Public Payments Act on the establishment of the NemKonto Register and on obtaining information on the banking accounts of natural and legal persons from other authorities and wage service agencies shall be continued with adaptations in Section 22(2) and (3) of the draft Act. Thus, it is proposed in Section 22(2) that the Agency for Digital Government shall ensure the devel-

opment, operation, maintenance, and administration of the NemKonto system, while Section 22(3) proposes that the Agency for Digital Government may appoint public authorities or legal entities to carry out tasks pursuant to (2) on behalf of the Agency for Digital Government. The draft Act does not continue the authorisation for the Minister for Digital Government to obtain account information from other public authorities and wage service agencies. Obtaining account information is currently done by payees themselves specifying which account shall be their NemKonto, cf. the rules in Section 23 of the NemKonto Order). Section 6 of the draft Act authorises the Minister for Digital Government to lay down rules on the designation, amendment or deletion of an account by payees as a NemKonto.

See also the general comments, paras. 2.3 and 2.8, Sections 6 and 21 and the specific comments thereon.

Section 4a of the Act on Public Payments, etc. on offsetting will continue with adjustments in Sections 17 and 26 of the draft Act and rules that may be laid down pursuant to the proposed Section 25(4).

See also the general comments, paras. 2.5 and 2.10, Sections 17, 24 and 25, and the specific comments thereon.

Section 5 of the Public Payments Act, etc. on the designation of a system administrator is replaced by Section 22(1) and (3) of the draft Act, according to which the Agency for Digital Government is appointed to be the system owner of the NemKonto system and can appoint other public authorities or legal entities to carry out tasks on behalf of the Agency for Digital Government related to the development, operation, maintenance, and administration of the NemKonto system. If the Agency for Digital Government appoints a provider, the agreement may lay down rules on the provider's performance of tasks, including, for example, requirements for standards on task performance or rules on the use of subcontractors by the designated public authority or private enterprise.

Please also refer to the general explanatory notes, point 2.8, Section 22 and the special explanatory notes on these.

Section 5a of the Act on Public Payments, etc. on private payers shall be continued with adjustments in Section 1(6) and Section 18 of the draft Act.

Please also refer to the general explanatory notes, point 2.6; Section 1, sentence 6; Section 18 and the special explanatory notes on these.

Section 5 b of the Act on Public Payments, etc., that the Minister for Digital Government may make the NemKonto system available to Greenlandic authorities, shall be continued in Section 23 of the draft Act.

See also the general explanatory notes, point 2.8, Section 23 and the special explanatory notes on these.

The authorisation in Section 5c of the Public Payments Act, etc. for the Minister for Digital Government to lay down rules requiring private payers to pay a fee to cover the part of the costs of the compensation scheme has not been used. The rule is not continued as an independent rule on the determination of the fee for the compensation scheme. Section 19(3) of the draft Act authorises the Minister for Digital Government to, inter alia, lay down rules on fees for the use of and connection to the NemKonto system by private account intermediaries. The fee will be determined in a cost-reflective manner and shall ensure the coverage of all costs associated with the connection and use of the NemKonto system by private account intermediaries, including costs of the compensation scheme. Private account intermediaries themselves will be responsible for collecting the costs of account notices in the NemKonto system from the private payers for whom they perform account searches.

Re no. 6

It is proposed that ‘Section 3(2)’ be replaced by: ‘Section 3(1)’ in *Section 6* of the Public Payments Act, etc.

This is a consequential amendment to no. 2, under which Section 3(1) and (5) are repealed and Section 3(2) therefore becomes Section 3(1).

Re no. 7

Under Section 6a of the Public Payments Act, etc., the Minister for Digital Government may lay down rules on financial compensation for natural persons covered by Section 1(1) who have not received lawful payment due to fraud or errors in designating or amending NemKonto. The provision further states that the Minister for Digital Government may lay down rules to the effect that no compensation may be paid to natural persons who have acted negligently or intentionally, have been fully compensated or have subsequently received the amount by other means. It is a condition for payment of compensation that the matter has been reported to the police as an immediate follow-up of knowledge of the criminal situation.

Section 6a also empowers the Minister for Digital Government to lay down rules on compensation to natural persons where the situation was committed before 1 August 2022, which is the time when the rules on the compensation scheme entered into force.

Section 6b of the Public Payments Act, etc. empowers the Minister for Digital Government to lay down rules on the submission of requests for compensation, including on deadlines, on the submission of applications for compensation, on the authority responsible for processing the case, and on the fact that decisions on compensation cases cannot be appealed to any other administrative authority.

On the legal basis of the enabling provisions in Sections 6a and 6b, rules on the compensation scheme are laid down in Order no. 351 of 28 March 2023 on the payment of financial compensation in the event of fraud or error in issuing or amending NemKonto.

It is proposed that *Sections 6a and 6b* of the Public Payments Act, etc., be repealed. Since the grounds for issuing the Order on the payment of financial compensation in the event of fraud or error of designation or amendment of NemKonto are repealed, this entails the repeal of the Order as well.

That which is proposed is a consequence of the fact that the regulation of matters relating to the NemKonto scheme is separated from the Act on Public Payments, etc. in this draft Act.

The content of Sections 6a and 6b and Order no. 351 of 28 March 2023 on the payment of financial compensation in the event of fraud or error in designation or amending NemKonto will therefore be continued in Sections 27 to 31 of the draft Act. Section 36(4) of the draft Act contains a transitional rule according to which Chapter 8 of the Act applies to decisions on compensation under the Order on the payment of financial compensation in the event of fraud or error in designation or amending NemKonto taken as of 1 July 2025.

The authorisation in Section 6a(2) for the Minister for Digital Government to lay down rules on compensation to natural persons where the situation was committed before 1 August 2022, which is the time when the rules on the compensation scheme entered into force, is not continued. This is due to the fact that the ‘backward-looking’ compensation scheme has been terminated. Thus, applications for compensation for payments that took place in the period from 1 August 2012 to 31 December 2021 had to be submitted no later than 31 January 2023, cf. Section 4(2) of the previous Order no. 1131 of 6 July 2022 on the payment of financial compensation in the event of fraud or error when designating or amending NemKonto. All applications from this period have been finalised.

See also the general comments, point 2.11, Sections 27-31 and the specific comments thereon.

Re no. 8

It is proposed that *Section 12(1), (3) and (6)* of the Act on Public Payments, etc. shall be amended so that ‘Sections 1-5 and 6-8’ shall be replaced by: ‘Sections 3 and 6-8’.

As a consequence of the proposal in no. 1 that Sections 1–2a shall be repealed and it is proposed in no. 5 that Sections 4–5c shall be repealed, it is proposed that references to Sections 1–2a, 4 and 5 shall be deleted from the lists in Section 12(1), (3) and (6).

Re no. 9

It is proposed that *Section 12(2) and (5)* of the Public Payments Act, etc. shall be amended as follows, ‘Sections 1-5 and 6-7’ shall be replaced by: ‘Sections 3, 6 and 7’.

As a consequence of the proposal in no. 1 that Sections 1–2a shall be repealed and it is proposed in no. 5 that Sections 4–5c shall be repealed, it is proposed that references to Sections 1–2a, 4 and 5 shall be deleted from the lists in Section 12(2) and (5).

Re Section 38

Re no. 1

It follows from the current Section 8b(1), first sentence, of the Debt Collection Act that payments from the public authorities transferred to the Arrears Collection Authority in accordance with Section 4a(2) of the Public Payments Act, etc. for the purpose of offsetting against claims under collection or recovery, shall be remunerated with an annual interest rate.

It is proposed that *Section 8b(1), sentence 1* be rewritten to delete the reference to Section 4a(2) of the Public Payments Act, etc., and it is clarified that the remuneration also applies to amounts transferred for the purpose of payment to rightsholders who have rights in claims for payment from the Customs and Tax Administration.

Section 4a of the Act on Public Payments, etc. is proposed to be repealed in Section 37(5) of the draft Act. Thus, deleting the reference to that provision is a consequential amendment.

In addition to the consequential amendment, it is proposed with the redraft to clarify that the return also applies to amounts paid by the Customs and Tax Administration transferred from the NemKonto system of recovery, which is administered by the Customs and Tax Administration, for payment to third parties (rightsholders) in cases where the Arrears Collection Authority has noted a transport to the third party in question or received notification of the third party's seizure of claims for payments from the Customs and Tax Administration.

See details in the proposed Section 17 and associated comments.

Re no. 2

According to the current Section 8b(4) of the Debt Collection Act, the debtor may not invoke the right to set off payment amounts transferred to the Danish Arrears Collection Authority pursuant to Section 4a(2) of the Public Payments Act.

It is proposed to amend *Section 8b(4)* so that the reference to Section 4a(2) of the Public Payments Act, etc. is replaced by a reference to Section 8b(1) of the Debt Collection Act.

This is a consequential amendment resulting from the amendment in no. 1 and Section 37(5), according to which the set-off provision in Section 4a of the Act on Public Payments, etc. is repealed and maintained in a revised form in the proposed Section 17.

By deleting the reference to other legislation, the provision becomes simpler.

Re Section 39

The Act does not apply to the Faroe Islands and Greenland, as the payments by the Faroese and Greenlandic public authorities are self-governing matters.

The Minister for Digital Government may, in accordance with the proposed Section 23, make the NemKonto system available to the Greenlandic authorities. This has already been done under the current provision in Section 5b of the Act on Public Payments, etc.

The draft Act compared to legislation currently in force

<i>Current wording</i>	<i>The draft Act</i>
	§ 37. The Act on Public Payments, etc., cf. Consolidation Act No 494 of 4 May 2023, is to be amended to be as follows:
<p>§ 1. Persons over the age of 18 who have been assigned a CPR number in accordance with the Act on the Central Person Register and who are not registered as having exited by Denmark must designate an account with a financial institution (a ‘NemKonto’) to which public authorities in discharge of their obligations can make payment of monetary amounts. The same applies to persons under the age of 18 who are assigned a CPR number in accordance with the Central Person Register Act and who receive payments from public authorities.</p> <p>(2) Legal persons to whom a Central Business Register number has been assigned under the Act on the Central Business Register shall designate an account with a financial institution to which public authorities in discharge of their obligations may make payment of amounts of money. This also applies to natural persons who, as an employer or self-employed person, are assigned a CVR number and to companies registered as traders with the Customs and Tax Administration.</p> <p>(3) Legal persons who have not been assigned a Central Business Registration Number (CVR number) under the Act on Central Business Register shall, in order to be able to re-</p>	<p>1. Sections 1-2 a are repealed.</p>

<p>ceive payments from a public authority,</p> <p>1) be entered in the Central Business Register in accordance with the rules on voluntary registration; and</p> <p>2) designate a NemKonto in accordance with the rules in (2).</p> <p>(4) The provision in (3) does not apply to legal persons who do not fulfil the conditions for voluntary registration in the Central Business Register as per the Act on the Central Business Register or provisions laid down by virtue of the Act.</p> <p>(5) Payment to the NemKonto does not take place if a natural or legal person has designated another account to which a payment is to be made.</p> <p>(6) The designation of an account in accordance with (1) or (2) must be issued at the latest when the first payment is made by a public authority.</p> <p>(7) The Minister for Digital Government may lay down rules to the effect that, in connection with registration or amendment of a registration in the Central Person Register, in the Central Business Register or in the Customs and Tax Administration's Register of Economic Operators, notification of a designated NemKonto must take place.</p> <p>(8) The Minister for Digital Government can lay down regulations to the effect that forms of registration other than those specified in (1)-(3) involve an obligation to issue assignments. The Minister may also determine that natural and legal persons other than those referred to in (1)</p>	
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<p>to (3) are subject to the obligation to designate.</p> <p>§ 2. The designation of an account under Section 1 is made to the system administrator appointed by the Minister for Digital Government under Section 5.</p> <p>(2) Natural and legal persons covered by Section 1 who have already designated a NemKonto are entitled to designate a new NemKonto at any time. The notified amendments shall have legal effect at the latest from the fifth business day following the date of notification.</p> <p>(3) In the event of death, on termination of the status of a legal person, or if a natural person ceases to be an employer or self-employed person, the information about the account in the register established in accordance with Section 4 is deleted.</p> <p>§ 2 a. Payments to banking institution accounts abroad shall be deemed to have been made in due time by the public authorities, notwithstanding the fact that they have received them at a later date than equivalent domestic payments, if</p> <p>1) they are executed on the same day as corresponding payments to domestic accounts; and</p> <p>2) the corresponding domestic payments are received by the recipient on time.</p>	
<p>§ 3. The Minister for Digital Government lays down rules on the right of public authorities to make payments in full discharge of their liabilities to natural and legal persons covered by Section 1 who have not designated a NemKonto.</p>	<p>2. Section 3 (1) and (5) is repealed. (2)-(4) subsequently become (1)-(3).</p>

<p>(2) The Minister for Finance may lay down rules to the effect that a joint administration can be established for several public authorities within a specified geographical area, which can make cash receipts and payments.</p> <p>(3) The Minister for Finance may lay down rules to the effect that certain practical measures in association with the issuing of declarations from public authorities, approvals, proof of identity, disclosure of effects, etc. shall also be handled by the administration referred to in (2).</p> <p>(4) Prior to issuing regulations pursuant to (2) and (3), the Minister shall enter into negotiations with the public authorities concerned, including municipalities and regions, in the geographical area in question. The Minister for Finance may decide which authority is to be in charge of the administration of the rules issued pursuant to (2) and (3) within a specified geographical area. The Minister may decide that the task is given to private individuals. The Minister lays down regulations for supervision and control of the person assigned the task in accordance with sentence 3. The Minister lays down an accounting instruction as well as auditing provisions for the person to whom the task is assigned in accordance with sentence 2 or 3.</p> <p>(5) The Minister for Digital Government can lay down regulations on access to designate several NemKontos.</p>	<p>3. In Section 3(3), which becomes (2), (2) shall be amended to: ‘(1)’.</p> <p>4. In Section 3(4) para. 1 and para. 2, which shall become (3), 1 and 2, ‘(2) and (3)’ is changed to: ‘(1) and (2)’.</p>
<p>§ 4. The Minister for Digital Government shall lay down rules on the establishment of a register containing information on accounts designated pursuant to Sections 1 and 2.</p> <p>(2) In connection with the establishment of the register pursuant to (1), the Minister for</p>	<p>5. <i>Sections 4-5c</i> are repealed.</p>

<p>Digital Government is authorised to obtain information on the bank accounts of natural and legal persons. The information can be obtained from other public authorities and payroll service agencies.</p> <p>§ 4 a. For the purpose of offsetting debts with the public authorities, information in the register referred to in Section 4(1) on payments from public authorities can be disclosed to a recovery system administered by the Customs and Tax Administration.</p> <p>(2) Payments to the payee's NemKonto or to another account do not take place if the Customs and Tax Administration has requested the transfer of the payment with a view to offsetting them in whole or in part in the payment amount.</p> <p>(3) When a payment is transferred to the Danish Customs and Tax Administration in accordance with (2), payment is considered to have been made in discharge of the paying authority's obligations.</p> <p>(4) When the Customs and Tax Administration issues excess payments after offsetting has been carried out, the Customs and Tax Administration shall be considered the paying authority.</p> <p>§ 5. The Minister for Digital Government shall appoint a system administrator who is responsible for administration of the account information. A system administrator can be appointed a public authority or a private company or the like.</p> <p>(2) The Minister for Digital Government shall lay down detailed rules for the activities of the system administrator, including on the</p>	
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<p>supervision of the activities of the system administrator and the right of appeal.</p> <p>§ 5 a. Private payers may, in return for payment and under specified conditions, use the account register established under Section 4 and pursuant to it, NemKonto system for the intermediation of payments to the payee's NemKonto.</p> <p>(2) For the purposes of this Act, private payers shall mean natural and legal persons who make payments and who are not covered by Section 12 or are public authorities.</p> <p>(3) The payee may at any time notify a private payer that the payouts are not intended to be placed in the NemKonto of the recipient.</p> <p>(4) A private payer may, for the intermediation of payouts, use the payee's CPR number if, under other legislation, the private payer has access to process CPR numbers or if the payee has consented to the use of his or her CPR number.</p> <p>(5) The Minister for Digital Government shall lay down detailed conditions for the dissemination of payments under (1).</p> <p>§ 5 b. The Minister for Digital Government may make the NemKonto system available to the Greenlandic authorities.</p> <p>§ 5 c. The Minister for Digital Government may lay down rules requiring private payers to pay a fee when using the account register established under Section 4 and the NemKonto system developed pursuant thereto, and lay down rules on the terms of the fee, including the amount of the fee and amendment of the connection conditions for private payers. The fee</p>	
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<p>shall cover the part of the costs of the compensation scheme under Section 6a which results from fraud or errors in private payments.</p> <p>(2) The fee determined in accordance with (1) cannot exceed DKK 0.04 per coupling between the CPR number and the account number in the NemKonto system.</p>	
<p>§ 6. The Minister for Finance may pay compensation to natural and legal persons to cover, in whole or in part, additional expenses arising from the rules laid down pursuant to Section 3(2) or the rules laid down pursuant to Section 7(2).</p>	<p>6. In Section 6, ‘Section 3(2)’ is changed to: ‘Section 3(1)’:</p>
<p>§ 6 a. The Minister for Digital Government may lay down rules on financial compensation to natural persons covered by Section 1(1) who have not received legitimate payment due to fraud or error when ordering or amending NemKonto.</p> <p>(2) The Minister for Digital Government may lay down rules on compensation to natural persons under (1) where the situation was committed before 1 August 2022.</p> <p>(3) The Minister for Digital Government may lay down rules to the effect that compensation under (1) cannot be paid to natural persons who have acted negligently or intentionally, are fully compensated or have subsequently received the amount by other means.</p> <p>(4) It is a condition for payment of compensation in accordance with (1) that the matter is reported to the police as an immediate follow-up of knowledge of the criminal situation.</p> <p>§ 6 b. The Minister for Digital Government can lay down regulations requiring that a request for compensation under Section 6a must be submitted within a specified period, includ-</p>	<p>7. Sections 6a and 6b shall be repealed.</p>

<p>ing that this must be done digitally.</p> <p>(2) The Minister for Digital Government can lay down rules on which authority is to carry out the case processing.</p> <p>(3) The Minister for Digital Government can lay down rules stipulating that decisions on compensation cases may not be appealed to any other administrative authority.</p> <p>(4) The Minister for Digital Government may lay down rules on the State's entry into the claims of the injured party against those who cause damage, to the extent that compensation is paid to the injured party.</p>	
<p>§ 12. Sections 1-5 and 6-8 include autonomous institutions, etc. whose operating budget is included in the Appropriation Act.</p> <p>(2) Sections 1-5 and 6-7 also cover autonomous institutions etc. with which a municipality or region has entered into an operation agreement.</p> <p>(3) Sections 1-5 and 6-8 and rules issued pursuant thereto shall also apply to Institutions, associations, foundations, etc.,</p> <p>1) the costs or accounting deficit of which is covered by a State subsidy or by contributions, tax, or other income in accordance with the law, or</p> <p>2) that receive a capital injection, subsidy, loan, guarantee or other support from the State or an institution, etc. covered by no. 1, if the capital injection, etc. is of significant importance to the recipient.</p> <p>(4) However, (1)-(3) do not apply to the extent that other legislation contains rules on pay-</p>	<p>8. In Section 12(1), (3) and (6), 'Sections 1-5 and 6-8' is changed to: 'Sections 3 and 6-8'.</p> <p>9. In Section 12(2) and (5), 'Sections 1-5 and 6-7' shall be changed to: 'Sections 3, 6 and 7'.</p>

<p>ment administration that are not compatible with the act or rules laid down by the act.</p> <p>(5) The relevant municipality or region may exempt self-governing institutions referred to in (2) from the provisions of Sections 1–5 and 6–7.</p> <p>(6) The Minister concerned may, after negotiation with the Minister of Finance, exempt institutions, associations and funds, etc. referred to in (3) from the provisions of Sections 1–5 and 6–8.</p>	
	<p>§ 38. The Act on the recovery of debts to the public sector, cf. Consolidated Act No 1063 of 26 September 2024, is amended as follows:</p>
<p>§ 8 b. Payments from the public authorities that have been transferred to the Arrears Collection Authority in accordance with Section 4a(2) of the Public Payments Act with a view to offsetting claims on collection or recovery shall bear interest at an annual interest rate equal to the interest rate in accordance with Section 5(1) and (2) of the Danish Interest Act, with a deduction of 4 per cent, provided that a change in interest in accordance with Section 5(1) and (2) of the Interest Act only takes effect five working days after the date of the change. The Arrears Collection Authority may choose to calculate interest on the total amount payments, even if that amount may have been transferred without separate indication of principal and interest. The interest shall be charged from the first day of the month following receipt of the payment amount by the Arrears Collection Authority. However, disbursements pursuant to Sections 62 and 62A of the Act on withholding tax shall accrue interest at the earliest from 1 September of the year following the income year to which the tax relates. Claims for compensation pursuant to Section 75(1) of the Property Valuation Act shall</p>	<p>1. <i>Section 8 b, (1) para. 1</i> is worded as follows:</p> <p>‘Payments from the public sector that have been made to the Arrears Collection Authority for the purpose of setting off claims in the process of collection or recovery or for the purpose of payment to rightsholders who have rights in claims for payment from the Customs and Tax Administration shall be remunerated with an annual interest rate equal to the interest rate pursuant to Section 5(1) and (2) of the Interest Act, minus a deduction of 4 per cent, except that a change in interest under Section 5(1) and (2) of the Interest Act shall not take effect until 5 business days after the date of the change.’</p>

accrue interest in accordance with the rules in Section 75(4) of the Property Valuation Act. Interest shall not be added if, within five business days of receipt of the amount, the Arrears Collection Authority decides to pay the amount or to apply it for offsetting.	
(2) an (3). ---	
(4) For payment amounts transferred to the Arrears Collection Authority pursuant to Section 4a(2) of the Act on Public Payments, etc., the debtor may not invoke the right to set-off.	2. In Section 8b(4), ‘pursuant to Section 4a(2) of the Public Payments Act, etc.’ is changed to: ‘as referred to in (1)’.

11. Order on the scheme of public service obligations in relation to the NemKonto system

The following is laid down pursuant to Section 20(1), (3) and (4) of Act no. xx of dd month 2025 on NemKonto:

Applicability

§ 1. Financial institutions, payment institutions, electronic money institutions and credit institutions may join the public service obligations by registering with the scheme under the conditions laid down by the Agency for Digital Government.

(2) The Agency for Digital Government may, upon application, pay support under this Order to financial institutions, payment or electronic money institutions, and credit institutions that have joined public service obligations in relation to the NemKonto system.

(3) The support from this Order is provided as de minimis aid in accordance with the Regulation (EU) 2023/2832 of the European Parliament and of the Council of 13 December

2023 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest

Definitions

§ 2. The following definitions apply to this Order:

- 1) Financial institution: An undertaking as defined in Section 5(1) no. 1 or 5 of the NemKonto Act.
- 2) Payment institution or e-money institution: An undertaking as defined in Section 5(1) no. 2, 4 or 6 of the NemKonto Act.
- 3) Credit institution: An undertaking as defined in Section 5(1) no. 3 of the NemKonto Act.
- 4) NemKonto: An account as defined in Section 1 no. 5 of the NemKonto Act.

Public service obligations

§ 3. Financial institutions, payment institutions, e-money institutions and credit institutions that have joined the scheme shall assist private persons and legal entities in designating or amending accounts maintained at the relevant institution as NemKontos for the NemKonto system, including the provision of the following services:

- 1) Report accounts maintained at the relevant institution as NemKontos for the NemKonto system. Institutions with a branch network are obliged to make designations available via the branch network.
- 2) Incorporate in the relevant business procedures of the institution that the customers of the institution are asked whether the customer wishes to designate an account as NemKonto or amend a NemKonto.

- 3) Provide insight to customers of the institution about which account within the institution is registered as a NemKonto.
- 4) Receive information from the NemKonto system on relevant matters, including on accounts at the institution concerned, which have been reported as NemKontos via other channels.
- 5) Submit reports within the time limits laid down by the Agency for Digital Government.
- 6) Update the NemKonto system in the event of changes made by the institution concerned relating to account numbers reported as NemKontos, for example by merging institutions or the like.
- 7) Mark which of the customers' accounts with the institution in question has been reported as NemKontos.

Amount of aid

§ 4. A financial institution, payment institution, electronic money institution or credit institution may be granted a maximum subsidy of EUR 750,000 over a period of 3 years after the scheme specified in this Order. Support shall be deemed to have been granted at the time when the Agency for Digital Government has made a decision pursuant to Section 6.

(2) The aid shall be granted in the following amounts:

- 1) Online banking reporting: DKK 5.66
- 2) Reporting through branches: DKK 16.98
- 3) Reporting of third-party accounts: DKK 28.29

(3) In the event of a change of a financial person or a legal entity from a financial institution, payment or e-money institution or credit institution, the new institution shall report the new NemKonto and is therefore entitled to receive the report support, cf. (2).

(4) Reports that result from changes to a financial institution, payment or electronic money institution or credit institution that result in the need for updates in the NemKonto system, cf. Section 3 no. 6 are not covered by the aid scheme under (1) and (2).

(5) If the financial institution, payment or e-money institution or credit institution receives any aid for the performance of the obligations referred to in Section 3 or de minimis aid other than under the scheme in this Order, the amount of aid that may be granted under this Order shall be reduced accordingly.

Applications

§ 5. Financial institutions, payment institutions, electronic money institutions and credit institutions that have joined the public service obligations, cf. Section 1(1) may apply to the Agency for Digital Government for support in the performance of public service obligations pursuant to Section 3.

(2) The application shall contain

- 1) name of the financial institution, payment or e-money institution or credit institution,
- 2) CVR number or equivalent company identification number, if the institute does not have a CVR number,
- 3) address,
- 4) contact person and information,
- 5) a statement on the payment triggering acts, cf. Section 4(2); and
- 6) solemn declaration that the information provided in the application is true.

(3) The Agency for Digital Government may require financial institutions, payment institutions, electronic money institutions, and credit institutions that apply for support, cf. (1) to also submit a solemn declaration that:

- 1) the institution has not received any other support for carrying out the same payment initiation acts, and
- 2) whether or not the institution received de minimis aid in the preceding three fiscal years.

(4) The application for support, cf. (1), shall be submitted electronically using the application forms available on a website designated by the Agency for Digital Government. Appli-

cations for support shall be submitted for one calendar year at a time and must be received by the Agency for Digital Government no later than 31 March of the year following the calendar year that the application relates to. If 31 March falls on a Saturday, Sunday or public holiday, the application shall be received by the Agency for Digital Government no later than the next working day thereafter.

(5) Financial institutions, payment or electronic money institutions and credit institutions may submit a statement of the payment initiation acts cf. (2), no. 5) via other actors approved for this purpose by the Agency for Digital Government.

Decision

§ 6. The Agency for Digital Government takes decisions on applications submitted under Section 5.

(2) The Agency for Digital Government may reject the application if the required information in the application, cf. Section 5 is not provided.

Administration, follow-up, etc.

§ 7. The Agency for Digital Government makes payment of the support.

(2) The Agency for Digital Government supervises compliance with the rules laid down in this Order and may in this connection require any information and additional documentation necessary for the processing of applications under Section 5 and by or after payment of aid amounts.

(3) Recipients of the support shall immediately inform the Agency for Digital Government if

- 1) there are circumstances which, in accordance with (4), may lead to a requirement that the amount of aid should lapse,
- 2) there are circumstances which, under Section 8, may give rise to a demand for repayment of the amount of aid, or
- 3) other de minimis aid is received under Section 4(5), which leads to the total permissible aid amount being exceeded.

(4) The right to receive aid lapses if:

- 1) the applicant ceases to perform public service obligations pursuant to Section 3,
- 2) the applicant has supplied false or misleading information or concealed information relevant to the decision of the case,
- 3) the applicant fails to comply with the notification obligation under (3), or
- 4) at the request of the Agency for Digital Government, the applicant does not submit additional information or documentation by a deadline specified by the Agency, cf. (2).

§ 8. If the aid has been paid, the Agency for Digital Government may require that the aid is repaid in whole or in part in accordance with the cases listed in Section 7(4), or if the total permitted amount of aid, cf. Section 4(1), is exceeded, after which an amount equal to the excess shall be repaid.

(2) Repayment of the subsidy shall be made within 14 days of demand for payment, at the latest. If the amount due is not repaid in time, interest will be added after the due date, corresponding to the interest stipulated in Section 5 of the Interest Act.

Technical and security requirements

§ 9. Financial institutions, payment or electronic money institutions and credit institutions shall ensure proper connection to and use of the NemKonto system and comply with the requirements established by the Agency for Digital Government on how the institutions in

question integrate into the NemKonto system in order to be able to perform the public service obligations.

(2) Financial institutions, payment or electronic money institutions and credit institutions shall assist the Agency for Digital Government in clarifying any technical errors.

(3) When connecting to the NemKonto system, financial institutions, payment institutions, or electronic money institutions and credit institutions shall comply with the Agency for Digital Government's laid down requirements for the security of the interface for the NemKonto system, including requirements for encryption as security against hacking, malware and viruses, as well as requirements for data security.

(4) Financial institutions, payment or electronic money institutions and credit institutions shall themselves incur costs associated with compliance with technical and security requirements, cf. (1)-(3).

Logging

§ 10. Financial institutions, payment or electronic money institutions and credit institutions shall log all reports and keep these logs for 5 years.

(2) The log shall include information on the time of reporting, which employee and branch of the financial institution, payment institution, e-money institution or credit institution have made the report.

Right of appeal

§ 11. Decisions taken pursuant to this Order may be appealed to the Ministry of Digital Affairs. The appeal shall be sent to the Agency for Digital Government no later than four weeks after the decision reached the complainant. If the decision is upheld, the Agency for

Digital Government must, as soon as possible and no later than four weeks after receipt of the complaint, send the case and its documents to the Ministry of Digital Affairs in which the complaint is processed.

Entry into force

§ 12. This Order shall enter into force on 1 July 2025