

EBA/CP/2016/18

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Consultation Paper

Draft Guidelines on the information to be provided for the authorisation as payment institutions and e-money institutions and for the registration as account information service providers

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Responding to this consultation

The EBA invites comments on all proposals put forward in this paper. Comments are most helpful if they:

- respond to the question stated;
- indicate the specific point to which a comment relates;
- contain a clear rationale;
- provide evidence to support the views expressed/ rationale proposed; and
- describe any alternative regulatory choices the EBA should consider.

Submission of responses

To submit your comments, click on the 'send your comments' button on the consultation page by 03.02.2016. Please note that comments submitted after this deadline, or submitted via other means may not be processed.

Publication of responses

Please clearly indicate in the consultation form if you wish your comments to be disclosed or to be treated as confidential. A confidential response may be requested from us in accordance with the EBA's rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the EBA's Board of Appeal and the European Ombudsman.

Data protection

The protection of individuals with regard to the processing of personal data by the EBA is based on Regulation (EC) N° 45/2001 of the European Parliament and of the Council of 18 December 2000 as implemented by the EBA in its implementing rules adopted by its Management Board. Further information on data protection can be found under the Legal notice section of the EBA website.

Executive Summary

On 13 January 2016, Directive (EU) 2015/2366 on Payment Services in the Internal Market (PSD2) entered into force in the European Union. In order to support the transposition of the Directive, Article 5(5) of PSD2 confers on the EBA the development of Guidelines concerning the information to be provided to the competent authorities in the application for the authorisation of payment institutions.

The draft Guidelines proposed in this Consultation Paper specify the type of information that applicants are required to submit in fulfilment of the requirements set out in PSD2, in respect of the applicant's programme of operations; its business plan; evidence that the payment institution holds initial capital; the measures taken for safeguarding payment service users' funds; the applicant's governance arrangements and internal control mechanisms; and the procedure in place to monitor, handle and follow up a security incident and security related customer complaints.

The draft Guidelines continue by specifying information requirements in respect of the process that applicant has in place to file, monitor, track and restrict access to sensitive payment data; its business continuity arrangements; the principles and definitions applied for the collection of statistical data on performance, transactions and fraud; a security policy document; its internal control mechanisms for the purpose of anti-money laundering obligations; the applicant's structural organisation; the identity of persons holding qualifying holdings; the identity of directors and persons responsible for the management of the payment institution and, where relevant, persons responsible for the management of the payment services activities of the payment institution; the identity of statutory auditors; the applicant's legal status and articles of association; and the address of the applicant's head office.

The Guidelines apply in full to applicants intending to obtain authorisation as a payment institution under the PSD2 but apply only partially to those applicants that intend to provide only account information services (AIS). As regards applicants that intend to provide only payment initiation services, some specific provisions of the Guidelines do not apply to them.

Furthermore, the Guidelines apply to those PIs under Article 32 PSD2 that have not been exempted from all of the information requirements under Article 5 PSD2. The Guidelines apply to these institutions only regarding those specific, non-exempted requirements. Also, the Guidelines also apply to Electronic Money Institutions, which states that Article 5 PSD2 shall apply to electronic money institutions *mutatis mutandis*.

Finally, in order to provide clarity to applicants in respect of the completeness of the application, the EBA has included Guidelines providing further details.

1. Background and rationale

1.1 Background

1. On 13 January 2016, Directive (EU) 2015/2366 on Payment Services in the Internal Market (PSD2) entered into force in the European Union. The PSD2 aims in particular at enhancing competition in the payment services market and, in so doing, increase choice for consumers. In order to support the transposition of the Directive by 13 January 2018, PSD2 confers on the EBA the development of six Technical Standards and five sets of Guidelines.

2. One of these mandates is set out in Article 5(5) of PSD2, which confers on the EBA the mandate to:

“[...] issue guidelines [...] concerning the information to be provided to the competent authorities in the application for the authorisation of payment institutions, including the requirements laid down in points (a), (b), (c), (e) and (g) to (j) of the first subparagraph of paragraph 1 of this Article”.

3. Given the usage of the word “including”, the mandate refers not only to the points expressly mentioned, but to all of the points of Article 5(1) PSD2, that is to say all requirements listed in points (a) to (q) of said Article, which consists of:

“(a) a programme of operations setting out in particular the type of payment services envisaged;

(b) a business plan including a forecast budget calculation for the first 3 financial years which demonstrates that the applicant is able to employ the appropriate and proportionate systems, resources and procedures to operate soundly;

(c) evidence that the payment institution holds initial capital as provided for in Article 7;

(d) for the payment institutions referred to in Article 10(1), a description of the measures taken for safeguarding payment service users’ funds in accordance with Article 10;

(e) a description of the applicant’s governance arrangements and internal control mechanisms, including administrative, risk management and accounting procedures, which demonstrates that those governance arrangements, control mechanisms and procedures are proportionate, appropriate, sound and adequate;

(f) a description of the procedure in place to monitor, handle and follow up a security incident and security related customer complaints, including an incidents reporting mechanism which takes account of the notification obligations of the payment institution laid down in Article 96;

(g) a description of the process in place to file, monitor, track and restrict access to sensitive payment data;

(h) a description of business continuity arrangements including a clear identification of the critical operations, effective contingency plans and a procedure to regularly test and review the adequacy and efficiency of such plans;

(i) a description of the principles and definitions applied for the collection of statistical data on performance, transactions and fraud;

(j) a security policy document, including a detailed risk assessment in relation to its payment services and a description of security control and mitigation measures taken to adequately protect payment service users against the risks identified, including fraud and illegal use of sensitive and personal data;

(k) for payment institutions subject to the obligations in relation to money laundering and terrorist financing under Directive (EU) 2015/849 of the European Parliament and of the Council (31) and Regulation (EU) 2015/847 of the European Parliament and of the Council (32), a description of the internal control mechanisms which the applicant has established in order to comply with those obligations;

(l) a description of the applicant's structural organisation, including, where applicable, a description of the intended use of agents and branches and of the off-site and on-site checks that the applicant undertakes to perform on them at least annually, as well as a description of outsourcing arrangements, and of its participation in a national or international payment system;

(m) the identity of persons holding in the applicant, directly or indirectly, qualifying holdings within the meaning of point (36) of Article 4(1) of Regulation (EU) No 575/2013, the size of their holdings and evidence of their suitability taking into account the need to ensure the sound and prudent management of a payment institution;

(n) the identity of directors and persons responsible for the management of the payment institution and, where relevant, persons responsible for the management of the payment services activities of the payment institution,

as well as evidence that they are of good repute and possess appropriate knowledge and experience to perform payment services as determined by the home Member State of the payment institution;

(o) where applicable, the identity of statutory auditors and audit firms as defined in Directive 2006/43/EC of the European Parliament and of the Council (33);

(p) the applicant's legal status and articles of association;

(q) the address of the applicant's head office."

4. The Guidelines proposed in this CP specify the information that applicants are required to submit under each of the above points when applying for authorisation as payment institution.
5. The Guidelines apply in full to applicants intending to obtain authorisation as a payment institution under the PSD2 but apply only partially to those applicants that intend to provide only account information services (AIS). This is in line with Article 33 PSD2, which states that

"natural or legal persons providing only account information services shall be exempted from the application of the procedure and conditions set out in Sections 1 and 2 of PSD2 with the exception of points (a), (b), (e) to (h), (j), (l), (n), (p) and (q) of Article 5(1), Article 5(3) and Articles 14 and 15. Section 3 shall apply, with the exception of Article 23(3)."
6. This provision implies that, for those specific points of Article 5 from which AIS providers are not exempted, the Guidelines apply to these providers.
7. As regards applicants that intend to provide only payment initiation services, all of the requirements under Article 5 apply. However, given that these Payment Institutions do not enter in possession of funds, some specific provisions of the Guidelines do not apply to them.
8. Furthermore, the Guidelines apply to those PSPs under Article 32 PSD2 that have not been exempted from all of the information requirements under Article 5 PSD2. The Guidelines apply to these Institutions only regarding those specific, non-exempted requirements.
9. Finally, the Guidelines also apply to Electronic Money Institutions, in line with Article 3(1) of Directive (EU) 2009/110 (EMD) on the taking up, pursuit and prudential supervision of the business of electronic money institutions (thereafter referred as EMD2), which states that Article 5 PSD2 shall apply to electronic money institutions *mutatis mutandis*.
10. In what follows below, this Consultation Paper proceeds with a rationale section that sets out the way in which the EBA has developed its mandate. This is followed by the actual Guidelines with the draft provisions proposed by the EBA. Questions have been inserted throughout the document to elicit the views of external stakeholders.

1.2 Rationale

11. In what follows below, this chapter sets out the approach the EBA has taken to develop the Guidelines and invites respondents to the CP to provide their views, on the EBA's approach as well as on the resultant requirements that are specified in chapter 4. The section summarises the external input that the EBA had sought and received prior to its commencing the work, sets out the objectives of the Guidelines and explains the options considered and assessed when the draft Guidelines were developed.

Early input sought and received by the EBA

12. Prior to starting to develop the substance of the Guidelines, the EBA sought input from several entities that have gathered experience over the years with the authorisation process under the authorisation regime of the existing Payment Services Directive (PSD1) and are therefore an interested party. The aim was to understand which, if any, issues these entities were facing with the submission and receipt of documents in the authorisation procedure, to identify the reasons for these issues, and to identify which, if any, regulatory requirements could be included in the EBA Guidelines under PSD2 to address them going forward.

13. To that end, the EBA approached

- the 28 national authorities that are the EBA's members and that have administered applications under PSD1 since 2009, as well as
- two European trade associations, the members of which operate in the payment services market in the EU,

with a request to provide input on the issues they have been facing in the past. These responses suggested that there is a need for a common list of information to be submitted by the applicant when applying for authorisation, so as to reduce inefficiencies, misunderstandings, delays, lack of transparency and regulatory arbitrage. The responses have also helped the EBA to identify and fine-tune the objectives that the Guidelines should achieve and that are set out below.

Objectives of the Guidelines

14. As part of its methodological approach, the EBA sought to identify the objectives that the Guidelines should achieve, for applicants; competent authorities and Member States; payment service users; and the EBA.

For applicants

- a. *Greater transparency and clarity* in respect of the information that an applicant has to submit as part of an application for authorisation;

- b. *A level playing field*, to ensure that applicants are subject to the same administrative obligations regardless of the Member State in which they apply, so that no advantages or disadvantages arise as a result of applying in one MS instead of another;

For competent authorities and Member States

- c. *Improved quality in the information provided by applicants*, by specifying a list of information that is to be provided by the applicant, thus reducing the need for applicants to re-submit documents, and by setting out the necessary supporting documents, data, and diagrams to be provided, thus increasing the efficiency of the authorisation procedure;
- d. *Contribution to harmonised supervision across the EU*, by providing a clear and harmonised content of the authorisation application, which should standardise the information received during the authorisation process, further contribute to the consistency of the assessment phase, and thus enhance the harmonised supervision of PIs in the EU.

For Payment Services Users

- e. *Transparency and safety*, because the payment service user (PSU) can have a level of confidence in a PI that is passporting into an EU Member State that is comparable to that submitted by a domestically authorised PI;

For the EBA

- f. *Fulfilment of the EBA's statutory objectives*, because the standardisation of information requirements for applicants facilitates economic activity in payment services across the 28 Member States, which in turn allows the EBA to fulfil the objectives set out in Art 1(5) of its founding regulation to “improve the functioning of the internal market, including, in particular, a sound, effective and consistent level of regulation and supervision”, to “ensure the integrity, transparency, efficiency and orderly functioning of financial markets, and to “prevent regulatory arbitrage and promote equal conditions for competition.”
15. The draft Guidelines proposed in this Consultation Paper, in conjunction with the provisions already stated in the PSD2 itself, set out a harmonised framework that is aimed at achieving the objectives listed above.

Question 1: Do you consider the objectives of the Guidelines as identified by the EBA to be plausible and complete? If not, please provide your reasoning.

Issues identified and options considered

16. The EBA assessed the feedback received from the 28 national CAs and from two external trade associations. One of the issues that was raised by authorities is that applicants tend to identify incorrectly the payment service they intend to provide, which results in the need for additional interactions, leads to delays in the granting of the authorisation, and therefore unnecessarily binds resources. In order to address this issue, three options were considered:
- A. The first option would be to require the applicant to submit a description of the type of payment services envisaged, including explanations as to the legal categorisation of such services. The benefits of this option would be that it allows a reasonably quick assessment if the applicant has correctly identified the service he intends to provide. And if this is not the case, the CA will be able to revert back to the applicant soon in the authorisation process to request missing or incorrect information.
 - B. Another option would be to insert in the Guidelines a non exhaustive list of examples, so as to guide the applicant in identifying the correct type of payment services. The advantage of this option would be that, by correctly identifying the service from the start, it is more likely that the applicant will provide complete and accurate information, thus smoothening the assessment stage and speeding up the authorisation procedure. As a downside, however, is that an exhaustive list of such examples cannot be provided and could be misinterpreted as suggesting that only the business models used in the examples are permissible while other, potentially more innovative ones are not. This mis-interpretation may be further exacerbated because Guidelines are an instrument that is legally binding, so, from a legal standpoint, whatever business model is not stated in the Guidelines could be read as implying that they are not legally recognised.
 - C. This option would be to insert the non exhaustive list of examples, not in the actual Guidelines, but in the background and rationale chapter of the CP, which is legally not binding.
17. From the three options above, the EBA has chosen option 1, as in the other 2 options, providing a list of examples could mislead applicants to believe that only the examples listed in the table are permissible.
18. Another key issue that emerged in the information submission for the authorisation of payment institution is the lack of transparency with regard to the specific information the applicant is expected to provide to the NCA. As a result, CAs have had to assess incomplete and unfocussed information, which has in turn delayed the completion of the authorisation procedure.
19. In order to prevent this issue under PSD2, the EBA arrived at the view that more detailed requirements will need to be developed as part of the Guidelines that explain to applicants

what information they are required to submit. The EBA identified two options how this could be achieved:

- A. to develop templates that applicants would be required to complete and submit, which would allow for a great degree of consistency but would also limit applicants to the format of the template, or
 - B. to specify a list of information items that applicants would be required to submit, which would achieve a lower degree of consistency but retain greater flexibility for applicants in respect of the document formats to be submitted;
20. The option eventually chosen by the EBA was option B, due to reasons of consistency with other authorisation requirements that the EBA has published or is currently developing, such as the pending Technical Standards on authorisation of credit institutions under the CRDIV, and the Joint EBA/ESMA Guidelines on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU (CRD IV) and Directive 2014/65/EU (MiFID II), which do not contemplate any template.
21. A further decision the EBA was required to make relates to the structure of the Guidelines. The PSD 2 provides that the Guidelines apply to all types of payment services that are listed in Annex I of PSD2 and for which applicants may seek authorisation (in the case of an application for services 1-8 of Annex I of PSD2), or registration (in the case of an application for only service 8 of Annex I of PSD2). This includes the two new categories of payment services introduced in PSD2, of payment initiation services (PIS) and account information services (AIS) respectively. However, these new services are subject to some but not to other information requirements for each of the services, and the question therefore arose how best to organise and structure these requirements. Three options were considered:
- A. to develop only one set of Guidelines addressed to Payment institutions and include in these also those applicants to provide the two new payment services.
 - B. to develop three different set of Guidelines: one for applicants to services 1-8 of Annex I of PSD2, another one for applicants exclusively to PIS, and a third one for applicants that apply exclusively to provide AIS.
 - C. to develop two different sets of Guidelines: one for applicants to services 1-8 of Annex I of PSD2 and, in the same Guidelines, to include the specificities of those applicants that apply exclusively to PIS, and a second set of Guidelines for applicants that apply exclusively to AIS.
22. Having assessed the respective pros and cons, Option C was the option eventually chosen, for reasons of consistency reasons and greater transparency. From a consistency point of view, payment services providers (PSPs) that provide exclusively PIS have the legal nature of payment institutions, whereas AIS providers are not payment institutions. Also, AISP are

subject to many more specific provisions in the PSD2 than PIS, thus justifying a separate set of Guidelines for them.

23. A final decision the EBA had to make relates to Electronic Money Institutions (EMIs), which are also within the scope of the Guidelines, due to the *mutatis mutandi* provision set out in Article 3.1 of Directive 2009/110/EC (EMD2). Two options were considered how best to apply the provision:
 - A. to make references to the *mutatis mutandi* provision in the Guidelines to EMIs; or
 - B. to develop an additional and specific set of Guidelines for applicants for authorisation as Electronic Money Institutions and, in so doing, to adapt the information the applicants need to provide in the authorisation process.
24. Having assessed their respective advantages and disadvantages, Option B was the preferred option, as it increases transparency and clarity for the applicant and enhances the quality and completeness of the information provided by them.

Question 2: Do you agree with the options the EBA has chosen regarding the identification of payment services by the applicant; the way information is to be submitted to the competent authority; the three-part structure of the Guidelines, and the inclusion of authorisation for electronic money institutions? If not, please provide your reasoning.

25. Furthermore, the EBA had to take into account that these Guidelines will be issued in support of a provision in PSD2 that is maximum harmonising, which means that applicants cannot be required to submit information other than those that are set out in the Guidelines, irrespective of, for example, the different type, size or complexity of the applicants or of the nature and scale of their activities.
26. The EBA therefore faced the challenging task of having to develop a single set of Guidelines that is as suitable for very complex applicants with large-scale activities, as it is for significantly smaller and less complex applicants, while at the same time ensuring that the latter are not treated in a disproportionate way.
27. One way in which the PSD2 itself has addressed this challenge is by providing in Article 32 a national option to exempt certain applicants from some or all the information requirements under certain conditions. In addition, PSD2 provides that for applicants that apply exclusively to provide AIS are subject to a reduced set of requirements, which is reflected in the three-part structure of the Guidelines that is explained above.
28. However, in order to strengthen this further, the EBA also introduced, in Guideline 1.4 of each of the three sets of Guidelines, the principle that “Institutions should take into account their size, internal organisation and the nature, scale, and complexity of their activities when developing and implementing policies and processes”.

Question 3: Do you consider it helpful how the EBA has incorporated proportionality measures in the Guidelines in line with PSD2? If not, please explain your reasoning and propose alternative approaches.

Question 4: Do you agree with the Guidelines on information required from applicants for the authorisation as payment institutions for the provision of services 1-8 of Annex I of PSD2, as set out in chapter 4.1 below? If not, please provide your reasoning.

Question 5: Do you agree with the Guidelines on information required from applicants for registration for the provision of only service 8 of Annex I PSD2 (account information services), as set out in chapter 4.2 below? If not, please provide your reasoning.

Question 6: Do you agree with the Guidelines on information requirements for applicants for authorisation as electronic money institutions, as set out in chapter 4.3 below? If not, please provide your reasoning.

29. Article 12 of PSD2 provides that “within 3 months of receipt of an application or, if the application is incomplete, of all of the information required for the decision, the competent authorities shall inform the applicant whether the authorisation is granted or refused. The competent authority shall give reasons where it refuses an authorisation.”

30. In order to provide clarity to applicants in respect of the notification process, the EBA has included in this Consultation Paper a fourth set of Guidelines that provides detail about the assessment of the completion of the application.

Question 7: Do you consider the Guidelines regarding the assessment of completeness of the application, as set out in chapter 4.4 to be helpful? If not, please provide your reasoning.

Draft Guidelines on the information to be provided for the authorisation as payment institutions and e-money institutions and for the registration as account information service providers

EBA/GL-REC/20XX/XX

DD Month YYYY

Draft Guidelines

on the information to be provided for the authorisation as payment institutions and e-money institutions and for the registration as account information service providers

1.1 Compliance and reporting obligations

Status of these guidelines

1. This document contains guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010¹. In accordance with Article 16(3) of Regulation (EU) No 1093/2010, competent authorities and financial institutions must make every effort to comply with the guidelines.
2. Guidelines set the EBA view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied in a particular area. Competent authorities as defined in Article 4(2) of Regulation (EU) No 1093/2010 to whom guidelines apply should comply by incorporating them into their practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where guidelines are directed primarily at institutions.

Reporting requirements

3. According to Article 16(3) of Regulation (EU) No 1093/2010, competent authorities must notify the EBA as to whether they comply or intend to comply with these guidelines, or otherwise with reasons for non-compliance, by ([dd.mm.yyyy]). In the absence of any notification by this deadline, competent authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the form available on the EBA website to compliance@eba.europa.eu with the reference 'EBA/GL/201x/xx'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities. Any change in the status of compliance must also be reported to EBA.
4. Notifications will be published on the EBA website, in line with Article 16(3).

¹ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, (OJ L 331, 15.12.2010, p.12).

2.1 Subject matter, scope and definitions

Subject matter

5. These guidelines set out the information to be provided to the competent authorities in the application for the authorisation of payment institutions, in the registration of account information service providers and in the application for authorisation of electronic money institutions.

Addressees

6. These guidelines are addressed to competent authorities as defined in point (i) of Article 4(2) of Regulation (EU) No 1093/2010 and to the following financial institutions: payment institutions as defined in point (4) of Article 4 of Directive (EU) 2015/2366, electronic money institutions as defined in point (1) of Article 2 of Directive 2009/110/EC, account information service providers as defined in point (19) of Article 4 of Directive (EU) 2015/2366.
7. These guidelines apply in relation to: a) applications for authorisation as a payment institution in accordance with Article 5 of Directive (EU) 2015/2366; b) registration as an account information service provider, in accordance with Article 5 and Article 33 of Directive (EU) 2015/2366; c) applications for authorisation as an electronic money institution, by virtue of the application mutatis mutandis of Article 5 of Directive (EU) 2015/2366 to electronic money institutions, in accordance with Article 3(1) of Directive 2009/110/EC.

Definitions

8. Terms used and defined in Directive (EU) 2015/2366 have the same meaning in the guidelines.

3.1 Implementation

Date of application

9. These guidelines apply from 13 January 2018.

4.1 Guidelines on information required from applicants for the authorisation as payment institutions for the provision of services 1-8 of Annex I of PSD2

Guideline 1: General Principles

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

Guideline 2: Identification Details

- 2.1 The identification details to be provided by the applicant should contain the following information:
 - a) the applicant's corporate name and, if different, trade name;
 - b) an indication on whether the applicant is already incorporated or in process of incorporation;
-

- c) the applicant's national identification number, if applicable;
- d) the applicant's legal status and (draft) articles of association and/or constitutional document evidencing the applicant's legal status;
- e) the address of the applicant's head office and registered office;
- f) the applicant's electronic address and website, if available;
- g) the person(s) in charge of dealing with the application file and authorisation procedure, and their contact details;
- h) indication on whether the applicant has ever been, or is currently being regulated, by a competent authority in the financial services sector or by any other industry-specific regulatory body;
- i) any trade association(s) that the applicant plans to join, where applicable;
- j) The register certificate of incorporation or, if applicable, negative certificate of a mercantile Register that certifies that the name applied by the company is available.
- k) evidence of the payment of any fees or of the deposit of funds to file an application for the authorisation as payment institution, where applicable under national law.

Guideline 3: Programme of operations

- 3.1. The programme of operations to be provided by the applicant should contain the following information:
- a) a description of the type of payment services envisaged, including an explanation on how the activities and the operations which will be provided are identified by the applicant as fitting into any of the legal categories of payment services listed in Annex I of PSD2.
 - b) a declaration on whether the applicant will enter or not into possession of funds;
 - c) a description of the execution of the different payment services, detailing all parties involved, and including for each payment service provided:
 - i. a diagram of flow of funds, unless the applicant intends to provide PIS only;
 - ii. settlement arrangements, unless the applicant intends to provide PIS only;
 - iii. draft contracts between all the parties involved, if applicable;
 - iv. a description of the different ways through which these services are provided;
 - v. flows of data; and

- vi. processing times.
- d) a copy of the draft framework contract, as defined in Article 4(21) of PSD2;
- e) number of different premises from which the applicant intends to provide the payment services, and/or carry out activities related to the provision of payment services if applicable;
- f) a description of any ancillary services to payment services, if applicable;
- g) a declaration on whether or not the applicant intends to grant credit and, if so, within which limits;
- h) a declaration on whether the applicant plans to provide payment services in other member state or third country after the granting of the licence;
- i) an indication of whether the applicant intends to provide/already provides other business activities as referred to in article 11 (5) of Directive 2015/2366, including a description of the type and nature of the activities, expected volume and business premises.

Guideline 4: Business Plan

4.1. The business plan to be provided by the applicant should contain:

- a) a marketing plan consisting of:
 - i. an analysis of the payments market;
 - ii. an analysis of the company's competitive position;
 - iii. a description of clients, marketing materials and distribution channels;
 - iv. the main conclusions of any marketing research carried out.
- b) Where available for existing companies, certified annual accounts of the previous three years, or a summary of the financial situation for those companies that have not yet produced annual accounts;
- c) a forecast budget calculation for the first three financial years that demonstrates that the applicant is able to employ appropriate and proportionate systems, resources and procedures that allow the applicant to operate soundly. It should include:
 - i. an income statement and balance sheet forecast, including target scenarios and stress scenarios as well as their base assumptions, such as volume and value of transactions, number of clients, pricing, average amount per transaction, expected increase profitability threshold;

- ii. explanations on the main lines of income and expenses, the financial debts and the capital assets, and
 - iii. a diagram and detailed breakdown of the estimated financial flows for the next three years.
- d) information on own funds, including the amount and detailed breakdown by paid-up capital, reserves and retained earnings;
- e) Information on, and calculation of, minimum own funds requirements in accordance with the method(s) referred to in Article 9 of Directive (EU) 2015/2366 (PSD2) as determined by the CA, unless the applicant intends to provide payment initiation services only, including
 - i. a projection of the breakdown of the own funds for three years according to the method used, monthly for the first year, and annually for the subsequent two years; and
 - ii. projection of the own funds for three years according to the other methods, monthly for the first year, and annually for the subsequent two years.

Guideline 5: Structural organisation

5.1. The applicant should provide a description of the structural organisation of its undertaking consisting of :

- a) a detailed organisational chart, showing each division, department or similar structural separation, including the name of the person(s) responsible, in particular those in charge of internal control functions. The chart should be accompanied by description of the functions and responsibilities of each division, department or similar structural separation;
- b) a forecast of the staff numbers for the next three years;
- c) a description of outsourcing arrangements consisting of:
 - i. the identity and geographical location of the outsourcing provider;
 - ii. the identity of the persons within the Payment Institution that are responsible for each of the outsourced activities;
 - iii. a clear description of the outsourced activities and its main characteristics;
- d) a copy of draft outsourcing agreements
- e) a description of the use of branches and agents, where applicable, including:

- i. a mapping of the off-site and on-site checks that the applicant intends to perform at least annually on branches and agents and their frequency;
 - ii. the IT systems, processes and infrastructure which are used by the applicant's agents to perform activities on behalf of the applicant;
 - iii. in the case of agents, the main characteristics and key points of the mandate agreement containing the full terms of the mandate, selection policy, monitoring procedures and agents' training.
- f) an indication of the national and/or international payment system which the applicant will access, if applicable;
- g) a list of all natural or legal persons that have close links with the applicant, indicating their identity and the nature of those links;

Guideline 6: Evidence of initial capital

6.1. For the evidence of initial capital to be provided by the applicant (of EUR 125.000 for services 1-5 of Annex I of PSD2; EUR 20.000 for service 6, and EUR 50.000 for service 7), the applicant should submit the following documents:

- a) for existing undertakings, an audited account statement or public register certifying the amount of capital of the applicant;
- b) for undertakings in the process of being incorporated, a bank statement issued by a bank certifying that the funds are deposited on the applicant's bank account.

Guideline 7: Measures to safeguard the funds of payment service users (applicable to payment services 1-6 only)

7.1. Where the applicant safeguards the Payment Service Users's funds through depositing funds in a separate account in a credit institution or through an investment in secure, liquid low risk assets, the description of the safeguarding measures should contain:

- a) a description of the investment policy to ensure the assets chosen are liquid secure and low risk, if applicable;
- b) contact details of the person (s) that has access to the safeguarding account;
- c) a description of the administration and reconciliation process to ensure that payment service users' funds are insulated in the interest of payment service users against the claims of other creditors of the payment institution, in particular in the event of insolvency; and
- d) a copy of the draft contract with credit institution, including explicit declaration of compliance with Article 10 of PSD2.

- 7.2. Where the applicant safeguards the funds of the payment services user through an insurance policy or comparable guarantee from an insurance company or a credit institution, the description of the safeguarding measures should contain the following:
- a) a confirmation that the insurance policy or comparable guarantee from an insurance company or a credit institution is from an entity that is not part of the same group of firms as the applicant;
 - b) details of the reconciliation process in place to ensure that the insurance policy or comparable guarantee is sufficient to meet the applicant's safeguarding obligations at all times;
 - c) duration and renewal of the coverage; and
 - d) Copy of the (draft) insurance agreement or of the (draft) comparable guarantee.

Guideline 8: Governance arrangements and internal control mechanisms

- 8.1. The applicant should provide a description of the governance arrangement and internal control mechanisms consisting of:
- a) a mapping of the risks identified by the applicant, including the type of risks and the procedures the applicant will put in place to assess and prevent such risks;
 - b) the different levels of periodical and permanent controls including the frequency with which they are applied, the administrative procedures used, and the human resources allocated; the accounting procedures by which the applicant will record and report its financial information;
 - c) a confirmation of the regulatory reporting requirements that apply to the applicant;
 - d) the identity of the person(s) responsible for the internal control functions, including for the periodic, permanent and compliance control, as well as an up-to-date Curriculum Vitae and criminal record where this person is responsible for the management of the payment services activities of the payment institution;
 - e) the identity of any auditor that is not a statutory auditor pursuant to Directive 2006/43/EC;
 - f) the identity and composition of the management body and, if applicable, of any other oversight body or committee;
 - g) a description of the way outsourced functions are monitored and controlled so as to avoid an impairment in the quality of the payment institution's internal controls;
 - h) a description of the way any agents and branches are monitored and controlled within the framework of the applicant's internal controls;

- i) the periodical control program, setting out the measures to be taken over the next three years to ensure a robust governance of the payment institution; and
- j) where the applicant is the subsidiary of a regulated entity in another EU Member State, a description of the group procedures and the identity of the supervisory authority responsible for the consolidated supervision.

Guideline 9: Procedure to monitor, handle and follow up on security incidents and security-related customer complaints

9.1. The applicant should provide a description of the procedure in place to monitor, handle and follow up on security incidents and security-related customer complaints to be provided by the applicant, which should contain:

- a) the individual(s) and bodies responsible for assisting customers in case of fraud, technical issues, and/or claim management;
- b) the contact point for customers, including name and email address;
- c) the procedures for the reporting of incidents, including the communication of these reports to internal or external bodies, including notification of mayor incidents to NCAs under Article 96 of PSD2 and in line with the EBA Guidelines on incident reporting (EBA/GL/2016/tbc); and
- d) the monitoring tools used and the follow-up measures and procedures in place to mitigate security risks.

Guideline 10: Process to file, monitor, track and restrict access to sensitive payment data

10.1. The applicant should provide a description of the process in place to file, monitor, track, and restrict access to sensitive payment data consisting of:

- a) a list of the data classified as sensitive payment data in the context of the payment institution's business model;
- b) the procedures in place to authorise access to the sensitive payment data;
- c) a description of the monitoring tool;
- d) the access right policy, detailing access to all relevant infrastructure components and systems, including data bases and back-up infrastructures;
- e) unless the applicant intends to provide PIS only, a description of how the collected data is registered;

- f) unless the applicant intends to provide PIS only, the expected internal and/or external use of the collected data, including by counterparties;
- g) the IT system and technical security measures that have been implanted, including encryption and/or tokenization;
- h) identification of the individual(s), bodies and/or committees with access to the sensitive payment data;
- i) an explanation of how breaches will be detected and addressed; and
- j) an annual internal control program in relation to the safety of the IT systems.

Guideline 11: Business continuity arrangements

11.1. The applicant should provide a description of the business continuity arrangements consisting of the following information:

- a) a business impact analysis, including the business processes and recovery objectives, such as recovery time objectives, recovery point objectives, and protected assets;
- b) the identification of the back-up site, access to IT infrastructure, and its key software and data to recover from a disaster or disruption;
- c) an explanation of how the applicant will deal with significant continuity events and disruptions, such as the failure of key systems; the loss of key data; inaccessibility of premises; and loss of key persons;
- d) the frequency with which the applicant intends to test the Business Continuity and Disaster Recovery Plans, including how the results of the testing will be recorded; and
- e) a description of the mitigation measures to be adopted by the applicant, in case of termination of its payment services, to avoid adverse effects on payment systems and on payments services users ensuring execution of pending payment transactions and termination of existing contracts.

Guideline 12: The principles and definitions applicable to the collection of statistical data on performance, transactions and fraud.

12.1. The applicant should provide a description of the principles and definitions applicable to the collection of the statistical data on performance, transaction and fraud consisting of the following information:

- a) the type of data that is collected, in relation to customers, type of payment service, channel, instrument, jurisdictions and currencies;

- b) scope of the collection, in terms of activities and entities concerned, including branches, and agents;
- c) the means of collection;
- d) the purpose of collection;
- e) the frequency of collection;
- f) supporting documents such as a manual, that describe how the system works;
- g) service level agreements with outsourcing partner(s) if the outsourcing partner is in charge of the collection of the statistical data;
- h) organisational measures and tools for the prevention of fraud; and
- i) the reporting lines in case of fraud.

Guideline 13: Security policy document

13.1. The applicant should provide a security policy document containing the following information:

- a) a detailed risk assessment of the payment service(s) the applicant intends to provide, which should include risks of fraud and the security control and mitigation measures taken to adequately protect payment service users against the risks identified.
- b) a description of the IT systems, which should include:
 - i. the architecture of the systems and their network elements;
 - ii. the business IT systems supporting the business activities provided, such as the applicant's website, wallets, the payment engine, the risk and fraud management engine and customer accounting;
 - iii. the support IT systems used for the organisation and administration of the applicant, such as accounting, legal reporting systems, staff management, customer relationship management, e-mail servers and internal file servers; and
 - iv. information on whether those systems are already used by the applicant or its group, and the estimated date of implementation, if applicable.
- c) an exhaustive list of authorised connections from outside with partners, service providers, entities of the group and employees of the applicant working remotely, including the rationale for such connection;

- d) for each of the connections listed under point c), the logical security measures and mechanisms in place, specifying the control the applicant will have over these accesses as well as the nature and frequency of each control, such as technical versus organizational, preventive vs detective; real-time monitoring vs regular reviews, such as the use of an Active Directory separate from the group, the opening/closing of communication lines, security equipment configuration, generation of keys or client authentication certificates, system monitoring, authentication, confidentiality of communication, intrusion detection, antivirus and logs;
 - e) the logical security measures and mechanisms that govern the internal access to IT systems, which should include:
 - i. the technical and organisational nature and frequency of each measure, such as whether it is preventive or detective or whether or not it is carried out in real time; and
 - ii. how the issue of client environment segregation is dealt with in cases where the applicant's IT resources are shared.
 - f) the physical security measures and mechanisms of the premises and the data centre of the applicant, such as access controls and environmental security;
 - g) the security of the payment processes, which should include:
 - i. the customer authentication procedure used for both, consultative and transactional accesses, and for all underlying payment instruments;
 - ii. an explanations on how the safe delivery to the legitimate payment services user and the integrity of authentication factors such as hardware tokens and mobile application is ensured, at the time of both, initial enrolment time and renewal; and
 - iii. a description of the systems and procedures that the applicant has in place for transaction analysis and identification of suspicious or unusual transactions.
 - h) a detailed risk assessment in relation to its payment services, including fraud and with a link to the control and mitigations explained in the application file, demonstrating that the risks are addressed;
 - i) a list of the main written procedures in relation to the applicant's IT systems or, for procedures that have not yet been formalized, an estimated date for their finalisation; and
 - j) any other information relevant to the risks arising from the specific activities of the applicant.
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Guideline 14: Internal control mechanisms to comply with obligations in relation to money laundering and terrorist financing (AML/CFT obligations)

14.1. The description of the internal control mechanisms that the applicant has established in order to comply, where applicable, with those obligations should contain the following information:

- a) the applicant's assessment of the anti-money laundering and counter terrorist financing risks associated with its business, including the risks associated with the applicant's customer base, the products and services provided, the distribution channels used and the geographic areas of operation;
- b) the measures the applicant has or will put in place to mitigate the risks and comply with applicable anti money laundering and counter terrorist financing obligations, including the applicant's risk assessment process, the policies and procedures to comply with customer due diligence requirements and the policies and procedures to detect and report suspicious transactions or activities;
- c) the systems and controls the applicant has or will put in place to ensure that their branches and agents comply with applicable anti money laundering and terrorist financing requirements, including, in cases where the agent or branch is located in another Member State, the anti-money laundering and counter terrorist financing requirements of that Member State;
- d) arrangements the applicant has or will put in place to ensure that staff and agents are appropriately trained in anti-money laundering and counter terrorist financing matters;
- e) the identity of the person in charge of ensuring the applicant's compliance with anti-money laundering and counter-terrorism obligations, and evidence that their anti-money laundering and counter-terrorism expertise is sufficient to enable them to fulfil this role effectively;
- f) the systems and controls the applicant has or will put in place to ensure their anti money laundering and counter terrorist financing policies and procedures remain up to date, effective and relevant;
- g) the systems and controls the applicant has or will put in place to ensure that the agents do not expose the applicant to increased money laundering and terrorist financing risk; and
- h) the anti-money laundering and counter terrorism manual for the staff of the applicant.

Guideline 15: Identity and suitability assessment of persons with qualified holdings in the applicant

- 15.1 For the purposes of the identity and suitability assessment of persons with qualified holdings in the applicant, , the applicant should submit the following information:
- a) a description of the group to which the applicant belongs and indication of the parent undertaking, where applicable;
 - b) a chart setting out the shareholder structure of the applicant, including the breakdown of the capital and voting rights; and
 - c) a list of the names of all persons and other entities that have or will, in case of authorisation, have qualifying holdings in the applicant's capital, indicating in respect of each such person or entity:
 - i. the number and type of shares or other holdings subscribed or to be subscribed;
 - ii. the nominal value of such shares or other holdings;
 - iii. any premium paid or to be paid;
 - iv. any security interests or encumbrances created over such shares or other holdings, including the identity of the secured parties; and
 - v. where applicable, any commitments made by such persons or entities aimed at ensuring that the applicant will comply with applicable prudential requirements.
- 15.2 Where a person who has or, in case of authorisation, will have a qualifying holding in the applicant's capital is a natural person, the application should set out all of the following information relating to the identity and suitability of that person:
- a) personal details including the person's name and name at birth, date and place of birth, citizenship, personal national identification number (where available), address, contact details and a copy of an official identity document;
 - b) a detailed curriculum vitae, stating the education and training, previous professional experience and any professional activities or other functions currently performed;
 - c) a statement, accompanied by supporting documents, containing the following information concerning the person and any undertaking which the person directs or controls and of which the applicant is aware after due and careful enquiry:
 - i. subject to national legislative requirements concerning the disclosure of spent convictions, any criminal conviction or proceedings where the person or undertaking has been found against and which were not set aside;
 - ii. any civil or administrative decisions in matters of relevance to the assessment or authorisation process where the person or undertaking has been found against

- and any administrative sanctions or measures imposed as a consequence of a breach of laws or regulations (including disqualification as a company director), in each case which were not set aside and against which no appeal is pending or may be filed;
- iii. any bankruptcy, insolvency or similar procedures;
 - iv. any pending criminal investigations;
 - v. any civil or administrative investigations, enforcement proceedings, sanctions or other enforcement decisions against the person or undertaking concerning matters which may reasonably be considered to be relevant to the authorisation to commence the activity of a payment institution or to the sound and prudent management of a payment institution;
 - vi. where such documents can be obtained, an official certificate or any other equivalent document evidencing whether any of the events set out in subparagraphs (i)-(v) has occurred in respect of the relevant person or undertaking;
 - vii. any refusal of registration, authorisation, membership or licence to carry out trade, business or a profession;
 - viii. any withdrawal, revocation or termination of a registration, authorisation, membership or licence to carry out trade, business or a profession;
 - ix. any expulsion by an authority or public sector entity in the financial services sector or by a professional body or association;
 - x. any position of responsibility with an entity subject to any criminal conviction or proceedings, administrative investigations, sanctions or other enforcement decisions for conduct failings, including in respect of fraud, dishonesty, corruption, money laundering, terrorist financing or other financial crime or of failure to put in place adequate policies and procedures to prevent such events, held at the time when the alleged conduct occurred, together with details of such occurrences and of the person's involvement, if any, in them; and
 - xi. any dismissal from employment or a position of trust, any removal from a fiduciary relationship (save as a result of the relevant relationship coming to an end by passage of time) and any similar situation.
- d) where an assessment of reputation of the person has already been conducted by a competent authority in the financial services sector, the identity of that authority and the outcome of the assessment;

- e) the current financial position of the person, including details concerning sources of revenues, assets and liabilities, security interests and guarantees, whether granted or received;
- f) a description of the business activities of the person;
- g) financial information, including credit ratings and publicly available reports on any undertakings directed or owned by the person;
- h) description of any interests or activities of the natural person that may be in conflict with those of the payment institution and proposed methods for managing those conflicts of interest;
- i) a description of any links to politically exposed persons, as defined in Article 3(9) of Directive (EU) 2015/849²; and
- j) any other interests or activities of the person that may be in conflict with those of the applicant and proposed methods for managing those conflicts of interest.

15.3 Where a person or entity who has or, in case of authorisation, will have a qualifying holding in the applicant's capital is a legal person or is an entity which is not a legal person and which holds or should hold the participation in its own name, the application should contain the following information relating to the identity and suitability of that legal person or entity:

- a) name of the legal person or entity;
- b) where the legal person or entity is registered in a central register, commercial register, companies register or similar public register, the register in which the legal person or entity is entered, the registration number or an equivalent means of identification in that register and a copy of the registration certificate;
- c) the addresses of its registered office and, where different, of its head office, and principal place of business;
- d) contact details;
- e) corporate documents or agreements governing the entity and a summary explanation of the main legal features of the legal form or of the entity;
- f) whether the legal person or entity has ever been or is regulated by a competent authority in the financial services sector or other government body;

² Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (OJ L 141 of 5.6.2015, p. 73).

- g) the information referred to in Guideline 15(2)(c), 15(2)(d), 15(2)(e), 15(2)(f), 15(2)(g) and 15(2)(i) in relation to the legal person or entity;
- h) description of any interests or activities of the legal person that may be in conflict with those of the payment institution and proposed methods for managing those conflicts of interest;
- i) a list of each person who effectively directs the business of the legal person or entity, their name, date and place of birth, address, contact details, their national identification number, where available, and detailed curriculum vitae (stating relevant education and training, previous professional experience, any professional activities or other relevant functions currently performed), together with the information referred to in Guideline 15(2)(c) and 15(2)(d) in respect of each such person;
- j) the shareholding structure of the legal person, including at least:
 - i. the name, date and place of birth, address and, where available, personal identification number or registration number and the respective share of capital and voting rights of all of its direct or indirect shareholders or members and beneficial owners, as defined in Article 3(6) of Directive (EU) 2015/849;
 - ii. information on any shareholders agreements; and
 - iii. the information referred to in Guideline 15(2)(c) in relation to the shareholders exercising or who may exercise significant influence.
- k) in the case of an entity which is not a legal person and which holds or should hold the participation in its own name, the identity of all members of the entity, together with the information set out in Guideline 15(2) if such members are natural persons, or, as the case may be, in Guideline 15(3) if such members are legal persons;
- l) if the legal person or entity is part of a group (which, for the purpose of this paragraph, should, in the case of such entities, include the members of the entity and the subsidiaries of such members), a detailed organisational chart of the structure of the group and information on the share of capital and voting rights of shareholders with significant influence over the entities of the group and on the activities currently performed by the entities of the group;
- m) if the legal person or entity is part of a group, information on the relationships between any credit institution, insurance or re-insurance undertaking or investment firm within the group and any other group entities;
- n) if the legal person or entity is part of a group, identification of any credit institution, insurance or re-insurance undertaking or investment firm within the group, the names of the relevant competent authorities, as well as an analysis of the perimeter of

consolidated supervision of the credit institution and the group, including information about which group entities would be included in the scope of consolidated supervision requirements and at which levels within the group these requirements would apply on a full or sub-consolidated basis;

- o) annual financial statements, at the individual and, where applicable, at the consolidated and sub-consolidated group levels, for the last three financial years, where the legal person or entity has been in operation for that period of time (or such shorter period of time for which the legal person or the entity has been in operation and financial statements were prepared), approved by the statutory auditor or audit firm within the meaning of Directive 2006/43/EC³, where applicable, including each of the following items:
 - i. the balance sheet;
 - ii. the profit and loss accounts or income statement; and
 - iii. the annual reports and financial annexes and any other documents registered with the relevant registry or competent authority of the legal person.
- p) where the legal person has not been operating for a sufficient period of time to be required to prepare financial statements for the three financial years immediately prior to the date of the application, the application shall set out the existing financial statements (if any), as well as statements which include the forecast balance sheets and forecast profit and loss accounts or income statements of the relevant person, including planning assumptions used, at least under base case and stress scenarios, for such number of financial years as would ensure that such statements, together with the financial statements provided (if any), cover three consecutive financial years;
- q) where the legal person or entity has its head office in a third country, the application shall set out all of the following information:
 - i. where the legal person or entity is supervised by an authority of a third country in the financial services sector, a certificate of good-standing, or equivalent where not available, from such foreign authority in relation to the legal person or entity;
 - ii. where the legal person or entity is supervised by an authority of a third country in the financial services sector and if the authority does issue such declarations, a declaration by that authority that there are no obstacles or limitations to the

³ Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (OJ L 157, 9.6.2006, p. 87–107).

- provision of information necessary for the supervision of the payment institution; and
- iii. general information on the regulatory regime of that third country as applicable to the legal person or entity, including information on the extent to which the third country's anti-money laundering and counter-terrorist financing regime is consistent with the Financial Action Task Force's Recommendations.
- r) where the legal person is a collective investment undertaking, the application shall set out the following information:
- i. the identity of the unit holders controlling the collective investment undertaking or having a holding enabling them to prevent the taking of decisions by the collective investment undertaking;
 - ii. details of the investment policy and any restrictions on investment;
 - iii. the name and position of the persons responsible, whether individually or as a committee, for defining and making the investment decisions for the collective investment undertaking, as well as a copy of any management mandate or, where applicable, terms of reference of the committee;
 - iv. in the case of undertakings which are not domiciled in a Member State, a detailed description of the applicable anti-money laundering legal framework and of the anti-money laundering procedures of the collective investment undertaking; and
 - v. a detailed description of the performance of former holdings of the collective investment undertaking in other credit institutions, insurance or re-insurance undertakings or investment firms, indicating whether such holdings were approved by a competent authority and, if so, the identity of the authority.
- s) where the person is a sovereign wealth fund, the name of the public body in charge of defining the investment policy of the fund, as well as details of any influence exerted by that public body on the day-to-day operations of the fund and the applicant;
- t) where a trust already exists or would result from the subscription to the applicant's share capital, the application should also set out the following information:
- i. the identity of all trustees who will manage assets under the terms of the trust document and of each person who is a beneficiary or a settlor of the trust property and, where applicable, their respective shares in the distribution of income generated by the trust property;
 - ii. a copy of any document establishing or governing the trust; and

iii. a description of the main legal features of the relevant trust and its functioning.

15.4. The application shall set out all of the following information of each natural or legal person or entity who has or, in case of authorisation, will have a qualifying holding in the capital of the applicant should contain the following:

- a) details of that person's or entity's financial or business reasons for owning that holding and the person's or the entity's strategy regarding the holding, including the period for which the person or the entity intends to hold the holding and any intention to increase, reduce or maintain the level of the holding in the foreseeable future;
- b) details of the person's or the entity's intentions in respect of the applicant and of the influence the person or the entity intends to exercise over the applicant, including in respect of the dividend policy, the strategic development and the allocation of resources of the applicant, whether or not it intends to act as an active minority shareholder and the rationale for such intention;
- c) information on the person's or the entity's willingness to support the applicant with additional own funds if needed for the development of its activities or in case of financial difficulties;
- d) the content of any intended shareholder's or member's agreements with other shareholders or members in relation to the applicant;
- e) an analysis as to whether the qualifying holding will impact in any way, including as a result of the person's close links to the applicant, on the ability of the applicant to provide timely and accurate information to the competent authorities; and
- f) the identity of each member of the management body or of senior management who will direct the business of the applicant and will have been appointed by, or following a nomination from, such shareholders or members, together with, to the extent not already provided, the information set out in Guideline 16.

15.5. The application should set out a detailed explanation on the specific sources of funding for the participation of each person or entity having a qualifying holding in the applicant's capital, which should include:

- a) details on the use of private financial resources, including their availability and (so as to ensure that the competent authority is satisfied that the activity that generated the funds is legitimate) source;
- b) details on the means of payment of the intended participation, of the payment service provider used to transfer funds and, where the head office of the payment service provider is not established in a Member State, evidence that the funds used for the participation are channelled through payment service providers that are subject to anti-

money laundering and terrorist financing legislative requirements consistent with those set out in Directive (EU) 2015/849, and are supervised effectively for compliance with these requirements;

- c) details on access to financial markets, including details of financial instruments to be issued;
- d) information on the use of borrowed funds, including the name of the lenders and details of the facilities granted, such as maturities, terms, security interests and guarantees, as well as information on the source of revenue to be used to repay such borrowings. Where the lender is not a credit institution or a financial institution authorised to grant credit, the applicant should provide to the competent authorities information on the origin of the borrowed funds;
- e) information on any financial arrangement with other persons who are shareholders or members of the applicant; and
- f) information on any assets of the person who is a shareholder or member of the applicant which are to be sold in order to help finance the proposed participation, such as conditions of sale, price, appraisal, and details regarding their characteristics, including information on when and how the assets were acquired.

15.6. Where a person who has or will, in case of authorisation, have a qualifying holding in the applicant's capital is a member of an entity which is not a legal person and the participation will be treated as an asset of that entity, the application should set out the following information:

- a) the identity of all members of the entity, together with the information set out in Guidelines (15)(2) if such members are natural persons, or, as the case may be, in Guideline (15) (3) if such members are legal persons; and
- b) details of the terms of the agreements governing the entity.

Guideline 16: Identity and suitability assessment of directors and persons responsible for the management of the payment institution

16.1. For the purposes of the identity and suitability assessment of directors and persons responsible for the management of the payment institution, the applicant should provide the following information:

- a) personal details, including:
 - i. the full name, gender, place and date of birth, address and contact details, nationality, and personal identification number or copy of ID card or equivalent;

- ii. details of the position for which the assessment is sought, whether or not the management body position is executive or non-executive. This should also include the following details:
 - the letter of appointment, contract, offer of employment or respective drafts, as applicable;
 - the planned start date and duration of the mandate; and
 - description of the individual's key duties and responsibilities.
- b) Information on suitability assessment carried out by the applicant, which should include details of the result of any assessment of the suitability of the individual performed by the institution, such as relevant board minutes or suitability assessment reports or other documents;
- c) evidence of knowledge, skills and experience, which should include:
 - i. a CV containing details of education and professional experience, including professional experience, academic qualifications, other relevant training,, the name and nature of all organisations for which the individual has worked and the nature and duration of the functions performed, in particular highlighting any activities within the scope of the position sought; and
 - ii. a statement from the applicant in relation to the individual's requisite experience as enumerated, as appropriate, in the Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body [Reference to future Guidelines to be inserted here after consultation].
- d) evidence of reputation, honesty, integrity, which should include:
 - i. criminal records and relevant information on criminal investigations and proceedings, relevant civil and administrative cases, and disciplinary actions, including disqualification as a company director, bankruptcy, insolvency and similar procedures, notably through an official certificate or any objectively reliable source of information concerning the absence of criminal conviction, investigations and proceedings, such as third party investigation, testimony made by a lawyer or a notary established in the European Union;
 - ii. statement as to whether criminal proceedings are pending or the person or any organisation managed by him or her has been involved as a debtor in insolvency proceedings or a comparable proceeding;
 - iii. Information concerning the following:

- investigations, enforcement proceedings, or sanctions by a supervisory authority which the individual has been directly or indirectly involved in;
 - refusal of registration, authorisation, membership or licence to carry out a trade, business or profession; or the withdrawal, revocation or termination of registration, authorisation, membership or licence; or expulsion by a regulatory or government body or by a professional body or association;
 - dismissal from employment or a position of trust, fiduciary relationship, or similar situation, or having been asked to resign from employment in such a position, excluding redundancies;
 - whether an assessment of reputation of the individual as an acquirer or a person who directs the business of an institution has already been conducted by another competent authority, including the identity of that authority, the date of the assessment, and evidence of the outcome of this assessment, and the consent of the individual where required to seek such information to be able to process and use the provided information for the suitability assessment; and
 - whether any previous assessment of the individual an authority from another, non-financial, sector has already been conducted, including the identity of that authority and evidence of the outcome of this assessment.
- e) Information on financial and non-financial interests, which should include:
- i. A description of any financial and non-financial interests, such as loans and shareholdings, and relationships and his/her close relatives, such as a spouse, registered partner, cohabitee, child, parent or other relation with whom the person shares living accommodations, between the individual and his/her close relatives, or any company that the individual is closely connected with, and the institution, its parent or subsidiaries, or any person holding a qualifying holding in such an institution, including any members of those institutions or key function holders;
 - ii. whether or not the individual conducts, or has conducted in the past two years, any business or has any commercial relationship with any of the above listed institutions or persons or is involved in any legal proceedings with those institutions or persons;
 - iii. whether or not the individual and his/her close relatives have any competing interests with the institution, its parent or subsidiaries;

- iv. whether or not the individual is being proposed on behalf of any one substantial shareholder;
 - v. any financial obligations to the institution, its parent or its subsidiaries
 - vi. any national or local position of political influence held over the past 2 years, and
 - vii. if a material conflict of interest is identified, a statement as to how this conflict has been satisfactorily mitigated or remedied.
- f) information on any other professional activities carried out.

Guideline 17: Identity of statutory auditors and audit firms

17.1. The identity of statutory auditors and audit firms as defined in Directive 2006/43/EC to be provided by the applicant, where relevant, should contain the following information:

- a) name, address and contact details of auditors; and
- b) date of the appointment.

Guideline 18: Professional indemnity insurance or comparable guarantee for payment initiation services and account information services

18.1. As evidence of a professional indemnity insurance or comparable guarantee that is compliant with EBA Guidelines [which at time of publishing this document is under separate consultation as EBA-CP-2016-12], the applicant for the provision of payment initiation services or account information services should provide the following information:

- a) an insurance contract or other equivalent document confirming the existence of the professional indemnity insurance or comparable guarantee, with a cover amount that is compliant with EBA Guidelines CP/2016/12; and
- b) a record of how the applicant has calculated the minimum amount in a way that is compliant with EBA Guidelines CP/2016/12, including all applicable components of the formula specified therein.

4.2 Guidelines on information required from applicants for registration for the provision of only service 8 of Annex I PSD2 (account information services)

Guideline 1: General Principles

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

Guideline 2: Identification Details

- 2.1 In case the applicant is a natural person, the identification details to be provided by the applicant should contain the following information:
 - a) the name, address, nationality and date and place of birth;
 - b) a copy of the identity card or equivalent piece of identification;

- c) an updated curriculum vitae;
- d) a criminal record check; and
- e) the person(s) in charge of dealing with the application file and authorisation procedure, and their contact details.

2.2 In case the applicant is a legal person, the identification details to be provided by the applicant should contain the following information:

- a) the applicant's corporate name and, if different, trade name;
- b) an indication on whether the applicant is already incorporated or in process of incorporation;
- c) the applicant's national identification number, if applicable;
- d) the applicant's legal status and (draft) articles of association and/or constitutional document evidencing the applicant's legal status;
- e) the address of the applicant's head office and registered office;
- f) the applicant's electronic address and website, if available;
- g) the person(s) in charge of dealing with the application file and authorisation procedure, and their contact details;
- h) indication on whether the applicant has ever been, or is currently being regulated, by a competent authority in the financial services sector or by any other industry-specific regulatory body;
- i) any trade association(s) that the applicant plans to join, where applicable;
- j) the register certificate of incorporation or, if applicable, negative certificate of a mercantile register that certifies that the name applied by the company is available; and
- k) evidence of the payment of any fees, or of the deposit of funds to file an application for the registration as account information service provider, where applicable under national law.

Guideline 3: Programme of operations

3.1. The programme of operations to be provided by the applicant should contain the following information:

- a) a description of the account information service that is intended to be provided, including an explanation on how the applicant determined that the activity fits the definition of account information services as defined in Article 4 (16) of Directive 2015/2366 (PSD2);
- b) a declaration of the applicant that they will not enter into possession of funds;
- c) a description of the execution of the account information service including:
 - i. draft contracts between all the parties involved, if applicable;
 - ii. indication of the different ways through which these services are provided;
 - iii. flows of data; and
 - iv. processing times.
- d) a copy of the draft framework contract as defined in Article 4(21) of PSD2;
- e) number of different premises from which the applicant intends to provide the services, if applicable;
- f) a description of any ancillary services to the account information service, if applicable;
- g) a declaration on whether the applicant intends to provide account information services in another EU Member State or another country once registered; and
- h) indication on whether the applicant intends to provide, or already provides, business activities other than account information services, including type, nature, expected volume and business premises.

Guideline 4: Business Plan

4.1. The business plan to be provided by the applicant should contain:

- a) a marketing plan consisting of:
 - i. an analysis of the payments market;
 - ii. an analysis of the company's competitive position;
 - iii. a description of clients, marketing materials and distribution channels; and
 - iv. the main conclusions of any marketing research carried out.
- b) certified annual accounts of the previous three years, if available, or a summary of the financial situation for those companies that have not yet produced annual accounts;

- c) a forecast budget calculation for the first three financial years that demonstrates that the applicant is able to employ appropriate and proportionate systems, resources and procedures that allow the applicant to operate soundly. It should include:
 - i. an income statement and balance sheet forecast, including target scenarios and stress scenarios as well as their base assumptions, such as, number of clients, pricing, and expected increase profitability threshold);
 - ii. explanations on the main lines of income and expenses, the financial debts and the capital assets, and
 - iii. diagram and detailed breakdown of the estimated flows for the next three years.

Guideline 5: Structural organisation

- 5.1. In case the applicant is a natural person, the description of the structural organisation of its undertaking should contain the following information:
- a) a forecast of the staff numbers for the next three years;
 - b) a description of outsourcing arrangements consisting of:
 - i. the identity and geographical location of the outsourcing provider;
 - ii. the identities of the persons that are responsible for each of the outsourced activities; and
 - iii. a detailed description of the outsourced activities and its main characteristics.
 - c) a copy of draft outsourcing agreements;
 - d) If applicable, a description of the use of branches and agents, including:
 - i. a mapping of the off-site and on-site checks that the applicant to be performed of branches and agents,
 - ii. the IT systems, processes and infrastructure which are used by the applicant's agents to perform activities on behalf of the applicant; and
 - iii. in the case of agents, the main characteristics and key points of the mandate agreement containing the full terms of the mandate, selection policy, monitoring procedures and agents' training.
 - e) an indication of the national and/or international payment system which the applicant will access, if applicable; and

- f) a list of all natural or legal persons which have close links with the applicant account information service provider, indicating their identity and the nature of those links.

5.2. In case the applicant is a legal person, the description of the structural organisation of its undertaking should contain the following information:

- a) a detailed organisational chart, showing each division, department or similar structural separation, including the name of the person (s) responsible, in particular those in charge of internal control functions. The chart should be accompanied by description of the functions and responsibilities of each division, department or similar structural separation;
- b) a forecast of the staff numbers for the next three years;
- c) a description of outsourcing arrangements consisting of:
 - i. the identity and geographical location of the outsourcing provider;
 - ii. the identity of the persons within the AISP that are responsible for each of the outsourced activities;
 - iii. a clear description of the outsourced activities and its main characteristics;
- d) a copy of draft outsourcing agreements;
- e) If applicable, a description of the use of branches and agents, including in the case of agents, the main characteristics and key points of the mandate agreement containing the full terms of the mandate, selection policy, monitoring procedures and agents' training;
- f) Indication of national or international payment system to which the applicant will access, if applicable; and
- g) a list of all natural or legal persons that have close links with the applicant, indicating their identity and the nature of those links.

Guideline 6: Governance arrangements and internal control mechanisms

6.1. The applicant should provide a description of the governance arrangement and internal control mechanisms consisting of:

- a) a mapping of the risks identified by the applicant, including the type of risks and the procedures the applicant will put in place to assess and prevent such risks;
- b) the different levels of periodical and permanent controls, including the frequency with which they are applied, the administrative procedures used, and the human resources allocated;

- c) the accounting procedures by the which the applicant will record and report its financial information;
- d) a confirmation of the regulatory reporting requirements that apply to the applicant;
- e) the identity of the person(s) responsible for the internal control functions, including for the periodic, permanent and compliance control, as well as an up-to-date Curriculum Vitae and criminal record where this person is responsible for the management of the account information services;
- f) the identity of any auditor that is not an statutory auditor pursuant Directive 2006/43/EC;
- g) the identity and composition of the management body and, if applicable, any other oversight body or committee;
- h) a description of the way outsourced functions are monitored and controlled so as to avoid an impairment in the quality of the applicant's internal controls;
- i) a description of the way any agents and branches are monitored and controlled within the framework of the applicant's internal controls;
- j) the periodical control program, setting out the measures to be taken over the next three years to ensure a robust governance of the applicant ; and
- k) where the applicant is the subsidiary of a regulated entity in another EU Member State, a description of the group procedures and the identity of the supervisory authority responsible for the consolidated supervision.

Guideline 7: Procedure to monitor, handle and follow up on a security incident and security related customer complaints

7.1. The applicant should provide a description of the procedure in place to monitor, handle and follow up a security incidents and security-related customer complaints to be provided by the applicant, which should contain:

- a) individuals and bodies responsible for assisting customers in case of fraud, technical issues, and/or claim management;
- b) the contact point for customers, including name and email address;
- c) the procedures for the reporting of incidents, including the communication of these reports to internal or external bodies, including notification of mayor incidents to NCAs under Article 96 of PSD2 and in line with EBA Guidelines on incident reporting [Reference to future Guidelines to be inserted here after consultation]; and

- d) the monitoring tools used and the follow-up measures and procedures in place to mitigate security risks.

Guideline 8: Process in place to file, monitor, track and restrict access to sensitive payment data

- 8.1. The applicant should provide a description of the process in place to file, monitor, track, and restrict access to sensitive payment data consisting of:
- a) a list of the data classified as sensitive payment data in the context of the account information service provider's business model;
 - b) the procedures in place to authorise access to the sensitive payment data;
 - c) a description of the monitoring tool;
 - d) the access right policy, detailing access to all relevant infrastructure components and systems, including data bases and back-up infrastructures;
 - e) a description of how the collected data is registered;
 - f) the expected internal and/or external use of the collected data, including by counterparties;
 - g) the IT system and technical security measures that have been implanted, including encryption and/or tokenization;
 - h) identification of the individual(s), bodies and/or committees with access to the sensitive payment data;
 - i) an explanation of how breaches will be detected and addressed; and
 - j) an annual internal control program in relation to the safety of the IT systems.

Guideline 9: Business continuity arrangements

- 9.1. The applicant should provide a description of the business continuity arrangements consisting of the following information:
- a) a business impact analysis, including the business processes and recovery objectives, such as recovery time objectives, recovery point objectives, and protected assets;
 - b) the identification of the back-up site, access to IT infrastructure, and its key software and data to recover from a disaster or disruption;

- c) an explanation of how the applicant will deal with significant continuity events and disruptions, such as the failure of key systems; the loss of key data; inaccessibility of premises; and loss of key persons;
- d) the frequency with which the applicant intends to test the Business Continuity and Disaster Recovery Plans, including how the results of the testing will be recorded; and
- e) description of the mitigation measures to be adopted by the applicant, in case of termination of its payment services activities, to avoid adverse effects on payment systems and on the payments services users, ensuring execution of pending payment transactions and termination of existing contracts.

Guideline 10: Security policy document

10.1. The applicant should provide a security policy document containing the following information:

- a) a detailed risk assessment of the payment service(s) the applicant intends to provide, which should include risks of fraud and the security control and mitigation measures taken to adequately protect payment service users against the risks identified;
- b) a description of the IT systems, which should include:
 - i. the architecture of the systems and their network elements;
 - ii. the business IT systems supporting the business activities provided, such as the applicant's website, the risk and fraud management engine and customer accounting;
 - iii. the support IT systems used for the organisation and administration of the account information service provider, such as accounting, legal reporting systems, staff management, customer relationship management, e-mail servers, internal file servers; and
 - iv. information on whether those systems are already used by the account information service provider its group, and the estimated date of implementation, if applicable.
- c) an exhaustive list of authorised connections from outside with partners, service providers, entities of the group and employees of the applicant working remotely, including the rationale for such connection;
- d) For each of the connections listed under point c), the logical security measures and mechanisms in place, specifying the control the PI will have over these accesses as well as the nature and frequency of each control, such as technical versus organizational, preventive vs. detective; real-time monitoring vs regular reviews, such as the use of an

Active Directory separate from the group, the opening/closing of communication lines, security equipment configuration, generation of keys or client authentication certificates, system monitoring, authentication, confidentiality of communication, intrusion detection, antivirus and logs;

- e) the logical security measures and mechanisms that govern the internal access to IT systems, which should include:
 - i. the technical and organisational nature and frequency of each measure, such as whether it is preventive or detective or whether or not it is carried out in real time; and
 - ii. how the issue of client environment segregation is dealt with in cases where the applicant's IT resources are shared;
- f) the physical security measures and mechanisms of the premises and the data centre of the applicant, such as access controls and environmental security;
- g) the security of the payment processes, which should include:
 - i. the customer authentication procedure used for both, consultative and transactional accesses;
 - ii. an explanations on how the safe delivery to the legitimate payment services user and the integrity of authentication factors such as hardware tokens and mobile application is ensured, at the time of both, initial enrolment time and renewal; and
 - iii. a description of the systems and procedures that the applicant has in place for transaction analysis and identification of suspicious or unusual transactions.
- h) a detailed risk assessment in relation to its payment services, including fraud and with a link to the control and mitigations explained in the application file, demonstrating that the risks are addressed;
- i) a list of the main written procedures in relation to the applicant's IT systems or, for procedures that have not yet been formalized, an estimated date for their finalisation; and
- j) any other information relevant to the risks arising from the specific activities of the applicant.

Guideline 11: Identity and suitability assessment of Directors and persons responsible for the management of the account information service provider

11.1. For the purposes of the identity and suitability assessment of directors and persons responsible for the management of the account information service provider, the applicant should provide the following information:

- a) Personal details, which should include:
 - i. the full name, gender, place and date of birth, address and contact details, nationality, and personal identification number or copy of ID card or equivalent;
 - ii. details of the position for which the assessment is sought, whether or not the management body position is executive or non-executive. This should also include the following details:
 - the letter of appointment, contract, offer of employment or respective drafts, as applicable;
 - the planned start date and duration of the mandate; and
 - description of the individual's key duties and responsibilities.
- b) information on the suitability assessment carried out by the applicant, which should include:
 - i. details of the result of any assessment of the suitability of the individual performed by the institution, such as relevant board minutes or suitability assessment reports or other documents;
 - ii. evidence of knowledge, skills and experience, which should include:
 - a CV containing details of education and professional experience, including professional experience, academic qualifications, other relevant training,, the name and nature of all organisations for which the individual has worked and the nature and duration of the functions performed, in particular highlighting any activities within the scope of the position sought; and
 - a statement from the applicant in relation to the individual's requisite experience as enumerated, as appropriate, in the Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body [Reference to future Guidelines to be inserted here after consultation].
- c) evidence of reputation, honesty, integrity, which should include:

- i. criminal records and relevant information on criminal investigations and proceedings, relevant civil and administrative cases, and disciplinary actions, including disqualification as a company director, bankruptcy, insolvency and similar procedures, notably through an official certificate or any objectively reliable source of information concerning the absence of criminal conviction, investigations and proceedings, such as third party investigation, testimony made by a lawyer or a notary established in the European Union;
 - ii. statement as to whether criminal proceedings are pending or the person or any organisation managed by him or her has been involved as a debtor in insolvency proceedings or a comparable proceeding;
 - iii. Information concerning the following :
 - investigations, enforcement proceedings, or sanctions by a supervisory authority which the individual has been directly or indirectly involved in;
 - refusal of registration, authorisation, membership or licence to carry out a trade, business or profession; or the withdrawal, revocation or termination of registration, authorisation, membership or licence; or expulsion by a regulatory or government body or by a professional body or association;
 - dismissal from employment or a position of trust, fiduciary relationship, or similar situation, or having been asked to resign from employment in such a position, excluding redundancies;
 - whether an assessment of reputation of the individual as an acquirer or a person who directs the business of an institution has already been conducted by another competent authority, including the identity of that authority, the date of the assessment, and evidence of the outcome of this assessment, and the consent of the individual where required to seek such information to be able to process and use the provided information for the suitability assessment; and
 - whether any previous assessment of the individual an authority from another, non-financial, sector has already been conducted, including the identity of that authority and evidence of the outcome of this assessment.
- d) Information on financial and non-financial interests, which should include:
- i. A description of any financial and non-financial interests, such as loans and shareholdings, and relationships and his/her close relatives, such as a spouse, registered partner, cohabite, child, parent or other relation with whom the person shares living accommodations, between the individual and his/her close

relatives, or any company that the individual is closely connected with, and the institution, its parent or subsidiaries, or any person holding a qualifying holding in such an institution, including any members of those institutions or key function holders;

- ii. whether or not the individual conducts, or has conducted in the past two years, any business or has any commercial relationship with any of the above listed institutions or persons or is involved in any legal proceedings with those institutions or persons;
 - iii. whether or not the individual and his/her close relatives have any competing interests with the institution, its parent or subsidiaries;
 - iv. whether or not the individual is being proposed on behalf of any one substantial shareholder;
 - v. any financial obligations to the institution, its parent or its subsidiaries;
 - vi. any national or local position of political influence held over the past 2 years;
 - vii. if a material conflict of interest is identified, a statement as to how this conflict has been satisfactorily mitigated or remedied; and
- e) Information on any other professional activities carried out.

Guideline 12: Professional indemnity insurance or comparable guarantee

12.1. As evidence of a professional indemnity insurance or comparable guarantee that is compliant with the EBA Guidelines on Professional Indemnity Insurance [which at time of publishing this document is under separate consultation as EBA-CP-2016-12], the applicant should provide the following information:

- a) an insurance contract or other equivalent document confirming the existence of the professional indemnity insurance or comparable guarantee, with a cover amount that is compliant with EBA Guidelines CP/2016/12; and
- b) a record of how the applicant has calculated the minimum amount in a way that is compliant with EBA Guidelines CP/2016/12, including all applicable components of the formula specified therein.

4.3 Guidelines on information requirements for applicants for authorisation as electronic money institutions

Guideline 1: General Principles

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

Guideline 2: Identification Details

- 2.1 The identification details to be provided by the applicant should contain the following information:
 - a) the applicant's corporate name and, if different, trade name;

- b) an indication on whether the applicant is already incorporated or in process of incorporation;
- c) the applicant's national identification number, if applicable;
- d) the applicant's legal status and (draft) articles of association and/or constitutional document evidencing the applicant's legal status;
- e) the address of the applicant's head office and registered office;
- f) the applicant's electronic address and website, if available;
- g) the person(s) in charge of dealing with the application file and authorisation procedure, and their contact details;
- h) indication on whether the applicant has ever been, or is currently being regulated, by a competent authority in the financial services sector or by any other industry-specific regulatory body;
- i) any trade association(s) that the applicant plans to join, where applicable;
- j) the register certificate of incorporation or, if applicable, negative certificate of a mercantile Register that certifies that the name applied by the company is available; and
- k) evidence of the payment of any fees, or of the deposit of funds to file an application for authorisation as electronic money institution, where applicable under national law.

Guideline 3: Programme of operations

3.1 The programme of operations to be provided by the applicant should contain the following information:

- a) an indication of the e-money services the applicant intends to provide: issuance, redemption, distribution;
- b) if applicable, a description of the type of payment services envisaged, including an explanation on how the activities and the operations that will be provided are identified by the applicant as fitting into any of the legal categories of payment services listed in Annex I of PSD2 and an indication on whether these payment services would be provided in addition to electronic money services or whether they are linked to the issuance of electronic money;
- c) a description of the procedures and mechanisms taken in place for the issuance, redemption and distribution of e-money;
- d) a declaration on whether the applicant will enter or not into possession of funds;

- e) if applicable, a description of the execution of the different e-money services, and if applicable, payment services, detailing all parties involved, and including for each e-money service, and if applicable, payment service provided:
 - i. a diagram of flow of funds;
 - ii. settlement arrangements;
 - iii. draft contracts between all the parties involved, if applicable;
 - iv. a description of the different ways through which these services are provided;
 - v. flows of data; and
 - vi. processing times.
- f) a copy of the draft contract between the electronic money issuer and the electronic money holder and the draft framework contract, as defined in Article 4(21) of PSD2 if the applicant pretends to provide payment services in addition to e-money services;
- g) number of different premises from which the applicant intends to provide the services, if applicable;
- h) a description of any ancillary services to e-money services and, if applicable, to payment services;
- i) when the applicant intends to provide payment services in addition to e-money services, a declaration on whether or not the applicant intends to grant credit and, if so, within which limits;
- j) a declaration on whether the applicant plans to provide e-money services and, if applicable, payment services in other EU member state or third country after the granting of the licence; and
- k) an indication of whether the applicant intends to provide/already provides business activities other than e-money services and, if applicable, payment services, as referred to in article 11 (5) of Directive 2015/2366, including a description of the type and nature of the activities, expected volume and business premises.

Guideline 4: Business Plan

4.1. The business plan to be provided by the applicant should contain:

- a) a marketing plan consisting of:
 - i. an analysis of the payments market;

- ii. an analysis of the company's competitive position;
 - iii. a description of clients, marketing materials and distribution channels; and
 - iv. the main conclusions of any marketing research carried out.
- b) certified annual accounts of the previous three years, if available, or a summary of the financial situation for those companies that have not yet produced annual accounts;
- c) a forecast budget calculation for the first three financial years that demonstrates that the applicant is able to employ appropriate and proportionate systems, resources and procedures that allow the applicant to operate soundly. It should include:
 - i. an income statement and balance sheet forecast, including target scenarios and stress scenarios as well as their base assumptions, such as volume and value of transactions, number of clients, pricing, average amount per transaction, expected increase profitability threshold;
 - ii. explanations on the main lines of income and expenses, the financial debts and the capital assets, and
 - iii. a diagram and detailed breakdown of the estimated financial flows for the next three years.
- d) information on own funds, including the amount and detailed breakdown by paid-up capital, reserves and retained earnings; and
- e) information on, and calculation of, minimum own funds requirements in accordance with method D as referred to in article 5.3 of Directive (EU) 2009/110 (EMD2) in the case the electronic money institution intends to provide e-money services only or, the method(s) referred to in Article 9 of Directive (EU) 2015/2366 (PSD2) as determined by the CA, when the applicant intends to provide payment services in addition to e-money services including:
 - i. a projection of the breakdown of the own funds for three years according to the method used, monthly for the first year, and annually for the subsequent two years; and
 - ii. if applicable, projection of the own funds for three years according to the other methods, monthly for the first year, and annually for the subsequent two years.

Guideline 5: Structural organisation

- 5.1. The applicant should provide a description of the structural organisation of its undertaking consisting of:

- a) a detailed organisational chart, showing each division, department or similar structural separation, including the name of the person(s) responsible, in particular those in charge of internal control functions. The chart should be accompanied by description of the functions and responsibilities of each division, department or similar structural separation.
- b) a forecast of the staff numbers for the next three years;
- c) a description of outsourcing arrangements consisting of:
 - i. the identity and geographical location of the outsourcing provider;
 - ii. the identity of the persons within the within the electronic money institution that are responsible for each of the outsourced activities; and
 - iii. a clear description of the outsourced activities and its main characteristics;
- d) a copy of draft outsourcing agreements;
- e) a description of the use of branches, agents and distributors, where applicable, including,
 - i. a mapping of the off-site and on-site checks that the applicant to be performed of branches, agents and distributors;
 - ii. the IT systems, processes and infrastructure which are used by the applicant's agents and distributors to perform activities on behalf of the applicant; and
 - iii. in the case of agents and distributors the main characteristics and key points of the mandate agreement containing the full terms of the mandate, selection policy, monitoring procedures and agents' and distributor's training.
- f) an indication of the national and/or international payment system which the applicant will access, if applicable; and
- g) a list of all natural or legal persons that have close links with the applicant, indicating their identity and the nature of those link.

Guideline 6: Evidence of initial capital

- 6.1. For the evidence of initial capital to be provided by the applicant (of EUR 350.000) the applicant should submit the following documents:
- a) for existing undertakings, an audited account statement or public register certifying the amount of capital of the applicant; and

- b) for undertakings in the process of being incorporated, a bank statement issued by a bank certifying that the funds are deposited on the applicant's bank account.

Guideline 7: Measures to safeguard the funds of payment service users

- 7.1. Where the applicant safeguards the PSUs funds through depositing funds in a separate account in a credit institution or through an investment in secure, liquid low risk assets, the description of the safeguarding measures should contain:
- a) a description of the investment policy to ensure the assets chosen are liquid secure and low risk, if applicable;
 - b) contact details of the person that has access to this safeguarding account;
 - c) a description of the administration and reconciliation process for electronic money users and, if applicable, payment service users, against the claims of other creditors of the electronic money institution, in particular in the event of insolvency; and
 - d) a copy of the draft contract with credit institution, including explicit declaration of compliance with Article 10 of PSD2.
- 7.2. Where the applicant safeguards the funds of the electronic money users, and if applicable, of the payment services users through an insurance policy or comparable guarantee from an insurance company or a credit institution, and unless the applicant intends to provide payment initiation services only, the description of the safeguarding measures should contain the following:
- a) a confirmation that the insurance policy or comparable guarantee from an insurance company or a credit institution is from an entity that is not part of the same group of firms as the applicant;
 - b) details of the reconciliation process in place to ensure that the insurance policy or comparable guarantee is sufficient to meet the applicant's safeguarding obligations at all times;
 - c) duration and renewal of the coverage; and
 - d) Copy of (draft) insurance agreement or (draft) comparable guarantee.

Guideline 8: Governance arrangements and internal control mechanisms

- 8.1. The applicant should provide a description of the governance arrangement and internal control mechanisms consisting of:
- a) a mapping of the risks identified by the applicant, including the type of risks and the procedures the applicant will put in place to assess and prevent such risks, in relation to e-money services and, if applicable, payment services;

- b) the different levels of periodical and permanent controls, including the frequency with which they are applied, the administrative procedures used and the human resources allocated; the accounting procedures by the which the applicant will record and report its financial information;
- c) a confirmation of the regulatory reporting requirements that apply to the applicant;
- d) the identity of the person(s) responsible for the internal control functions, including for the periodic, permanent and compliance control, as well as an up-to-date Curriculum Vitae and criminal record where this person is responsible for the management of the e money services and payment services activities of the electronic money institution, if applicable;
- e) the identity of any auditor that is not an statutory auditor pursuant Directive 2006/43/EC;
- f) the identity and composition of the management body and, if applicable, any other oversight body or committee;
- g) a description of the way outsourced functions are monitored and controlled so as to avoid an impairment in the quality of the electronic money institution 's internal controls;
- h) a description of the way any agents, branches and distributors are monitored and controlled within the framework of the applicant's internal controls;
- i) the periodical control program, setting out the measures to be taken over the next three years to ensure a robust governance of the electronic money institution; and
- j) where the applicant is the subsidiary of a regulated entity in another EU Member State, a description of the group procedures and the identity of the supervisory authority responsible for the consolidated supervision.

Guideline 9: Procedure to monitor, handle and follow up on security incidents and security-related customer complaints

- 9.1. The applicant should provide a description of the procedure in place to monitor, handle and follow up on security incidents and security-related customer complaints to be provided by the applicant, which should contain:
- a) the individual(s) and bodies responsible for assisting customers in case of fraud, technical issues, and/or claim management;
 - b) the contact point for customers, including name and email address;
 - c) the procedures for the reporting of incidents, including the communication of these reports to internal or external bodies, including in the case of applicants that intend to

provide payment services in addition to e-money services, notification of mayor incidents to NCAs under Article 96 of PSD2 and in line with the EBA Guidelines on incident reporting [Reference to future Guidelines to be inserted here after consultation]; and

- d) the monitoring tools used and the follow-up measures and procedures in place to mitigate security risks.

Guideline 10: Process to file, monitor, track and restrict access to sensitive payment data

10.1. The applicant should provide a description of the process in place to file, monitor, track, and restrict access to sensitive payment data consisting of:

- a) a list of the data classified as sensitive payment data in the context of the electronic money institution's business model;
- b) the procedures in place to authorise access to the sensitive payment data;
- c) a description of the monitoring tool;
- d) the access right policy, detailing access to all relevant infrastructure components and systems, including data bases and back-up infrastructures;
- e) a description of how the collected data is registered;
- f) the expected internal and/or external use of the collected data, including by counterparties;
- g) the IT system and technical security measures that have been implanted, including encryption and/or tokenization;
- h) identification of the individual(s), bodies and/or committees with access to the sensitive payment data;
- i) an explanation of how breaches will be detected and addressed; and
- j) an annual internal control program in relation to the safety of the IT systems.

Guideline 11: Business continuity arrangements

11.1. The applicant should provide a description of the business continuity arrangements consisting of the following information:

- a) a business impact analysis, including the business processes and recovery objectives, such as recovery time objectives, recovery point objectives, and protected assets;

- b) the identification of the back-up site, access to IT infrastructure, and its key software and data to recover from a disaster or disruption;
- c) an explanation of how the applicant will deal with significant continuity events and disruptions, such as the failure of key systems; the loss of key data; inaccessibility of premises; and loss of key persons;
- d) the frequency with which the applicant intends to test the Business Continuity and Disaster Recovery Plans, including how the results of the testing will be recorded; and
- e) a description of the mitigation measures to be adopted by the applicant, in case of termination of its payment services, to avoid adverse effects on payment systems and on the payments services users, ensuring execution of pending payment transactions and termination of existing contracts.

Guideline 12: The principles and definitions applicable to the collection of statistical data on performance, transactions and fraud.

- 12.1. The applicant should provide a description of the principles and definitions applicable to the collection of the statistical data on performance, transaction and fraud consisting of the following information:
- a) the type of data that is collected, in relation to customers, type of payment service, channel, instrument, jurisdictions and currencies;
 - b) scope of the collection, in terms of activities and entities concerned, including branches, agents and distributors;
 - c) the means of collection;
 - d) the purpose of collection;
 - e) the frequency of collection;
 - f) supporting documents such as a manual, that describe how the system works;
 - g) service level agreements with outsourcing partner(s) if the outsourcing partner is in charge of the collection of the statistical data;
 - h) organisational measures and tools for the prevention of fraud; and
 - i) the reporting lines in case of fraud.

Guideline 13: Security policy document

- 13.1. The applicant should provide a security policy document in relation to its e-money service(s) and, where applicable, payment service(s) containing the following information:

- a) a detailed risk assessment of the e-money service(s) and, where applicable, of the payment service(s) the applicant intends to provide, which should include risks of fraud and the security control and mitigation measures taken to adequately protect e-money service users, and where applicable payment service users against the risks identified;
 - b) a description of the IT systems, which should include
 - i. the architecture of the systems and their network elements;
 - ii. the business IT systems supporting the business activities provided, such as the applicant's website, wallets, the payment engine, the risk and fraud management engine and customer accounting;
 - iii. the support IT systems used for the organisation and administration of the electronic money institution, such as accounting, legal reporting systems, staff management, customer relationship management, e-mail servers, internal file servers; and
 - iv. information on whether those systems are already used by the electronic money institution or its group, and the estimated date of implementation, if applicable.
 - c) an exhaustive list of authorised connections from outside with partners, service providers, entities of the group and staff of the electronic money institution working remotely, including the rationale for such connection;
 - d) for each of the connections listed under point c), the logical security measures and mechanisms in place, specifying the control the electronic money institution will have over these accesses as well as the nature and frequency of each control, such as technical versus organizational, preventive vs detective; real-time monitoring vs regular reviews, such as the use of an Active Directory separate from the group, the opening/closing of communication lines, security equipment configuration, generation of keys or client authentication certificates, system monitoring, authentication, confidentiality of communication, intrusion detection, antivirus and logs.
 - e) the logical security measures and mechanisms that govern the internal access to IT systems, which should include:
 - i. the technical and organisational nature and frequency of each measure, such as whether it is preventive or detective or whether or not it is carried out in real time; and
 - ii. how the issue of client environment segregation is dealt with in cases where the applicant's IT resources are shared.
 - f) the physical security measures and mechanisms of the premises and the data centre of the applicant, such as access controls and environmental security;
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- g) the security of the e-money, and where applicable payment processes, which should include:
 - i. the customer authentication procedure used for both, consultative and transactional accesses, and for all underlying payment instruments;
 - ii. an explanations on how the safe delivery to the legitimate e-money services user and, where applicable payment services user and the integrity of authentication factors such as hardware tokens and mobile application is ensured, at the time of both, initial enrolment time and renewal; and
 - iii. a description of the systems and procedures that the electronic money institution has in place for transaction analysis and identification of suspicious or unusual transactions.
- h) a detailed risk assessment in relation to its e-money services and, where applicable, to its payment services, including fraud and with a link to the control and mitigations explained in the application file, demonstrating that the risks are addressed;
- i) a list of the main written procedures in relation to the applicant's IT systems or, for procedures that have not yet been formalized, an estimated date for their finalisation; and
- j) any other information relevant to the risks arising from the specific activities of the applicant.

Guideline 14: Internal control mechanisms to comply with obligations in relation to money laundering and terrorist financing (AML/CFT obligations)

- 14.1 The description of the internal control mechanisms that the applicant has established in order to comply, where applicable, with those obligations should contain the following information:
- a) the applicant's assessment of the anti-money laundering and counter terrorist financing risks associated with its business, including the risks associated with the applicant's customer base, the products and services provided, the distribution channels used and the geographic areas of operation;
 - b) the measures the applicant has or will put in place to mitigate the risks and comply with applicable anti money laundering and counter terrorist financing obligations, including the applicant's risk assessment process, the policies and procedures to comply with customer due diligence requirements and the policies and procedures to detect and report suspicious transactions or activities;
 - c) the systems and controls the applicant has or will put in place to ensure that their branches agents and distributors comply with applicable anti money laundering and
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terrorist financing requirements, including, in cases where the agent, distributor or branch is located in another Member State, the anti-money laundering and counter terrorist financing requirements of that Member State;

- d) arrangements the applicant has or will put in place to ensure that staff, agents and distributors are appropriately trained in anti-money laundering and counter terrorist financing matters;
- e) the identity of the person in charge of ensuring the applicant's compliance with anti-money laundering and counter-terrorism obligations, and evidence that their anti-money laundering and counter-terrorism expertise is sufficient to enable them to fulfil this role effectively;
- f) the systems and controls the applicant has or will put in place to ensure their anti-money laundering and counter terrorist financing policies and procedures remain up to date, effective and relevant;
- g) the systems and controls the applicant has or will put in place to ensure that the agents and distributors do not expose the applicant to increased money laundering and terrorist financing risk; and
- h) the anti-money laundering and counter terrorism manual for the staff of the applicant.

Guideline 15: Identity and suitability assessment of persons with qualified holdings in the applicant

15.1 For the purposes of the identity and suitability assessment of persons with qualified holdings in the applicant, the applicant should submit the following information:

- a) a description of the group to which the applicant belongs and indication of the parent undertaking, where applicable;
- b) a chart setting out the shareholder structure of the applicant, including the breakdown of the capital and voting rights; and
- c) a list of the names of all persons and other entities that have or will, in case of authorisation, have qualifying holdings in the applicant's capital, indicating in respect of each such person or entity:
 - i. the number and type of shares or other holdings subscribed or to be subscribed;
 - ii. the nominal value of such shares or other holdings;
 - iii. any premium paid or to be paid;

- iv. any security interests or encumbrances created over such shares or other holdings, including the identity of the secured parties; and
- v. where applicable, any commitments made by such persons or entities aimed at ensuring that the applicant will comply with applicable prudential requirements.

15.2 Where a person who has or, in case of authorisation, will have a qualifying holding in the applicant's capital is a natural person, the application should set out all of the following information relating to the identity and suitability of that person:

- a) personal details including the person's name and name at birth, date and place of birth, citizenship, personal national identification number (where available), address, contact details and a copy of an official identity document;
- b) a detailed curriculum vitae, stating the education and training, previous professional experience and any professional activities or other functions currently performed;
- c) a statement, accompanied by supporting documents, containing the following information concerning the person and any undertaking which the person directs or controls and of which the applicant is aware after due and careful enquiry:
 - i. subject to national legislative requirements concerning the disclosure of spent convictions, any criminal conviction or proceedings where the person or undertaking has been found against and which were not set aside;
 - ii. any civil or administrative decisions in matters of relevance to the assessment or authorisation process where the person or undertaking has been found against and any administrative sanctions or measures imposed as a consequence of a breach of laws or regulations (including disqualification as a company director), in each case which were not set aside and against which no appeal is pending or may be filed;
 - iii. any bankruptcy, insolvency or similar procedures;
 - iv. any pending criminal investigations;
 - v. any civil or administrative investigations, enforcement proceedings, sanctions or other enforcement decisions against the person or undertaking concerning matters which may reasonably be considered to be relevant to the authorisation to commence the activity of an electronic money institution or to the sound and prudent management of an electronic money institution;
 - vi. where such documents can be obtained, an official certificate or any other equivalent document evidencing whether any of the events set out in sub-

- paragraphs (i)-(v) has occurred in respect of the relevant person or undertaking;
- vii. any refusal of registration, authorisation, membership or licence to carry out trade, business or a profession;
 - viii. any withdrawal, revocation or termination of a registration, authorisation, membership or licence to carry out trade, business or a profession;
 - ix. any expulsion by an authority or public sector entity in the financial services sector or by a professional body or association;
 - x. any position of responsibility with an entity subject to any criminal conviction or proceedings, administrative investigations, sanctions or other enforcement decisions for conduct failings, including in respect of fraud, dishonesty, corruption, money laundering, terrorist financing or other financial crime or of failure to put in place adequate policies and procedures to prevent such events, held at the time when the alleged conduct occurred, together with details of such occurrences and of the person's involvement, if any, in them; and
 - xi. any dismissal from employment or a position of trust, any removal from a fiduciary relationship (save as a result of the relevant relationship coming to an end by passage of time) and any similar situation.
- d) where an assessment of reputation of the person has already been conducted by a competent authority in the financial services sector, the identity of that authority and the outcome of the assessment;
 - e) the current financial position of the person, including details concerning sources of revenues, assets and liabilities, security interests and guarantees, whether granted or received;
 - f) a description of the business activities of the person;
 - g) financial information, including credit ratings and publicly available reports on any undertakings directed or owned by the person;
 - h) description of any current interests or activities of the natural person that may be in conflict with those of the electronic money institution and proposed methods for managing those conflicts of interest;

- i) a description of any links to politically exposed persons, as defined in Article 3(9) of Directive (EU) 2015/849⁴; and
- j) any other interests or activities of the person that may be in conflict with those of the applicant and proposed methods for managing those conflicts of interest.

15.3 Where a person or entity who has or, in case of authorisation, will have a qualifying holding in the applicant's capital is a legal person or is an entity which is not a legal person and which holds or should hold the participation in its own name, the application should contain the following information relating to the identity and suitability of that legal person or entity:

- a) name of the legal person or entity;
- b) where the legal person or entity is registered in a central register, commercial register, companies register or similar public register, the register in which the legal person or entity is entered, the registration number or an equivalent means of identification in that register and a copy of the registration certificate;
- c) the addresses of its registered office and, where different, of its head office, and principal place of business;
- d) contact details;
- e) corporate documents or agreements governing the entity and a summary explanation of the main legal features of the legal form or of the entity;
- f) whether the legal person or entity has ever been or is regulated by a competent authority in the financial services sector or other government body;
- g) the information referred to in Guideline 15(2)(c), 15(2)(d), 15(2)(e), 15(2)(f), 15(2)(g) and 15(2)(i) in relation to the legal person or entity;
- h) description of any interests or activities of the legal person that may be in conflict with those of the electronic money institution and proposed methods for managing those conflicts of interest; and
- i) a list of each person who effectively directs the business of the legal person or entity, their name, date and place of birth, address, contact details, their national identification number, where available, and detailed curriculum vitae (stating relevant education and training, previous professional experience, any professional activities or other relevant functions currently performed), together with the information referred to in Guideline 15(2)(c) and 15(2)(d) in respect of each such person;

⁴ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (OJ L 141 of 5.6.2015, p. 73).

- j) the shareholding structure of the legal person, including at least:
 - i. the name, date and place of birth, address and, where available, personal identification number or registration number and the respective share of capital and voting rights of all of its direct or indirect shareholders or members and beneficial owners, as defined in Article 3(6) of Directive (EU) 2015/849;
 - ii. information on any shareholders agreements; and
 - iii. the information referred to in Guideline 15(2)(c) in relation to the shareholders exercising or who may exercise significant influence.
- k) in the case of an entity which is not a legal person and which holds or should hold the participation in its own name, the identity of all members of the entity, together with the information set out in Guideline 15(2) if such members are natural persons, or, as the case may be, in Guideline 15(3) if such members are legal persons;
- l) if the legal person or entity is part of a group (which, for the purpose of this paragraph, should, in the case of such entities, include the members of the entity and the subsidiaries of such members), a detailed organisational chart of the structure of the group and information on the share of capital and voting rights of shareholders with significant influence over the entities of the group and on the activities currently performed by the entities of the group;
- m) if the legal person or entity is part of a group, information on the relationships between any credit institution, insurance or re-insurance undertaking or investment firm within the group and any other group entities;
- n) if the legal person or entity is part of a group, identification of any credit institution, insurance or re-insurance undertaking or investment firm within the group, the names of the relevant competent authorities, as well as an analysis of the perimeter of consolidated supervision of the credit institution and the group, including information about which group entities would be included in the scope of consolidated supervision requirements and at which levels within the group these requirements would apply on a full or sub-consolidated basis;
- o) annual financial statements, at the individual and, where applicable, at the consolidated and sub-consolidated group levels, for the last three financial years, where the legal person or entity has been in operation for that period of time (or such shorter period of time for which the legal person or the entity has been in operation and financial statements were prepared), approved by the statutory auditor or audit firm

within the meaning of Directive 2006/43/EC⁵, where applicable, including each of the following items:

- i. the balance sheet;
 - ii. the profit and loss accounts or income statement;
 - iii. the annual reports and financial annexes and any other documents registered with the relevant registry or competent authority of the legal person.
- p) Where the legal person has not been operating for a sufficient period of time to be required to prepare financial statements for the three financial years immediately prior to the date of the application, the application shall set out the existing financial statements (if any), as well as statements which include the forecast balance sheets and forecast profit and loss accounts or income statements of the relevant person, including planning assumptions used, at least under base case and stress scenarios, for such number of financial years as would ensure that such statements, together with the financial statements provided (if any), cover three consecutive financial years;
- q) where the legal person or entity has its head office in a third country, the application shall set out all of the following information:
- i. where the legal person or entity is supervised by an authority of a third country in the financial services sector, a certificate of good-standing, or equivalent where not available, from such foreign authority in relation to the legal person or entity;
 - ii. where the legal person or entity is supervised by an authority of a third country in the financial services sector and if the authority does issue such declarations, a declaration by that authority that there are no obstacles or limitations to the provision of information necessary for the supervision of the electronic money institution; and
 - iii. general information on the regulatory regime of that third country as applicable to the legal person or entity, including information on the extent to which the third country's anti-money laundering and counter-terrorist financing regime is consistent with the Financial Action Task Force's Recommendations.
- r) where the legal person is a collective investment undertaking, the application shall set out the following information:

⁵ Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (OJ L 157, 9.6.2006, p. 87–107).

- i. the identity of the unit holders controlling the collective investment undertaking or having a holding enabling them to prevent the taking of decisions by the collective investment undertaking;
 - ii. details of the investment policy and any restrictions on investment;
 - iii. the name and position of the persons responsible, whether individually or as a committee, for defining and making the investment decisions for the collective investment undertaking, as well as a copy of any management mandate or, where applicable, terms of reference of the committee;
 - iv. in the case of undertakings which are not domiciled in a Member State, a detailed description of the applicable anti-money laundering legal framework and of the anti-money laundering procedures of the collective investment undertaking; and
 - v. a detailed description of the performance of former holdings of the collective investment undertaking in other credit institutions, insurance or re-insurance undertakings or investment firms, indicating whether such holdings were approved by a competent authority and, if so, the identity of the authority.
- s) where the person is a sovereign wealth fund, the name of the public body in charge of defining the investment policy of the fund, as well as details of any influence exerted by that public body on the day-to-day operations of the fund and the applicant; and
- t) where a trust already exists or would result from the subscription to the applicant's share capital, the application should also set out the following information:
- i. the identity of all trustees who will manage assets under the terms of the trust document and of each person who is a beneficiary or a settlor of the trust property and, where applicable, their respective shares in the distribution of income generated by the trust property;
 - ii. a copy of any document establishing or governing the trust; and
 - iii. a description of the main legal features of the relevant trust and its functioning.

15.4 The application shall set out all of the following information of each natural or legal person or entity who has or, in case of authorisation, will have a qualifying holding in the capital of the applicant should contain the following:

- a) details of that person's or entity's financial or business reasons for owning that holding and the person's or the entity's strategy regarding the holding, including the period for

which the person or the entity intends to hold the holding and any intention to increase, reduce or maintain the level of the holding in the foreseeable future;

- b) details of the person's or the entity's intentions in respect of the applicant and of the influence the person or the entity intends to exercise over the applicant, including in respect of the dividend policy, the strategic development and the allocation of resources of the applicant, whether or not it intends to act as an active minority shareholder and the rationale for such intention;
- c) information on the person's or the entity's willingness to support the applicant with additional own funds if needed for the development of its activities or in case of financial difficulties;
- d) the content of any intended shareholder's or member's agreements with other shareholders or members in relation to the applicant;
- e) an analysis as to whether the qualifying holding will impact in any way, including as a result of the person's close links to the applicant, on the ability of the applicant to provide timely and accurate information to the competent authorities; and
- f) the identity of each member of the management body or of senior management who will direct the business of the applicant and will have been appointed by, or following a nomination from, such shareholders or members, together with, to the extent not already provided, the information set out in Guideline 16 below.

15.5 The application should set out a detailed explanation on the specific sources of funding for the participation of each person or entity having a qualifying holding in the applicant's capital, which should include:

- a) details on the use of private financial resources, including their availability and (so as to ensure that the competent authority is satisfied that the activity that generated the funds is legitimate) source;
- b) details on the means of payment of the intended participation, of the payment service provider used to transfer funds and, where the head office of the payment service provider is not established in a Member State, evidence that the funds used for the participation are channelled through payment service providers that are subject to anti-money laundering and terrorist financing legislative requirements consistent with those set out in Directive (EU) 2015/849, and are supervised effectively for compliance with these requirements;
- c) details on access to financial markets, including details of financial instruments to be issued;

- d) information on the use of borrowed funds, including the name of the lenders and details of the facilities granted, such as maturities, terms, security interests and guarantees, as well as information on the source of revenue to be used to repay such borrowings. Where the lender is not a credit institution or a financial institution authorised to grant credit, the applicant should provide to the competent authorities information on the origin of the borrowed funds;
- e) information on any financial arrangement with other persons who are shareholders or members of the applicant; and
- f) information on any assets of the person who is a shareholder or member of the applicant which are to be sold in order to help finance the proposed participation, such as conditions of sale, price, appraisal, and details regarding their characteristics, including information on when and how the assets were acquired.

15.6 Where a person who has, or will, in case of authorisation, have a qualifying holding in the applicant's capital is a member of an entity which is not a legal person and the participation will be treated as an asset of that entity, the application should set out the following information:

- a) the identity of all members of the entity, together with the information set out in Guidelines (15)(2) if such members are natural persons, or, as the case may be, in Guideline (15) (3) if such members are legal persons; and
- b) details of the terms of the agreements governing the entity.

Guideline 16: Identity and suitability assessment of directors and persons responsible for the management of the electronic money institution

16.1 For the purposes of the identity and suitability assessment of directors and persons responsible for the management of the electronic money institution, the applicant should provide the following information:

- a) Personal details including:
 - i. the full name, gender, place and date of birth, address and contact details, nationality, and personal identification number or copy of ID card or equivalent.
 - ii. details of the position for which the assessment is sought, whether or not the management body position is executive or non-executive. This should also include the following details:
 - the letter of appointment, contract, offer of employment or respective drafts, as applicable;
 - the planned start date and duration of the mandate; and

- description of the individual's key duties and responsibilities.
- b) a Information on suitability assessment carried out by the applicant which should include details of the result of any assessment of the suitability of the individual performed by the institution, such as relevant board minutes or suitability assessment reports or other documents;
- c) evidence of knowledge, skills and experience, which should include:
- i. a CV containing details of education and professional experience, including professional experience, academic qualifications, other relevant training, the name and nature of all organisations for which the individual has worked and the nature and duration of the functions performed, in particular highlighting any activities within the scope of the position sought; and
 - ii. a statement from the applicant in relation to the individual's requisite experience as enumerated, as appropriate, in the Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body [Reference to future Guidelines to be inserted here after consultation].
- d) evidence of reputation, honesty, integrity, which should include:
- i. criminal records and relevant information on criminal investigations and proceedings, relevant civil and administrative cases, and disciplinary actions, including disqualification as a company director, bankruptcy, insolvency and similar procedures, notably through an official certificate or any objectively reliable source of information concerning the absence of criminal conviction, investigations and proceedings, such as third party investigation, testimony made by a lawyer or a notary established in the European Union;
 - ii. statement as to whether criminal proceedings are pending or the person or any organisation managed by him or her has been involved as a debtor in insolvency proceedings or a comparable proceeding;
 - iii. Information concerning the following :
 - investigations, enforcement proceedings, or sanctions by a supervisory authority which the individual has been directly or indirectly involved in;
 - refusal of registration, authorisation, membership or licence to carry out a trade, business or profession; or the withdrawal, revocation or termination of registration, authorisation, membership or licence; or expulsion by a regulatory or government body or by a professional body or association;

- dismissal from employment or a position of trust, fiduciary relationship, or similar situation, or having been asked to resign from employment in such a position, excluding redundancies;
- whether an assessment of reputation of the individual as an acquirer or a person who directs the business of an institution has already been conducted by another competent authority, including the identity of that authority, the date of the assessment, and evidence of the outcome of this assessment, and the consent of the individual where required to seek such information to be able to process and use the provided information for the suitability assessment; and
- whether any previous assessment of the individual an authority from another, non-financial, sector has already been conducted, including the identity of that authority and evidence of the outcome of this assessment.

e) Information on financial and non-financial interests, which should include:

- i. a description of any financial and non-financial interests, such as loans and shareholdings, and relationships and his/her close relatives, such as a spouse, registered partner, cohabite, child, parent or other relation with whom the person shares living accommodations, between the individual and his/her close relatives, or any company that the individual is closely connected with, and the institution, its parent or subsidiaries, or any person holding a qualifying holding in such an institution, including any members of those institutions or key function holders;
- ii. whether or not the individual conducts, or has conducted in the past two years, any business or has any commercial relationship with any of the above listed institutions or persons or is involved in any legal proceedings with those institutions or persons;
- iii. whether or not the individual and his/her close relatives have any competing interests with the institution , its parent or subsidiaries;
- iv. whether or not the individual is being proposed on behalf of any one substantial shareholder;
- v. any financial obligations to the institution, its parent or its subsidiaries
- vi. any national or local position of political influence held over the past 2 years, and
- vii. if a material conflict of interest is identified, a statement as to how this conflict has been satisfactorily mitigated or remedied including a reference to the

relevant parts of the institution's conflicts of interest policy or any bespoke conflict management or mitigation arrangements.

- f) information on any other professional activities carried out.

Guideline 17: Identity of statutory auditors and audit firms

17.1 The identity of statutory auditors and audit firms as defined in Directive 2006/43/EC to be provided by the applicant, where relevant, should contain the following information:

- a) name, address and contact details of auditors; and
- b) date of the appointment.

Guideline 18: Professional indemnity insurance or comparable guarantee for payment initiation services and account information services

18.1 As evidence of a professional indemnity insurance or comparable guarantee that is compliant with EBA Guidelines [which at time of publishing this document is under separate consultation as EBA-CP-2016-12], the applicant for authorisation as electronic money institutions that, in addition to e-money services, intends to provide payment initiation services or account information services, should provide the following information:

- a) an insurance contract or other equivalent document confirming the existence of the professional indemnity insurance or comparable guarantee, with a cover amount that is compliant with EBA Guidelines CP/2016/12;
- b) a record of how the applicant has calculated the minimum amount in a way that is compliant with EBA Guidelines CP/2016/12, including all applicable components of the formula specified therein.

4.4 Guidelines regarding the assessment of completeness of the application

Guideline 1: Assessment of completeness of the application

- 1.1. An application should be deemed to be complete if it contains all the information needed by the competent authorities in order to assess the application in accordance with these Guidelines and with Article 5 of Directive (EU) 2015/2366.
- 1.2. Where the information provided in the application is assessed to be incomplete, the competent authority should send, in paper format or by electronic means, a request to the applicant, indicating the missing information, and should provide to the applicant the opportunity to submit the missing information.
- 1.3. Upon an application being assessed as complete, the competent authority should inform the applicant of that fact, together with the date of receipt of the complete application or, as the case may be, the date of receipt of the information that completed the application.
- 1.4. In any case, the competent authority may require the applicant to provide clarification on the information for the purposes of assessing the application.
- 1.5. Where an application contains information, or relies on information held by the competent authorities, which is no longer true, accurate or complete, an update to the application should be provided to the competent authorities without delay. The update should identify the information concerned, its location within the original application, the reason for the information no longer being true, accurate or complete, the updated information and confirmation that the rest of the information in the application remains true, accurate and complete.

Accompanying documents

Draft cost-benefit analysis / impact assessment

Article 5(5) of the Directive (EU) 2015/2366 (PSD2) mandates EBA to develop guidelines on the information to be provided to national competent authorities (CAs) in the application for the authorisation of payment institutions (PIs). Article 33 of the PSD2 and the *Mutatis Mutandi* clause for Electronic Money Institutions (EMI) expand the mandate to Account Information Services Provider (AISP) and EMI.

Article 16(2) of the EBA Regulation provides that the EBA should carry out an analysis of ‘the potential related costs and benefits’ of any guidelines it develops. This analysis should provide an overview of the findings regarding the problem to be dealt with, the solutions proposed and the potential impact of these options.

This annex contains the impact assessment on PIs, AISP, EMI and CAs arising from adopting the GLs on authorisation for PIs under article 5(5) of PSD2 (services 1-8 of Annex I of PSD2), for AISP and for EMI.

A. Problem identification and baseline scenario⁶

The market for payment services in the EU is developing very dynamically with the number of users and providers of innovative payment services rising continuously, increasing the need for an adequate regulatory and governance framework. The PSD2 provides the legal foundation for the creation of an EU-wide single market for payments. Article 5 of the Directive specifies the application for authorisation of PIs. It creates a legal basis for the entry in the payment service market and thereby ensures that the objectives set by the directive are pursued from the start of the market creation. Receiving feedback on the authorisation process under the previous payment service regulation framework (PSD I) from relevant payment providers and CAs, the EBA identified several problems in the authorisation application process, such as incompleteness of information, low quality of information received, long delays in providing requested information, and the incorrect identification of the payment service intended to be provided by the applicant.⁷ The problems in quality of provided information and information submission process lead to inefficiencies, misunderstandings, delays, lack of transparency and regulatory arbitrage.

To address these issues, the GLs on authorisation of PIs provide a common list of information to be submitted by the applicant when applying for authorisation. It provides three sets of GLs

⁶ See also EBA: Consumer trends report (2016).

⁷ EBA questionnaire to NCAs in preparation of the EBA Guidelines on Authorisation of Payment Institutions under Article 5(5) PSD 2, 2016.

separately for PIs (offering services as defined under 1-8 of Annex I PSD 2), AISP and EMIs, as well as a fourth regarding the assessment of completeness of the application.

The baseline scenario, the status quo, is the authorisation approach under the PSD2. The PIs submit authorisation information based on the requirements set by each Member State and on the requirements outlined in Article 5 of the PSD2. Without the use of GLs on the authorisation, CAs might decide to apply different standards on the entry requirements for application, allowing different administrative obligations on applicants in different member states and thereby hamper the establishment of a level-playing field. Further, GLs can increase the efficiency in the authorisation process, thereby encouraging new entrants and support the creation of a competitive market for payment services.

B. Policy objectives⁸

This CP introduces three distinct sets of draft GLs to PIs under article 5(5) of PSD2 (services 1-8 of Annex I of PSD2), to AISP (point 8 of Annex I PSD2) and to EMI. Further, it provides GLs regarding the assessment of completeness of the application.

In general, the objectives for the EBA are to improve the functioning of the internal market, including, in particular, a sound, effective and consistent level of regulation and supervision. The EBA also aims to ensure the integrity, transparency, efficiency and orderly functioning of financial markets and prevent regulatory arbitrage and promote equal conditions for competition.

More specifically, the GLs contribute to the general objectives by providing a set of document requirements for PSPs to facilitate the authorisation process. The guidelines that have been developed clarify which information is required to be provided by applicants to CAs. Each set of GLs is adapted to the nature of the service provided by the PSP. The specific objectives of the GLs for the applicants, the CAs and the Member States, the Payment Services Users and for the EBA are stated in paragraph ten of this consultation paper. These GL are drafted to bring the following benefits to stakeholders concerned:

for applicants: greater transparency and clarity, Level playing field;

for CAs and Member States: increased quality in the information provided by applicants, indirect contribution to harmonised supervision;

for Payment Services Users: transparency and safety.

⁸ See also EBA: Annual Report (2016), EBA Work Programme (2016).

Operationally, the GL are drafted considering several options with the view to ensure transparency for the different types of service providers and to ensure that application can effectively be supervised by CAs.

C. Options considered and preferred options

The costs and benefits analysis compares the options for how to develop and fulfill the mandate, assuming the full adoption, national implementation and compliance of the GLs by CAs.

During the drafting of the GLs, the EBA considered different scenarios for the GLs. A questionnaire conducted in the first half of 2016 served as the basis for the work. 24 national CAs and the members of two relevant European trade associations gave detailed feedback on the current status of the authorisation process of PIs under the existing PSD1. The questionnaire identified that the payment service/s identification process, the information submission process and the number of documents to be provided are issues that need to be addressed by the EBA. Section 3 on 'Options considered and preferred options' outlines the different scenarios and provides the rationales behind the preferred options.

Payment service/s identification process

The applicant is required to identify the payment service it provides. In order to facilitate this payment service/s identification process during the authorisation, the EBA considered that the applicant can:

Option 1.1: self-identify the payment service it intends to provide;

Option 1.2: choose from a non-exhaustive list of examples in the guidelines;

Option 1.3: choose from a non-exhaustive list of examples in the background and rationale section of the CP; or

For the payment service/s identification process it was decided that option 1.1 is the preferred option, i.e. that the applicant provide an own description of the provided payment service. This will facilitate the applicant providing CAs with complete and accurate information, smoothen the assessment stage, and speed up the authorisation procedure. It helps the objective to establish an efficient authorisation process for PIs and CAs. Further, allowing the applicants to submit an own description of the type of payment service avoids the exclusion of business models and thus strengthens innovation, supporting the objective to create a competitive market in payment services.

Information submission process

The authorisation process is facilitated when CAs receive from applicants information with a high degree of granularity. In order to improve the submission process of such detailed information, the EBA considered that applicant could use following submission formats:

Option 2.1: templates;

Option 2.2: a list of information; or

Option 2.3: a combined format.⁹

For the information submission process, the EBA considered option 2.2 to be preferable as it facilitates the alignment of the authorisation processes carried out by CA¹⁰ that do not contemplate any templates for the submission process. In addition, an alignment with related regulatory standards developed by the EBA for other EU Directives allows CAs to create a harmonized execution of the application processing, leading to further efficiency effects.

Further, the EBA considered to:

Option 3.1: provide one set of guidelines for all payments services;

Option 3.2: provide three separate sets of guidelines for services 1-8 of Annex I of PSD 2, for Payment Initiation Services (PIS) only, and for Account Information Services (AIS) only; and

Option 3.3: provide a joint set of guidelines for services 1-8 of Annex I of PSD 2 and for PIS and a set of guidelines for AIS.

Also, the CP addresses EBA mandates to cover Electronic Money Institutions as set out in article 3.1 of Directive 2009/110/EC (EMD), which is why the EBA considered to:

Option 4.1: develop a joint set of guidelines for EMIs and other PIs; or

Option 4.2: develop a specific set of guidelines for EMIs.

The EBA considered the significance of the introduction of new payment services in the PSD2 and the legal nature of the service provider during the drafting of the GLs and concluded that option 3.3 in combination with 4.2 would be preferable, i.e. to provide three distinct GLs for PIs offering services 1-8 of Annex I of PSD2, for AISP and EMI.

The preference for these two options is due to the legal nature of the service providers. For AIS providers, different legal requirements under PSD2 result in different information required for the application process. A distinct set of GLs for AIS providers and EMI ensures transparency for the

⁹ A combined option comprehends a list of information and provision of templates for two requirements.

¹⁰ CP – Joint ESMA and EBA GLs on the assessment of the suitability of the members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU, EBA 2016; Authorisation of credit institutions.

applicant, which in turn should enhance the information quality. It increases clarification of the GLs which facilitates the information submission process and thereby reduces administrative burden for the applicant and CAs.

D. Cost-benefit analysis¹¹

The preferred options developed in the Guidelines set important standards for the structure and content of the requested information for the authorisation of PIs. The implementation of the options is expected to have a low impact on the administrative costs of CAs and limited additional costs for PIs, AISP and EMI. The adoption of the three different GLs results in a one-off administrative alignment of the already established requirements in each jurisdiction.

change required from the use of templates for the submission of some information items. Several CAs are already currently using templates for the suitability of members of the management body and key function holders. In the long term, the benefits will outweigh the initiated costs, as the alignment within and among CAs in different jurisdiction will benefit the exchange of information and facilitate comparison between PIs to establish a competitive market.

The Given the alternative options outlined above, the options chosen for GL will benefit CAs and PIs, AISP and EMI. The harmonisation of submitted information through the adoption of a list of information is expected to introduce transient administrative implementation costs for CAs. It will permanently benefit CAs and PIs by ensuring that CAs receive the information they require, and reduce the likelihood of requests for further information. It will also improve consistency in the formats used by PIs and will facilitate their compliance with the notification requirements set by the GLs. Clear and detailed instructions and definitions facilitate the reporting process, therefore reduce administrative costs, and increase the quality and accountability of reported data. This approach improves the exchange of information within and between CAs, which will improve the functioning of the internal market, including, in particular, a sound, effective and consistent level of regulation and supervision.

¹¹ For further reference, see also COM: Impact assessment accompanying the PSDII proposal (2014).

Overview of questions for consultation

Q1: Do you consider the objectives of the Guidelines as identified by the EBA to be plausible and complete? If not, please provide your reasoning.

Q2: Do you agree with the options the EBA has chosen regarding the identification of payment services by the applicant; the way information is to be submitted to the competent authority; the four-part structure of the Guidelines, and the inclusion of authorisation for electronic money institutions? If not, please provide your reasoning.

Q3: Do you consider it helpful how the EBA has incorporated proportionality measures in the Guidelines in line with PSD2? If not, please explain your reasoning and propose alternative approaches.

Q4: Do you agree with the Guidelines on information required from applicants for the authorisation as payment institutions for the provision of services 1-8 of Annex I of PSD2, as set out in chapter 4.1? If not, please provide your reasoning.

Q5: Do you agree with the Guidelines on information required from applicants for registration for the provision of only service 8 of Annex I PSD2 (account information services), as set out in chapter 4.2? If not, please provide your reasoning.

Q6: Do you agree with the Guidelines on information requirements for applicants for authorisation as electronic money institutions, as set out in chapter 4.3? If not, please provide your reasoning.

Q7: Do you consider the Guidelines regarding the assessment of completeness of the application, as set out in chapter 4.4 to be helpful? If not, please provide your reasoning.