

EBA/CP/2017/01

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16 February 2017

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# Consultation Paper

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Draft Guidelines

on procedures for complaints of alleged infringements of the  
Payment Services Directive 2

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# 1. Responding to this consultation

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The EBA invites comments on all proposals put forward in this paper and in particular on the specific questions summarised in 5.2.

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 16.05.2017. 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.

## 2. Abbreviations

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<b>ADR</b>	Alternative Dispute Resolution
<b>CAs</b>	Competent Authorities
<b>CP</b>	Consultation Paper
<b>EBA</b>	European Banking Authority
<b>ECB</b>	European Central Bank
<b>EU</b>	European Union
<b>PSD1</b>	Payment Services Directive 1
<b>PSD2</b>	Payment Services Directive 2
<b>PSPs</b>	Payment Service Providers
<b>PSUs</b>	Payment Service Users

## 3. Executive Summary

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Article 100(6) of Directive (EU) 2015/2366 on Payment Services in the Internal Market (PSD2) requires the European Banking Authority (EBA) to issue Guidelines, after consulting the European Central Bank, addressed to the competent authorities, in accordance with Article 16 of Regulation (EU) No 1093/2010 on the complaints procedures to be taken into consideration to ensure compliance with Article 100(1) of PSD2. The Guidelines shall be issued by 13 January 2018. In order to fulfil this mandate, the EBA has assessed existing complaints procedures put in place by competent authorities pursuant to Article 80 of Directive 2007/64/EC (PSD1) and has produced the draft Guidelines proposed in this Consultation Paper.

These draft Guidelines govern the process of complaints submitted to competent authorities by payment service users or any other interested party, including consumer associations, about the alleged infringement of the PSD2 by payment service providers.

The draft Guidelines set out requirements on the channels to be made available by competent authorities to complainants for the submission of complaints of alleged infringements of PSD2 and on the information to be requested from complainants by competent authorities, and, where provided, to be recorded by such authorities, when complaints are submitted.

Also, acknowledging that competent authorities are required to respond to complainants as laid down in Article 99(2) of PSD2, the draft Guidelines take this provision into account and set out the relevant information that competent authorities should provide to each complainant. In addition to acknowledging the complaint, the response should include information on the general competence of the competent authority in respect of procedures for complaints of alleged infringements of PSD2 and whether the competent authority has forwarded the complaint to another authority or body, which may be located in the same or in another country; and information on either the timing and form of any further communication with the complainant on the alleged infringement of PSD2, or whether the reply represents the end of the complaints procedure with the competent authority.

Further, these draft Guidelines require that competent authorities perform an aggregate analysis of complaints of alleged infringements of PSD2 to be taken into consideration to ensure and monitor effective compliance with PSD2, referred to in Article 100(1) of PSD2.

Finally, the draft Guidelines require competent authorities to document their complaints procedure set out in accordance with the Guidelines; and specify the general information on complaints that competent authorities should ensure is easily accessible to the public.

### Next steps

The consultation period will run from 16 February 2017 to 16 May 2017. The final Guidelines will be published after this consultation.

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## 4. Background and rationale

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### 4.1 Background

1. Article 100(6) of Directive (EU) 2015/2366, of 25 November 2015, on payment services in the internal market ('Payment Services Directive 2' or 'PSD2') requires the European Banking Authority ('EBA') to issue Guidelines, addressed to the competent authorities, in accordance with Article 16 of Regulation (EU) No 1093/2010, on the complaints procedures to be taken into consideration to ensure compliance with Article 100(1) of PSD2, after consulting the ECB. The Guidelines need to be issued by the transposition date of PSD2 on 13 January 2018.
2. Article 100(1) of PSD2, in turn, states that 'Member States shall designate competent authorities to ensure and monitor effective compliance with this Directive. Those competent authorities shall take all appropriate measures to ensure such compliance'. The Guidelines therefore aim at establishing complaints procedures to be taken into consideration by competent authorities to "ensure and monitor [payment service providers'] effective compliance" with the PSD2.
3. Article 99 further specifies that 'Member States shall ensure that procedures are set up which allow payment service users and other interested parties including consumer associations, to submit complaints to the competent authorities with regard to payment service providers' alleged infringements of this Directive'. The EBA understands that the reference made to alleged infringements of PSD2 relates to infringements of provisions of national law transposing PSD2. However, these Guidelines make reference to 'infringements of PSD2' so as to keep the wording consistent with the one in the Directive.
4. These Guidelines govern the process of the complaints submitted to competent authorities by payment service users (PSUs) and other interested parties, including consumer associations, about the alleged infringement by payment service providers (PSPs) of the PSD2.
5. As a result, the following aspects remain outside of the scope of these Guidelines:
  - a. dispute resolution procedures that PSPs have to put in place (which are covered in Article 101 of PSD2); and
  - b. alternative dispute resolution (ADR) procedures that Member States need to ensure exist (which are covered in Article 102 of PSD2).
6. It should therefore be noted that these Guidelines relate to complaints procedures under Title IV, Chapter 6, Section 1 of PSD2 and apply to complaints of alleged infringements of PSD2 submitted to competent authorities by PSUs and other interested parties. These Guidelines do not cover the role of competent bodies referred to in Article 102(1) of PSD2, which relates to ADR procedures concerning the settlement of disputes between PSUs and PSPs.
7. These Guidelines were drafted taking into account complaints procedures that competent authorities have already put in place to deal with complaints under Article 80 of Directive

2007/64/EC (PSD1). In particular, Article 80(1) of PSD1 provides that “Member States shall ensure that procedures are set up which allow payment service users [PSUs] and other interested parties, including consumer associations, to submit complaints to the competent authorities with regard to payment service providers' alleged infringements of the provisions of national law implementing the provisions of this Directive”. Article 82 of PSD1 further states that Member States shall take all the measures necessary to ensure that the complaints procedures provided for in Article 80(1) and 81(1) are administered by the authorities empowered to ensure compliance with the provisions of national law adopted pursuant to the requirements laid down in that Article.

8. In summary, these Guidelines are aimed at fulfilling the EBA’s overall objective, as set out in Article 1(5) the EBA regulation, of ensuring the consistent, efficient and effective application of the acts that fall into the EBA’s scope of action.

## 4.2 Rationale

9. During the development of the Guidelines, the EBA assessed a number of interrelated issues in respect of the substance of the Guidelines, including the nature of the complainant to which the procedures for complaints of alleged infringements of PSD2 apply; the channels through which a complaint can be submitted; the information to be requested from complainants by competent authorities when the complaint is submitted; the content of the reply to the complainant; the various types of analysis of complaints that competent authorities can perform and the way they organise themselves in order to do so; and the type of information to be made public about complaints procedures. The rationale for the EBA’s proposals on these issues is provided below.
10. As explained above, the Guidelines apply to complaints submitted by PSUs, as defined in PSD2; consumer associations; and other interested parties, with regard to the alleged infringements of PSD2 by PSPs. Some competent authorities may want to allow PSPs, and other entities, to make use of the complaints procedures that will be implemented to comply with these Guidelines, depending on the interpretation of the concept of ‘other interested parties’ at national level. This is why the Guidelines are written in a way that no distinction is made between various types of complainants.
11. The EBA is of the view that one of the important components of the procedures for complaints of alleged infringements of PSD2 that the Guidelines are meant to cover is the channel by which complainants can submit their complaints. While the Guidelines do not specify which channels should or should not be made available by competent authorities, Guideline 1 proposes that competent authorities should make available at least two different channels which should also be easily accessible for complainants.

**Q1: Do you agree with the proposed Guideline 1 on the channels through which complainants should be able to submit their complaints of alleged infringements of PSD2? If not, please provide your reasoning.**

12. Given that competent authorities shall take the complaints procedures into consideration for monitoring and ensuring compliance with the PSD2, as per Article 100(6) of the Directive, the

EBA considers that information received from complainants should contain all relevant details to put the competent authority in a position to fulfil this task effectively.

13. For this reason, Guideline 2 specifies the kind of information that competent authorities should request from complainants when the complaint is submitted, and requires competent authorities to record that information, as and when provided. Competent authorities will be able to request more than the basic information that is specified in Guideline 2, should they so wish. Furthermore, in cases where a complainant fails to provide the information requested, competent authorities will retain discretion, as with all complaints, as to whether or not to assess such complaint.
14. Guideline 2 further requires that competent authorities make the means available to allow complainants to submit any documentary evidence in support of the complaint, such as their contract with the PSP(s); any correspondence exchanged with the PSP(s) or with any other entity; and information related to their payment account, if relevant.

**Q2: Do you agree with the proposed Guideline 2 on the information to be requested from the complainant when the complaint is submitted, and to be recorded by competent authorities, as and when provided? If not, please provide your reasoning.**

15. Article 99 (2) of PSD2 requires that a reply is sent by the competent authority to the complainant and that, where appropriate, information on the ADR procedures is included in such a reply. In support of this provision, Guideline 3 proposes that competent authorities include in such reply i) an acknowledgment of receipt of the complaint; ii) information on the general competence of the competent authority in respect of procedures for complaints of alleged infringements of PSD2, and whether the competent authority has forwarded the complaint to another authority or body, which may be located in the same or in another country; and iii) information on either the timing and form of any further communication with the complainant on the alleged infringement of PSD2, or whether the reply represents the end of the complaints procedure with the competent authority.
16. The EBA considers that information on all the above mentioned elements is relevant for the complainant to be able to understand the current and future status of his/her complaint. While in some cases it might be up to the CA whether or not to forward the complaint to another authority or body, in some cases the CA is required to inform another authority of an infringement in the context of Union provisions on information exchange, such as Article 29 (3) PSD2 or Commission Delegated Regulation (EU) 524/2014<sup>1</sup>.
17. While Guideline 3.2 allows flexibility for the competent authority in respect of the precise moment when the reply is to be provided to the complainant, the competent authority should send the reply to the complainant without undue delay.
18. Guideline 3.3 requires that competent authorities include in any subsequent communication that they may have with the complainant information on either the timing and form of any

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<sup>1</sup> Commission Delegated Regulation (EU) No 524/2014 of 12 March 2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the information that competent authorities of home and host Member States supply to one another.

further communication with the complainant on the alleged infringement of PSD2, or whether the reply represents the end of the complaints procedure with the competent authority.

19. The information provided under Guideline 3 is required to be specific to each complaint received to the extent possible. The level of detail of the information provided to complainants is to be decided by competent authorities.

**Q3: Do you agree with the proposed Guideline 3 on reply to complainants? If not, please provide your reasoning.**

20. In order to ensure a consistent approach in the set-up and use of complaints procedures by competent authorities across Member States, these Guidelines cover, not only the submission of relevant complaints to the competent authorities, but also bring about some harmonisation on the treatment of those complaints by competent authorities, by reference to their function to ensure and monitor effective compliance with PSD2. The Guidelines therefore allow competent authorities to develop the capability to assess complaints at a more aggregate level and to arrive at conclusions in respect of the compliance of PSPs with the provisions of PSD2 that are more evidence based and therefore more robust.
21. To that end, Guideline 4 on aggregate analysis of complaints requires that competent authorities should be able to identify, understand and assess, for a given timeframe, the total number of complaints of alleged infringements of PSD2 received; the nature of the most common types of complainants; the identity of the PSPs that are most often complained about; the identification of the issues most raised by that complainants. Also, the aggregate analysis of complaints should enable competent authorities to identify the PSD2 provision(s) most often infringed; and the most common measures taken by competent authorities to ensure effective compliance with PSD2.

**Q4. Do you agree with the proposed Guideline 4 on aggregate analysis of complaints of alleged infringements of PSD2? If not, please provide your reasoning.**

22. Finally, to ensure that each competent authority implements and applies its complaints procedures in a consistent way, Guideline 5 requires that competent authorities document their complaints procedures, by outlining the procedure through which payment service users and other interest parties can submit complaints, as defined in these Guidelines, and the governance of that procedure.

**Q5: Do you agree with the proposed Guideline 5 on the internal written rules on complaints procedures? If not, please provide your reasoning.**

23. During the development of these Guidelines, the EBA has also come to understand that currently complainants are sometimes unaware that complaints procedures exist; what their scope is; and what the legal remit of competent authorities is in this respect. While these Guidelines do not require that competent authorities make their policy on complaints procedures available to the public, Guideline 6 nonetheless does require that sufficient and updated information should be made available to the public, on the most relevant aspects of the complaints procedure put in place by the relevant competent authority. This Guideline is aimed

at raising the awareness of payments service users and other interested parties of the existence and reliability of complaints procedures.

**Q6: Do you agree with the proposed Guideline 6 on the public information to complainants? If not, please provide your reasoning.**



## 5. Draft Guidelines

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EBA/GL-REC/20XX/XX

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## Draft Guidelines

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# on procedures for complaints of alleged infringements of the Payment Services Directive 2

# 1. Compliance and reporting obligations

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## Status of these Guidelines

1. This document contains Guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010<sup>2</sup>. In accordance with Article 16(3) of Regulation (EU) No 1093/2010, competent authorities 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](mailto: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).

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<sup>2</sup> 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. Subject matter, scope and definitions

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### Subject matter and scope of application

5. These Guidelines address the requirement for the EBA to issue Guidelines under Article 100(6) of Directive (EU) 2015/2366 of 25 November 2015 on payment services in the internal market.
6. These Guidelines apply to complaints submitted to the competent authorities with regard to payment service providers' alleged infringements of Directive (EU) 2015/2366, which are to be taken into consideration by competent authorities to ensure and monitor effective compliance with Directive (EU) 2015/2366, as referred to in 100(6) of Directive (EU) 2015/2366. These complaints may be submitted by payment service users and other interested parties, including consumer associations (here and after referred to as 'complainants'), as laid down in Article 99 (1) of Directive (EU) 2015/2366, irrespective of whether or not the complainant is affected by the alleged infringement.

### Addressees

7. These Guidelines are addressed to competent authorities as defined in point i) of Article 4(2) of Regulation (EU) No 1093/2010, and designated by Member States to ensure and monitor effective compliance with Directive (EU) 2015/2366, in accordance with Article 100(1) of that Directive.

### Definitions

8. Unless otherwise specified, terms used and defined in Directive (EU) 2015/2366 have the same meaning in the Guidelines.

## 3. Implementation

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### Date of application

9. These Guidelines apply from 13.01.2018.

## 4. Procedures for Complaints of alleged infringements of Directive (EU) 2015/2366

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### Guideline 1: Channels for the submission of complaints of alleged infringements of Directive (EU) 2015/2366

- 1.1. Competent authorities should ensure that at least two different channels are available for complainants to submit their complaints of alleged infringement of Directive (EU) 2015/2366 and that these channels are easily accessible for all types of complainants.

### Guideline 2: Information to be requested from complainants

- 2.1. When the complaint of an alleged infringement of Directive (EU) 2015/2366 is submitted competent authorities should request from complainants and, where provided by complainants, record information which includes but is not limited to:
  - a. The identity and contact details of the complainant;
  - b. An indication whether the complainant is a natural or legal person;
  - c. An indication whether or not the complainant is a payment service user;
  - d. The identity of the payment service provider(s) that has/have given rise to the complaint of an alleged infringement of Directive (EU) 2015/2366;
  - e. A description of the situation that gave rise to the complaint of an alleged infringement of Directive (EU) 2015/2366.
- 2.2. Competent authorities should make means available for complainants to submit any documentary evidence in support of the complaint, such as a copy of their contract with the payment service provider; any correspondence exchanged with the payment service provider(s) or with any other entity; and information related to their payment account if relevant.

### Guideline 3: Reply to complainants

- 3.1. When responding to the complainants and, where appropriate, informing them about the existence of Alternative Dispute Resolution procedures in accordance with Article 99(2) of Directive (EU) 2015/2366, competent authorities should also provide:



- a. an acknowledgment of receipt of the complaint;
  - b. information on the general competence of the competent authority in respect of procedures for complaints of alleged infringements of Directive (EU) 2015/2366, and whether the competent authority has forwarded the complaint to another authority or body which may be located in the same or in another country;
  - c. information on either the timing and form of any further communication with the complainant on the alleged infringement of Directive (EU) 2015/2366, or whether the reply represents the end of the complaints procedure with the competent authority.
- 3.2. Competent authorities should send the reply to the complainant without undue delay.
- 3.3. Competent authorities should include information as set out in Guideline 3.1 c. in any subsequent communication that they may have with the complainant.

## Guideline 4: Aggregate analysis of complaints

- 4.1. Taking into account at least the information collected under Guideline 2, competent authorities should have a complaints procedure in place that allows for the aggregate analysis of complaints on alleged infringements of Directive (EU) 2015/2366 and enables competent authorities to identify, understand, and assess, for a given timeframe:
- a. the total number of complaints of alleged infringements of Directive (EU) 2015/2366 received;
  - b. the nature of the most common types of complainants;
  - c. the identity of the payment service providers that are most often complained about;
  - d. the identification of the issues most complained about;
  - e. the identification of the provision(s) of Directive (EU) 2015/2366 the competent authority found to be most often infringed; and
  - f. the identification of the most common measures taken by competent authorities to ensure effective compliance with Directive (EU) 2015/2366.
- 4.2. The aggregate analysis referred to in Guideline 4.1. should be taken into account by competent authorities to ensure and monitor effective compliance of payment service providers with Directive (EU) 2015/2366.

## Guideline 5: Documentation of complaints procedure

- 5.1. Competent authorities should document their complaints procedure by outlining the procedure for the receipt of complaints submitted by payment service users and other



interest parties, as laid down in these Guidelines, and the internal governance of that procedure.

## Guideline 6: Public information on complaints procedure

- 6.1. Competent authorities should make publicly available information on their procedures for complaints of alleged infringements of Directive (EU) 2015/2366. This information should be up-to-date, easily accessible and include, but not be limited to:
- a. the objective and scope of the complaints procedures;
  - b. the channels through which complaints can be submitted;
  - c. the information complainants are requested to provide as set out in Guideline 2;
  - d. the sequential steps of the complaints procedures and any deadlines that may apply;
  - e. the general competence of the competent authority in respect of procedures for complaints of alleged infringements of Directive (EU) 2015/2366; and
  - f. the different measures available to the competent authority to ensure and monitor effective compliance with Directive (EU) 2015/2366.

## 5. Accompanying documents

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### 5.1 Draft cost-benefit analysis / impact assessment

Article 100(6) of Directive (EU) 2015/2366, of 25 November 2015, on payment services in the internal market (PSD2) requires the European Banking Authority (EBA), after consulting the ECB, to issue Guidelines, addressed to the competent authorities, in accordance with Article 16 of Regulation (EU) No 1093/2010, on the procedures for complaints of alleged infringements of Directive (EU) 2015/2366 to be taken into consideration to ensure compliance with Article 100(1) of PSD2. The Guidelines need to be issued by the transposition date of PSD2 on 13 January 2018.

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 competent authorities, payment service users (PSUs) and other interested parties arising from adopting the Guidelines on procedures for complaints of alleged infringements of Directive (EU) 2015/2366 under Article 100(6) of PSD2.

#### A. Problem identification and baseline scenario

Article 80 of Directive 2007/64/EU (PSD1) sets the current legal standards for EU Member States to have a complaints procedure in place which allow PSUs and other interested parties to submit complaints directly to competent authorities.

The analysis of the EU Commission of the current status shows that the established procedures for the submission of complaints differ among Member States and that the awareness of users concerning these procedures may be significantly lower in some Member States compared to others.<sup>3</sup> The analysis further shows that in their established national complaints systems, competent authorities experience material difficulties, namely the lack of information received from complainants, to provide sound complaint procedures and therefore effectively supervise compliance with the Directive.

On the consumer side, the EU efforts to encourage the development of competitive markets in payment services by offering cross-border purchases of financial products are currently hampered by consumers’ concern about insufficient information about their rights in case of a problem.

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<sup>3</sup> European Commission (2013): Study on the impact of Directive 2007/64/EC on payment services in the internal market and on the application of regulation (EC) No 924/2009 on cross-border payments in the community – Annexes to Final Report, p.153 ff., [http://ec.europa.eu/finance/payments/docs/framework/130724\\_study-impact-psd-annex\\_en.pdf](http://ec.europa.eu/finance/payments/docs/framework/130724_study-impact-psd-annex_en.pdf).



PSUs and other interested parties are further concerned about lower consumer protection in other EU Member States than in their home country.<sup>4</sup>

To address these issues, the draft Guidelines proposed in this Consultation Paper (CP) identify and describe requirements for the procedures for complaints of alleged infringements of Directive (EU) 2015/2366 to be put in place by competent authorities to enhance the current Member States' practices and the enforcement of consumers' rights and thereby strengthen consumer protection.

## B. Policy objectives

This CP proposes six different requirements addressed to competent authorities specifying the procedures for complaints of alleged infringements of Directive (EU) 2015/2366 that they should put in place to ensure and monitor effective compliance of PSPs with PSD2 with the aim to enhance consumers' rights.<sup>5</sup>

In general, the Guidelines aim to contribute to the EBA objective of enhancing regulatory and supervisory convergence and protection of users of payment services in the EU<sup>6</sup> by ensuring that procedures for complaints of alleged infringements of Directive (EU) 2015/2366 are applied consistently, efficiently and effectively across the European Union.

More specifically, these Guidelines aim to ensure a coherent approach in the set-up of complaint procedures by competent authorities across Member States by addressing the submission of complaints and some level of harmonisation on the treatment of those complaints by competent authorities.

Operationally, the Guidelines are drafted considering the current procedures put in place under PSD1, to build on good practices and to minimise any implementation costs for competent authorities.

## C. Options considered and preferred option

Analysing the current procedures for complaints of alleged infringements of Directive (EU) 2015/2366 set up in the EU Member States under the PSD1 allows the EBA to gain from best practices in the field. Different scenarios about the scope of these Guidelines and about the requirements for competent authorities have been considered.

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<sup>4</sup> European Commission (July 2016): Special Eurobarometer 446 – Financial Products and Services, p.10, <http://ec.europa.eu/COMMFrontOffice/publicopinion/index.cfm/ResultDoc/download/DocumentKy/74151>.

<sup>5</sup> European Commission (2015): Payment Service Directive – FAQ, [http://europa.eu/rapid/press-release\\_MEMO-15-5793\\_en.htm?locale=en](http://europa.eu/rapid/press-release_MEMO-15-5793_en.htm?locale=en).

<sup>6</sup> EBA: Annual Report (2016) and EBA: Work Programme (2017).



Insufficient information which is submitted to competent authorities by complainants hinders the efficient handling of the complaint. These Guidelines address this issue by requiring competent authorities to offer sufficient channels for complainants to submit their complaints (Guideline 1) and by setting a list of elements that competent authorities should request from complainants when the complaint is submitted (Guideline 2). The EBA considered different options on the number of elements to be requested by the competent authorities. Based on the EBA survey, the retained option requires competent authorities to request from complainants the information which have been identified as the most supportive for the possible follow-up of the complaints and as helpful to close gaps in the currently submitted information. Further, the retained option gives competent authorities flexibility to handle complaints where the information listed in Guideline 2.1. is not provided by complainants.

The Guidelines require measures to remove current barriers to submit complaints. To this end, Guideline 3 requires CA to acknowledge the receipt of each complaint received and to provide a number of information elements to complainants without undue delay. The EBA considered several options on the scope and detail of the reply to the complainants. The retained option ensures that competent authorities can choose to further communicate with complainants provided that they include in each communication information on when and how the competent authority will further communicate with the complainant on the alleged infringement of Directive (EU) 2015/2366; or information on whether the reply is intended to finalise the complaints procedure with the competent authority (Guideline 3.3.).

#### E. Cost-Benefit Analysis

The Guidelines will affect competent authorities, PSUs and other interested parties, including consumer associations. The adopted options in the proposed Guidelines describe the complaint procedure in a high-level way that allows competent authorities to take into account national specificities and what they consider will work best in their jurisdiction when implementing the Guidelines at national level. The draft Guidelines are based on current best practices and therefore allow competent authorities to leverage on the procedures they already have in place.

Currently, competent authorities conform to the technical and administrative standards needed to implement these Guidelines. The EBA survey shows that the required submission channels are already in place in all Members States that responded to the survey. It is expected that there will be a one-time cost to amend the current complaint procedure system allowing to request, and, if applicable, process and assess the required information. The additional information received from complainants will benefit competent authorities that are responsible for the follow-up of complaints to process the received complaints in a more efficient and prompt manner. They are further expected to support all competent authorities in their responsibility to ensure PSPs' compliance with the PSD2. The complaints procedure under these Guidelines will set standards which are already in place in some Member States and thereby unifies the EU-level rather than creating new standards.



The draft Guidelines further impact PSUs and other interested parties, including consumer association, by providing more transparency of the process of submitting a complaint. Submission by complainants will raise the awareness and trust in procedures for complaints of alleged infringements of Directive (EU) 2015/2366 established by competent authorities as well as in the use of PSPs' services. The harmonisation among Member States will further build trust in an EU wide standard and facilitate cross-border use of payment services.

Overall, these Guidelines are expected to deliver net benefits and better protection for EU consumers of payment services and contribute to the development of the market for payment services in the EU.



## 5.2 Overview of questions for consultation

**Q1:** Do you agree with the proposed Guideline 1 on the channels through which complainants should be able to submit their complaints of alleged infringements of PSD2? If not, please provide your reasoning.

**Q2:** Do you agree with the proposed Guideline 2 on the information to be requested from the complainant when the complaint is submitted, and to be recorded by competent authorities, as and when provided? If not, please provide your reasoning.

**Q3:** Do you agree with the proposed Guideline 3 on reply to complainants? If not, please provide your reasoning.

**Q4:** Do you agree with the proposed Guideline 4 on aggregate analysis of complaints of alleged infringements of PSD2? If not, please provide your reasoning.

**Q5:** Do you agree with the proposed Guideline 5 on the internal written rules on complaints procedures? If not, please provide your reasoning.

**Q6:** Do you agree with the proposed Guideline 6 on the public information to complainants? If not, please provide your reasoning.