

EBA/CP/2017/16

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27 October 2017

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# Consultation Paper

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Draft Regulatory Technical Standards

on cooperation between competent authorities in the home and host Member States in the supervision of payment institutions operating on a cross-border basis under Art. 29 (6) of PSD2

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# Contents

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<b>1. Responding to this consultation</b>	<b>3</b>
<b>2. Abbreviations</b>	<b>4</b>
<b>3. Executive Summary</b>	<b>5</b>
<b>4. Background and rationale</b>	<b>6</b>
Background	6
Rationale	7
<b>5. Draft regulatory technical standards on cooperation between competent authorities in the home and host Member States in the supervision of payment institutions operating on a cross-border basis under Art. 29 (6) of Directive (EU) 2015/2366</b>	<b>15</b>
<b>Accompanying documents</b>	<b>45</b>
Draft cost-benefit analysis / impact assessment	45
Overview of questions for consultation	51

# 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 05.01.2018. 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>CA</b>	Competent Authority
<b>CP</b>	Consultation Paper
<b>EBA</b>	European Banking Authority
<b>EMD</b>	Electronic Money Directive
<b>MS</b>	Member State
<b>PSD1</b>	Payment Services Directive 2007/64/EC
<b>PSD2</b>	Payment Services Directive (EU) 2015/2366
<b>PSU</b>	Payment Service User
<b>RTS</b>	Regulatory Technical Standards

### 3. Executive Summary

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The revised Payment Service Directive (PSD2) aims, inter alia, at enhancing cooperation between competent authorities (CAs) in the home and host Member States where a payment institution would like to provide payment services in a Member State (MS) other than its home MS.

To that end, Article 29(6) PSD2 confers a mandate on the EBA to develop draft regulatory technical standards (RTS), specifying the method, means and details of cooperation in the supervision of payment institutions operating on a cross-border basis. The RTS shall include the scope and treatment of information to be exchanged. Additionally, the RTS shall also specify the means and details of any reporting requested by host CA from payment institutions of the payment business activities carried out in their territories through agents or branches, including the frequency of such reporting. Such reports shall be required for information or statistical purposes and, as far as the agents and branches conduct the payment business under the right of establishment, to monitor compliance with the provisions of national law transposing Titles III and IV of PSD2.

According to Article 111 of PSD2, these provisions shall also apply *mutatis mutandis* to electronic money institutions (EMIs).

In line with the mandate conferred on the EBA, the draft RTS proposed in this CP set out the framework for the cooperation between competent authorities in the host and home MS that is aimed at enhancing supervision of payment institutions operating across borders. The draft RTS specify the procedure for the requests and replies for cooperation and exchange of information between CAs, including specific features that they shall have, in terms of single contact points, language, standardised forms and timelines.

These RTS also set out the periodical reporting requirements, divided into two sets of information, which host CAs can request from payment institutions operating in their territories via agents or branches. This periodical reporting aims at providing the host CA with a better understanding of the payments market in the host MS and to help the host CA to monitor compliance with the provisions of national law transposing Title III and IV of PSD2. The reporting requirements set out in this CP define the data breakdown, reporting periods, frequency and reporting deadlines.

#### Next steps

The consultation period will run from 27 October 2017 to 5 January 2018. The final RTS will be published after consultation.

## 4. Background and rationale

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### Background

1. On 13 January 2016, Directive (EU) 2015/2366 on Payment Services in the Internal Market (PSD2) entered into force, and it will apply from 13 January 2018. PSD2 aims, inter alia, to enhance cooperation between competent authorities (CAs) in the home and host Member States where a payment institution would like to provide payment services in a Member State (MS) other than its home MS.
2. To that end, Article 29(6) PSD2 confers a mandate on the EBA to develop draft regulatory technical standards (RTS), “specifying the framework for cooperation, and for the exchange of information, between the competent authorities of the home Member State and of the host Member State” in accordance with Title II of PSD2 and “to monitor compliance with the provisions of national law transposing Titles III and IV of PSD2”. According to the same Article, the draft RTS “shall specify the method, means and details of cooperation in the supervision of payment institutions operating on a cross-border basis and, in particular, the scope and treatment of information to be exchanged, to ensure consistent and efficient supervision of payments institutions exercising cross-border provision of payment services”.
3. Moreover, in accordance with Articles 29(6) and 29(2), the RTS shall also specify the means and details of any reporting requested by host Member States from payment institutions of the payment business activities carried out in their territories through agents or branches, including the frequency of such reporting. Pursuant to Article 29(2), “such reports shall be required for information or statistical purposes and, as far as the agents and branches conduct the payment business under the right of establishment, to monitor compliance with the provisions of national law transposing Titles III and IV” of PSD2.
4. Finally, according to Article 3(1) of Directive 2009/110/EC (Electronic Money Directive, EMD), as amended by Article 111 of PSD2, the above requirements shall also apply *mutatis mutandis* to electronic money institutions.
5. In what follows below, this Consultation Paper (CP) proceeds with a rationale section that sets out the way in which the EBA has developed its mandate, including the options it has considered and choices it had to make. This is followed by the actual RTS with the draft provisions proposed by the EBA. Questions have been inserted throughout the document to elicit the views of external stakeholders.

## Rationale

6. This chapter sets out the approach the EBA has taken to develop the draft RTS 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 5. This includes a summary of the input that the EBA has sought and received from competent authorities prior to commencing the work and explains the options considered and assessed when the draft RTS were developed.
7. Prior to developing the mandate, the EBA approached competent authorities in the 28 EU Member States asking them to share:
  - the issues they are currently experiencing under the PSD1 with regard to the supervision of PIs providing services on a cross-border basis and the cooperation and exchange of information between CAs;
  - the methods and means of cooperation between the Home and Host CAs, that, in their view, would ensure a more consistent and efficient supervision of PIs operating on a cross-border basis; and
  - the information they would like to receive from payment institutions that are headquartered in another MS, on the activities carried out in their territories via agents or branches and the frequency of such reporting.
8. These RTS are divided into four chapters: the first one contains general provisions, while the second chapter applies to competent authorities only, consisting of seven Articles that sets out the framework for the cooperation and the exchange of information between competent authorities. The third chapter, in turn, applies to host competent authorities and payment institutions that are headquartered in one MS and that provide payment services in a different MS via agents or branches. It consists of three Articles setting out requirements for data reporting from the payment institution to the host CA, should the latter decide to request information. The RTS concludes with the fourth chapter setting out some final provisions.

## Objectives of the Regulatory Technical Standards

9. As part of its methodological approach, and in the absence of any further details provided in the PSD2 itself as regards the specific aims of the provision in Article 29(6)(2), the EBA sought to identify the objectives that the RTS should achieve, for payment institutions; competent authorities, Member States; payment service users; and the EBA.

Party	Objectives
<b>Competent authorities under PSD2</b>	<ul style="list-style-type: none"> <li>– Better understanding of the payments sector in the host MS, by specifying the information that host competent authorities can request periodically from payment institutions authorised in other MS and operating in their territories;</li> <li>– Enhanced supervision of payment institutions operating across borders through defined procedures and instruments for the cooperation and information exchange between home and host authorities.</li> </ul>
<b>EBA</b>	– Fulfilment of the EBA's statutory objectives set out in Art 1(5) of its

Party	Objectives
	founding regulation to: <ol style="list-style-type: none"> <li>a. improve the functioning of the internal market of the European Union, including, in particular, a sound, effective and consistent level of regulation and supervision;</li> <li>b. prevent regulatory arbitrage and promote equal conditions for competition;</li> <li>c. enhance customer protection.</li> </ol>
<b>Payment institutions</b>	<ul style="list-style-type: none"> <li>– Greater transparency and clarity in respect of the information that a payment institution providing payment services in a MS other than its home MS can be requested to provide periodically by the host CA;</li> <li>– More predictable interaction with competent authorities in the home and the host MS when providing services across borders.</li> </ul>
<b>Payment service users</b>	<ul style="list-style-type: none"> <li>– Increased level of confidence that payment institutions providing cross-border payment services from another European Union MS are afforded a similar degree of supervisory attention as a domestically authorised payment institution.</li> </ul>

10. The draft RTS 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 RTS as identified by the EBA to be appropriate and complete? If not, please provide your reasoning.**

### **Framework for the cooperation and the exchange of information between competent authorities of the home and host Member States**

11. Article 29(6) of the PSD2 confers on the EBA the mandate to set out the framework for cooperation and exchange of information between competent authorities of the home and host Member States. This framework must specify the method, means and details of cooperation in the supervision of payment institutions operating on a cross-border basis.
12. In order to have an efficient cooperation and dynamic exchange of information, and based on the feedback received from competent authorities, the EBA considered very useful that competent authorities designate single points of contact, so that all requests and notifications are done through them.
13. Additionally, the EBA is of the view that the single points of contact should incorporate functional email boxes in order to avoid the usual updating of emails when personal emails are used as contact points. Moreover, functional email boxes have the advantage that several staff of a CA can have access to the information.
14. The EBA arrived also at the view that the framework should define a procedure for the exchange of information between competent authorities. That procedure should include the specific events that would trigger a notification, the information that should be provided in those cases and the timeframes for the responses so that competent authorities are able to efficiently cooperate and exchange information in a timely manner.

15. The EBA assessed the convenience of the use of standard forms and templates for the submission and exchange of information. Feedback received from competent authorities suggested that defining standardised templates and forms would help them to cooperate more efficiently and to have a more agile exchange of information. However, these standard forms and templates should also be flexible enough so as to let competent authorities incorporate additional information that they might consider appropriate and could help to convey their message.
16. Based on the input and suggestions received at the beginning of the policy development process, the EBA considered that the procedure should also include deadlines for the requests for information, submission of information, acknowledgement of receipt and for the replies.
17. Furthermore, in respect of the scope of the framework for cooperation between competent authorities of the home and host Member States, and as indicated above, the PSD2 explicitly foresees two scenarios that should be included in the framework: i) that home competent authorities notify host CA where they intend to carry out an on-site inspection in the territory of the host MS; and ii) that the home CA delegates to the host competent authorities the task of carrying out on-site inspections of an institution which operates in host Member States.
18. However, the EBA is of the view that there could be various scenarios in which the host CA may wish to request the home CA to carry out an inspection of against an institution that operates in the host territory. Furthermore, the said host CA may wish to request that this inspection is delegated to the host CA or carried out jointly by both the home and host.
19. Against this background, the EBA is of the view that the framework for cooperation between competent authorities defined in the RTS should not exclude any possibilities of cooperation in such scenarios. To that end, the EBA proposes in this Consultation Paper a procedure which allows any CA, home or host, to request another CA to carry out an on-site investigation. At the same time, this procedure does not imply any obligation to the requested CA to out a joint inspection or delegate the task.
20. The EBA also assessed other ways of enhancing the cooperation between competent authorities, such as the establishment of so called 'colleges of supervisors' of large entities that operate across borders or regular meetings between competent authorities. However, based on the feedback received from competent authorities, the EBA disregarded these options as there are not enough issues experienced by competent authorities in the supervision of the activities carried out by payment institutions that operate cross-border.

**Question 2: Do you agree with the proposed framework for cooperation and the standardised forms specified in Articles 2 to 8 and Annexes 1 to 4? If not, what other ways of cooperation would you consider more efficient?**

Notifications in case of infringements or suspected infringements

21. Pursuant to Art. 29(3) of the PSD2, competent authorities shall provide each other with all essential and/or relevant information, in particular in the case of infringements or suspected infringement by an agent or a branch, and where such infringement occurred in the context of the exercise of the freedom to provide services. In that regard, the competent authorities shall communicate, upon request, all relevant information and, on their own initiative, all essential information.
22. The EBA is of the view that the exchange of information, including the notifications in case of infringements or suspected infringements, should be done under the framework of cooperation defined in these RTS. Moreover, as the PSD2 neither defines nor describes what 'relevant' or 'essential' information is, the EBA arrived at the view that the RTS should provide some clarity so as to ensure a consistent interpretation of the PSD2 provisions..
23. Based on the input received from the European Commission, essential information should be understood as any information indispensable in relation to the corresponding issue. And relevant information should be understood as any other information in addition to the essential information which is appropriate for the specific intended purpose.
24. In the case of notifications of infringements and suspected infringements, the EBA is of the view that essential information is information that is related to the type and description of the infringement or suspected infringement and the actions taken by the competent authorities in response to such infringements, such as any precautionary measures issued against the payment institution, any sanctions, withdrawals of authorisation, or any failure by the payment institution to comply with the conditions under Article 11(3) of the PSD2, that a payment institution must carry out at least part of its payment service business in the same MS where it has its head office. Relevant information would be any other information (such as the payment institution's performance compared with that of its peers or any further work planned on other payment institutions with similar activities) that can be conducive to either one of the authorities fulfilling their respective objectives as well as obligations under the Directive.

**Question 3: Do you agree with the proposed framework for notifications of infringements and suspected infringements specified in Article 8 and Annex 4? If not, how should this be done?**

### **Reporting requested by host CAs from payment institutions conducting payment service business in their territories**

25. Article 29(2) PSD2 allows the CA of the Host MS to require that payment institutions with agents or branches within their territories report to them periodically on the activities carried out in their territories and that such reports shall be required for information or statistical purposes and, as far as the agents and branches conduct the payment service business under the right of establishment, to monitor compliance with the provisions of national law transposing Titles III and IV of the PSD2. Title III refers to transparency of conditions and information requirements for payments services and Title IV refers to rights and obligations in relation to the provision and use of payment services.

26. The EBA then took a view in respect of, firstly, whether it is the case that *all* payment institutions are subject to the reporting requirement of these RTS and, secondly, whether or not a payment institution needs to report *all* data.
27. With regard to the first question, and taking into account that PSD2 provides for two different purposes of reporting, the EBA arrived at the view that, as proposed in Articles 10 and 11 of the draft RTS, such reports should include two different sets of information requirements:
- a. general and specific activity data for information or statistical purposes, to be reported by
    - i. all payment institutions having branches or agents within the host MS; or
    - ii. a subset of those payment institutions as long as it is characteristic of the market for payments services in the host MS, in terms of the type of payments services they provide; the market segments they serve; the volume and value of the transactions they carry out; and the complexity of their business models;
  - b. an additional set of information to allow the CA of the host MS to monitor compliance with national provisions transposing Titles III and IV of the PSD2, to be reported by all payment institutions having branches or agents under the right of establishment within the host MS.
28. With regard to the second question, the EBA assessed the merits or otherwise of allowing a host CA, once it has decided to exercise its discretion to require payments institutions with agents or branches within its territory to report to it, to decide whether to request all pieces of information and data that is set out in these RTS, or also only specific parts thereof.
29. However, in order to contribute to a convergent interpretation and supervision of the PSD2, the EBA arrived at the view that it is preferable for both purposes described in i) and ii) above to require all pieces of information set out in these RTS to be reported. Otherwise, without such a standardised set of information, payment institutions would have little, if any, certainty and predictability in respect of the applicable requirements when providing their services in more than one Member State.

**Question 4: Do you consider that the approach proposed in Article 10, which gives the host CA discretion to require reporting either from all payment institutions or a characteristic subset thereof, is methodologically robust?**

General information and specific activity data to be reported for information or statistical purposes

30. The EBA considers it essential for the data to be comprehensive enough so as to provide the host CA with a complete picture of the payment service market in its jurisdiction. The EBA therefore identified and assessed the data that payment institutions could potentially be required to report, the data that would be of most benefit for the host CA, and the level of detail at which this should be done.
31. The EBA has arrived at the view, and proposed in the CP, that the report should include data on the following aspects: identification of the payment institution; type of payments services provided; information on the number of agents, branches, employees and identification of the biggest agents by transactions; volume and value of transactions; number of customers and complaints; fraud; and the number of suspicious transactions reports sent to the Financial Intelligence Unit.
32. The CP proposes that the information requested on the identification and the type of payment services is similar to the one requested under the RTS on the framework for cooperation and exchange of information for passport notifications under the PSD2<sup>1</sup>, in order to ensure an utmost of consistency between both RTS, and to avoid what would otherwise have been an avoidable administrative burden.
33. The information requested on the volume and value of transactions, where applicable, is proposed to be broken down by the type of payment service provided, the distribution channel and agents/branches. Moreover, the EBA considers it necessary to break down the corridors of the transaction flows, by identifying the transaction volume coming in and going out of the host MS, as well as the most important countries of origin and destination of these flows, so as to allow the host competent authorities to have a comprehensive view of the payments market in their territories.
34. Additionally, the CP proposes specific pieces of general information to be requested with regard to complaints received by the payment institution, fraud cases and suspicious transaction reports sent to the Financial Intelligence Unit. In these cases, the information is more general than and not as detailed as previous information because it would be enough to have a good understanding of the payments market.
35. The PSD2 remains silent on the frequency of the reporting, which allows the EBA to decide on the most appropriate approach. Given that the PSD2 provides that the data requested is for information or statistical purposes, the EBA considers that an annual report would be enough.

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<sup>1</sup> <https://www.eba.europa.eu/documents/10180/1694291/Final+draft+RTS+on+passporting+%28EBA-RTS-2016-08%29.pdf>

36. Finally, the EBA considered that the RTS should also specify the format, via a template, that payment institutions should use to submit the information to the host competent authorities. This would be consistent with the approach followed in the RTS on the framework for cooperation and exchange of information for passport notifications under the PSD2. Moreover, such an approach harmonises the submission of information across all Member States and is less burdensome for payment institutions, as they would know in advance the information and format through which they might be requested to provide information by the competent authorities of any host Member States to which they decide to passport their services.
37. These considerations have led to the development of Article 10 and the tables detailed in Annex 5.

**Question 5: Do you consider that payment institutions will be able to report the data specified in Article 10 and Annex 5? If not, what obstacles do you see and how could these obstacles be overcome?**

#### Additional information to be reported for monitoring compliance of national provisions transposing Titles III and IV

38. The EBA considered that, in order for competent authorities to monitor compliance with the provisions of national law transposing Titles III and IV of the PSD2 by payment institutions headquartered in another MS that provide payment services on their territories via branches or agents under the right of establishment, they need to request more data, in addition to the data requested for information and statistical purposes.
39. The EBA is of the view that the reports should be as much as possible focussed on specific data, and as little as possible on long descriptive procedures, as this would help competent authorities to process and assess the information and prioritise the use of supervisory resources to issues that require most attention. However, some descriptive and narrative pieces of information were considered to be useful so that competent authorities can have a better understanding of how payment institutions provide their services and interact with payment service users in the host MS.
40. The additional information to be reported, and proposed in Article 11 of this CP, should include data on the following aspects: central contact point; detailed information about the complaints received from payment services users concerning the rights and obligations under Titles III and IV of the PSD2, including some brief description of the procedure in place to handle and follow up complaints; number of major operational and security incidents; and framework contracts and fees.

41. Akin to the reporting of information for statistical purposes, the PSD2 remains silent on the frequency. The EBA assessed whether it was desirable and appropriate to require reporting that is more frequent than the annual reporting for statistical purposes, given that the aim is the monitoring of compliance with provisions and therefore different. However, the EBA arrived at the view that annual reporting would be sufficient, based on the feedback received from competent authorities. Moreover, this avoids unnecessary workload for payment institutions and would allow the existence of a single reporting by payment institutions. Such reporting would have two sets of information:
- One set of information with the information to be requested for information and statistical purposes that would be requested from all payment institutions operating in the host territory irrespective of the status under which they provide payment services or from a subset of those payment institutions as long as it is characteristic of the market for payment services in the host MS.
  - A second set of information with additional information for helping the host CA monitor compliance with provisions of national law transposing Titles III and IV of the PSD2 and requested from all those payment institutions that conduct the payment service business via branches and/or agents under the right of establishment.
42. Finally, the EBA arrived at the view that the RTS should also specify the format, via a template, that payment institutions should use to submit the information to the host CA, for the same reasons as explained earlier in the CP for the reports for information and statistical purposes.
43. These considerations have led to the development of Article 11 and the tables detailed in Annex 6.

**Question 6: Do you consider that payment institutions should and will be able to report the data specified in Article 11 and Annex 6? If not, what obstacles do you see and how could these obstacles be overcome?**

5. Draft regulatory technical standards on cooperation between competent authorities in the home and host Member States in the supervision of payment institutions operating on a cross-border basis under Art. 29 (6) of Directive (EU) 2015/2366

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**COMMISSION DELEGATED REGULATION (EU) No .../..****of XXX****[...]**

**supplementing Directive (EU) 2015/2366 of the European Parliament and of the Council with regard to regulatory technical standards for the cooperation between competent authorities in the home and host Member States in the supervision of payment institutions operating on a cross-border basis**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,  
Having regard to Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC<sup>2</sup>, and in particular Article 29(6) thereof,

Whereas:

1. In order to enhance cooperation between competent authorities and ensure a consistent and efficient supervision of payment institutions exercising cross-border provision of payment services, it is necessary to specify the framework for cooperation, and for the exchange of information between competent authorities of the home and of the host Member States. This framework needs to specify the method, means and details of cooperation, including the scope and treatment of information to be exchanged. In accordance with Article 3(1) of Directive 2009/110/EC of the European Parliament and of the Council, as amended by Article 111 of the Directive (EU) 2015/2366, these provisions shall apply *mutatis mutandis* to electronic money institutions. A reference to 'payment institution' therefore needs to be read as a reference to 'electronic money institution'.
2. For the purposes of having an agile communication and exchange of information between competent authorities, it is necessary that competent authorities designate single points of contact and make them available to other competent authorities so that all of them know to whom they should address their requests and notifications. Additionally, it is desirable that they also indicate the languages in which they can be approached by other competent authorities.

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<sup>2</sup> OJ L 337, 23.12.2015, p. 35.

3. In order to ensure a consistent and efficient notification process, standardised forms for the communication should be introduced and made available for competent authorities to use when they communicate with each other. However, it is desirable that these standard forms are flexible enough so as to allow competent authorities to introduce the necessary explanations and information which they consider appropriate. Additionally, it is desirable to introduce some deadlines for avoiding undue delays.
4. Article 29(2) of Directive (EU) 2015/2366 confers on the competent authorities of the host Member States a discretionary power to require payment institutions, the headoffice of which is situated in another Member State and that provide payment services on their territory via agents or branches, to report to them periodically on the activities carried out in their territories. Those reports shall be for information or statistical purposes, and as far as the branches or agents conduct the payment service under the right of establishment, such reports shall also be required to monitor compliance with the provisions of national law transposing Titles III and IV of the mentioned Directive.
5. Given that the requirement of submitting these reports is an option conferred on the host competent authorities, it is necessary that the host competent authorities inform payment institutions of their decision to make use of this option. If they decide to require these reports, they should also indicate to the payment institutions the electronic means through which they will have to submit the reports. Furthermore, in order for the EBA to be able to fulfill its mandate to contribute to supervisory cooperation and convergence as foreseen under the mentioned Directive, host competent authorities should inform the EBA about their decision to make use of the option.
6. With the view of harmonising the content of the reports which can be requested by host competent authorities, it is necessary to specify the information and the format in which payment institutions should submit their reports to host competent authorities. This way, payment institutions can know the information which they might be requested from host competent authorities when they provide services in their territories.

HAS ADOPTED THIS REGULATION:

## **CHAPTER 1**

### **GENERAL PROVISIONS**

#### *Article 1- Subject matter and scope of application*

1. This Regulation establishes the framework for cooperation, and for the exchange of information, between the competent authorities of the home Member State and of the host Member State in accordance with Title II of Directive (EU) 2015/2366 and to monitor compliance with the provisions of national law transposing Titles III and IV of the same Directive.
2. Additionally, this Regulation establishes the means and details of any reporting requested by competent authorities of the host Members States from payment institutions having agents or branches within their territories on the payment business activities carried out in their territories, including the frequency of such reporting.

3. This Regulation applies *mutatis mutandis* to electronic money institutions.

## **CHAPTER 2**

### **FRAMEWORK FOR COOPERATION AND EXCHANGE OF INFORMATION BETWEEN COMPETENT AUTHORITIES**

#### *Article 2 – Single contact points*

1. Competent authorities shall designate a single contact point for the communication of requests for cooperation and exchange of information as referred to in Article 4 of this Regulation. The designated single contact points shall be accessible through a functional e-mail box.
2. The competent authorities shall communicate the information on their single contact points to the EBA and the EBA shall maintain and keep up to date the list of single contact points for the use of the competent authorities. The EBA shall make this list accessible to all competent authorities.

#### *Article 3 – General requirements*

1. The information exchanged between competent authorities under this Regulation shall comply with the following requirements:
  - a. they shall be in writing in a language customary in the field of finance, or in any Union language accepted by both the competent authorities of the home and host Member States.
  - b. they shall be transmitted by electronic means, which shall be followed by an electronic confirmation of receipt by such competent authorities.
2. If the requesting authority has justified reasons to categorise its request as urgent, the requesting authority may make the request verbally, provided that subsequent confirmation of the request for cooperation or exchange of information is made in writing by electronic means, unless the requested authority agrees otherwise.
3. Each competent authority shall communicate the languages accepted in accordance with paragraph 1(a) to the EBA and the EBA shall include this information alongside the list of single contact points that it will make available to competent authorities as per Article 2(2).

#### *Article 4 – Procedure for the requests for cooperation or exchange of information*

Any competent authority that intends to request cooperation or exchange of information from another competent authority shall submit a request for cooperation or exchange of information to the single contact point of the requested authority by completing the form set out in Annex 1. The requesting authority may attach to the request any document or supporting material deemed necessary to support the request.

#### *Article 5 – Reply to a request for cooperation or exchange of information*

1. The requested authority shall respond to a request for cooperation or exchange of information, to the single contact point of the requesting authority.
2. The requested authority shall:
  - a. inform the requesting authority of any clarification it requires in relation to the request received;
  - b. reply within 20 working days of receipt of the request for cooperation or exchange of information by completing the form set out in Annex 2.
3. Where, on the basis of the complexity of the request or the amount of information requested, the requested authority realises that it is not able to meet the request and/or provide the information requested within 20 working days of receipt, the requested authority shall inform the requesting authority about it. It shall also explain the reasons for failing to meet the request and, where possible, indicate an estimated date of reply.
4. Should the requesting authority disagree with the reply it has received and wish to refer the matter to the EBA, including for the purpose of settlement of disagreements between competent authorities as set out in Article 27 of Directive (EU) 2015/2366, the requesting authority shall communicate to the EBA the request it had submitted originally and any reply it subsequently received from the requested authority.

*Article 6 – Notification of the intention to carry out an on-site inspection in the host Member State*

Where the competent authority of the home Member State intends to carry out an on-site inspection of a payment institution, the head office of which is situated in its territory and which provides payment services in a different territory, it shall notify the competent authorities of the host Member State by completing the form set out in Annex 3.

*Article 7 – Procedure for the request to carry out an on-site inspection*

1. Where the competent authority of the home Member State intends to delegate to the competent authority of the host Member State the task of carrying out an on-site inspection, the competent authority of the home Member State shall request this from the competent authority of that host Member State. The competent authority of the home Member State may also request to carry out the inspection jointly with the competent authority of the host Member State. The competent authority of the home Member State shall provide the competent authority of the host Member State with the reasons for carrying-out an on-site inspection.
2. Where the competent authority of a host Member State receives a request to carry out an inspection, it shall assess whether to accept the request or not. If the request is accepted, the competent authority of the host Member State shall carry-out the on-site inspection itself; or initiate a joint on-site inspection with the requesting authority.

3. Where the competent authority of the host Member State rejects the request to carry out an on-site inspection it shall communicate to the requesting competent authority its decision and the reasons for its decision. Should the competent authority of the home Member State disagree with the communication it has received and wish to refer the matter to the EBA, including for the purpose of settlement of disagreements between competent authorities as set out in Article 27 of Directive (EU) 2015/2366, the competent authority of the home Member State shall communicate to the EBA the request it had submitted originally and any reply it subsequently received from the competent authority of the host Member State.
4. Where the requested competent authority decides to carry out a joint inspection with the requesting competent authority, or allow the latter to carry out the inspection on its own, both competent authorities shall engage in ongoing dialogue to coordinate the different steps of the inspection.
5. Where the competent authority of the host Member State accepts the request to carry out an on-site inspection on behalf of the competent authority of the home Member State, or jointly exercises this task with the competent authority of the home Member State, both competent authorities shall agree beforehand on:
  - a. the subject matter and scope of the inspection;
  - b. a supervisory programme that sets out the different areas on which the inspection shall focus;
  - c. the allocation of resources and staff;
  - d. timelines;
  - e. responsibility for any enforcement actions which could be considered necessary as a result of the inspection.
6. The competent authority of the home Member State shall send the request in the way specified in Article 4 and the requested authority shall reply in the way specified in Article 5.
7. The competent authority of the host Member State, too, shall be able to request to carry out an on-site inspection. It shall be able to request such an inspection from the competent authority of the home Member State, and only of a payment institution, the head office of which is situated in the home Member State and which provides payment services in the host Member State. The procedure set out in paragraphs 1 to 6 of this Article shall apply accordingly.

*Article 8 – Notification in the case of an infringement or suspected infringement*

1. Where the home or the host competent authority of a payment institution providing payment services across borders is aware of any infringements or suspected infringements by an agent or a branch of the payment institution, they shall notify each other immediately.

2. The notifying competent authority shall provide the notified competent authority with all the indispensable information in relation to the corresponding issue, which shall include: i) the type of infringement; and ii) all the actions, if any, undertaken by the competent authority such as any precautionary measures issued against the payment institution, any sanctions or withdrawals of authorisation, among others. Additionally, the notifying competent authority can provide the notified competent authority with any other information which considers is appropriate and of interest for the notified competent authority.
3. The notified competent authority can request from the notifying competent authority any other information that is appropriate and of interest for the notified competent authority in order to decide the appropriate course of action in relation to the corresponding issue.
4. In both cases, the competent authorities shall notify each other by completing the form set out in Annex 4. The notifying authority may attach to the communication any document or supporting material deemed of interest.
5. If the competent authority sending the notification believes the information should be sent urgently it may initially notify verbally the other competent authority provided that subsequent transmission of information is made in writing by electronic means, unless the authority receiving the information agrees otherwise.

## **CHAPTER 3**

### **PROVISIONS OF INFORMATION REQUESTED BY HOST COMPETENT AUTHORITIES TO PAYMENT INSTITUTIONS**

#### *Article 9 – Discretionary power of the host competent authorities*

1. Competent authorities of the host Member States shall communicate to the EBA whether they intend to make use of their discretionary power to require payment institutions having agents or branches within their territories to report to them periodically on the activities carried out in their territories.
2. When a competent authority of the host Member State decides to require periodical reporting, it shall also make available on its website the electronic means by which payment institutions shall report to them.

#### *Article 10 – Information and data to be reported for information or statistical purposes*

1. When a competent authority of the host Member State decides to require periodical reporting, it shall require reports from
  - a. all payment institutions with agents or branches within its territory or

- b. a subset of those payment institutions, as long as the subset is characteristic of the market for payments services in the host Member State, in terms of the type of payment services they provide; the market segments they serve; the volume and value of the transaction they carry out; and the complexity of their business models.

2. Such reports shall include the following information:

- (a) the name, the address and where applicable, the authorisation number and the unique identification number of the payment institution in the home Member State in accordance with the formats provided in Annex 5 to this Regulation;
- (b) the identity and contact details of the person responsible for the submission of the report;
- (c) type of payment services and e-money services provided;
- (d) number of branches addresses and employees;
- (e) number of agents enrolled within the reporting period and total number of agents, break down by number under the freedom to provide services and number under the right of establishment;
- (f) number of e-money distributors enrolled within the reporting period and total number of distributors, break down by number under freedom to provide services and number under the right of establishment;
- (g) the name and address of the ten biggest agents, and the ten biggest distributors, if applicable, in the host member state by transaction volumes;
- (h) total volume of transactions carried out by the payment institution within the reporting period, break down by type of payment service, distribution channel (branch, online, mobile, automated teller machine, telephone, etc.), and by agents/branch. It will also specify the volume of transactions coming in and out of the host Member State;
- (i) total value of transactions carried out by the payment institution within the reporting period, break down by type of payment service, distribution channel (branch, online, mobile, telephone, etc.), and by agents/branch. It will also specify the value of transactions coming in and out of the host Member State;
- (j) In the case of electronic money institutions, value of the e-money distributed and redeemed in the host Member State;
- (k) Number of payment accounts opened/accessed in the host Member State within the reporting period, and total number of payment accounts operated/maintained in the host Member State.
- (l) number of payment cards issued in the host Member State within the reporting period, break down by characteristic of the card (debit, credit, revolving...), and outstanding number of payment cards issued in the host Member State;
- (m) number of automatic teller machines operated/managed by the payment institution in the host Member State, if applicable, and cash withdrawals from payment accounts and cash placed on payment accounts through those automated teller operated/managed by the payment institution in the host Member State;
- (n) number of customers (framework contract) and payment service users (single payment transactions) in the host Member State registered within the reporting period and total number at the end of the period;

- (o) aggregated number of complaints concerning the rights and obligations under Titles III and IV of the PSD2 received from payment service users in the host Member State within the reporting period;
  - (p) number of fraud cases and volume of fraud losses incurred in the host Member State within the reporting period; and
  - (q) number of suspicious transaction reports sent to the financial intelligence unit in the host Member State.
3. Payment institutions shall report values in the currency of the host Member State and, where required to convert currencies, apply the average European Central Bank reference exchange rate for the applicable reporting period.
4. Payment institutions shall report this information to the competent authorities of the host Member State by making use of the templates laid down in Annex 5 to this Regulation. Payment institutions shall report this information annually, for the calendar year, within two months after the end of each calendar year.

*Article 11 – Additional information and data to be reported for monitoring compliance with the provisions of national law transposing Titles III and IV of the PSD2*

1. When a competent authority of the host Member State decides to require periodical reporting, all payment institutions providing payment services in its territory via branches or agents under the right of establishment shall communicate additional information to the competent authority of the host Member State for monitoring compliance with the provisions of national law transposing Titles III and IV of the PSD2. In those cases, the reports shall include all the information referred to in Article 10 and shall also include the following information:
- (a) name and contact details of the person or persons responsible for the payment institution activity and/or of the compliance officer (if different) in the host Member State, where applicable;
  - (b) name and contact detail of the Central Contact Point, where applicable;
  - (c) number of complaints received from payment service users in the host Member State concerning the rights and obligations under Titles III and IV of the PSD2 within the reporting period, break down by number of complaints which have been settled or not, and by number of complaints not replied to, per agent/branch;
  - (d) brief description of the procedure in place to handle and follow up customer complaints;
  - (e) amendments to framework contracts within the reporting period;
  - (f) number of major operational and/or security incidents with impact to payment service users in the host Member State within the reporting period;

- (g) aggregated number of requests for refunds received from payment service users within the reporting period for unauthorised and/or incorrectly executed payment transactions and, where appropriate, aggregated number of requests for refunds received from payment service users and/or from ASPSPs within the reporting period for losses resulting from one or more of the liabilities referred to in Article 5, paragraphs (2) and (3), of the PSD2, breakdown by number of transactions which have been refunded to the payment account or not;
  - (h) total value of refunds made to payment service users within the reporting period, break down by unauthorized or incorrectly executed (non-execution, defective or late execution) payment transactions and, where appropriate, total value of refunds made to payment service users and/or to ASPSPs for losses resulting from the liabilities referred to in Article 5, paragraphs (2) and (3), of the PSD2, breakdown by unauthorized or incorrectly executed (non-execution, defective or late execution) payment transactions and/or non-authorized or fraudulent access to payment account information, or non-authorized or fraudulent use of such information.
  - (i) brief description of its business model, focusing on the way the payment services will be provided in the host Member State;
  - (j) short description of the payment service envisaged for the next year (short description of products and payment services provided and engagement of agents/distributors in the provision of payment services/e-money)
2. Payment institutions shall report values in the currency of the host Member State and, where required to convert currencies, apply the average European Central Bank reference exchange rate for the applicable reporting period.
3. Payment institutions shall report this information to the competent authorities of the host Member State by making use of the templates laid down in Annex 6 to this Regulation. Payment institutions shall report this information annually, for the calendar year, within two months after the end of each calendar year.

## **CHAPTER 4**

### **FINAL PROVISIONS**

#### *Article 12 – Entry into force*

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Commission*  
*The President*



*[For the Commission  
On behalf of the President]*

*[Position]*



**ANNEX 1**

<b>Reference number:</b>	<b>Date:</b>
<b>FROM:</b>	<b>TO:</b>
<hr/>	
Member State:	Member State:
Competent Authority:	Competent Authority:
Address:	Address:
Name:	Name:
Telephone:	Telephone:
Email:	Email:

Dear [name]

In accordance with Article 29 of Directive (EU) 2015/2366 on payment services in the internal market your input is sought in relation to the matter(s) set out in further detail below.

I would be grateful to receive a response to the above request by *[insert indicative date for the reply]* or, if that is not possible, for an indication of the estimated date of response.

**Type of request**

Please tick the appropriate box(es)

- Provision of information
- On-site inspection
- Delegation of inspection
- Other – please provide details below

Please provide the main reasons for the request

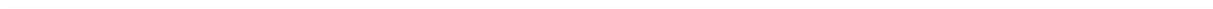
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.....

Please provide a detailed description of the information sought





.....  
.....  
.....  
.....

Please provide any additional information that could be of interest and help the requested competent authority to provide a reply in a timely manner

.....  
.....  
.....  
.....

In case of an urgent request, please provide an explanation of the urgency of the request and for the short deadline.

.....  
.....  
.....  
.....

Please indicate any additional comments with regard to the confidentiality and potential use of the provided information:

.....  
.....  
.....  
.....

Yours sincerely,

[signature]



**ANNEX 2**

<b>Reference number:</b>	<b>Date:</b>
<b>FROM:</b>	<b>TO:</b>
Member State:	Member State:
Competent Authority:	Competent Authority:
Address:	Address:
Name:	Name:
Telephone:	Telephone:
Email:	Email:

Dear [name]

Following your request [Reference number] we hereby provide the information that has been gathered:

Please provide all the information requested that could assist the cooperation or exchange of information for the purposes of the request:

.....  
.....  
.....  
.....

In case you could not provide all the information requested and/or meet the deadline for replying, please explain the reasons and provide an initial estimated date of response:

.....  
.....  
.....



.....

Please provide, on your own initiative and on a best effort basis, any essential information that could further assist the cooperation or exchange of information for the purposes of the request:

.....  
.....  
.....  
.....

Please indicate any additional comments with regard to the confidentiality and potential use of the provided information:

.....  
.....  
.....  
.....

Yours sincerely,

*[signature]*



**ANNEX 3**

<b>Reference number:</b>	<b>Date:</b>
<b>FROM:</b>	<b>TO:</b>
Member State:	Member State:
Competent Authority:	Competent Authority:
Address:	Address:
Name:	Name:
Telephone:	Telephone:
Email:	Email:

Dear [*name*]

In accordance with Article 29 of Directive (EU) 2015/2366 on payment services in the internal market, please find below some information with regard to the on-site inspection which I intend to carry out in your territory.

Please provide information on the payment institution that is, or has been, inspected

.....  
.....  
.....  
.....

Please provide information, if possible, with regard to the scope and plan of the on-site inspection

.....



.....  
.....  
.....

Please provide the dates on which you plan to carry out the on-site inspection

.....  
.....

Yours sincerely,

[signature]



**ANNEX 4**

<b>Reference number:</b>	<b>Date:</b>
<b>FROM:</b>	<b>TO:</b>
<hr/>	
Member State:	Member State:
Competent Authority:	Competent Authority:
Address:	Address:
Name:	Name:
Telephone:	Telephone:
Email:	Email:

Dear [name]

In accordance with Article 29 of Directive (EU) 2015/2366 on payment services in the internal market please find below some information with regard to [an infringement/a suspected infringement].

Please provide all indispensable information on the infringement/suspected infringement, which shall include the type of infringement and any actions taken by your competent authority, including any precautionary measures and sanctions.

.....

.....

.....

.....

Please provide any other information on the infringement/suspected infringement that could be of interest and benefit to the notified competent authority:

.....

.....



.....  
.....

Please indicate any additional comments with regard to the confidentiality and potential use of the provided information:

.....  
.....  
.....  
.....

Yours sincerely,

[signature]

## ANNEX 5

Payment institutions headquartered in a Member State and providing payment services in a different Member State via agents or branches, shall provide the following data, where required by the host competent authorities, so as to allow the host competent authorities to get periodical information on the activities carried out in their territory.

**Table 1: General Information about the Payment Institution/E-money Institution**

1)	Name of the payment institution/e-money institution	
2)	Type of institution	<input type="checkbox"/> Payment Institution <input type="checkbox"/> E-Money Institution
3)	Head office address of the payment institution/e-money institution	
4)	Unique identification number of the payment institution/e-money institution under the format of the home Member State (where applicable)	
5)	Legal Entity Identifier (LEI) of the payment institution/e-money institution (where available)	
6)	Home Member State authorisation number of the payment institution/e-money institution (where applicable)	
7)	Contact person within the payment institution/e-money institution (where available, please provide contact details of the appointed contact person in the host MS)	Name: Role: Email: Telephone number:
8)	Payment services to be provided	1. <input type="checkbox"/> Services enabling cash to be placed on a payment account as well as all the operations required for operating a payment account 2. <input type="checkbox"/> Services enabling cash withdrawals from a payment

		<p>account as well as all the operations required for operating a payment account</p> <p>3. Execution of payment transactions, including transfers of funds on a payment account with the user`s payment provider or with another payment service provider:</p> <p>a) execution of direct debits, including one-off direct debits <input type="checkbox"/></p> <p>b) execution of payment transactions through a payment card or a similar device <input type="checkbox"/></p> <p>c) execution of credit transfers, including standing orders <input type="checkbox"/></p> <p>4. Execution of payment transactions where the funds are covered by a credit line for a payment service user:</p> <p>a) execution of direct debits, including one-off direct debits <input type="checkbox"/></p> <p>b) execution of payment transactions through a payment card or a similar device <input type="checkbox"/></p> <p>c) execution of credit transfers, including standing orders <input type="checkbox"/></p> <p>Including granting of credit in accordance with Article 18(4) of Directive (EU) 2015/2366: <input type="checkbox"/> yes <input type="checkbox"/> no</p> <p>5. <input type="checkbox"/> Issuing of payment instruments <input type="checkbox"/> Acquiring of payment transactions Including granting of credit in accordance with Article 18(4) of Directive (EU) 2015/2366: <input type="checkbox"/> yes <input type="checkbox"/> no</p> <p>6. <input type="checkbox"/> Money remittance</p> <p>7. <input type="checkbox"/> Payment initiation services</p> <p>8. <input type="checkbox"/> Account information services</p>
9)	Electronic money services to be provided (applicable only to e-money institutions)	<input type="checkbox"/> Distribution of electronic money <input type="checkbox"/> Redemption of electronic money
10	Name and address of the 10 biggest agents in the host member state by value of transactions	1. Agent 1 2. Agent 2 3. ... 10. Agent 10
11	Name and address of the 10 biggest distributors in the host member state by e-money distribution / redemption value	1. Distributor 1 2. Distributor 2 3. ... 10. Distributor 10

**Table 2. Branches**

	Number
Total number of branches addresses, where applicable	
Total number of employees of the branches, where applicable	

**Table 3. Agents**

	Under the freedom to provide services (FOS)	Under the right of establishment (FOE)
Number of agents enrolled within the reporting period		
Total number of agents at the end of the reporting period		

**Table 4. Customers/Payment Service Users**

	registered within the reporting period	at the end of the reporting period
Number of customers (framework contract)		
Number of payment service users (single payment transactions)		

**Table 5. Card-based payment instruments**

	Number of				Value of payment transactions executed through			
	Credit Cards	Debit Cards	Revolving	Other (Please specify)	Credit Card	Debit Card	Revolving	Other (Please specify)
Issued within the reporting period								
Outstanding at the end of the period								

**Table 6. Payment accounts**

	Payment Accounts
Opened within the reporting period	
Total number of payments accounts operated in the host Member State	

**Table 7. Automated Teller Machines (ATMs)**

	Number	Amount
Number of ATMs operated/managed by the payment institution		n.a.
Cash withdrawals		



Cash placed on payment accounts		
---------------------------------	--	--

**Table 8. Complaints**

	Agents (FOS)	Agents (FOE)	Branches
Aggregated number of complaints received from payment service users within the reporting period			

**Table 9. Total fraudulent transactions**

	Volume	Value
Total Gross Fraudulent Payment Transactions		
Total Net Fraudulent Payment Transactions		

**Table 10. Notifications to the Financial Intelligence Unit in the host Member State**

	Volume
Number of suspicious transaction reports sent to the financial intelligence unit	

**Table 11. Payment transactions in and out of the host Member State**

	Volume								Value								
	Agents (FOS)		Agents (FOE)		Branch		TOTAL		Agents (FOS)		Agents (FOE)		Branch		TOTAL		
	In	Out	In	Out	In	Out	In	Out	In	Out	In	Out	In	Out	In	Out	
Payment services as referred to in Annex I of the PSD2																	
1																	
2																	
3a																	
3b																	
3c																	
4a																	
4b																	
4c																	
5 (issuing of payment instruments)																	
5 (acquiring of payment transactions)																	
6																	
7																	

**Table 12. Country of destination of payment transactions OUT (disclose only countries which represent >10% of the Total Value)**

Payment services as referred to in Annex I of the PSD2	Agents (FOE)			Agents (FOE)			Branch		
	Country 1	Country 2	...	Country 1	Country 2	...	Country 1	Country 2	...



**Table 12. Country of destination of payment transactions OUT (disclose only countries which represent >10% of the Total Value)**

Payment services as referred to in Annex I of the PSD2	Agents (FOE)			Agents (FOE)			Branch		
	Country 1	Country 2	...	Country 1	Country 2	...	Country 1	Country 2	...
1									
2									
3a									
3b									
3c									
4a									
4b									
4c									
5 (issuing of payment instruments)									
5 (acquiring of payment transactions)									
6									
7									

**Table 13. Country of origin of payment transactions IN (disclose only countries which represent >10% of the Total Value)**

Payment services as referred to in Annex I of the PSD2	Agents (FOE)			Agents (FOE)			Branch		
	Country 1	Country 2	...	Country 1	Country 2	...	Country 1	Country 2	...
1									
2									
3a									
3b									
3c									
4a									
4b									
4c									
5 (issuing of payment instruments)									
5 (acquiring of payment transactions)									
6									
7									

**Table 14. Payment transactions break down by distribution channel**

Payment services as referred to in Annex I of the PSD2	Volume						Value					
	Face to Face	Online	Mobile	ATM	Phone	Other	Face to Face	Online	Mobile	ATM	Phone	Other

**Table 14. Payment transactions break down by distribution channel**

Payment services as referred to in Annex I of the PSD2	Volume						Value					
	Face to Face	Online	Mobile	ATM	Phone	Other	Face to Face	Online	Mobile	ATM	Phone	Other
1												
2												
3a												
3b												
3c												
4a												
4b												
4c												
5 (issuing of payment instruments)												
5 (acquiring of payment transactions)												
6												
7												

**Table 15. E-money services**

	Amount
E-money distributed during the reporting period in the host Member State	
E-money redeemed during the reporting period in the host Member State	

**Table 16. E-money distributors**

	Under the freedom to provide services (FOS)	Under the right of establishment (FOE)
Number of distributors enrolled within the reporting period		
Total number of distributors at the end of the reporting period		

## ANNEX 6

Payment institutions headquartered in on Member State and providing payment services in a different Member State via branches or agents under the right of establishment, shall provide the following additional data, where required by the host competent authorities, so as to allow the host competent authorities to monitor compliance with the provisions of national law transposing Titles III and IV of the PSD2.

**Table 1: General Information about the Payment Institution/E-money Institution**

1)	Person or persons responsible for the payment institution activity and/or of the compliance officer (if different) in the host Member State, where applicable	<ul style="list-style-type: none"> <li>a. Name of representative</li> <li>b. Address</li> <li>c. Telephone number</li> <li>d. Email</li> </ul>
2)	Central contact point, if already appointed and/or required in accordance with Article 29(4) of Directive (EU) 2015/2366	<ul style="list-style-type: none"> <li>a. Name of representative</li> <li>b. Address</li> <li>c. Telephone number</li> <li>d. Email</li> </ul>
3)	Where applicable, please check the relevant box/es for any new payment services envisaged to be provided the next year	<ul style="list-style-type: none"> <li>1. <input type="checkbox"/> Services enabling cash to be placed on a payment account as well as all the operations required for operating a payment account</li> <li>2. <input type="checkbox"/> Services enabling cash withdrawals from a payment account as well as all the operations required for operating a payment account</li> <li>3. Execution of payment transactions, including transfers of funds on a payment account with the user`s payment provider or with another payment service provider: <ul style="list-style-type: none"> <li>a) execution of direct debits, including one-off direct debits <input type="checkbox"/></li> <li>b) execution of payment transactions through a payment card or a similar device <input type="checkbox"/></li> <li>c) execution of credit transfers, including standing orders <input type="checkbox"/></li> </ul> </li> <li>4. Execution of payment transactions where the funds are covered by a credit line for a payment service user: <ul style="list-style-type: none"> <li>a) execution of direct debits, including one-off direct debits <input type="checkbox"/></li> </ul> </li> </ul>

		<p>b) execution of payment transactions through a payment card or a similar device <input type="checkbox"/></p> <p>c) execution of credit transfers, including standing orders <input type="checkbox"/></p> <p>Including granting of credit in accordance with Article 18(4) of Directive (EU) 2015/2366: <input type="checkbox"/> yes <input type="checkbox"/> no</p> <p>5. <input type="checkbox"/> Issuing of payment instruments  <input type="checkbox"/> Acquiring of payment transactions                  Including granting of credit in accordance with Article 18(4) of Directive (EU) 2015/2366: <input type="checkbox"/> yes <input type="checkbox"/> no</p> <p>6. <input type="checkbox"/> Money remittance</p> <p>7. <input type="checkbox"/> Payment initiation services</p> <p>8. <input type="checkbox"/> Account information services</p>
4)	Where applicable, please check the relevant box/es for any new e-money services envisaged to be provided the next year	<input type="checkbox"/> Distribution of electronic money <input type="checkbox"/> Redemption of electronic money
5)	Complaints handling	<p>Do you have an internal procedure in place to handle and follow up customer complaints?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Please provide contact details for the person or persons responsible for handling complaints:</p> <p>Name:                  Address:                  Telephone number:                  Email:</p> <p>Is this procedure available in the official language of the host MS?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If not, please include the languages available for customer complaints.</p> <p>Please provide a brief description of your internal procedure for handling payment service users' complaints in the host MS (max 300 words)</p>

6)	Business model	<p>Is this the first report where you provide a brief description of your business model:</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If Yes, please provide a brief description of it, focusing on the products and payment services to be provided and engagement of agents/distributors in the host Member State (max 300 words)</p> <p>If No, has any material change occurred in your business model during the reporting period?:</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If Yes, please describe briefly the changes occurred (max 300 words).</p>
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**Table 2. Detailed breakdown of complaints**

	Agents				Branches			
	Received	Settled	Not settled	Not replied	Received	Settled	Not settled	Not replied
<b>Number of complaints received from PSUs concerning the rights and obligations under Titles III &amp; IV within the reporting period</b>								

**Table 3. Requests for refunds**

	Agents		Branches	
	Refunded	Not refunded	Refunded	Not refunded
<b>Aggregated number of requests for refunds received from payment service users for unauthorized and/or incorrectly executed payment transactions within the reporting period</b>				

	PSUs		ASPSPs	
	Refunded	Not refunded	Refunded	Not refunded
<b>Aggregated number of requests for refunds received for losses resulting from the liabilities referred to in Art. 5(2) of PSD2 within the reporting period</b>				
<b>Aggregated number of requests for refunds received for losses resulting from the liabilities referred to in Art. 5(3) of PSD2 within the reporting period</b>				

**Table 4. Detailed breakdown of the total value of refunds made**

	Agents		Branches	
	Unauthorised	Incorrectly executed	Unauthorised	Incorrectly executed
Total value of refunds made to payment service users for unauthorised and/or incorrectly executed payment transactions within the reporting period				
Where applicable, total value of refunds made to payment service users for losses resulting from the liabilities referred to in Art. 5(2) of PSD2 within the reporting period				
Where applicable, total value of refunds made to ASPSPs for losses resulting from the liabilities referred to in Art. 5(2) of PSD2 within the reporting period				

	Unauthorised access to/use of payment account information	Fraudulent access to/use of payment account information
Where applicable, total value of refunds made to payment service users for losses resulting from the liabilities referred to in Art. 5(3) of PSD2 within the reporting period		
Where applicable, total value of refunds made to ASPSPs for losses resulting from the liabilities referred to in Art. 5(3) of PSD2 within the reporting period		

**Table 5. Operational and security incidents**

	Agents	Branches
Number of major operational and/or security incidents within the reporting period		

**Table 6. Amendments to framework contracts within the reporting period**

<p>Please check the relevant box/es where amendments to the following conditions of the framework contract governing payment accounts which you operate have been made within the reporting period</p>	<input type="checkbox"/> fees and charges <input type="checkbox"/> interest/exchange rates <input type="checkbox"/> payment service user’s rights <input type="checkbox"/> payment service user’s obligations <input type="checkbox"/> payment initiation procedure
<p>Please check the relevant box/es where amendments to the following conditions of the framework contract governing credit cards issued by you have been made within the reporting period</p>	<input type="checkbox"/> fees and charges <input type="checkbox"/> interest/exchange rates <input type="checkbox"/> spending limits <input type="checkbox"/> payment service user’s rights <input type="checkbox"/> payment service user’s obligations <input type="checkbox"/> payment initiation procedure

<p><b>Please check the relevant box/es where amendments to the following conditions of the framework contract governing debit cards issued by you have been made within the reporting period</b></p>	<input type="checkbox"/> fees and charges <input type="checkbox"/> exchange rates <input type="checkbox"/> spending limits <input type="checkbox"/> payment service user's rights <input type="checkbox"/> payment service user's obligations <input type="checkbox"/> payment initiation procedure
<p><b>Please check the relevant box/es where amendments to the following conditions of any other framework contract [please specify] to which you are part have been made within the reporting period</b></p>	<input type="checkbox"/> fees and charges <input type="checkbox"/> interest/exchange rates <input type="checkbox"/> spending limits <input type="checkbox"/> payment service user's rights <input type="checkbox"/> payment service user's obligations <input type="checkbox"/> payment initiation procedure

# Accompanying documents

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## Draft cost-benefit analysis / impact assessment

Article 10(1) of the EBA Regulation provides that any regulatory technical standards (RTS) developed by the EBA should be accompanied by an analysis of ‘the potential related costs and benefits’. 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.

### A. Problem identification and baseline scenario

PSD2 updates the existing rules for electronic payments with a view to create a more effective regulatory framework for payment services and to enhance transparency, efficiency and confidence within the EU-wide single market for payments.

The increasing use of cross-border payment services across the EU<sup>3</sup> has raised the need to improve the cooperation among competent authorities in terms of information exchange and harmonisation of the supervisory activity.

Currently, with regard to the activities of cross-border payment institutions, “the competent authorities of the home Member State shall cooperate with the competent authorities of the host Member State” (Article 29(1)). Furthermore, “the competent authorities of the host Member States may require that payment institutions having agents or branches within their territories shall report to them periodically on the activities carried out in their territories” Article 29(2)).

Different levels of information across Member States can negatively affect the level playing field and the transparency within the market leaving space for regulatory arbitrage and inappropriate conducts<sup>4</sup>. In particular, the lack of an adequate communication between home and host Member States can imply a weak supervision and monitoring activity.

Consistent with the above, Article 29 of the Directive provides measures in order to enhance the supervision of payment institutions that provide cross-border services. To this end, the EBA is mandated to “specify the method, means and details of cooperation in the supervision of payment institutions operating on a cross-border basis and, in particular, the scope and treatment of information to be exchanged, to ensure consistent and efficient supervision of payment institutions exercising cross-border provision of payment services” (Article 29(6)).

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<sup>3</sup> See also: EBA Consumer Trends Report 2017,

<https://www.eba.europa.eu/documents/10180/1720738/Consumer+Trends+Report+2017.pdf>.

<sup>4</sup> See also: European Commission, Green Paper: Towards an integrated European market for card, internet and mobile payments, 11 January 2012.



## B. Policy objectives

These RTS aim to ensure a consistent and efficient supervision of payment institutions exercising cross-border provision of payment services. In general, these RTS contribute to the overall aim of the Directive by strengthening the supervisory power of the host Member State.

This is in line with the general objectives of PSD2 with reference to the improvement of the level of transparency and consumer protection, and to the development of a better integrated internal European market for payment services. This can contribute to make payments within the EU as efficient and secure as payments within a single Member State.

More specifically, these RTS are developed with a view to facilitate the efficient cooperation between competent authorities. To this end, the objectives underpinning the current RTS are the following:

- enhance the transparency of the information that cross-border payment institutions can be requested to report to the host competent authorities;
- harmonise the supervisory activity across Member States through specifically defined procedures and instruments, as well as a more specified set of information that host competent authorities can request to cross-border payment institutions;
- ensure an high level of confidence for payment services users throughout the EU by a more effective cooperation between Member States.

## D. Options considered and preferred options

For the development of these RTS, the EBA has considered technical options relating to (1) the cooperation and exchange of information between competent authorities of the home and host Member States and (2) the reporting requested by host competent authorities from payment institutions conducting payment service business in their territories.

### 1. Options for the cooperation and exchange of information between competent authorities of the home and host Member States

The collection of all requests and notifications could be carried out according to the following options:

- (1) Option 1.1.A: Designate single points of contact incorporating functional email boxes.
- (2) Option 1.1.B: Designate contact points using personal email accounts.

Option 1.1.A would allow several staff of a competent authority to have access to the information easily and rapidly. Conversely, Option 1.1.B would imply the use different contact points resulting in duplication of the information and in a disordered and less effective collection process.



Option 1.1.A has been retained.

The procedure for the exchange of information between competent authorities could be carried out by the following options:

- (1) Option 1.2.A: Introduce templates for the submission and exchange of information.
- (2) Option 1.2.B: Use non-standard forms for the submission and exchange of information.

Option 1.2.A implies the use of standard forms for the submission and exchange of information. This would allow competent authorities to use standardised definitions making the overall process more rapid and efficient.

On the other hand, the use of non-standard forms for the exchange of information (i.e. emails exchange and phone calls) would delay the process (Option 1.2.B). Also, the contents of the information wouldn't be harmonised across Member States. This could negatively affect the quality of the information to be exchanged hindering the cooperation between competent authorities.

Option 1.2.A has been retained.

On-site inspections could be carried out by competent authorities according to the following options:

- (1) Option 1.3.A: On-site inspections can be carried out in line with what is already provided in Article 29(1)<sup>5</sup> of the Directive (*status quo*).
- (2) Option 1.3.B: Allow any competent authorities, home or host, to request another competent authority to carry out an on-site investigation.

Option 1.3.A provides that home competent authorities can notify host competent authorities where they intend to carry out an on-site inspection in the territory of the host Member States. In addition, a home competent authority can delegate the host competent authority the task of carrying out on-site inspections of an institution which operates in the host Member State.

However, it is reasonable to assume that there are situations in which the host competent authority may need to request the home competent authority to carry out an investigation against an institution operating in a host Member State. Option 1.3.B addresses this issue allowing also the host competent authorities to request that investigations are delegated to the host competent authorities or carried out jointly by both the home and host. This option would reinforce the cooperation between competent authorities since it takes into account all the situations in which a competent authority (home or host) need to open an investigation.

Option 1.3.B has been retained.

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<sup>5</sup> Article 29(1): "The competent authorities of the home Member State shall notify the competent authorities of the host Member State where they intend to carry out an on-site inspection in the territory of the latter. However, the competent authorities of the home Member State may delegate to the competent authorities of the host Member State the task of carrying out on-site inspections of the institution concerned".



Alternative options have been also considered in order to reinforce the cooperation between competent authorities:

- (1) Option 1.4.A: To establish “colleges of supervisors” or regular meetings for competent authorities.
- (2) Option 1.4.B: To not establish “colleges of supervisors” or regular meetings for competent authorities.

Option 1.4.A aims to improve the supervisory activity and the information exchange between competent authorities through the establishment of colleges and regular meetings for supervisors. This option would have the advantage of promoting the cooperation across Member States.

Despite this, according to feedback received from competent authorities, the establishment of colleges and regular meetings for supervisors has been considered unnecessary and not very useful at this point. The costs that would arise from Option 1.4.A would exceed the expected benefits.

Option 1.4.B has been retained.

## 2. Options for the reporting requested by host competent authorities from payment institutions conducting payment service business in their territories

Different options have been considered in order to determine whether all payment institutions are subject to the reporting requirements of these RTS:

- (1) Option 2.1.A: Allow competent authorities to request information from specific payment institutions.
- (2) Option 2.1.B: Allow competent authorities to request information from all payment institutions.

Option 2.1.A allows competent authorities to request the information from specific payments institutions which they deemed of interest, for two sets of information requirements: for statistical purposes, and for monitoring compliance with Titles III and IV of the PSD2. Competent authorities might not need to request information from all payment institutions in order to have a good knowledge of the payments market in the host Member State, but only a characteristic subset of them based on criteria such as size, type of payment services provided, etc. At the same time, this option allows competent authorities to request information for supervisory purposes from specific payment institutions following a risk-based approach. This is consistent with the proportionality principle and would avoid unnecessary reporting burden from some payment institutions.



Option 2.1.B allows competent authorities to request the information from all payment institutions. This option ensures that competent authorities have all the information related to the payments market in the host Member States and allows monitoring all payment institutions operating in the host Member State via branches or agents under the right of establishment. However, this option would imply higher reporting burden for payment institutions.

Option 2.1.A has been retained, but only for the reporting for information or statistical purposes, and as long as those payment institutions which are required to report are characteristic of the market for payments services in the host MS, in terms of the type of payments services they provide; the market segments they serve; the volume and value of the transactions they carry out; and the complexity of their business models.

In relation to the content of the reporting requirements, different options have been considered in order to determine whether or not payment institutions need to report all information and data specified in these RTS:

- (1) Option 2.2.A: Allow competent authorities to request only specific parts of the information from payment institutions
- (2) Option 2.2.B: Allow competent authorities to request all information and data set out in these RTS from payment institutions.

Option 2.2.A allows competent authorities to decide which pieces of information they can request from payment institutions. However, this option does not ensure a harmonisation of the level of information to be reported by payment institutions and could result in different reporting burdens imposed on the same payment institution, depending on which host Member State it is providing services to. This would not be in line with the objectives of these RTS.

Option 2.2B gives payment institutions certainty and predictability in respect of the applicable requirements when providing their services in more than one Member State. In addition, it would ensure that the host CA has a complete picture of the national payment market in the host MS and all the information that can support its supervisory activities. The resultant harmonization of the level of information would also be in line with the objectives of these RTS.

Option 2.2.B has been retained.

Finally, payment institutions could report the information and data required with the following frequency:

- (1) Option 2.2.A: Semi-annual frequency.
- (2) Option 2.2.B: Annual frequency.

The frequency of the reporting should allow competent authorities to carry out their supervisory and monitoring activity efficiently. In view of this, Option 2.2.B would be in line with these objectives and, at the same time, it wouldn't imply unnecessary workload for payment



institutions. Differently, a semi-annual frequency reporting (Option 2.2.A) could result in an excessive reporting burden that would imply higher compliance costs.

Option 2.2.B has been retained.

#### E. Cost-Benefit Analysis

These RTS aim to strengthen the supervisory and monitoring activity of payments institutions providing cross-border services within the EU. This is going to affect competent authorities and payments services users as well as payment institutions.

A further improvement in the coordination and information exchange between competent authorities would bring several benefits. Indeed, facilitating the supervision activity on payment institutions across Member States<sup>6</sup> would make the payment services market safer and more efficient.

A better supervisory activity can increase also the confidence in the market positively affecting consumer protection. This would support the growth of cross-border innovative payment services fostering the development of the EU payment services market. Moreover, a safer and more efficient payment services market would also facilitate the exchange of goods and services within the single European market.

Payment institutions would certainly benefit from a wider deployment of cross-border payment services across the EU. This will highly depend on the capacity of competent authorities to ensure the level playing field and to avoid regulatory arbitrage and misconducts within the market. In this scenario, the harmonisation of the information exchange practices across Member States can play a key role.

On the other hand, the implementation of these RTS would imply compliance costs for both, competent authorities and payment institutions. These costs will mainly refer to additional reporting standards to be set out by competent authorities and to the increasing administrative burden for payment institutions. However, it is reasonable to assume that most of the costs will be one-off costs in order to set up new reporting and data collection processes.

In conclusion, the benefits expected from a more effective cooperation between competent authorities would exceed the costs that both competent authorities and payment institutions could face.

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<sup>6</sup> EBA Work Programme (2017),

<https://www.eba.europa.eu/documents/10180/1617016/EBA+Revised+2017+Work+Programme.pdf/59d29b87-d9ca-415d-bdbe-6ebdd54705e8>.



## Overview of questions for consultation

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

**Question 2: Do you agree with the proposed framework for cooperation and the standardised forms specified in Articles 2 to 8 and Annexes 1 to 4? If not, what other ways of cooperation would you consider more efficient?**

**Question 3: Do you agree with the proposed framework for notifications of infringements and suspected infringements specified in Article 8 and Annex 4? If not, how should this be done?**

**Question 4: Do you consider that the approach proposed in Article 10, which gives the host CA discretion to require reporting either from all payment institutions or a characteristic subset thereof, is methodologically robust?**

**Question 5: Do you consider that payment institutions will be able to report the data specified in Article 10 and Annex 5? If not, what obstacles do you see and how could these obstacles be overcome?**

**Question 6: Do you consider that payment institutions should and will be able to report the data specified in Article 11 and Annex 6? If not, what obstacles do you see and how could these obstacles be overcome?**

