

EBA/RTS/2018/03

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Final Report

Draft Regulatory Technical Standards

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

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1. Abbreviations

ASPSP	Account servicing payment service provider
ATM	Automated teller machine
BSG	Banking Stakeholder Group
CA	Competent authority
CP	Consultation Paper
EBA	European Banking Authority
EMI	Electronic money institution
FOE	Freedom of establishment
FOS	Freedom to provide services
PSD2	Payment Services Directive (Directive (EU) 2015/2366)
PSU	Payment service user
RTS	Regulatory technical standards

2. Executive summary

The revised Payment Services Directive, Directive (EU) 2015/2366 (PSD2), aims, inter alia, to enhance cooperation between the competent authorities (CAs) of the home and host Member States where a payment institution would like to provide payment services in a Member State other than its home Member State.

To that end, Article 29(6) of PSD2 confers a mandate on the European Banking Authority (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 mandate specifies that the RTS shall include the scope and treatment of information to be exchanged. The RTS shall also specify the means and details of any reporting requested by host CAs from payment institutions on the payment business activities carried out in their territories through agents or branches, including the frequency of such reporting. The mandate continues to specify that such reports shall be required for information or statistical purposes and, insofar 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).

To deliver this mandate, the EBA published a Consultation Paper (CP) on its proposals; the consultation period ran from 27 October 2017 to 5 January 2018. The EBA received nine responses to the CP, which it assessed with a view to deciding whether any amendments needed to be made to the draft RTS before issuing this final report.

The respondents to the CP were divided as to whether or not host CAs should be given the discretion to require reporting either from all payment institutions or from a characteristic subset thereof. After assessing the comments, the EBA decided to disregard the option, considered in the CP, for CAs to require reporting from a characteristic subset of payment institutions; host CAs, should they decide to require periodical reporting from payment institutions providing payment services in their territories via agents or branches, will have to require reporting from all payment institutions, for the reasons explained in more detail in the feedback table in section 5.2.

In addition, in the light of a comment made by one respondent, the EBA has decided to clarify how the RTS apply *mutatis mutandis* to EMIs and, in particular, to those EMIs that only distribute e-money in the host Member State through natural or legal persons that act on their behalf.

Next steps

The draft RTS will be submitted to the European Commission for endorsement, following which they will be subject to scrutiny by the European Parliament and the Council, before being published

in the *Official Journal of the European Union*. The RTS will enter into force on the twentieth day following publication in the *Official Journal of the European Union*.

3. Background and rationale

3.1 Background

1. On 13 January 2016, Directive (EU) 2015/2366 on Payment Services in the Internal Market (PSD2) entered into force, and it has applied since 13 January 2018. PSD2 aims, inter alia, to enhance cooperation between the CAs of the home and host Member States where a payment institution would like to provide payment services in a Member State other than its home Member State.
2. To that end, Article 29(6) of PSD2 confers a mandate on the EBA to develop draft 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 payment institutions exercising cross-border provision of payment services'.
3. Moreover, in accordance with Article 29(6) and (2), the RTS shall also specify the means and details of any reporting requested by host Member States from payment institutions on 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 (the Electronic Money Directive), as amended by Article 111 of PSD2, the above requirements also apply *mutatis mutandis* to EMIs.
5. A CP on the draft RTS on home-host cooperation under PSD2 was published on 27 October 2017. The consultation period ended on 5 January 2018. The EBA received eight responses to the CP, three of which were confidential. The Banking Stakeholder Group (BSG) also submitted a response. The respondents represented various types of market participants, two being from trade associations, two from payment institutions, one from an account information service provider, one from a credit institution and two from other types of institutions not specified.
6. The EBA assessed the responses to the consultation and made changes to the draft RTS where relevant. The feedback table in section 5.2 provides an exhaustive and comprehensive list of the issues raised by the respondents and the analysis carried out by the EBA. The Rationale section below (3.2) summarises the subset of the issues raised by respondents that appeared to be particularly relevant to respondents and/or resulted in more substantive changes to the RTS.

3.2 Rationale

Reporting obligations for EMIs with distributors in a host Member State

7. One respondent considered that it was unclear in the CP whether EMIs that use distributors, but no agents or branches, in a host Member State should be subject to reporting obligations should the host CA decide to exercise the discretionary power to require reports from payment institutions providing payment services in its territory via agents or branches. In the respondent's view, only EMIs with agents or branches in the host Member State, and not those with only distributors, should be required to report. The respondent was of the view that distributors do not offer payment services on behalf of EMIs, as agents or branches do, and considered them merely outsourced service providers that do not offer regulated services in the host Member State.
8. The EBA is of the view that the *mutatis mutandis* clause in Article 111 of PSD2, which specifies that the RTS apply to EMIs, should be read in accordance with the guidance provided in recital 9 of the Electronic Money Directive, which clarifies that a reference to 'payment institution' in PSD2 needs to be read as a reference to 'electronic money institution' and that a reference to 'payment service' needs to be read as a reference to the activity of 'payment services and issuing electronic money'.
9. In accordance with that guidance and with Article 111 of PSD2, Article 29 of PSD2, including the RTS referred to in paragraph 7, applies to EMIs *mutatis mutandis* in relation to both the provision of payment services and the issuing/distribution of e-money, irrespective of whether those activities are provided independently or at the same time.
10. Where an EMI carries out e-money activities only by means of distributors in a host Member State, those activities will be included in the scope of the reports that may be required by the host CA for information or statistical purposes. The fact that only e-money activities are provided, and not payment services, simply means that the host CA will not require reports, where the distributors are establishments, for monitoring compliance with the provisions of national law transposing Titles III and IV of PSD2, because those provisions would not be relevant where payment services were not provided.
11. The EBA concurs with the view of the respondent that greater clarity would be helpful on whether EMIs that use distributors, but no agents or branches, in host Member States are within the scope of the periodical reporting that could be required by the host CA. The EBA has therefore made a change to the text proposed in the CP, introducing a new recital to clarify that, where an EMI only distributes e-money in the host Member State through distributors, the EMI will have to submit reports for information or statistical purposes to the host CA, but will not have to submit any reports for monitoring compliance with the provisions of national law transposing Titles III and IV of PSD2.

Host CA discretion to require reporting from either all payment institutions or a characteristic subset thereof

12. The CP proposed two different sets of information and data that could be required by host CAs:

- One set of data that could be required from payment institutions operating in the host Member State via branches or agents, irrespective of the status of the agents. This data would be reported for information or statistical purposes.
- Another set of data that could be required from payment institutions operating in the host Member State via branches or agents under the right of establishment. This data would be reported for monitoring compliance with the provisions of national law transposing Titles III and IV of PSD2.

13. The CP proposed that the reports for information or statistical purposes could be requested by host CAs from either:

- all payment institutions having branches or agents within the host Member State; or
- a subset of those payment institutions that could be considered characteristic of the market for payment services in the host Member State, in terms of the type of payment services provided, the market segments served, the volume and value of the transactions carried out, and the complexity of their business models.

14. The CP also proposed that the reports for monitoring compliance with the provisions of national law transposing Titles III and IV of PSD2 should be requested by host CAs from all payment institutions providing payment services via branches or agents under the right of establishment in the host Member State. These reports would contain all the information specified in the reports for information or statistical purposes (as set out in Article 10 and Annex V in the CP) and some additional pieces of information (as set out in Article 11 and Annex VI in the CP).

15. Respondents were divided as to whether or not host CAs should be given the discretion to require reporting from only a characteristic subset of payment institutions. Half of them were in favour of this provision and half were against it, as they saw this as being potentially discriminatory, creating an unwarranted asymmetry between various types of payment institutions, and thus working against the goal of creating a level playing field between payment institutions in the European Union.

16. The EBA assessed the comments received from respondents and arrived at the view that the fact that all payment institutions providing payment services in the host Member State via branches or agents under the right of establishment had always to report both sets of data (for information or statistical purposes and to monitor compliance with the provisions of national law transposing Titles III and IV of PSD2) would imply that host CAs could require only the first set of data from payment institutions operating in the host Member State via agents under the freedom to provide services.

17. The number of payment institutions currently providing payment services cross-border via agents under the freedom to provide services is very small in most Member States. Therefore, due to the limited number of payment institutions operating under that business model, it would be very difficult for host CAs to identify a characteristic subset of them to be required to report for information or statistical purposes; in most cases, host CAs would have to include all those few payment institutions in the sample.

18. Given this, the EBA arrived at the view that it did not make sense to allow host CAs to require reports for information or statistical purposes from a subset of payment institutions characteristic of the payments market in the host Member State. The EBA therefore amended the text so that all payment institutions shall report to the host CA should the host CA decide to exercise its discretion to require such reporting. In this way:

- payment institutions that operate via agents under the freedom to provide services will have to report only the first set of data, for information or statistical purposes; and
- payment institutions that operate via a branch or agents under the right of establishment will have to report both sets of data (for information or statistical purposes and for monitoring compliance with the provisions of national law transposing Titles III and IV of PSD2).

Framework for cooperation and the exchange of information between CAs in home and host Member States

19. The majority of respondents agreed with the proposed framework for cooperation and the exchange of information between CAs and with the use of standardised forms as specified in the CP. However, one respondent was of the view that CAs should share information in a secure way through encrypted channels. The EBA concurs with the respondent that this should be the case and agreed to amend Article 3.1 in the CP to state that the information exchanged between CAs must be transmitted in a secure way by electronic means.

20. Another respondent considered that Article 7(7) in the CP gave host CAs the power to carry out on-site inspections of entities located in their territories without being established there, and that this might go beyond the responsibilities granted to host CAs. The EBA clarifies that the RTS do not confer any discretion or power on CAs of the host Member States other than that expressly provided for in PSD2. The RTS set out the framework for cooperation and the exchange of information between CAs of host and home Member States with the aim of ensuring consistent and efficient supervision of payment institutions providing cross-border payment services.

21. With the abovementioned aim, Article 7(7) in the CP refers to the possibility that the host CA may request the home CA to carry out an on-site inspection 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. Therefore, it does not confer any additional power on the host CA; rather, it set out the procedure that the host CA should follow when it considers it would be convenient for the home CA to carry out an inspection of such a payment institution.

22. In addition, the BSG recommended that paragraph 5 of Article 7 in the CP should be expanded to state that the CAs should agree on 'responsibility for monitoring the implementation of any risk mitigation plan or supervisory actions which could be considered necessary as a result of the inspection'.

23. The EBA agreed to amend the wording of Article 7 in the CP to try to make it clearer. The EBA deleted paragraph 4 of Article 7 and amended paragraph 5 by including some of the wording of paragraph 4 and incorporating the recommendation of the BSG that supervisory actions resulting

from an inspection should be monitored and that it should be clear which CA is responsible for that monitoring.

24. In addition, the EBA agreed to amend paragraph 7 of Article 7 in the CP to better explain in several new paragraphs how the host CA should approach the home CA to request it to carry out an on-site inspection.

Data on fraudulent transactions

25. One respondent considered that payment institutions would not be able to report the information on fraudulent transactions specified in Table 9 of Annex V in the CP. The respondent was of the view that only gross data on fraudulent payment transactions should be reported, and not net data, because there is a time lag between the availability of overall gross data and that of information on recovered fraudulent transactions, with the latter available only later, and therefore potentially creating a distorted view of reality.

26. The EBA agreed to require only gross data on fraudulent payment transactions, as this was also an issue raised during the public consultation on the EBA Guidelines on fraud reporting, and the final Guidelines on fraud reporting will require only gross data.

Language of the periodical reports to host CAs

27. One respondent suggested that the rule established in Article 3 in the CP, according to which communication between the CAs must take place in a language customary in the field of finance, be applied also to communication between the payment institution and the host CA, and in particular to the periodical reporting required by host CAs from payment institutions providing payment services in the host Member State via agents or branches.

28. The EBA arrived at the view that, as the mandate is silent regarding the language of such reporting, it is for the Member State, in its own regulations, to determine if reporting should be done in the official language of the Member State or in other acceptable languages. The EBA agreed to amend Article 9(1) to clarify that the host CA must make available on its website the electronic means by which and the language(s) in which payment institutions may report to them.

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

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 specifying the framework for cooperation and the exchange of information between competent authorities of the home Member State and the host Member State in the context of supervision of payment institutions exercising cross-border provision of payment services

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, and in particular Article 29(6) thereof,

Whereas:

- (1) The framework for cooperation and for the exchange of information between competent authorities of the home and of the host Member States in accordance with Title II of Directive (EU) 2015/2366 should enhance cooperation between competent authorities and should ensure consistent and efficient supervision of payment institutions providing payment services in other Member States, by specifying the method, means and details of cooperation, including the scope and treatment of information to be exchanged.
- (2) Competent authorities should be required to 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 to facilitate communication and exchange of information between them. Competent authorities should also indicate the languages in which they can be approached by other competent authorities.
- (3) Standardised forms should be introduced and made available to competent authorities to facilitate their communication when requesting and notifying information from and to each other, to ensure consistent and efficient cooperation. Those standard forms should be flexible enough to allow competent authorities to introduce the necessary explanations and information, upon request or on their own initiative, as relevant, that they consider to be appropriate. It is desirable to introduce deadlines to avoid undue

delays in the request, exchange and notification of information among competent authorities.

- (4) Where the competent authorities of the host Member States require payment institutions located in their territory to report to them periodically on the activities carried out, they should indicate to payment institutions the head office of which is situated in another Member State the electronic means, where available, by which and the language(s) in which they will may submit the reports. Furthermore, to enable the European Banking Authority (EBA) to fulfil its mandate to contribute to supervisory cooperation and convergence as envisaged in Regulation (EU) No 1093/2010 and for the purposes of the consistent application of Directive (EU) 2015/2366, host competent authorities should inform the EBA about their decision to require payment institutions having branches or agents within their territories to report to them periodically.
- (5) The content and the format of the reports to be submitted to host competent authorities by payment institutions having branches or agents within their territories should ensure the comparability of the data reported and, to the extent possible, the predictability of the data that host competent authorities might require payment institutions to report.
- (6) In accordance with point (a) of Article 6(1) of Directive 2009/110/EC of the European Parliament and of the Council¹, electronic money institutions, in addition to issuing electronic money, are entitled to engage in the provision of payment services. Further, in accordance with Article 3(1) of that Directive, the procedures for supervision of payment institutions exercising the right of establishment and freedom to provide services, including any periodical reporting required from payment institutions, apply *mutatis mutandis* to electronic money institutions. Article 3(4) of Directive 2009/110/EC also establishes that the provisions for supervision of payment institutions exercising the right of establishment and freedom to provide services apply *mutatis mutandis* to electronic money institutions distributing electronic money in another Member State through natural or legal persons that act on their behalf, with the exception of the appointment of central contact points in accordance with Article 29(4) of Directive (EU) 2015/2366. Article 3(5) of Directive 2009/110/EC provides that electronic money institutions may not issue electronic money through agents, while they are allowed to provide payment services through agents subject to the conditions laid down in Article 19 of Directive (EU) 2015/2366. Cross-border cooperation among competent authorities in relation to electronic money institutions having branches, agents or distributors within the territory of a host Member State should be facilitated with regard to the content and the format of the reports to be submitted. Nevertheless, information for monitoring compliance with the provisions of national law transposing Titles III and IV of Directive (EU) 2015/2366 should be submitted only by electronic money institutions providing payment services via branches or agents that are establishments in the host Member States; the distribution of electronic money through natural or legal persons established in a host Member State does not entail the provision of payment services.
- (7) This Regulation is based on the draft regulatory technical standards submitted by the EBA to the Commission.

¹ Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ L 267, 10.10.2009, p. 7).

- (8) The EBA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010².

² Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

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, as far as the payment service business is conducted under the right of establishment, for the monitoring of compliance with the provisions of national law transposing Titles III and IV of that Directive.
2. This Regulation also establishes the means and details of any periodical reporting required by the competent authorities of the host Member 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, in accordance with the first subparagraph of Article 29(2) of Directive (EU) 2015/2366.
3. This Regulation applies *mutatis mutandis* to 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 with regard to the exercise of the right of establishment or of the freedom to provide services by electronic money institutions in accordance with Article 111 of Directive (EU) 2015/2366, including the means and details of any periodical reporting required by the competent authorities of the host Member States from electronic money institutions having agents, branches or distributors within their territories on the payment business activities and electronic money activities carried out in their territories, including the frequency of such reporting, in accordance with the first subparagraph of Article 29(2) of Directive (EU) 2015/2366.

CHAPTER 2

FRAMEWORK FOR COOPERATION AND THE EXCHANGE OF INFORMATION BETWEEN COMPETENT AUTHORITIES

Article 2 – Single contact points

1. Competent authorities shall designate, by way of a single address of a dedicated functional mailbox, a single contact point to receive and transmit requests for cooperation and for the exchange of information in accordance with Article 4 of this Regulation.

2. Each competent authority shall make the information on single contact points referred to in paragraph 1 available to the other competent authorities and to the EBA. The EBA, based on the information received by the competent authorities, shall maintain a list of single contact points referred in paragraph 1 and shall make that list available to the competent authorities. Competent authorities shall communicate to the EBA updates on the information on single contact points referred to in paragraph 1 and shall remain solely responsible for the validity of the information provided to the EBA.

Article 3 – General requirements

1. The requests for information and the responses exchanged between competent authorities in accordance with 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 the competent authorities of the home and the host Member States.
 - b. they shall be transmitted in a secure way by electronic means, where those means are accepted by the competent authorities of the home and host Member States, followed by an electronic confirmation of receipt by the recipient competent authority.
2. Where the requesting authority has justified reasons for categorising its request as urgent, the requesting authority may make the request by means other than those envisaged in paragraph 1, including verbally. Any request for cooperation or exchange of information made verbally shall be subsequently confirmed in writing in accordance with paragraph 1, unless the competent authorities involved agree otherwise.
3. Each competent authority shall communicate the languages accepted in accordance with point (a) of paragraph 1 to the EBA. The EBA shall include that information, for each competent authority, in the list of single contact points referred to in Article 2(2). Competent authorities shall remain solely responsible for the validity of the information provided to the EBA.

Article 4 – Submission of requests for cooperation or exchange of information

Any competent authority that intends to request cooperation or exchange of information with 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 in Annex I. The requesting authority may attach to the request any document or other material deemed necessary to support the request.

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

1. The requested authority shall provide the requesting authority as soon as possible and no later than 20 working days after receipt of a request for cooperation or exchange of information, by completing the form in Annex II and using the single contact point of the requesting authority, with:

- (a) all relevant information specified by the requesting authority;
 - (b) all essential information, on its own initiative
2. The requested authority shall inform the requesting authority of any clarification it requires in relation to the request received.
 3. Where, on the basis of the complexity of the request or the amount of information requested, the requested authority is unable to meet the time limit set out in paragraph 1, it shall immediately inform the requesting authority of the justifiable reasons that necessitate any such delay and provide an estimated date of response.
 4. Where, in accordance with paragraph 3, the requested authority is not able to provide all the required information within the time limit set out in paragraph 1, it shall:
 - (a) provide the information that is already available within the time limit set out in paragraph 1, using the form in Annex II;
 - (b) provide any missing information as soon as it becomes available and in a manner, including verbally, that ensures that any necessary action may proceed expediently.
 5. If the requested information is provided verbally pursuant to point (b) of paragraph 4, it shall subsequently be confirmed in writing in accordance with paragraph 1, unless the competent authorities involved agree otherwise.
 6. Where a procedure for the settlement of a disagreement between the competent authorities of different Member States has been initiated in accordance with Article 27 of Directive (EU) 2015/2366 in relation to a request for cooperation or exchange of information, paragraphs 1 to 5 shall not apply pending resolution of the procedure under Article 19 of Regulation (EU) No 1093/2010.

Article 6 – Notification of 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 an agent or a branch of a payment institution located in the territory of another Member State, it shall notify the competent authority of the host Member State by completing the form in Annex III.

Article 7 – Procedure for a 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 of an agent or a branch of a payment institution located in its territory, it shall inform the competent authority of that host Member State of its intention. The competent authority of the home Member State may make a 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 requesting that it carry out an on-site inspection of an agent or a branch of a payment institution located in its territory.

2. Where, on the basis of the complexity of the request, the competent authority of the host Member State is unable to meet the request, it shall immediately inform the competent authority of the home Member State of the justifiable reasons that may prevent it from meeting the request.
3. The competent authorities of the home and of the host Member States shall engage in ongoing dialogue to coordinate the various stages of the on-site inspection and 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 will focus;
 - c. the allocation of resources and staff;
 - d. timelines;
 - e. responsibility for any enforcement actions and for monitoring the implementation of any risk mitigation plan that is considered necessary as a result of the inspection.
4. The competent authority of the home Member State shall send the request in the manner specified in Article 4 and the requested authority shall reply in the manner specified in Article 5.
5. The competent authority of the host Member State, too, shall be able to request of the competent authority of the home Member State that the latter carry out an on-site inspection at the head office of a payment institution that is situated in the home Member State and which provides payment services in the host Member State. The competent authority of the host Member State shall provide the competent authority of the home Member State with the reasons for carrying out such an on-site inspection at the head office of a payment institution located in the home Member State and which provides payment services in the host Member State.
6. Where, on the basis of the complexity of the request, the competent authority of the home Member State is unable to meet the request, it shall immediately inform the competent authority of the host Member State of the justifiable reasons that may prevent it from meeting the request.
7. The competent authority of the host Member State shall send the request in the manner specified in Article 4 and the requested authority shall reply in the manner specified in Article 5.
8. Where a procedure for the settlement of a disagreement between the competent authorities of different Member States has been initiated in accordance with Article 27 of Directive (EU) 2015/2366 in relation to a request to carry out an on-site inspection, paragraphs 1 to 7 shall not apply pending resolution of the procedure under Article 19 of Regulation (EU) No 1093/2010.

Article 8 – Notification in the event of an infringement or suspected infringement

1. The home and host competent authorities, on becoming aware of any infringements or suspected infringements by an agent or a branch of a payment institution, or such infringements occurring in the exercise of the freedom to provide services, shall notify each other immediately in accordance with Article 4.
2. The notifying competent authority shall provide the notified competent authority with all the indispensable information in relation to the 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, and so on. Additionally, the notifying competent authority may provide the notified competent authority with any other information that it considers to be 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 it considers to be appropriate and of interest for the notified competent authority in deciding the appropriate course of action in relation to the issue.
4. The competent authorities shall notify each other in this regard by completing the form in Annex IV. The notifying authority may attach to the communication any document or other supporting material deemed of interest.
5. If the notifying competent authority believes the information should be sent urgently, it may initially notify the other competent authority verbally, provided that subsequently information is transmitted in writing by electronic means, unless the competent authorities agree otherwise.

CHAPTER 3

PROVISION OF INFORMATION REQUESTED BY HOST COMPETENT AUTHORITIES FROM PAYMENT INSTITUTIONS

Article 9 – Reporting for information or statistical purposes and to monitor compliance with the provisions of national law transposing Titles III and IV of PSD2

1. Where the competent authorities of host Member States require payment institutions located in their territories with branches or agents to report to them periodically on the activities carried out, they shall indicate to payment institutions the head office of which is situated in another Member State the electronic means, where available, by which and the language(s) in which they may submit reports.
2. For the purposes of paragraph 1, host competent authorities shall inform the EBA about their decision to require payment institutions having branches or agents within their territories to report to them periodically.

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

1. Where a competent authority of a host Member State decides to require periodical reporting as referred to in Article 9, it shall require reports for information or statistical purposes from payment institutions in relation to their agents or branches located within its territory.
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 templates in Annex V to this Regulation;
 - (b) the identity and contact details of the person responsible for the submission of the report;
 - (c) the type of payment services and e-money services provided, where applicable;
 - (d) the number of places of business, their addresses and the number of employees;
 - (e) the number of agents enrolled within the reporting period and the total number of agents, broken down into number under the freedom to provide services and number under the right of establishment;
 - (f) the number of e-money distributors enrolled within the reporting period and the total number of distributors, broken down into number under freedom to provide services and number under the right of establishment;
 - (g) the names and addresses of the 10 biggest agents, and the 10 biggest distributors, if applicable, in the host Member State by transaction volumes;
 - (h) the total volume of transactions carried out by the payment institution within the reporting period, broken down by type of payment service, distribution channel (branch, online, mobile, automated teller machine, telephone, etc.) and agent/branch (the volume of transactions coming in and out of the host Member State must also be specified);
 - (i) the total value of transactions carried out by the payment institution within the reporting period, broken down by type of payment service, distribution channel (branch, online, mobile, telephone, etc.) and agent/branch (the value of transactions coming in and out of the host Member State must also be specified);
 - (j) for electronic money institutions, the value of the e-money distributed and redeemed in the host Member State;
 - (k) the number of payment accounts, including accounts where e-money is stored, opened/accessed in the host Member State within the reporting period, and the total number of payment accounts operated/maintained in the host Member State;
 - (l) the number of card-based payment instruments issued in the host Member State within the reporting period, broken down by type of card-based payment instrument (debit, credit, revolving, etc.) and stating the outstanding number of card-based payment instruments issued in the host Member State;
 - (m) the 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) the number of customers (framework contracts) and payment service users (single payment transactions) in the host Member State registered within the reporting period and the total number at the end of the period;
 - (o) the aggregated number of complaints concerning the rights and obligations under Titles III and IV of Directive (EU) 2015/2366 and security-related customer complaints received from payment service users in the host Member State within the reporting period;
 - (p) the number of fraudulent transactions and the volume of gross fraudulent payment transactions incurred in the host Member State within the reporting period; and
 - (q) the 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 authority of the host Member State using the templates in Annex V 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 PSD2

1. Where the competent authority of the host Member State requires 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 PSD2. In those cases, the reports shall include all the information referred to in Article 10 and shall also include the following information:
 - (a) the name and contact details of the person or persons responsible for the payment institution's activity and/or of the compliance officer (if different) in the host Member State, where applicable;
 - (b) the name and contact details of the Central Contact Point, where applicable;
 - (c) the number of complaints received from payment service users in the host Member State concerning the rights and obligations under Titles III and IV of PSD2 and security-related customer complaints within the reporting period, into the number of complaints that have been settled and the number that have not, and into the number of complaints that have been replied to and the number that have not, per agent/branch;
 - (d) a brief description of the procedure in place to handle and follow up on customer complaints;
 - (e) amendments to framework contracts within the reporting period;
 - (f) the number of major operational and/or security incidents that affected payment service users in the host Member State within the reporting period;

- (g) the 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, the aggregated number of requests for refunds received from payment service users and/or from account servicing payment service providers (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 PSD2, broken down into the number of transactions that have been refunded to the payment account and the number that have not;
 - (h) the total value of refunds made to payment service users within the reporting period, broken down into unauthorised and incorrectly executed (non-execution, defective or late execution) payment transactions, and, where appropriate, the 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 PSD2, broken down into unauthorised and incorrectly executed (non-execution, defective or late execution) payment transactions, into unauthorised and fraudulent access to payment account information and into unauthorised and fraudulent use of such information.
 - (i) a brief description of the payment institution's business model, focusing on the way in which payment services are provided in the host Member State;
 - (j) a brief description of the payment services envisaged for the next year (products and payment services to be provided and the 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 authority of the host Member State using the templates in Annex VI 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

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 I: Form for a request for cooperation or exchange of information

Reference number:	Date:
FROM:	TO:
<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:

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

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

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Please add any further comments with regard to the confidentiality and potential use of the information provided:

.....
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...



Yours sincerely,

[signature]



ANNEX II: Form for the reply to a request for cooperation or exchange of information

Reference number:	Date:
FROM:	TO:
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 in cooperation or the exchange of information for the purposes of the request:

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If you were unable to provide all the information requested and/or meet the deadline for replying, please explain the reasons and provide an initial estimated date of response:

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Please provide, on a best-efforts basis, any other essential information that could further assist cooperation or the exchange of information for the purposes of the request:

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Please add any further comments with regard to the confidentiality and potential use of the information provided:

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Yours sincerely,

[signature]



ANNEX III: Form for the notification of intention to carry out an on-site inspection in the host Member State

Reference number:	Date:
FROM:	TO:
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 that I intend to carry out in your territory.

Please provide information on the payment institution that is to be inspected:

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...
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...



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

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

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...
.....
...

Yours sincerely,

[signature]



ANNEX IV: Form for the notification of an infringement or suspected infringement

Reference number:	Date:
FROM:	TO:
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 or sanctions.

.....
 ...

 ...

 ...

 ...



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

.....
...
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...

Please add any further comments with regard to the confidentiality and potential use of the information provided:

.....
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Yours sincerely,

[signature]

ANNEX V: Data to be reported for information and statistical purposes

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 authority, to allow the host competent authority to receive periodical information on the activities carried out in its territory.

Table 1. General Information about the payment institution/electronic money institution

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

Table 1. General Information about the payment institution/electronic money institution

		<p>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>execution of direct debits, including one-off direct debits <input type="checkbox"/></p> <p>execution of payment transactions through a payment card or a similar device <input type="checkbox"/></p> <p>execution of credit transfers, including standing orders <input type="checkbox"/></p> <p>Execution of payment transactions where the funds are covered by a credit line for a payment service user:</p> <p>execution of direct debits, including one-off direct debits <input type="checkbox"/></p> <p>execution of payment transactions through a payment card or a similar device <input type="checkbox"/></p> <p>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><input type="checkbox"/> Issuing of payment instruments</p> <p><input type="checkbox"/> Acquiring of payment transactions</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><input type="checkbox"/> Money remittance</p> <p><input type="checkbox"/> Payment initiation services</p> <p><input type="checkbox"/> Account information services</p>
8)	Electronic money services to be provided (applicable only to electronic money institutions)	<input type="checkbox"/> Distribution of electronic money <input type="checkbox"/> Redemption of electronic money
9)	Name and address of the 10 biggest agents in the host Member State by value of transactions	Agent 1 Agent 2 ... Agent 10
10)	Name and address of the 10 biggest distributors in the host Member State by e-money distribution/ redemption value	Distributor 1 Distributor 2 ... Distributor 10

Table 2. Branches

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

Table 3. Agents

	Under 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 contracts)		
Number of payment service users (single payment transactions)		

Table 5. Card-based payment instruments

	Number of				
	Credit cards	Revolving cards	Debit cards	Prepaid cards	Other (please specify)
Issued within the reporting period					
Outstanding at the end of the period					

	Credit cards	Revolving cards	Debit cards	Prepaid cards	Other (please specify)
Value of card-based payment transactions executed through					

Table 6. Payment accounts

	Payment accounts
Opened within the reporting period	
Accessed within the reporting period	
Total number of payment accounts operated/maintained in the host Member State	
Total number of payment accounts accessed 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 in 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		

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

Payment services as referred to in Annex I to PSD2	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	
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 that represent > 10% of the total value)

Payment services as referred to in Annex I to 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 that represent > 10% of the total value)

Payment services as referred to in Annex I to 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 broken down by distribution channel

Payment services as referred to in Annex I to 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	

Table 15. E-money services

	Amount
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 VI: Data to be reported for monitoring compliance with the provisions of national law transposing Titles III and IV of PSD2

Payment institutions headquartered in a 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, to allow the host competent authorities to monitor compliance with the provisions of national law transposing Titles III and IV of PSD2.

Table 1: General Information about the payment institution/electronic money institution

1)	Person or persons responsible for the payment institution's activity and/or the compliance officer (if different) in the host Member State, where applicable	a. Name of representative b. Address c. Telephone number d. Email
2)	Central contact point, if already appointed and/or required in accordance with Article 29(4) of Directive (EU) 2015/2366	a. Name of representative b. Address c. Telephone number d. Email
3)	Where applicable, please check the relevant box(es) for any new payment services envisaged to be provided in the next year	<input type="checkbox"/> Services enabling cash to be placed in a payment account as well as all the operations required for operating a payment account <input type="checkbox"/> Services enabling cash withdrawals from a payment account as well as all the operations required for operating a payment account Execution of payment transactions, including transfers of funds on a payment account with the user's payment provider or with another payment service provider: execution of direct debits, including one-off direct debits <input type="checkbox"/> execution of payment transactions through a payment card or a similar device <input type="checkbox"/> execution of credit transfers, including standing orders <input type="checkbox"/> Execution of payment transactions where the funds are covered by a credit line for a payment service user: execution of direct debits, including one-off direct debits <input type="checkbox"/> execution of payment transactions through a payment card or a similar device <input type="checkbox"/> execution of credit transfers, including standing orders <input type="checkbox"/>

		<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><input type="checkbox"/> Issuing of payment instruments</p> <p><input type="checkbox"/> Acquiring of payment transactions</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><input type="checkbox"/> Money remittance</p> <p><input type="checkbox"/> Payment initiation services</p> <p><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	<p><input type="checkbox"/> Distribution of electronic money</p> <p><input type="checkbox"/> Redemption of electronic money</p>
5)	Complaints handling	<p>Do you have an internal procedure in place to handle and follow up on customer complaints? <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:</p> <p>Address:</p> <p>Telephone:</p> <p>Email:</p> <p>Is this procedure available in the official language of the host Member State? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If not, please include the languages in which the customer complaints procedure is available.</p> <p>Please provide a brief description of your internal procedure for handling payment service users' complaints in the host Member State (max. 300 words)</p>
6)	Business model	<p>Is this your first report, where you provide a brief description of your business model? <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 the 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 that have 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
Number of complaints received from payment service users (PSUs) concerning the rights and obligations under Titles III and IV and security-related matters within the reporting period								

Table 3. Requests for refunds

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

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

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 Article 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 Article 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 Article 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 Article 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 that 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 users' rights <input type="checkbox"/> Payment service users' 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 users' rights <input type="checkbox"/> Payment service users' 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 debit cards issued by you have been made within the reporting period</p>	<input type="checkbox"/> Fees and charges <input type="checkbox"/> Exchange rates <input type="checkbox"/> Spending limits <input type="checkbox"/> Payment service users' rights <input type="checkbox"/> Payment service users' obligations <input type="checkbox"/> Payment initiation procedure
<p>Please check the relevant box(es) where amendments to the following conditions of any other framework contract (please specify) to which you are party 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 users' rights <input type="checkbox"/> Payment service users' obligations <input type="checkbox"/> Payment initiation procedure

5. Accompanying documents

5.1 Cost-benefit analysis/impact assessment

Article 10(1) of the EBA Regulation provides that any 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 on electronic payments with a view to creating 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 within the EU³ has resulted in the need to improve the cooperation among CAs in terms of information exchange and harmonisation of supervisory activities.

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 transparency within the market, leaving space for regulatory arbitrage and inappropriate conduct⁴. In particular, a lack of an adequate communication between home and host Member States can imply weak supervision and monitoring activities.

Article 29 of the Directive therefore provides measures 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)).

³ See the EBA’s Consumer Trends Report 2017,

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

⁴ 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 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 levels of transparency and consumer protection, and to the development of a better-integrated internal European market for payment services. The RTS can contribute to making payments within the EU as efficient and secure as payments within a single Member State.

More specifically, these RTS have been developed with a view to facilitating efficient cooperation between CAs. To this end, the objectives underpinning the current RTS are the following:

- to enhance the transparency of the information that cross-border payment institutions can be required to report to host CAs;
- to harmonise supervisory activities across Member States through specifically defined procedures and instruments, as well as a more specific set of information that host CAs can request from cross-border payment institutions;
- to ensure a high level of confidence on the part of payment service users throughout the EU through more effective cooperation between Member States.

C. Options considered and preferred options

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

1. Options for cooperation and the exchange of information between CAs in home and host Member States

The collection of all requests and notifications could be carried out in accordance with the following options:

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

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

Option 1.1.A has been selected.



The procedure for the exchange of information between CAs could be carried out in accordance with 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 would involve the use of standard forms for the submission and exchange of information. This would allow CAs 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. email exchange and phone calls) would delay the process (Option 1.2.B). Furthermore, the content of the information would not be harmonised across Member States. This could negatively affect the quality of the information exchanged, hindering cooperation between CAs.

Option 1.2.A has been selected.

On-site inspections could be carried out by CAs in accordance with the following options:

- (1) Option 1.3.A: on-site inspections can be carried out as specified in Article 29(1)⁵ of the Directive (status quo).
- (2) Option 1.3.B: allow any CA, home or host, to request another CA to carry out an on-site inspection.

Option 1.3.A would allow a home CA to notify the host CA where it intended to carry out an on-site inspection in the territory of the host Member State. In addition, a home CA can delegate to the host CA the task of carrying out an on-site inspection of an institution that operates in the host Member State.

However, it is reasonable to assume that there are situations in which the host CA may need to request the home CA to carry out an inspection of an institution operating in a host Member State. Option 1.3.B addresses this issue, allowing host CAs to request that inspections be delegated to the home CA or carried out jointly by both the home and host CAs. This option would reinforce the cooperation between CAs, since it takes into account all the situations in which a CA (home or host) needs to conduct an inspection.

Option 1.3.B has been selected.

Alternative options were also considered with a view to reinforcing the cooperation between CAs:

- (1) Option 1.4.A: to establish 'colleges of supervisors' or regular meetings for CAs.

⁵ 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.'



- (2) Option 1.4.B: to not establish ‘colleges of supervisors’ or regular meetings for CAs.

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

Despite this, according to feedback received from CAs, the establishment of colleges and regular meetings for supervisors is 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 selected.

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

Various options were considered to determine whether all payment institutions should be subject to the reporting requirements of these RTS:

- (1) Option 2.1.A: allow CAs to request information from specific payment institutions.
- (2) Option 2.1.B: allow CAs to request information only from all payment institutions.

Option 2.1.A allows CAs to request information from specific payment institutions that they deem of interest for two sets of information requirements: those for information or statistical purposes and those for monitoring compliance with Titles III and IV of PSD2. CAs might not need to request information from all payment institutions to have a good knowledge of the payments market in the host Member State; they could instead request information from a characteristic subset of them based on criteria such as size, type of payment services provided, etc. This would be consistent with the proportionality principle and would avoid an unnecessary reporting burden for some payment institutions. However, this option might not work for supervisory purposes, as supervisory authorities might need to gather information from all payment institutions operating in the host Member State via branches or agents under the right of establishment that they have to supervise.

Option 2.1.B allows CAs to request information from all payment institutions. This option ensures that CAs will have all the information related to the payments markets in host Member States and allows the monitoring of all payment institutions operating in host Member States via branches or agents under the right of establishment. However, this option would entail a greater reporting burden for payment institutions.

To allow host CAs to have all the information required to facilitate monitoring compliance with Titles III and IV of PSD2 of payment institutions operating in host Member States via branches or agents under the right of establishment, Option 2.1.B is preferable. This would mean that host CAs, to have a good knowledge of the payments market in host Member States, would need to collect information also from those payment institutions operating via agents under the freedom to provide services. As the number of payment institutions currently operating under that business



model is small in most Member States, it would be very difficult for host CAs to identify a characteristic subset of them to be required to report for information or statistical purposes, and therefore Option 2.1.A was disregarded.

Option 2.1.B has been selected, for both the reporting for information or statistical purposes and the reporting for monitoring compliance with Titles III and IV of PSD2.

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

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

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

Option 2.2B offers 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 Member State and all the information needed to support its supervisory activities. The resultant harmonisation of information would also be in line with the objectives of these RTS.

Option 2.2.B has been selected.

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

- (1) Option 2.3.A: semi-annual frequency.
- (2) Option 2.3.B: annual frequency.

The frequency of the reporting should allow CAs to carry out their supervisory and monitoring activities efficiently. Therefore, Option 2.2.B would be in line with this objective and, at the same time, it would not entail an unnecessary workload for payment institutions. By contrast, a semi-annual frequency of reporting (Option 2.2.A) could result in an excessive reporting burden that would entail higher compliance costs.

Option 2.3.B has been selected.



D. Cost-benefit analysis

These RTS aim to strengthen supervisory and monitoring activities for payment institutions providing cross-border services within the EU. This will affect CAs and payment service users as well as payment institutions.

A further improvement in cooperation and information exchange between CAs would bring several benefits. Indeed, facilitating supervision activities in relation to payment institutions across Member States⁶ would make the payment services market safer and more efficient.

Improved supervisory activities can also increase confidence in the market and positively affect 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 would depend to a great extent on the capacity of CAs to ensure a level playing field and to avoid regulatory arbitrage and misconduct within the market. In this regard, the harmonisation of information exchange practices across Member States can play a key role.

However, the implementation of these RTS will entail compliance costs for both competent authorities and payment institutions. These costs will mainly relate to additional reporting standards to be set out by CAs and to the increased administrative burden for payment institutions. Nonetheless, it is reasonable to assume that most of the costs will be one-off costs to set up new reporting and data collection processes.

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

5.2 Feedback on the public consultation and on the opinion of the BSG

The EBA publicly consulted on the draft proposal contained in this paper.

The consultation period lasted for two and half months and ended on 5 January 2018. Nine responses were received, of which six were published on the EBA website.

This paper presents a summary of the key points and other comments arising from the consultation, the analysis and discussion triggered by these comments and the actions taken to address them if deemed necessary.

⁶ EBA Work Programme (2017),

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



In many cases, several industry bodies made similar comments or the same body repeated its comments in response to different questions. In such cases, the comments, and the EBA's analysis, are included in the section of the table that follows where the EBA considers them most appropriate.

Changes to the draft RTS have been incorporated as a result of the responses received during the public consultation.

Summary of key issues and the EBA's response

As stated in section 3.2, 'Rationale', the EBA has decided to make changes to the draft RTS to reflect some of the concerns raised by respondents. In the feedback table that follows, the EBA has summarised the comments received and explains which responses have and have not led to changes, and the reasons for this.

Summary of responses to the consultation and the EBA's analysis

No	Comments	Summary of responses received	EBA analysis	Amendments to the proposals
General comments				
1.	General comment	<p>One respondent was concerned about the erosion of the home Member State principle under PSD2 generally, and as represented by these RTS by granting further discretion to host Member States. In its view, this principle provides legal certainty, removing the complexity of complying with 28 different regimes, and serves as an incentive for cross-border activity and innovation within the EU.</p>	<p>The RTS do not confer any additional discretion or power on CAs in host Member States other than that expressly provided for in PSD2. The RTS set out the framework for cooperation and the exchange of information between CAs of the host and home Member State with the aim of ensuring consistent and efficient supervision of payment institutions providing cross-border payment services.</p> <p>In addition, the RTS specify the means, frequency and details of any reporting requested by CAs of the host Member State on the payment business activities carried out in their territories by payment institutions having agents or branches within their territories, should host CAs decide to exercise the discretionary power conferred on them by Article 29(2) of PSD2.</p>	None.
2.	General comment	<p>One respondent remarked that the EBA should also ensure that home Member States request information comparable to that specified in these RTS from payment institutions that provide payment services in another Member State under the freedom to provide services.</p> <p>The rationale underlying the CP is that the EBA should ensure that supervisory authorities gather comparable information on PSD2 payment services provided in another Member State from payment institutions that have obtained the European passport.</p>	<p>The scope of the mandate is limited to setting out the framework for cooperation and the exchange of information between CAs of the home and host Member State and specifying the details of any reporting requested by host CAs from payment institutions the head office of which is located in another Member State and which provide payment services in their territories via agents or branches. Given that the aspects mentioned by the respondent exceed the scope of this mandate, the EBA considers that no changes to the RTS are needed.</p>	None.

No	Comments	Summary of responses received	EBA analysis	Amendments to the proposals
			<p>However, the EBA notes that PSD2 does not prevent the CA in the home Member State from requesting the same kind of information or any other information considered relevant by the home CA from payment institutions that provide payment services in another Member State under the freedom to provide services or the right of establishment.</p>	
3.	General comment	<p>One respondent considered that it was unclear from the RTS whether EMIs with distributors but no agents or branches in a host Member State were within the scope of the information requirements set out in Articles 10 and 11. In its view, only EMIs with agents or branches in a host Member State should be subject to reporting obligations.</p> <p>The reason for this is that distributors do not offer payment services on behalf of payment institutions, as agents or branches do. They are merely outsourced service providers that do not offer regulated services of the host Member State.</p>	<p>The RTS apply <i>mutatis mutandis</i> to EMIs. The EBA is of the view that the <i>mutatis mutandis</i> clause should be read in accordance with the guidance provided in recital 9 of the Electronic Money Directive, which clarifies that a reference to ‘payment institution’ in PSD2 needs to be read as a reference to ‘electronic money institution’ and that a reference to ‘payment service’ needs to be read as reference to the activity of ‘payment services and issuing electronic money’.</p> <p>In accordance with that guidance and with Article 111 of PSD2, Article 29 of PSD2, including the RTS referred to in paragraph 7, applies to EMIs <i>mutatis mutandis</i> in relation to both the provision of payment services and the issuing/distribution of e-money, irrespective of whether those activities are provided independently or at the same time.</p> <p>Where an EMI only provides e-money activities only by means of distributors in a host Member State, those activities will be included in the scope of the reports that may be required by the host CA for information or statistical purposes. The fact that only e-money activities are provided, and not payment services, simply means that the host CA will not require reports, where the distributors are establishments, for monitoring compliance with the provisions of national law transposing Titles III and IV</p>	<p>The EBA amended Article 1(3) as follows:</p> <p>‘This Regulation applies <i>mutatis mutandis</i> to electronic money institutions 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 with regard to the exercise of the right of establishment or of the freedom to provide services by electronic money institutions in accordance with Article 111 of Directive (EU) 2015/2366, including the means and details of any periodical reporting required by the competent authorities of the host Member States from electronic money institutions having agents, branches or distributors within their territories on the payment business activities and electronic money activities carried out in their territories, including the frequency of such reporting, in accordance with the first subparagraph of Article 29(2) of Directive (EU) 2015/2366.’</p> <p>In addition, the EBA introduced a new recital, recital 6, to provide some clarity on the <i>mutatis mutandis</i> clause.</p>

No	Comments	Summary of responses received	EBA analysis	Amendments to the proposals
			<p>of PSD2, because those provisions would not be relevant where payment services were not provided.</p> <p>Therefore, the EBA arrived at the view that, where an EMI only distributes e-money in the host Member State through distributors, the EMI will have to submit reports for information or statistical purposes to the host CA, should the host CA decide to exercise its discretionary power to request those reports. However, the EMI will not have to submit any reports for monitoring compliance with the provisions of national law transposing Titles III and IV of PSD2.</p>	
4.	General comment	<p>One respondent asked the EBA to clarify whether the list of information that can be requested by host CAs from payment institutions is exhaustive or if it can be extended at the discretion of the host CA.</p>	<p>Articles 10 and 11 of the RTS specify the means and details of any reporting requested by host CAs from payment institutions on payment business activities carried out in their territories. In particular, the RTS specify the information that payment institutions have to submit using the standardised templates laid down in Annexes V and VI to the RTS. Therefore, the list of information is exhaustive and cannot be extended at the discretion of the host CA. The reason for this is to harmonise the content of the reports, so that payment institutions know the information that might be requested from them by host CAs when they provide payment services in their territories.</p> <p>However, the EBA clarifies that host CAs can always request ad hoc information from payment institutions providing payment services in their territories via branches or agents under the right of establishment with the aim of monitoring compliance with the provisions of national law transposing Titles III and IV of PSD2.</p>	None.

No	Comments	Summary of responses received	EBA analysis	Amendments to the proposals
5.	General comment	<p>One respondent suggested that the rule established in Article 3 of the draft RTS, according to which communication between the CAs must take place in a language customary in the field of finance, be applied also to communication between the payment institution and the host CA, and in particular to the reports mentioned in the draft RTS.</p>	<p>Article 29(6) of PSD2 mandates the EBA to specify the means and details of any reporting requested by host Member States from payment institutions on the payment business activities carried out in their territories, including the frequency of such reporting.</p> <p>The EBA is of the view that, as the mandate is silent regarding the language of such reporting, this should be a matter for the CAs' discretion, in accordance with national law transposing PSD2 or any other applicable national rules. The EBA also considers that reporting the information in the official language of the host Member State should not be too burdensome for payment institutions, as the reports are mostly focused on data and are to be submitted by filling out the standardised templates in Annexes V and VI to the RTS.</p> <p>However, the EBA will amend the RTS to clarify that the host CA must make available on its website the language(s) in which the information may be reported.</p>	<p>The EBA redrafted Article 9 as follows:</p> <ol style="list-style-type: none"> 1. Where the competent authorities of the host Member States require payment institutions located in their territory with branches or agents to report to them periodically on the activities carried out, they shall indicate to payment institutions the head office of which is situated in another Member State the electronic means, where available, by which and the language(s) in which they may submit reports 2. For the purposes of paragraph 1, host competent authorities shall inform the EBA about their decision to require payment institutions having branches or agents within their territories to report to them periodically.
6.	General comment]]	<p>The EBA cannot clarify in these RTS certain provisions that are set out in other RTS, as it would go beyond the mandate for developing these RTS.</p> <p>However, the EBA is of the view that these RTS set out a framework for cooperation and the exchange of information between CAs that is flexible enough to ensure that it covers as many scenarios as possible. The specified framework does not exclude any possibilities with regard to exchange of information between CAs, including on the exemption from the requirement for strong customer authentication.</p>	None.

No	Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Responses to question 1 in the Consultation Paper				
7.	Section 3.2 ('Rationale')	<p>The majority of respondents were in agreement with the identified objectives of the RTS in the CP and considered them appropriate and complete. However, one respondent was concerned that the reference to 'enhanced supervision' in the objectives for CAs proposed an additional competence for host Member States, over and above those explicitly set out in PSD2.</p> <p>The same respondent also suggested including a clarification of the different extents of the competences of home and host CAs in different circumstances as one of the objectives of the RTS. This would include distinguishing cross-border provision of payment services that involve establishment from those provided under freedom to provide services, as well as those where an agent or branch is utilised from those where it is not. Similarly, the significance, if any, of outsourced services being located in a host Member State could be clarified. The respondent suggested including a reference to Article 100(4), which specifies that host CAs have competence only where agents or branches are established in their jurisdiction.</p>	<p>The EBA clarifies that the reference to 'enhanced supervision' in the objectives for CAs does not mean more competences allocated to host CAs than those established in PSD2. That reference is intended to express these RTS's aim of ensuring consistent and efficient supervision of payment institutions exercising cross-border provision of payment services through defined procedures and instruments for cooperation and information exchange between home and host CAs.</p> <p>The EBA agrees to amend the wording for greater clarity by replacing the reference to 'enhanced supervision' with 'consistent and efficient supervision'.</p> <p>On the suggestion to include a clarification of the different extents of the competences of home and host CAs, the EBA considers it unnecessary to repeat or make reference to competences clearly specified in PSD2.</p>	None.
Responses to question 2 in the Consultation Paper				
8.	Article 3	The majority of respondents agreed with the proposed framework for cooperation and the exchange of information between CAs and with the use of standardised forms as specified in the CP.	The EBA recognises the importance of ensuring security and data confidentiality when CAs exchange information and reminds the respondent that PSD2 already states, in Article 24, that professional secrecy must be strictly applied to the exchange of	The EBA amended Article 3(1)(b) as follows: b. they shall be transmitted in a secure way by electronic means, where those means are accepted by the competent authorities of the home and host Member States , followed by an

No	Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		<p>However, one respondent was of the view that CAs should share information in a secure way through encrypted channels rather than via standard group emails.</p>	<p>information between CAs to ensure the protection of individual and business rights.</p> <p>The EBA agrees to amend the wording to specify that the information must be transmitted in a secure way by electronic means. However, the EBA is of the view that it should leave it to CAs to adopt the security methods they consider adequate.</p>	<p>electronic confirmation of receipt by the recipient competent authority.</p>
9.	Article 7	<p>One respondent considered that Article 7(7) gave host CAs the power to carry out on-site inspections of entities located in their territories without being established there. In its view, this might go beyond the responsibilities granted to host CAs, and the power should be limited to entities established in the host Member State.</p> <p>Additionally, the same respondent considered that there was no qualification regarding the types of entities that could be subject to on-site visits – e.g. agents, branches or outsourced service providers – and that this should be restricted to branches and established agents.</p>	<p>PSD2 explicitly specifies that the CA of the home Member State may delegate to the CA of the host Member State the power to carry out an on-site inspection of a payment institution. In addition, PSD2 entrusts the host CA with full powers to monitor compliance with the provisions of national law transposing Titles III and IV of PSD2 by branches and agents conducting business under the right of establishment. Therefore, the host CA would be allowed to conduct an on-site inspection of a branch or agent established in its territory to monitor compliance with the provisions of national law transposing Titles III and IV of PSD2 without submitting any prior request or notification to the home CA and with no need to be delegated the task of doing so by the home CA.</p> <p>Article 7(5) of the RTS states that the host CA may request of the home CA that the latter carry out an on-site inspection 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. Therefore, it does not confer any additional power on the host CA. However, the EBA has adapted the wording of section 3.2 and Article 7(5) to make it clearer.</p>	<p>The EBA amended Article 7; former paragraph 7 has been modified and become paragraph 6, and a new paragraph 7 has been added, as follows:</p> <p>6. The competent authority of the host Member State, too, shall be able to request of the competent authority of the home Member State that the latter to carry out an on-site inspection at the head office of a payment institution 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 that 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 The competent authority of the host Member State shall provide the competent authority of the home Member State with the reasons for carrying out such an on-site inspection at the head office of a payment institution located in the home Member State and which provides payment services in the host Member State.</p> <p>7. Where, on the basis of the complexity of the request, the competent authority of the home</p>

No	Comments	Summary of responses received	EBA analysis	Amendments to the proposals
			Finally, with regard to the comment on the types of entities subject to on-site visits, the EBA clarifies that, according to Article 23(1)(b), CAs may carry out on-site inspections at the payment institution, at any agent or branch providing payment services under the responsibility of the payment institution, or at any entity to which activities are outsourced.	Member State is unable to meet the request, it shall immediately inform the competent authority of the host Member State of the justifiable reasons that may prevent it from meeting the request.
10.	Article 7	<p>The BSG recommended that paragraph 5 of Article 7 in the CP should be expanded to state that the CAs should agree on ‘responsibility for monitoring the implementation of any risk mitigation plan or supervisory actions which could be considered necessary as a result of the inspection’.</p> <p>An inspection may highlight a number of issues that need to be dealt with to ensure appropriate standards of consumer protection. It is important that the CAs have a clear plan for allocating responsibility for actions that arise to ensure that they are implemented.</p>	The EBA agrees with the BSG that, as a result of an inspection, there could be supervisory actions that should be monitored and that it should be clarified which CA is responsible for the monitoring. The EBA has adapted the wording accordingly.	<p>The EBA amended former Article 7(5)(e), which has become Article 7(3)(e), as follows:</p> <p>e) responsibility for any enforcement actions and for monitoring the implementation of any risk mitigation plan that which is considered necessary as a result of the inspection.</p>
Responses to question 3 in the Consultation Paper				
11.	Article 8	<p>One respondent agreed that the framework and standardised forms were a good basis for the notification but was concerned about the lack of a <i>de minimis</i> threshold for notifications. This could give rise to either CAs not being able to comply with the requirement or excessive correspondence, some of which could be trivial.</p> <p>The respondent considered that there was a need for additional guidance on the seriousness and</p>	The EBA notes the respondent’s view, but considers that, when there is an infringement or a suspected infringement by a payment institution providing payment services across borders, it is for the CA to determine the type of infringement that should trigger a notification, and what information it is essential to share, taking into consideration the type of infringement, its severity, its potential consequences and its impact on payment service users.	None.

No	Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		type of matter that should be the subject of infringement information sharing.		
Responses to question 4 in the Consultation Paper				
12.	Article 10	<p>Some respondents were against allowing host CAs the discretion to require reporting from only a characteristic subset of payment institutions, as this could be discriminatory, creating an unwarranted asymmetry between payment institutions and working against the goal of creating a level playing field in the European Union.</p> <p>However, two respondents favoured the proposed approach that allowed CAs to collect data on business in their jurisdictions without having to collect data for every provider that passports into that Member State, and thus to choose a subset of relevant payment institutions.</p>	<p>Requiring periodical reports from payment institutions operating in a host Member State via agents or branches is an option conferred on the host CAs by PSD2.</p> <p>The EBA disregarded the option of allowing host CAs to require information from only a subset of payment institutions. The reason for this is that the fact that all payment institutions providing payment services in the host Member State via agents or branches under the right of establishment have always to report both sets of data (for information or statistical purposes and to monitor compliance with the provisions of national law transposing Titles III and IV of PSD2) implies that host CAs could require only the first set of data (for information or statistical purposes) from payment institutions operating in the host Member State via agents under the freedom to provide services. As the number of payment institutions currently providing payment services via agents under the freedom to provide services in the Member States is very small, it would be very difficult or impossible for host CAs to choose a subset of those payment institutions that was characteristic of the payments market in the host Member State, as they would have to choose all of them in most cases.</p> <p>Therefore, the EBA agreed to amend the RTS such that, should the host CA decide to require periodical reporting:</p>	<p>The EBA amended Articles 9, 10(1) and 11(1) as follows:</p> <p>Article 9:</p> <p>1. Where the competent authorities of host Member States shall communicate to the EBA whether they intend to make use of their discretionary power to require payment institutions located in their territories having agents or with branches or agents within their territories to report to them periodically on the activities carried out, in their territories they shall indicate to payment institutions the head office of which is situated in another Member State the electronic means, where available, by which and the language(s) in which they may submit reports.</p> <p>2. For the purposes of paragraph 1, host competent authorities shall inform the EBA about their decision to require payment institutions having branches or agents within their territories to report to them periodically 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.</p>

No	Comments	Summary of responses received	EBA analysis	Amendments to the proposals
			<p>– all payment institutions that operate via agents under the freedom to provide services are to report the first set of data, for information or statistical purposes; and</p> <p>– all payment institutions that operate via a branch or agent under the right of establishment are to report both sets of data (for information or statistical purposes and to monitor compliance with the provisions of national law transposing Titles III and IV of PSD2).</p>	<p>Article 10(1):</p> <p>1. Where a competent authority of a host Member State decides to require periodical reporting as referred to in Article 9, it shall require reports for information or statistical purposes from payment institutions in relation to their agents or branches located within its territory. from</p> <p>a. all payment institutions with agents or branches within its territory or</p> <p>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.</p> <p>Article 11(1)</p> <p>1. Where the competent authority of the host Member State decides to requires 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 PSD2. In those cases, the reports shall include all the information referred to in Article 10 and shall also include the following information: ...'</p>
13.	Article 10	One respondent considered that the RTS should establish guidelines for host CAs that limit the possibility to request reporting in some situations.	The EBA is of the view that all branches of payment institutions should have to report to the host CA should the latter decide to exercise the option	See amendments made in response to comment 12.

No	Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		<p>In particular, the respondent highlighted that branches that were small or had limited scope should be exempted from the reporting obligations. The reason for this is that PSD2 aims to foster the presence of payment institutions across various Member States and avoid unnecessary barriers. The comprehensive reporting requirements established in the RTS for small branches are an unnecessary barrier that should be avoided.</p>	<p>provided for in PSD2 to require periodical reporting from payment institutions providing payment services in the host Member State via agents or branches.</p> <p>The EBA considers that there is added value for host CAs in receiving annual information from all branches, as all of them, even the smallest, should be duly monitored to assess their compliance with the provisions of national law transposing Titles III and IV of PSD2. Moreover, as explained above, the EBA has disregarded the option of allowing host CAs to require information from only a subset of payment institutions. Therefore, the EBA is of the view that the RTS should not introduce any threshold to limit the discretionary power granted to host CAs by PSD2.</p>	
Responses to question 5 in the Consultation Paper				
14.	Article 10	<p>Several respondents were of the view that the volume of data required was excessive. One of them considered that the level of detail required in the reporting went beyond the mandate given in Article 29(6) and made reference to Article 29(5)(a), which asks the EBA to include in the reporting ‘in particular ... the total volume and value of transactions carried out by payment institutions in host Member States’.</p> <p>Additionally, the same respondent was of the view that the CP did not provide a rationale for the excessive reporting requirements except to mention that they were for ‘statistical’ reasons, and, in its view, there was no intrinsic value in reporting for statistical reasons.</p>	<p>The EBA considers that the respondent’s reference to Article 29(5) is not relevant in this case. Article 29(5) confers a mandate on the EBA to develop RTS specifying the criteria to be applied when determining the circumstances in which the appointment of a central contact point is appropriate, whereas Article 29(2) provides that host CAs 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. According to PSD2, such reports may be required for information or statistical purposes and, insofar as the branches and agents conduct payment business services under the right of establishment, to monitor compliance with</p>	None.

No	Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		The respondent stated that the proposed level of detail should be requested only by the home CA and then distributed to host CA if required by the latter.	<p>the provisions of national law transposing Titles III and IV of PSD2.</p> <p>Therefore, reporting for information or statistical purposes is an option offered to host CAs by PSD2. The EBA is of the view that requesting information for statistical reasons would allow host CAs to have a better understanding of the payments market in their jurisdictions. The EBA considers that it is essential that such reports are comprehensive enough to provide the host CA with a complete picture of the activities carried out by payment institutions operating cross-border via agents or branches.</p>	
15.	Article 10	One respondent considered the breakdown of transaction volumes and values by channel, and distinguishing payments coming into and out of the Member State, as specified in Article 10(2)(h) and (i), to be excessive and not usually required by home CAs.	<p>The EBA is of the view that the required items of information specified in the RTS are necessary to allow host CAs to have a better understanding of the payments market in the host Member State. The EBA considers that the breakdown of transactions by channel is important to understand the business model of the payment institution operating cross-border in the host territory, and in particular because different channels have different types of risks that need to be properly understood by host CAs.</p> <p>Finally, the EBA considers that similar breakdowns to those specified in the RTS are already requested by some home CAs in the European Union, so payment institutions should be able to provide the required information fairly easily.</p>	None.
16.	Article 10	One respondent stated that AISPs and PISPs do not necessarily have access to all the required information and that banks are the institutions that hold it. The respondent asked the EBA to	Payment institutions have to provide only the data and information requested that are applicable to their specific activities. Therefore, where a payment institution does not provide a particular payment	None.

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		<p>redraft and simplify Annex V, and in particular the following tables:</p> <ul style="list-style-type: none"> – Table 8: in its view, there is little clarity about the term ‘complaint’. It might mean an unsecured banking connection or a complaint regarding the payment platform. – Tables 11, 12, 13 and 14: the tables refer to information regarding payment transactions and their destinations, and this information is not held by AISPs and should be removed from Annex V. In addition, Table 14 asks about the distribution channels used, and AISPs and PISPs operate only through mobile solutions. – Table 10: information on notifications to FIUs in host Member States should not be required of AISPs/PISPs. FIUs should share that information with CAs. 	<p>service, the payment institution does not need to provide information about that particular service.</p> <p>References to ‘complaints’ in Article 10 and Table 8 of Annex V must be understood as referring to complaints concerning the rights and obligations under Titles III and IV of PSD2, including security-related complaints, received from payment service users in the host Member State within the reporting period.</p>	
17.	Article 10	<p>Several respondents pointed out that some of the data requested were subject to other reporting obligations, such as the number of fraudulent transactions under the Guidelines on fraud reporting or the number of major operational and/or security incidents under the Guidelines on incident reporting. The respondents asked the EBA to remove any duplicate reporting requirements.</p>	<p>The required information on the number of fraudulent transactions and the number of major incidents refers to those transactions and incidents that took place in the host Member State only and not the overall number of incidents or fraudulent transactions suffered by the payment institution.</p> <p>The EBA further clarifies that report in relation to incidents under the Guidelines on major incident reporting have to be submitted to the home CA, and, in the case of transactions under the Guidelines on fraud reporting, they have to be submitted to the home CA except in the case of branches, which have to submit them to the host CA.</p>	None.

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18.	Article 10	<p>One respondent agreed that payment institutions should be able to report most of the information specified in Article 10 and Annex V, with the exception of the fraudulent transaction data specified in Table 9. The respondent was of the view that only gross data on fraudulent payment transactions should be reported, and not net data.</p> <p>The reason for this is the inherent time lag between the availability of overall gross data and that of information on recovered fraudulent transactions, with the latter available only later, and therefore potentially creating a distorted view of reality. The respondent considered that reporting net data would therefore be unnecessarily burdensome for payment institutions, would be of limited added value to the EBA and would go against the principle of proportionality, thus not contributing to the achievement of the EBA's wider objectives.</p>	<p>The EBA agrees that gross data on fraudulent payment transactions should be requested, to align the reporting with the Final Guidelines on fraud reporting.</p>	<p>The EBA amended Article 10(2)(p) of the RTS as follows:</p> <p>(p) the number of fraud cases fraudulent transactions and the volume of gross fraudulent payment transactions incurred in the host Member State within the reporting period; and ...</p> <p>The EBA also amended Table 9 of Annex V by deleting a row referring to net fraudulent payment transactions:</p> <p>Table 9. Total fraudulent transactions</p> <p>Total gross fraudulent payment transactions</p> <p>Total Net Fraudulent Payment Transactions</p>
19.	Article 10	<p>Two respondents welcomed the proposed annual frequency of reporting and considered that more frequent submissions would be overwhelmingly burdensome for payment institutions and of limited added value to CAs.</p>	<p>The EBA agrees that annual frequency of reporting for information or statistical purposes would be sufficient to allow host CAs to have a good understanding of the payments market in the host Member State.</p>	None.
20.	Article 10	<p>The BSG recommended that the data should be include the number of past and current enforcement actions by CAs that have been taken against the payment institution.</p>	<p>The EBA is of the view that information regarding the number of past and current enforcement actions by CAs should not be part of the periodical reporting from payment institutions. The EBA considers that this kind of information is to be shared between CAs and not to be provided by payment institutions.</p>	None.

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			<p>The periodical reporting should be as much as possible focused on specific data, and as little as possible on descriptive procedures and texts, as this will help CAs to process and assess the information and prioritise supervisory resources for use on the issues that require the most attention.</p>	
<p>Responses to question 6 in the Consultation Paper</p>				
21.	Article 11	<p>One respondent considered that the data required under Article 11 were particularly voluminous and that some of the information might be of little practical value. Some examples are:</p> <ul style="list-style-type: none"> – Article 11(1)(e) about amendments to framework contracts in a given period; – Article 11(1)(d), which requires a brief description of the procedure for complaints handling; – Article 11(1)(f) on the number of major operational and/or security incidents, which is subject to home Member State reporting obligations and communicated to host Member States via the EBA. In addition, this is a prudential regulatory matter and should not come under host CAs' jurisdiction. 	<p>The EBA is of the view that the data and information required under Article 11 is of great value for helping host CAs to monitor compliance with the provisions of national law transposing Titles III and IV of PSD2.</p> <p>The information requested will help host CAs to prioritise supervisory resources for use on those issues and/or payment institutions that they consider may pose higher risks.</p>	None.
22.	Article 11	<p>One respondent was of the view that the host CA should be able to limit the reporting obligation to a subset of payment institutions, as in Article 10 of the draft RTS.</p> <p>The same respondent also asked for clarification on the precise scope of application of the</p>	<p>The EBA has disregarded the option of allowing host CAs to require periodical reporting from a subset of payment institutions for the reasons stated in the response to comment 12.</p>	See amendments made in response to comment 12.

No	Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		reporting requirements set out in Articles 10 and 11.	The EBA is of the view that host CAs, to be able to properly monitor compliance with the provisions of national law transposing Titles III and IV of PSD2, need to have information about all payment institutions providing payment services in their territories via branches and agents under the right of establishment.	
23.	Article 11	<p>One respondent considered that the level of detail required in the reporting went beyond the mandate given in Article 29(6) and made reference to Article 29(5)(a), which asks the EBA to include in the reporting ‘in particular ... the total volume and value of transactions carried out by payment institutions in host Member States’.</p> <p>Additionally, the same respondent was of the view that the CP did not provide a rationale for the excessive reporting requirements except to mention that they were for ‘statistical’ reasons, and, in its view, there was no intrinsic value in reporting for statistical reasons.</p> <p>The respondent stated that the proposed level of detail should be requested only by the home CA and then distributed to host CA if required by the latter.</p>	<p>The EBA considers that the respondent’s reference to Article 29(5) is not relevant in this case. Please refer to the reasons provided in response to comment 14.</p> <p>Furthermore, the EBA is of the view that there is intrinsic value in the information requested to monitor compliance with the provisions of national law transposing Titles III and IV of PSD2, as it allows host CAs to prioritise supervisory resources for use on those issues and/or payment institutions that they consider may pose higher risks.</p>	None.
24.	Article 11	<p>One respondent stated that AISPs and PISPs do not necessarily have access to all the required information and that banks are the institutions that hold it. The respondent asked the EBA to redraft and simplify Annex VI, and in particular the following tables:</p> <p>– Table 2: detailed breakdown of complaints;</p>	<p>Payment institutions have to provide only the data and information requested that are applicable to their specific activities. Therefore, where a payment institution does not provide a particular payment service, the payment institution does not need to provide information about that particular service.</p> <p>The EBA is of the view that the information requested in Annex VI, including the information</p>	None.

No	Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		<ul style="list-style-type: none"> – Table 3: on requested refunds; – Table 4: detailed breakdown of the total value of refunds made. 	requested in Tables 2, 3 and 4, is helpful for host CAs to allow them to monitor compliance with the provisions of national law transposing Titles III and IV of PSD2.	
25.	Article 11	<p>The BSG recommended that the description of the procedure in place to handle and follow up on complaints should include an analysis of common patterns or root causes of the complaints received from payment service users and the action taken by the payment institution to change its policies and procedures in response to this analysis. In particular, the information requested should include:</p> <ul style="list-style-type: none"> – details of any past and current enforcement actions that have been taken against the payment institution; – details of any relevant pending action or matters reported to CAs in other Member States. 	<p>The EBA is of the view that information regarding enforcement actions by CAs should not be part of the periodical reporting from payment institutions. In addition, the EBA does not agree with the respondent that the reporting should include any other pending action or matters reported to CAs in other Member States, as this might not be of relevance for the host CA. This information could also be subject to confidentiality requirements in the other Member State. The EBA considers that the relevance of this information is to be assessed and, if necessary, shared by CAs and not to be provided by payment institutions.</p>	None.
26.	Article 11	<p>The BSG agreed that annual reporting should be sufficient for most of the data but considered that there should be immediate reporting of major operational or security incidents or enforcement actions taken by other CAs.</p>	<p>The EBA agrees with the BSG that annual reporting is sufficient to help host CAs to monitor compliance with the provisions of national law transposing Titles III and IV of PSD2. However, the EBA does not agree with the BSG that there should be immediate reporting from payment institutions on major incidents or enforcement actions taken by other CAs in addition to the annual reporting.</p> <p>Reporting requirements on major operational incidents are specified in the EBA Guidelines on major incident reporting, which require payment institutions to report them to the home CA ,which has to notify them to the EBA and the ECB, and all together, they then assess the relevance of the</p>	None.

No	Comments	Summary of responses received	EBA analysis	Amendments to the proposals
			<p>incident to other relevant Union and national authorities and notify them accordingly.</p> <p>With regard to infringements, where the home or host CA of a payment institution providing payment services across borders is aware of any infringements or suspected infringements, they must notify each other accordingly. There is a template for this notification under the framework for cooperation and the exchange of information specified in the RTS.</p>	