



BANKING STAKEHOLDER GROUP

CONSULTATION EBA/CP/2017/01 ON
“DRAFT GUIDELINES ON PROCEDURES FOR COMPLAINTS OF
ALLEGED INFRINGEMENTS OF THE PAYMENT SERVICES DIRECTIVE
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General Comments and Replies to Questions

BY THE EBA BANKING STAKEHOLDER GROUP

London, May 16, 2017

Foreword

The EBA Banking Stakeholder Group (BSG) welcomes the opportunity to comment on the Consultation Paper EBA/CP/2017/01.

Replies to Questions

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

We support the widest possible application of the guidelines to allow all stakeholders including PSPs and other entities to make use of the complaints procedures.

We agree that insufficient information submitted to competent authorities (CAs) by complainants hinders the efficient handling of complaints. This can lead to consumer detriment.

Ensuring that at least two different channels are available for complainants to submit their alleged infringements, as per draft Guideline 1, will go some way towards addressing this. These channels should include email and a web-form on the website of the CAs, together with another channel.

We note however that no details are provided as to what those channels will look like. Ease of use will be of particular importance and we would therefore encourage competent authorities (CAs) to give thought as to how all types of complainants, including vulnerable consumers such as the digitally excluded, will make use of those channels. CAs should also review whether the channels available are effective and adjust accordingly.

Harmonizing the complaints channels across the EU and ensuring that the channels available for complainants allow the payment users with the option of keeping durable proof of their complaints would also be beneficial.

It is key for CAs to respond to complainants in a timely fashion, outline the review process from the outset and give an initial assessment of whether the CA believe there has indeed been an infringement. However, we believe that the inclusion of a recommendation for payment service users to address their claims first to PSPs (as described in article 101 of PSD2), where possible, would reduce the number of claims to be handled by Competent Authorities, resulting in a reduction in handling times and improving overall outcomes for payment service users.

In some member states the supervisory authority has no mandate to deal with consumers complaints. If in these states the competent authority according to the national law is identical with the supervising authority, there is a gap regarding who deals effectively with consumers complaints.

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

We believe PSPs should always be able to file complaints on PSD2 infringements in any Member State. This would avoid the fragmentation of practices among countries, as well as ensure a level playing field on infringement complaints procedures.

Additionally, this Guideline does not address those situations where the infringement is related to a company (or a PSP) offering services that it is not authorised to provide. Where the company offering the service is not an authorised or registered PSP, the complainant may not be able to provide the identity of the firm, or even be able to identify the appropriate Competent Authority to contact.

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

Yes. For an effective framework for PSD II infringement complaints to be established, it is particularly important for CAs to respond to complainants in a timely fashion, clearly set out the review process and associated timeline. Without this there is a risk that complainants, especially retail consumers, are likely to be discouraged and not submit. The CA should also give an initial assessment of the complaint to determine whether there has been an infringement of the Directive.

The EBA should also set out provisions for instances in which complainants were not satisfied with how their complaint had been handled by the CA and how complainants should be informed of any possible appeal mechanisms. For example, in the UK, the Complaints Commissioner provides an independent assessment of complaints against the FCA and the PRA.¹

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

¹<http://fsc.gov.uk/about/>

Yes. Breaking down that information to reveal the nature of the most common types of complainants; the most common type of complaints; the identity of the payment service providers that are most often complained about and the identification of the issues most complained about will help national authorities identify any issues and act upon them before it causes further detriment.

There would also be value in requiring CAs to notify all EU national authorities and the EBA of the most common and major infringements revealed by their aggregate analysis. This would allow CAs to understand the wider impacts on the EU payments system, act accordingly and avoid widespread consumer detriment.

Finally, the EBA should publish its aggregated analysis on its website and aim to make it available to as many stakeholders as possible.

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

Yes, we agree.

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

Yes. CAs should also make clear that where a complaint has been made regarding a service provider regulated by a CA located in another country, that complaint will be forwarded and appropriately dealt with, as detailed in proposed Guideline 3

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Submitted on behalf of the EBA Banking Stakeholder Group

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