

EBA/RTS/2017/09

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Final Report

Draft regulatory technical standards

on central contact points under Directive (EU) 2015/2366 (PSD2)

Contents

Abbreviations	3
1. Executive summary	4
2. Background and rationale	5
3. Draft regulatory technical standards on central contact points under PSD2	8
4. Accompanying documents	13
4.1 Cost-benefit analysis/impact assessment	13
4.2 Feedback on the public consultation	16

Abbreviations

CA	competent authority
CP	Consultation Paper
EBA	European Banking Authority
EMI	electronic money institution
MS	Member State(s)
PI	payment institution
PSD2	Directive (EU) 2015/2366 on payment services in the internal market
RTS	regulatory technical standards

1. Executive summary

Article 29(4) of the revised Payment Services Directive, Directive (EU) 2015/2366 (PSD2), gives Member States the option to require payment institutions (PIs) that have their head office in another Member State (MS) and that operate through agents in the host MS territory under the right of establishment to establish a central contact point in the host MS's territory. According to PSD2, the purpose of these contact points is to ensure adequate communication and information reporting on compliance with Titles III and IV of PSD2 and to facilitate supervision by the competent authorities (CAs) of the home and host MS. PSD2 also provides that these provisions apply *mutatis mutandis* to electronic money institutions (EMIs) providing payment services in a host MS through agents under the right of establishment.

In support of these provisions, Article 29(5) of PSD2 confers a mandate on the European Banking Authority (EBA) to develop draft regulatory technical standards (RTS) specifying 'the criteria to be applied when determining, in accordance with the principle of proportionality, the circumstances when the appointment of a central contact point is appropriate, and the functions of those contact points pursuant to [Article 29] paragraph 4 [of PSD2]'.

In order to deliver this mandate, the EBA published a Consultation Paper (CP) on its proposals; the three-month consultation period ran from 29 June to 29 September 2017. The EBA received four 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 generally supportive of the functions of a central contact point as set out in the draft RTS, and their comments primarily related to the criteria for determining when the appointment of a central contact point is appropriate. After assessing the comments and proposals made by the respondents, the EBA decided to retain the criteria proposed in the CP, for the reasons explained in more detail in the feedback table in Section 4.2.

However, in the light of the comments made by the respondents, the EBA decided to make one change to the draft RTS, to clarify that, where the host MS has decided to make use of the option provided for in Article 29(4) of PSD2, PIs that meet any one or more of the criteria set out in Article 2 of the RTS should notify the CA of the host MS accordingly. The EBA deemed this notification requirement necessary to increase the transparency of the process for the appointment of a central contact point and also to enable the CA of the host MS to exercise its supervisory responsibilities effectively. In particular, the EBA took into account that, in the absence of such a notification, the CA of the host MS might not have the data needed to assess which PIs operating in its territory meet the criteria for the appointment of a central contact point, or might not have that data made available to it in a timely manner.

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*.

2. Background and rationale

2.1 Background

1. On 12 January 2016, PSD2 entered into force, and it will apply from 13 January 2018. One of the objectives pursued by PSD2 is to enhance the supervision of PIs providing payment services cross-border, by, on the one hand, facilitating cooperation between the CAs of the home and host MS and, on the other hand, reinforcing the supervisory powers of the CAs of the host MS. To that end, PSD2 makes available to the host MS, or to the CAs in the host MS, a number of means through which to facilitate the supervision of payment services provided in their territories by PIs headquartered in another MS under the right of establishment.
2. These measures include the option under Article 29(2) of PSD2 for the CAs of the host MS to require PIs having agents or branches within their territories to report to the CAs of the host MS on the activities carried out in their territories. They also include the option granted to a host MS under Article 29(4) of PSD2 to require PIs that provide payment services cross-border in the host MS through agents under the right of establishment to establish a central contact point in its territory.
3. According to PSD2, the role of such local central contact points is to 'ensure adequate communication and information reporting on compliance with Titles III and IV' of PSD2 and to 'facilitate supervision by competent authorities of home Member State and host Member States'. Pursuant to Article 3(1) of Directive 2009/110/EC, as amended by Article 111 of PSD2, these provisions apply *mutatis mutandis* to EMLs that provide payment services cross-border through agents under the right of establishment.
4. In support of these provisions, Article 29(5) of PSD2 mandates the EBA to develop draft RTS setting out 'the criteria to be applied when determining, in accordance with the principle of proportionality, the circumstances when the appointment of a central contact point is appropriate, and the functions of those contact points, pursuant to [Article 29] paragraph 4 [of PSD2]'.
5. In order to deliver this mandate, the EBA approached competent authorities in the 28 EU MS and gathered information on the payment services provided by PIs and EMLs on a cross-border basis through agents under the right of establishment. Based on the findings of this mapping exercise, the EBA developed the criteria set out in the draft RTS and published a CP on 29 June 2017. The consultation period lasted for three months and ended on 29 September 2017.

6. The EBA received four responses to the CP, all of which have been published on the EBA website. This report summarises the main issues raised by respondents and the EBA's assessment of the changes required as a result. Additional details are provided in the feedback table in Section 4.2.

2.2 Rationale

7. The respondents to the CP were generally supportive of the functions of a central contact point as set out in the draft RTS, and their comments focused primarily on the criteria for determining when the appointment of a central contact point is appropriate. In particular, respondents proposed a number of alternative approaches to these criteria, including establishing criteria tailored to each host MS, setting different criteria for 'low-risk' transactions and setting a criterion based on the percentage of market share in the host MS (in terms of volume or value of transactions).
8. Respondents also argued that the thresholds set in the draft RTS relating to the value and volume of transactions performed in the host MS were too low, and proposed that these thresholds should be increased, and significantly so. Where respondents proposed alternative thresholds, these ranged between EUR 25 million and EUR 50 million p.a. for the value threshold, and between 200 000 and 100 million transactions p.a. for the volume threshold. As regards the threshold relating to the number of agents, one respondent proposed that this threshold should be increased from 10 to 25 agents.
9. However, respondents did not provide specific data to justify the proposed increases in the thresholds. Where such data was provided, it was limited to individual estimates of the costs to PIs of establishing a central contact point in a host MS.
10. Given the lack of verifiable data, the EBA has not been in a position to verify and assess such cost estimates, considering that the costs of establishing a central contact point will depend to a large extent on the legal structure chosen when setting up the contact point. The EBA emphasises that the draft RTS do not regulate or restrict such aspects, which fall outside the scope of the RTS. It follows from this that the RTS do not rule out, for example, the use of a third party outsourcee to act as a central contact point on behalf of the PI, based on an outsourcing agreement with the PI, as long as the central contact point is able to fulfil all the functions set out in Article 3 of the RTS, which might help reduce costs for PIs and EMIs.
11. The EBA therefore decided to maintain the criteria proposed in the CP, for the reasons explained in more detail in the feedback table in Section 4.2.
12. Following an assessment of the other responses, the EBA decided to make one change to the draft RTS, by requiring in Article 2(2) that, where the host MS has decided to make use of the option provided for in Article 29(4) of PSD2 to require a central contact point, PIs that meet any one or more of the criteria set out in the RTS must inform the CA of the host MS accordingly.

13. The EBA deemed this notification requirement necessary to increase the transparency of the process for the appointment of a central contact point and also to enable the CA of the host MS to exercise its supervisory responsibilities effectively. In particular, the EBA took into account that, in the absence of such a notification, the CA of the host MS might not have the data needed to assess which PIs operating in its territory meet the criteria for the appointment of a central contact point (e.g. if the host CA did not make use of the option provided for in Article 29(2) of PSD2 to require PIs to report directly to it), or might not have that data made available to it in a timely manner.

3. Draft regulatory technical standards on central contact points under PSD2

COMMISSION DELEGATED REGULATION (EU) .../...**of XXX****supplementing Directive (EU) 2015/2366 of the European Parliament and of the Council with regard to regulatory technical standards on the criteria for determining the circumstances when the appointment of a central contact point pursuant to Article 29(4) of Directive (EU) 2015/2366 is appropriate and the functions of those central contact points**

(Text with EEA relevance)

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/EC¹, and in particular Article 29(4) and (5) thereof,

Whereas:

- (1) Pursuant to Article 29(4) of Directive (EU) 2015/2366, Member States may require payment institutions the head office of which is situated in another Member State and which operate on their territory through agents under the right of establishment, to appoint a central contact point in their territory. According to Directive (EU) 2015/2366, the role of such contact points is to ensure adequate communication and information reporting on compliance with Titles III and IV of Directive (EU) 2015/2366 and to facilitate supervision by the competent authorities of the home and host Member States. In accordance with Article 3(1) of Directive 2009/110/EC of the European Parliament and of the Council², as amended by Article 111 of Directive (EU) 2015/2366, these provisions shall apply *mutatis mutandis* to electronic money institutions providing payment services in a host Member State through agents under the right of establishment. A reference to ‘payment institution’ in this Regulation therefore needs to be read as including a reference to ‘electronic money institutions’.
- (2) Where a host Member State decides to make use of the option under Article 29(4) of Directive (EU) 2015/2366, the appointment of a central contact point should be proportionate to achieving the aims pursued by Directive (EU) 2015/2366, without creating unnecessary burdens on institutions operating cross-border. Therefore, in line with Article 29(5) of Directive (EU) 2015/2366, this Regulation should specify the thresholds that represent a proportionate application of the criteria relating to the volume and value of the transactions carried out in the host Member State through agents and the number of agents established in the host Member State. Where new

¹ OJ L 337, 23.12.2015, p. 35.

² 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).

available data provides evidence that an adjustment in the value of these thresholds is needed to ensure a proportionate application of the criteria on volume and value of transactions and number of agents, the EBA should update these regulatory technical standards, where appropriate, by setting new values for these thresholds.

- (3) Where a central contact point pursuant to Article 29(4) of Directive (EU) 2015/2366 is required, it should primarily ensure adequate communication and information reporting on compliance with the requirements in Titles III and IV of that Directive in the host Member State, including ensuring compliance with the reporting obligations of the appointing payment institution towards the competent authorities of the host Member State. It should also have a central coordinating role between the appointing payment institution and the competent authorities of the home and the host Member States in order to facilitate supervision of the payment services business conducted in the host Member State through agents under the right of establishment. To that end, the central contact point should possess appropriate knowledge of the provisions of national law transposing Titles III and IV of Directive (EU) 2015/2366 in the host Member State, in order to be able to perform its tasks and increase awareness of those national provisions within the local network of agents.
- (4) This Regulation is based on the draft regulatory technical standards submitted by the European Supervisory Authority (the European Banking Authority (EBA)) to the Commission.
- (5) 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 1093/2010³,

HAS ADOPTED THIS REGULATION:

Article 1
Scope

1. This Regulation establishes the criteria to be applied for determining the circumstances, pursuant to Article 29(4) of Directive (EU) 2015/2366, when it is appropriate to require payment institutions that operate in host Member States through agents under the right of establishment to appoint a central contact point in the territory of those Member States, and the functions of a central contact point.
2. This Regulation applies *mutatis mutandis* to electronic money institutions providing payment services referred to in point (a) of Article 6(1) of Directive 2009/110/EC in host Member States by engaging agents under the right of establishment and subject to the conditions laid down in Article 19 of Directive (EU) 2015/2366.

³ 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. 1)

Article 2

Criteria for the appointment of a central contact point

1. For the purpose of Article 29(4) of Directive (EU) 2015/2366, it is appropriate to require payment institutions to appoint a central contact point in the territory of the host Member State where any one or more of the following criteria is met:
 - (a) the total number of agents through which a payment institution provides any of the payment services referred to in Annex I to Directive (EU) 2015/2366 in a host Member State under the right of establishment is equal to or exceeds 10 agents;
 - (b) the total value of payment transactions carried out by a payment institution in the host Member State in the last financial year through agents located in the host Member State and operating under either the right of establishment or the freedom to provide services, including the value of payment transactions initiated when providing payment initiation services, exceeds EUR 3 million and the payment institution has engaged at least 2 of those agents under the right of establishment;
 - (c) the total volume of payment transactions carried out by a payment institution in the host Member State in the last financial year through agents located in the host Member State and operating under either the right of establishment or the freedom to provide services, including the volume of payment transactions initiated when providing payment initiation services, exceeds 100 000 transactions and the payment institution has engaged at least 2 of those agents under the right of establishment.
2. Where a host Member State requires the appointment of a central contact point in accordance with Article 29(4) of Directive (EU) 2015/2366, payment institutions that meet any one or more of the criteria laid down in paragraph 1 shall notify the competent authority of the host Member State accordingly. Payment institutions shall provide this information to the competent authority of the host Member State within 30 days of any one or more of those criteria being met.

Article 3

Functions of the central contact point

1. A central contact point that is appointed pursuant to Article 29(4) of Directive (EU) 2015/2366 shall carry out each of the following functions:
 - (a) it shall serve as single provider and single point of collection of the reporting obligations of the appointing payment institution towards the competent authorities of the host Member State pursuant to Article 29(2) of Directive (EU) 2015/2366, including the delegated act referred to in Article 29(7) thereof, in relation to payment services provided in the host Member State through agents under the right of establishment;
 - (b) it shall serve as single point of contact of the appointing payment institution in communications with the competent authorities of the home and host Member States, in relation to the payment services provided in the host

- Member State through agents under the right of establishment, including by providing competent authorities with documents and information on request;
- (c) it shall facilitate the on-site inspections by competent authorities of the agents of the appointing payment institution operating in the host Member State under the right of establishment and the implementation of any supervisory measures adopted by the competent authorities of the home or host Member States pursuant to Directive (EU) 2015/2366.
2. Payment institutions shall ensure that a central contact point possesses all the adequate resources and has access to all the data necessary for the performance of the functions set out in Article 29(4) of Directive (EU) 2015/2366 and paragraph 1 of this Article.
3. The provisions in paragraphs 1 and 2 above shall be without prejudice to the obligations and the liability of the appointing payment institution under Directive (EU) 2015/2366.

Article 4
Entry into force

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

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

Done at Brussels,

For the Commission
The President

4. Accompanying documents

4.1 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 aims, inter alia, to improve the supervision of PIs providing payment services cross-border, by, on the one hand, strengthening the cooperation between the CAs of the home and host MS, and, on the other hand, reinforcing the supervisory powers of the CAs of the host MS, where the services are provided in the host MS’s territory through branches or agents operating under the right of establishment.

In particular, Article 29(4) of PSD2 gives a host MS the option to require PIs that provide payment services within its territory through agents under the right of establishment to set up a central contact point in the host MS, in order to ‘ensure adequate communication and information reporting on compliance with Titles III and IV of PSD2’ and ‘to facilitate supervision’ by the CAs of the home and host MS. According to Article 3(1) of Directive 2009/110/EC, as amended by Article 111 of PSD2, these provisions also apply *mutatis mutandis* to EMIs providing payment services in a host MS through agents under the right of establishment.

Article 29(5) of PSD2 mandates the EBA to specify ‘the criteria to be applied when determining, in accordance with the principle of proportionality, the circumstances when the appointment of a central contact point is appropriate, and the functions of those contact points’. To that end, the EBA has to identify methods that can be used to assess when the appointment of a central contact point is appropriate and specify the functions that those contact points should carry out in fulfilment of the objectives set by PSD2.

In the absence of common criteria, there would be a significant risk that the supervision of PIs and EMIs providing payment services cross-border would become more complex and fragmented across MS.

B. Policy objectives

These RTS contribute to the overall aim pursued by PSD2 of facilitating supervision of PIs and EMIs providing payment services cross-border, without creating undue regulatory barriers to the freedom of establishment of PIs and EMIs.

More specifically, these RTS specify the criteria for assessing when the appointment of a central contact point under Article 29(4) of PSD2 is appropriate and what its functions should be, in fulfilment of the objectives set by PSD2.

Article 29(5) of PSD2 provides that, in determining the criteria for assessing when the appointment of a central contact point is appropriate, the RTS 'shall, in particular, take account of: (a) the total volume and value of transactions carried out by the payment institution in host Member States; (b) the type of payment services provided; and (c) the total number of agents established in the host Member State'.

C. Options considered

The criteria for the appointment of a central contact point could be determined according to the following options:

Option 1: setting different thresholds, based on the criteria set out in Article 29(5) of PSD2, tailored to each host MS.

Option 2: setting a single set of thresholds, based on the criteria set out in Article 29(5) of PSD2, applicable across all EU MS.

Option 3: determining criteria and thresholds in addition to the indicative criteria set out in Article 29(5) of PSD2.

Option 1 envisages different thresholds based on the characteristics of the market in each host MS. This option would take into account the specificities of the market in each EU MS.

Option 2 envisages a single set of common thresholds, based on an overall assessment of the markets in the MS. This option aims to create a simpler and more practical approach, in order to facilitate the determination of when the appointment of a central contact point is appropriate.

Option 3 envisages, in addition to the criteria specified in Article 29(5), additional elements, such as data drawn from an aggregated analysis of complaints received by CAs from consumers and consumer associations regarding alleged infringements of Directive 2007/64/EC on payment services in the internal market (PSD1) by PIs and EMIs, in order to provide a clearer indication of when the appointment of a central contact point is appropriate.

D. Cost-benefit analysis and preferred option

These RTS will affect PIs and EMIs providing payment services cross-border via agents under the right of establishment, users of payment services and CAs. Considering the overall costs and benefits for these stakeholders stemming from each option, the EBA is of the view that Option 2 is the preferred one.

Option 2 will allow the application of a common set of rules across the EU, which will ensure legal certainty. Greater certainty in the criteria for the appointment of a central contact point should encourage PIs and EMIs to provide services cross-border without incurring higher compliance costs that might differ across MS.

Higher costs and uncertainty in the determination of the applicable criteria could be reflected in more complex and less efficient supervisory activity. This would also increase the fragmentation of the payment services market within the EU. The precise costs of appointing a central contact point will depend on the legal structure chosen when setting up the contact point, which is, however, outside of the scope of these RTS.

Better supervision can positively affect consumer protection, improve the user experience and increase confidence in the market. Hence it is reasonable to state that the overall benefits of Option 2 would exceed the costs.

On the other hand, a single set of thresholds applicable across all EU MS would not take into account the specificities of the market in each MS. Option 1 aims to address this issue, but it is reasonable to assume that gathering the data required to determine the different thresholds, and also the ongoing monitoring of these thresholds, would be costly for both PIs and EMIs, and for competent authorities. Furthermore, the necessary data might not be available to all MS. Thus, Option 1 is not considered feasible.

Option 3 envisages additional elements for determining when the appointment of a central contact point is appropriate, such as data drawn from an analysis of complaints received by CAs from consumers and consumer associations, as well as the criteria set out in Article 29(5) of PSD2. The benefits of this option would relate to the possibility of taking into account other information and data not already included in the thresholds considered under Options 1 and 2. This might allow a better fine-tuning of the criteria for assessing when the appointment of a central contact point is appropriate in order to facilitate supervision.

However, the data necessary to apply this option could be difficult to gather at this stage, and it would also entail higher compliance costs for both PIs and EMIs, as well as for CAs. Furthermore, developing a criterion based on the number of complaints received by CAs from consumers might be difficult to implement in practice, because PIs and EMIs might not be able to monitor whether or not they met the threshold in a timely manner, as they might not know of all the complaints filed against them with CAs.

Consequently, Option 2 is preferred.

4.2 Feedback on the public consultation

The EBA publicly consulted on the draft RTS contained in this final report. The consultation period lasted for three months and ended on 29 September 2017. Four responses were received, all of which were published on the EBA website.

This chapter 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. In many cases, several industry respondents made similar comments or the same respondent repeated its comments in response to more than one question. In such cases, the comments and the EBA's analysis were included in the section of this paper where the EBA considered them most appropriate.

Changes to the draft RTS have been incorporated as a result of the responses received during the public consultation, as described in detail below.

Summary of key issues and the EBA's response

Following an assessment of the responses to the CP, the EBA decided to make one change to the draft RTS to increase the transparency of the process for the appointment of a central contact point where the host MS has decided to make use of the option provided for in Article 29(4) of PSD2 to require a central contact point and the criteria set out in Article 2 of the RTS are met. In the feedback table that follows, the EBA has summarised the comments received and explains which responses have and which have not led to changes, and the reasons for this.



No	Comments	Summary of responses received	EBA analysis	Amendments to the proposals
General comments				
1.	Article 1	One respondent was of the view that the option offered by Article 29(4) of PSD2 to the host CA to request a central contact point in its territory was not reflected in Article 1(1) of the RTS.	<p>Article 1(1) of the RTS sets out the scope of the RTS in line with the mandate conferred on the EBA under Article 29(5) of PSD2.</p> <p>This Article is without prejudice to the option granted to a host MS under Article 29(4) of PSD2 to decide whether or not to require a central contact point in its territory. This option is expressly acknowledged in recital 1 to the RTS. The RTS will apply only where the host MS decides to make use of this option.</p>	None.
2.	Article 1	One respondent was of the view that the simple physical distribution of payment instruments, such as gift cards, should not automatically trigger the need to operate under an agency model or under an establishment passport and that a central contact point should therefore not be required in such cases.	<p>In accordance with Article 29(4) of PSD2, these RTS apply to PIs and EMIs that provide payment services on a cross-border basis in a host MS through agents under the right of establishment. The scope of the mandate in Article 29(5) of PSD2 does not include the question of whether or when an activity is carried out under the right of establishment or under the freedom to provide services.</p> <p>Rather, according to the Commission Delegated Regulation (EU) 2017/2055 of 23 June 2017 with regard to regulatory technical standards for the cooperation and exchange of information between competent authorities relating to the exercise of the right of establishment and the freedom to provide services of payment institutions, the nature of the passporting application (right of establishment or freedom to provide services) should be assessed by the CA of the home MS as part of the passporting notification process and specified in the passport notification.</p> <p>The EBA also notes that the simple physical distribution of payment instruments falls outside the scope of PSD2 if it does not entail any payment service, or if it meets the conditions of the limited network exemption under Article 3(k) of PSD2.</p>	None.



No	Comments	Summary of responses received	EBA analysis	Amendments to the proposals
3.	Article 1	One respondent pointed out that the draft RTS do not explain how the CA of the host MS should inform/notify a PI/EMI of the requirement to establish a local central contact point, while another respondent was of the view that the establishment of a central contact point should occur under the clear leadership of the CA of the home MS.	<p>In the light of the comments made by respondents and to increase the transparency of the process for the appointment of a central contact point where the host MS decides to make use of the option under Article 29(4) of PSD2, the EBA has decided to provide in the draft RTS a requirement for PIs and EMIs that meet any one or more of the criteria in Article 2 of the RTS to inform the CA of the host MS accordingly.</p> <p>The EBA deemed this notification requirement necessary to achieve the objective pursued by PSD2 of facilitating supervision by the CA of the host MS, taking into account that, in the absence of such a notification, the CA of the host MS might not have the data needed to assess which PIs met the criteria set out in Article 2 of the RTS. For example, this might be particularly relevant where the CA of the host MS does not require any reporting under Article 29(2) of PSD2 from passporting PIs and EMIs having agents or branches within their territories. The EBA also took into account that, even where the host CA decides to make use of the option made available under Article 29(2) of PSD2 to require passporting PIs to report to them, the CA of the host MS might not have such information made available to it in a timely manner, given that the periodical reporting under Article 29(2) is to be performed on an annual basis, according to the current form of the draft RTS under Article 29(6) of PSD2.</p>	<p>A new paragraph 2 was added to Article 2 of the RTS, which provides that:</p> <p>‘Where a host Member State requires the appointment of a central contact point in accordance with Article 29(4) of Directive (EU) 2015/2366, payment institutions that meet any one or more of the criteria laid down in paragraph 1 shall notify the competent authority of the host Member State accordingly. Payment institutions shall provide this information to the competent authority of the host Member State within 30 days of any one or more of those criteria being met’.</p>
4.	Article 1	One respondent pointed out that the RTS do not explain the alignment process between the CAs of the home and host MS, or the arbitration process between CAs.	<p>The cooperation mechanism between the CAs of the home and host MS is covered in PSD2 and further explained in the RTS under Article 29(6) of PSD2 (EBA/CP/2017/16); it is not part of the mandate under Article 29(5) of PSD2.</p> <p>The settlement of disagreements between CAs is not part of the mandate under Article 29(5) of PSD2 either, but is covered in the Level 1 legislation (see, for example, Article 27 of PSD2 regarding the EBA mediation procedure or the mediation procedure under the EBA Regulation).</p>	None.



No	Comments	Summary of responses received	EBA analysis	Amendments to the proposals
5.	Article 1	Two respondents were of the view that the RTS proposed in the CP allowed the functions of a central contact point to be outsourced to a third party, for example to a law firm, and highlighted that it was important for the RTS to allow flexibility for firms to choose how to carry out the requirement to establish a central contact point.	The mandate under Article 29(5) of PSD2 does not cover the question of the legal structure that should be chosen when setting up a central contact point. Therefore, the RTS do not define or restrict such aspects. Having said that, the EBA agrees that the wording of the draft RTS is broad enough to allow the outsourcing of the functions of a central contact point to a third party located in the host MS, provided that the outsourcee is able to fulfil all the functions of a central contact point as set out in Article 3 of the RTS.	None.
6.	'Background and rationale' section of the CP	One respondent pointed out there was an error in paragraph 18(c) of the 'Background and rationale' section of the CP, where a reference was made to 'value' of payment transactions instead of 'volume'.	The EBA acknowledges this clerical error. However, as the error appeared not in the draft RTS but only in the 'Background and rationale' section of the CP, no changes were needed to the draft RTS.	None.
Responses to Question 1 in the CP				
7.	Article 2	While some respondents agreed with the establishment of a single set of thresholds applicable across all MS, one respondent was of the view that a fixed volume threshold applied in the same way for every host MS would not provide a level playing field across countries and would give more control to CAs of host MS with large markets than to CAs of host MS with small markets.	As explained in the 'Background and rationale' section of the CP, the EBA has chosen the option of establishing a single set of thresholds applicable across all EU MS after due consideration of several options, taking into account their feasibility, methodological robustness and degree of proportionality. This approach was preferred for its simplicity and practicality for both PIs/EMIs and CAs, particularly in the ongoing monitoring phase. Moreover, it has been considered suitable for creating legal certainty and a harmonised approach across the EU. The EBA considered the option of establishing different thresholds across the EU MS, but decided not to pursue this approach because it might lead to market fragmentation, which would go against the objective pursued by PSD2 of fostering the development of a single EU payments market, and also because it might result in undue complexity and higher compliance costs for PIs and EMIs operating cross-border.	None.



No	Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Responses to Question 2 in the CP				
8.	Article 2	<p>Some respondents were of the view that the criteria for the appointment of a central contact point should take into account only activities carried out through agents under the right of establishment (and not under the freedom to provide services).</p> <p>One respondent argued that the transaction values and volumes performed under the freedom to provide services were not considered in Article 29(2) of PSD2 and that the criteria proposed in the CP are not in line with Article 29(4) and (5) of PSD2.</p>	<p>In accordance with Article 29(4) of PSD2, the draft RTS are clear that its provisions apply only in respect of PIs and EMIs that operate in a host MS through agents under the right of establishment. A central contact point cannot be required if the PI/EMI does not have agents established in the host MS.</p> <p>This does not, however, exclude the possibility of considering in the criteria for the appointment of a central contact point also payment transactions carried out through agents located in the host MS under the freedom to provide services. This follows because the wording of Article 29(5)(a) of PSD2 requires the EBA to consider all transactions carried out in the host MS (irrespective of the nature of the passporting).</p> <p>As explained in the ‘Background and rationale’ section of the CP (see paragraphs 21-23), the EBA considers the approach taken in the RTS to be a balanced approach, in line with Article 29(5)(a) of PSD2. The EBA would also like to stress that the value and volume of transactions performed under the freedom to provide services without the engagement of agents in the host MS are not included in the calculation of the thresholds.</p>	None.



No	Comments	Summary of responses received	EBA analysis	Amendments to the proposals
9.		<p>The majority of respondents considered that the thresholds proposed in the CP, and in particular the EUR 3 million and 100 000 transactions thresholds, were too low. In the view of one respondent, these thresholds did not observe the proportionality principle and went against the objective of having an integrated EU payments market. The same respondent also considered that these thresholds gave a lot of control to the CAs of host MS, without reinforcing collaboration between the CAs of the home and host MS, which the respondent deemed to be the objective of these RTS.</p> <p>Another respondent thought there was a risk that these thresholds might render services in host MS unprofitable and might lead to institutions withdrawing their services from the host MS market or stopping providing services under an establishment passport. The same respondent estimated that the annual cost of a central contact point per MS would be between EUR 80 000 and EUR 120 000, and that firms would be able to absorb such costs only if they generated an annual payment transactions volume above EUR 25 million.</p> <p>Where respondents proposed alternative thresholds, these ranged between EUR 25 million and EUR 50 million (for the value threshold) and between 200 000 and 100 million transactions (for the volume threshold). One respondent also suggested that the threshold of 10 agents should be increased to 25 agents.</p>	<p>The EBA considered the comments raised by respondents, but, in the absence of specific and verifiable data to justify the proposed increase in the thresholds, the EBA has not been in a position to verify and assess the proposals.</p> <p>The EBA is also of the view that the thresholds proposed by respondents would be too high for those MS in which the volume and value of transactions carried out by foreign PIs through agents established in those MS are typically low and therefore would not achieve the objective pursued by PSD2 of facilitating supervision by the CAs of host MS.</p> <p>The EBA acknowledges the concerns raised by respondents regarding the costs of establishing a local central contact point in a host MS's territory, but, at the same time, considers that the costs for PIs/EMIs will depend to a large extent on the legal structure chosen when setting up the contact point. The EBA emphasises that the draft RTS do not regulate or restrict such aspects, which fall outside the scope of the RTS. It follows from this that the RTS do not rule out, for example, the use of a third party outsourcee to act as a central contact point on behalf of the PI, based on an outsourcing agreement with the PI, as long as the central contact point can fulfil all the functions set out in Article 3 of the RTS, which might help to reduce costs for PIs and EMIs.</p> <p>As explained in the CP, the EBA considers that the criteria set out in the draft RTS are proportionate to achieving the objectives pursued by PSD2. However, as acknowledged in the CP, EBA will monitor the appropriateness of these thresholds and propose amendments, where appropriate, to these RTS, should new data provide evidence that an adjustment in the value of the thresholds is needed, taking into account the new data that will become available after PSD2 is implemented by MS and the experience acquired in the application of the RTS.</p>	None.



No	Comments	Summary of responses received	EBA analysis	Amendments to the proposals
10.	Article 2	<p>One respondent considered that the criteria for the appointment of a central contact point should follow a risk-based approach, instead of one based on thresholds. The respondent believed that the thresholds proposed in the CP might not be suitable for lower-risk payment service activities, such as payment services (or e-money) provided to corporate clients; services that allow only low-value payments; or services that allow payments only for goods and services.</p> <p>In addition, one respondent suggested that the criteria should take into account the 'wider range of business types and sizes potentially affected by the RTS'.</p>	<p>The EBA considered this proposal but concluded that the adoption of different thresholds for 'lower-risk payment services' would not be feasible in practice, at least at this stage, due to the lack of reliable and comparable data across EU MS for establishing such thresholds.</p> <p>The EBA also took into account that the adoption of different thresholds that would depend on a series of characteristics of the payment services carried out cross-border might create undue complexity for both CAs and PIs/EMIs, and might lead to increased costs for both PIs and EMIs operating cross-border – as they would need to monitor and report on such thresholds on an ongoing basis – and for CAs. For these reasons, the EBA decided not to pursue this approach.</p>	None.
11.	Article 2	<p>One respondent proposed, as an alternative to the criteria defined in the CP, establishing a criterion set as a percentage of the market share (of the volume or value of transactions) performed by a PI/EMI through agents. The respondent suggested a threshold of 20% of the host MS's total value of transactions per year. In the respondent's view, this percentage could be computed based on the ECB country statistics published every year.</p>	<p>The EBA considered the approach proposed by the respondent of adopting a market-share threshold but concluded that, while such an approach could have some advantages, it would also involve significant practical difficulties in calculating and monitoring the thresholds. This in turn might trigger undue complexity and increased costs for both CAs and PIs/EMIs operating cross-border, as they would have to calculate and monitor the fluctuation of these thresholds.</p> <p>The EBA considered whether the statistical data collected by the ECB could be used for computing such thresholds but believes that this data would be insufficient for this purpose and would not solve the practical difficulties mentioned above.</p>	None.
Responses to Question 3 in the CP				



No	Comments	Summary of responses received	EBA analysis	Amendments to the proposals
12.	Article 3(1)(a)	<p>While the majority of respondents agreed with the functions of a central contact point as set out in the draft RTS, one respondent was of the view that the draft RTS did not explain the extent of the interaction that the CA of the host MS is allowed to conduct in relation to the central contact point or the frequency of such interaction. The same respondent considered that it was important to ensure that the reporting obligations referred to in Article 3(1)(a) of the draft RTS, and the format of the reporting, would be harmonised across all MS and that the frequency of the reporting would be limited as far as possible.</p>	<p>The extent of the interaction between the CA of the host MS and the local central contact point is defined in Article 29(4) of PSD2 and further specified in Article 3 of the RTS. However, the reporting obligations of PIs/EMIs towards the CA of the host MS under Article 29(2) of PSD2 (where the CA of the host MS decides to make use of the option under this Article to require such reporting) and the frequency of this reporting are detailed in the RTS mandated under Article 29(6) of PSD2 (EBA/CP/2017/16) and are not part of the mandate under Article 29(5) of PSD2.</p> <p>Aside from the reporting under Article 29(2) of PSD2, the CA of the host MS may also request information from the central contact point (acting on behalf of the PI/EMI) where such information is deemed necessary by the host CA for it to fulfil its supervisory responsibilities as set out in PSD2. However, the frequency of such requests cannot be established in advance, because it typically differs on a case-by-case basis (taking into account, for example, the risks associated with the activity carried out in the host MS or the number of complaints that the host CA receives as regards a particular PI/EMI).</p>	None.
13.	Article 3(1)(b)	<p>One respondent asked that the reporting requests of the host CAs should be limited to specific topics such as compliance with Titles III and IV in the host MS. In the respondent's view, if the CA of the host MS were to require additional information in relation to the central contact point, it should inform the CA of the home MS of its request and the reasons for it. The respondent believed that this would prevent the CA of the host MS from carrying out overly burdensome checks on agents to limit passporting in their territory.</p>	<p>As explained above, the reporting obligations of PIs/EMIs towards the CA of the host MS under Article 29(2) of PSD2 (where the host CA decides to make use of the option under this Article to require such reporting) are detailed in the RTS mandated under Article 29(6) of PSD2 (EBA/CP/2017/16) and are not part of the mandate under Article 29(5) of PSD2. Aside from such periodical reporting, the host CA may request information from the central contact point in fulfilment of its supervisory functions under PSD2, which are defined in PSD2 (see, for example, Articles 100(4), 29(4) and 30(2)).</p>	None.



No	Comments	Summary of responses received	EBA analysis	Amendments to the proposals
14.	Article 3(1)(c)	One respondent remarked that the CA of the host MS should not be allowed to carry out an inspection on its own initiative without a formal alignment with the CA of the home MS, and that the inspection should be coordinated by the CA of the home MS, which could delegate to the CA of the host MS the task of carrying out the inspection.	The supervisory powers of the CA of the host MS, including the right to carry out an inspection in coordination with the CA of the home MS, are defined in PSD2 and will be further specified in the draft RTS under Article 29(6) of PSD2 (EBA/CP/2017/16). Given that these aspects exceed the scope of these RTS, the EBA considers that no changes to the RTS are needed.	None.