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EBA report on potential impediments to the cross-border provision of banking and payment services: Frequently Asked Questions

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Why has the EBA issued this report?

In accordance with the EBA's March 2018 FinTech Roadmap,¹ the EBA has been monitoring the use of digital solutions (e.g. online and mobile banking applications and platforms) in the banking and payments sectors.

Digital solutions enable financial institutions to reach a wider population of customers, including cross-border. However, the cross-border provision of financial services remains limited.

The reasons for this are complex and relate to both the demand for, and supply of, financial services cross-border.

In this report the EBA focusses on issues in the following areas that may pose an impediment to the cross-border provision of banking and payment services:

- authorisations;
- conduct of business and consumer protection requirements; and
- anti-money laundering (AML) and countering the financing of terrorism (CFT).

The EBA also sets out in the report recommended actions for the European Commission to address the issues in order to remove barriers to entry and facilitate the scaling up of banking and payments activities across the EU.

What is the report about?

The EBA identifies in the report issues that may impede the provision of banking and payment services cross-border. These issues alone or in combination may create barriers to market entry, impede the scaling up of activities cross-border and undermine the functioning of the EU Single Market.

To address these issues, the EBA calls on the European Commission to update its interpretative communications on the extent of the freedom to provide services cross-border and to develop

¹ <https://eba.europa.eu/eba-publishes-its-roadmap-on-fintech>



legislative proposals to address issues stemming from authorisations, consumer protection and conduct of business, AML and CFT requirements that are not fully harmonised or are not yet covered by EU law.

In summary, the EBA recommends the European Commission take the following actions:

Policy area	Action [for the EC]
Designation as cross-border activity under the freedom to provide services or right of establishment	Update of European Commission guidance, including EC interpretative communications, to support the identification of cross-border services, taking account of technological developments.
Authorisations and licencing	Development of legislative proposals to introduce at Level 1: <ul style="list-style-type: none"> • new reporting requirements by institutions of cross-border activities to home and host competent authorities; • a mandate for the EBA to issue EBA Guidelines to promote more consistent communication by competent authorities of requirements imposed in host jurisdictions.
Consumer protection and conduct of business requirements	Development of legislative proposals to further harmonise at Level 1: <ul style="list-style-type: none"> • consumer-facing disclosure requirements; • the allocation of home/host responsibilities for the supervision of complaints handling in the context of cross-border services; • supervisory powers regarding the right of establishment and freedom to provide services cross-border.
AML/CFT	Development of legislative proposals to further harmonise at Level 1 AML and CFT requirements, e.g. relating to customer identification.

Is the report all about FinTech?

No. The report identifies issues that may impede the provision of banking and payment services cross-border using more ‘traditional’ delivery mechanisms and new digital solutions.

Is it clear when a service is provided cross-border?

No. The EBA identifies challenges that financial institutions and supervisors face currently in determining whether a service is being provided cross-border and, if so, whether it is through the freedom to provide services or right of establishment (this classification determines the applicable



regulatory and supervisory requirements). The EBA recommends the update of European Commission interpretative communications to provide up-to-date guidance taking account of the digitisation of the financial services sector.

Do financial institutions face challenges in navigating requirements imposed in host jurisdictions?

Yes. Currently financial institutions face challenges in navigating requirements imposed by supervisors in 'host' jurisdictions. This may deter firms from seeking to provide services on a cross-border basis. The EBA recommends that the European Commission consider Level 1 changes to mandate the EBA to issue Guidelines to improve transparency and assist firms in navigating these requirements.

What about supervisors - do they always know when financial institutions are providing services in their jurisdictions on a cross-border basis?

Current weaknesses in financial institutions' reporting of cross-border business mean that supervisors lack comprehensive and timely information to monitor certain forms of cross-border activity. The EBA recommends that the European Commission consider Level 1 changes to strengthen the reporting requirements for institutions in order to better equip home and host competent authorities to monitor this activity and to respond, for instance through enhanced supervision or the exercise of supervisory powers, to address any additional risks identified.

What about consumer protection and conduct of business requirements?

Currently certain types of consumer protection and conduct of business requirements are not harmonised across the EU. This means that consumers do not benefit from uniform protection when engaging financial products and services across the EU and financial institutions face challenges in navigating and complying with different requirements in different Member States.

To address these issues the EBA recommends in the report that the European Commission consider the further harmonisation of (i) consumer-facing disclosure requirements, (ii) the allocation of responsibilities for complaints handling regarding cross-border financial services, and (iii) supervisory practices in the context of the provision of financial services via the right of establishment and/or the freedom to provide services.

What about AML/CFT?

Successfully countering financial crime is essential to protect the integrity of the EU Single Market. For this reason the EU has in place robust AML/CFT framework (in the form of Directive (EU) 2015/849 (AMLD4) as amended by Directive (EU) 2018/843).

Importantly, in accordance with the risk-based approach,² the AMLD4 gives flexibility to Member States to impose different AML/CFT requirements when transposing that directive into national law. Inevitably this means that local requirements may vary from one Member State to another. Notwithstanding the need to maintain this flexibility, the EBA considers that there are certain aspects that could benefit from further convergence efforts, for instance in relation to remote customer on-boarding, and recommends that the European Commission consider such steps.

² This approach recognises that the ML/TF risks can vary across Member States, competent authorities and institutions, and that those within the scope of the AMLD4 have to take steps to identify and assess that risk with a view to deciding how best to manage it through effective AML/CFT policies and procedures.

What will the EBA do next?

The EBA will continue to monitor the adoption of digital solutions in the context of the provision of banking and payments services and take further action as required should new issues emerge that may impede the capacity for financial institutions to provide services cross-border.

Further information about the EBA’s work on FinTech can be accessed via the [EBA’s FinTech Knowledge Hub](#).

