



## Public Hearing on the Draft RTS and ITS on the EBA Register under PSD2

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# 1. Introduction to the EBA

# The creation of the EBA

**The EBA was established on 1 January 2011 by Regulation (EC) No. 1093/2010 of the European Parliament and the Council, and was given a specific role.**

- **The EBA took over all existing tasks and responsibilities from the Committee of European Banking Supervisors (CEBS);**
- **The EBA took on additional tasks, incl. consumer protection, the monitoring of financial innovation, and payments;**
- **The EBA is an independent authority;**
- **The EBA is accountable to the EU Parliament and EU Council;**
- **The EBA has as its highest governing body the EBA Board of Supervisors, comprising the Heads of the 28 national supervisory authorities.**



# The EBA's scope of action

The EBA's regulatory remit is defined by a set of EU Directives and Regulations that fall into its 'scope of action'. They include:

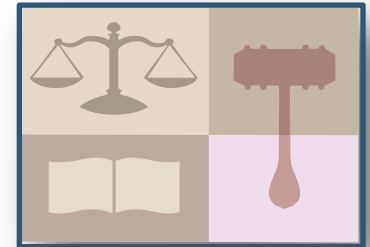
- Capital Requirements Directive (CRR/D IV)
- Deposit Guarantee Scheme Directive (DGSD)
- Mortgage Credit Directive (MCD)
- Payment Accounts Directive (PAD)
- Electronic Money Directive (EMD)
- Payment Services Directive (PSD1 + forthcoming PSD2)
- Anti-Money Laundering Directive (AMLD)
- Markets in Financial Instruments Directive (MiFID/R, for structured deposits)



# Legal instruments available to the EBA

The EBA has different types of legal instruments at its disposal that differ in terms of purpose, legal status, and possible addressees.

- **Technical standards**
- **Guidelines**
- **Recommendations**
- **Opinions / Technical Advice**
- **Warnings**
- **Temporary prohibitions**
- **Joint Positions**
- **Breach of Union law investigations**
- **Binding and non-binding mediation**



# Output of the EBA to date



Since its creation in 2011, the EBA has issued more than 200 legal instruments, plus more than 100 reports and other outputs.

	2011	2012	2013	2014	2015	2016	Total
<b>Regulatory Technical Standards</b>	-	1	39	22	15	15	92
<b>Implementing Technical Standards</b>	-	-	21	10	10	7	48
<b>Guidelines</b>	2	6	2	17	19	12	58
<b>Opinions / Technical Advice</b>	1	6	6	14	21	17	65
<b>Published reports</b>	6	12	26	23	34	37	138
<b>Recommendations</b>	2	-	4	1	2	1	10
<b>Breach of Union Law investigations</b>	-	-	-	1	-	-	1
<b>Mediations</b>	-	2	5	-	-	-	7
<b>Peer reviews</b>	-	-	1	1	1	2	5
<b>Warnings</b>	-	-	2	-	-	-	2
<b>Stress tests</b>	1	-	1	-	1	1	4

# The purpose of EBA public hearings

For many of its Technical Standards and Guidelines the EBA organises ‘public hearings, with a view to allow interested parties to ask clarification questions.

- An EBA hearing takes place during the consultation period, usually a month or so before the submission deadline of responses to the Consultation Paper (CP).
- The purpose of the hearing is for the EBA to present a summary of the CP, re-produce the questions of the CP, and ask attendees whether they require additional explanations or clarifications from the EBA so as to be able to answer the questions in the CP.
- The public hearing does therefore not replace written responses to the CP, as it is only through written responses that the EBA is able to give the views of stakeholders the required consideration.





## **2. The PSD2 mandates related to the EBA Register**

# Progress of the PSD2 Mandates

Deliverables	Milestones reached			
	Milestone 1: Work has started	Milestone 2: CP is published	Milestone 3: Final Report is published	Milestone 4: TS published in OJ , or GL Compliance Table publ.
1 RTS on Passporting Notifications under PSD2	✓	✓	✓	
2 RTS on Strong Authentication & Secure Comm. under PSD2	✓	✓	✓	
3 GL on Professional Indemnity Insurance under PSD2	✓	✓	✓	
4 GL on Authorisation of Payment Institutions under PSD2	✓	✓	✓	
5 GL on Incident Reporting under PSD2	✓	✓	✓	
6 GL on Complaints Procedures by CAs under PSD2	✓	✓	→	
7 GL on Operational & Security Measures under PSD2	✓	✓		
8 RTS on Central Contact Points under PSD2	✓	✓		
9 RTS & ITS on EBA Register under PSD2	✓	✓		
10 GL on Fraud Reporting under PSD2	✓	✓		
11 RTS on Home-Host Cooperation under PSD2	✓			

Status as of 04 September 2017  
 Planned progress end of September

# Wording of the mandates on the EBA Register



**Article 15(1) of the PSD2 requires the EBA to:**

*‘develop, operate and maintain an electronic central register that contains information as notified by competent authorities’*

**Article 15(4) of the PSD2 confers on the EBA the following mandate:**

*‘develop draft regulatory technical standards setting technical requirements on the development, operation and maintenance of the electronic central register and on access to the information contained therein’*

**Article 15(5) of the PSD2 confers on the EBA the following mandate:**

*‘develop draft implementing technical standards on the details and the structure of the information to be notified in accordance with paragraph 1 of Article 15, including the common format and model in which this information is to be provided’*

# Development approach taken by the EBA



At the start of the policy development work, the EBA conducted a fact finding and evidence gathering exercise by requesting information from NCAs and the industry.

## Input from the national competent authorities

- Information contained in the national public registers (NPR) under PSD1;
- Practices for update of the information in the NPR under PSD1;
- Information foreseen to be contained in the NPR under PSD2;
- Views on the future electronic central register of the EBA.

## Input from EU trade associations EMA and EPIF

- Information about the experience of payment and e-money institutions with the NPR under PSD1;
- Views on the future electronic central register of the EBA.

## Exploring synergies with the EBA Credit Institution Register

- In terms of technological solutions, functionality and information contained, while taking account of the different legal basis for establishing each register.

## **3. Draft RTS and ITS on the EBA Register under PSD2**

# Provision of information from NCAs (1)

**At the start of the policy development work, the EBA considered different approaches for provision of information from NCAs to the EBA:**

- **A manual approach** – fully manual insertion and modification of information in the register;
- **A semi-automated approach** – manual upload of a standardised file (generated automatically or filled in manually);
- **An automated approach** – fully automatic transmission of information.

**The EBA came to the conclusion that a single technological solution would not be feasible for the EBA Register because of the difference in the:**

- **number of entries** in the national registers;
- procedures for **updating the information** in the national registers;
- level of **sophistication of the applications** of the national registers;
- preference of CAs for provision of information.

**Eventually, the EBA decided to introduce a technological solution which incorporates two separate functionalities for provision of information – manual and automatic.**

# Provision of information from NCAs (2)

The EBA considered two options for the functionality for the automated transmission of information:

- **Option 1** – complete reload of the whole set of information contained in a national register;
- **Option 2** – transmission of the newly added or modified information in a national register.

The EBA decided that **Option 1** is the preferred option because it is easier and quicker to implement, cheaper for both NCAs and the EBA, and easier for the EBA to maintain.

**Q1. Do you agree with the option the EBA has chosen regarding the transmission of information by NCAs to the EBA? If not, please provide your reasoning.**

# Search of information in the EBA Register (1)

In order to fulfil the objectives of PSD2 related to the EBA Register of increasing transparency, ensuring high-level of consumer protection and facilitating cooperation between competent authorities, the EBA has suggested the following search criteria:

- The **type** of natural or legal person;
- The **name** of the natural or legal person;
- The **national identifier** of the natural or legal person;
- The name of the responsible **competent authority**;
- The **country** where the natural or legal person is established;
- The **city** where the natural or legal person is established;
- The payment and electronic money **services provided**;
- The **Host Member State** in which the payment institution, electronic money institution or account information service provider provides or intends to provide payment services.



**These search criteria would also be used in combination for more refined searches.**



# Search of information in the EBA Register (2)



**Display of information** - the information displayed for the search results will be user-friendly and will not contain the whole set of information contained for the respective person.

**Download of information** - the public users will be able to download in a separate file the search results and the information displayed for the natural and legal persons.

**'Machine readable'** - the EBA also considered the possibility to create an interface which will allow external applications to automatically search the register, but considered that it would be too costly and would bring implications for the implementation of the IT project.

**Q2. Do you agree with the proposed criteria and functionalities related to the search of information in the EBA Register? If not, please provide your reasoning.**

# Non-functional requirements of the EBA Register

Chapter 3 of the draft RTS specifies the non-functional requirements related to the operation of the EBA Register. These high level requirements are related to:

- **Safety** – storing and backing-up the information contained in the register, and procedure in case of security issues (including emergency situations);
- **Availability and performance** – accessibility of the register to the general public and stability of the performance;
- **Maintenance and support** – optimisation of the performance of the register, support and testing environment provided by the EBA to NCAs;
- **Audit trail** – recording of transmitted information and actions performed, as well as possibility for the EBA to extract reports from the register.

**Q3. Do you agree with the proposed non-functional requirements related to the operation of the EBA Register? If not, please provide your reasoning.**

# Persons to be contained in the EBA Register (1)

Based on the analysis of the mandate under Article 15(5) of the PSD2 and several other related Articles in the Directive, as well as the external input provided by NCAs and the industry, EBA suggests the following natural and legal persons to be included in its register:

Article 14(1)  
of the PSD2

- Payment institutions, their agents and foreign branches
- Account information service providers, their agents and foreign branches
- Exempted payment institutions and their agents
- Institutions referred to in Article 2(5) of PSD2 providing payment services

Article  
111(1)(a) of  
the PSD2

- Electronic money institutions, their agents and foreign branches
- Exempted electronic money institutions and their agents

Article 37(5)  
of the PSD2

- Providers of services based on specific payment instrument that can be used only in a limited way
- Providers of electronic communication networks executing payment transactions or providing services in addition to electronic communications services

# Persons to be contained in the EBA Register (2)



**Other natural and legal persons which were suggested by few NCAs and the industry to be contained in the EBA Register were:**

- Credit institutions providing payment initiation and account information services;
- Distributors of electronic money.

**The EBA, after analysing the legal basis and carrying out the fact finding exercise, decided not to include them in the draft ITS because:**

- They are out of the scope of the mandate;
- The majority of the NCAs would not include them in their national registers;
- There is a separate EBA register for credit institutions.

**Q4. Do you agree with the way how the EBA proposes to fulfil the mandate in terms of the natural and legal persons that will need to be included in the future EBA Register? If not, please provide your reasoning.**

# Information in the EBA Register – level of detail



The EBA observed differences in the level of detail of the information that the EBA may want to make available in the Register. Therefore, two options emerged regarding the level of detail of the information in the EBA Register:

- **Option 1** - to have more detailed information, meaning that some of the information will be optional for NCAs to provide to the EBA;
- **Option 2** - to have less detailed information which will be mandatory for all NCAs to provide to the EBA.

**The EBA decided that Option 2 is the preferred option, because it would:**

- allow for consistency in the information contained in the EBA Register;
- bring the same level of transparency and level-playing field for all natural and legal persons contained in the register;
- not impose additional information requirements not provided for by the PSD2 itself.

**Q5. Do you agree with the option the EBA has chosen regarding the detail of information for the natural and legal persons that will be contained in the future EBA Register? If not, please provide your reasoning.**

# Information in the EBA Register - PI, EMI and AISP (1)



Taking into account the option chosen regarding the detail of information, the EBA decided that its register should contain information either required by PSD2 or made publicly available by all NCAs.

**Therefore, the following information was introduced in the ITS for PI, EMI and AISP:**

- the name of the institution;
- the address of the head office;
- the national identifier used in the respective national public register;
- the payment and electronic money services provided;
- the authorisation/registration status;
- the name of the competent authority by which the PI is authorised;
- information about the Host Member States where the institution provides services;
- information about foreign branches.

# Information in the EBA Register - PI, EMI and AISP (2)



The EBA also assessed the case for and against including in the ITS (and the EBA Register respectively) information about the:

- contact details of these institutions;
- the dates of authorisation/registration;
- the addresses of the offices of the institutions in their Home MS;
- the services provided by the respective institution in the Host Member States.

However, the EBA reached the conclusion that, without being required explicitly by the PSD2 itself, the above information cannot be included in the EBA Register because it is not consistently collected by the competent authorities or published in their national public registers.

**Q6. Do you agree with the EBA that the contact details, dates of authorisation/registration, and the services provided in the Host Member States, should not be included in the EBA register? If not, please provide your reasoning, which should also include the benefits for payment service users and other interested parties of having this information in the EBA Register.**

# Information in the EBA Register - service providers excluded from the scope of PSD2

Article 37(5) of PSD2 provides that the EBA Register should contain the description of the activities of the service providers that are excluded from the scope of the PSD2 which carry out an activity referred to in points (i) and/or (ii) of point (k) or point (l) of Article 3 of the PSD2 (telecom and limited network exclusions).

In order to fulfil the PSD2 objectives of bringing transparency and ensuring high level of consumer protection, the EBA introduced additional information requirements for these service providers, which are the following:

- name and national identifier of the service provider;
- the address of the head office;
- the name of the responsible competent authority;
- the exclusion under which the service provider carries out activities;
- the current registration status.

**Q7. Do you agree with the extension of the information for the service providers excluded from the scope of the PSD2 that will be entered in the EBA register? If not, please provide your reasoning.**



# Information in the EBA Register - agents



**Article 9 of the ITS specifies the information that will be made publicly available for agents under PSD2, which covers:**

- the name and national identifier of the agent;
- the address of the agent;
- the name and national identifier of the person on behalf of which the agent provides payment services;
- the name of the responsible competent authority.

**The EBA also considered to include information about the payment services which the agent provides. However, the EBA concluded that, without being required explicitly by the PSD2 itself, this information is not consistently collected by the competent authorities or published in the national public registers.**

**Q8. Do you agree with the scope of the information on agents of payment institutions, exempted payment institutions, account information service providers, electronic money institutions and exempted electronic money institutions to be included in the EBA register? If not, please provide your reasoning.**

# Envisaged next steps

- **18 September 2017:** Consultation period ends.
- **Middle of September – end of November 2017:** The EBA assesses the CP responses to decide which, if any, changes will be made to the draft RTS and ITS on the EBA Register before finalisation.
- **December 2017:** The EBA will publish a Final report on the Draft RTS and ITS on the EBA Register and submit the draft technical standards to the European Commission for endorsement.
- **Q2 of 2018:** Estimated adoption of the RTS and ITS by the EU Commission.
- **Q3/Q4 of 2018:** Estimated 'Go-live' of the EBA Register.