



# Draft RTS on separation of payment card schemes and processing entities under the Interchange Fee Regulation (IFR)

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# Introduction to the EBA

# The creation of the EBA

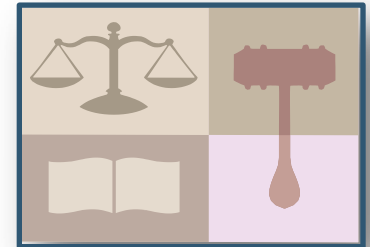
- The EBA was established by Regulation (EC) No. 1093/2010 of the European Parliament and EU Council;
- came into being on 1 January 2011;
- took over all existing tasks and responsibilities from the Committee of European Banking Supervisors (CEBS);
- took on additional tasks, incl. consumer protection, the monitoring of financial innovation, and payments;
- is an independent authority;
- is accountable to the EU Parliament and Council;
- has as its highest governing body the EBA Board of Supervisors, comprising the Heads of the 28 national supervisory authorities.



# 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 and recommendations
- > Opinions / Technical Advice
- > Warnings
- > Temporary prohibitions
- > Joint Positions
- > Breach of Union law investigations
- > Binding and non-binding mediation



# The EBA's scope of action

**The EBA's regulatory remit is defined by the EU Directives and Regulations that fall into its 'scope of action', either because they are listed in the EBA's founding regulation or because they confer tasks on the EBA. 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)



Given this scope of action, the EBA's innovation work focuses on payment services, payment accounts, electronic money, mortgages, personal loans, and deposits.

# Output of the EBA to date

Since its creation in 2011, the EBA has issued more than 200 legal instruments, as well as more than 100 reports.

	2011	2012	2013	2014	2015	Total
Regulatory Technical Standards	0	1	39	22	15	77
Implementing Technical Standards	0	0	21	10	9	40
Guidelines	2	6	2	17	19	46
Opinions / Technical Advice	1	6	6	14	21	48
Published reports	6	12	26	23	34	111
Recommendations	2	0	4	1	2	9
Breach of Union Law investigations	0	0	0	1	0	1
Mediations	0	2	5	0	0	7
Peer reviews	0	0	1	1	1	3
Warnings	0	0	2	0	0	2
Stress tests	1	0	0	1	1	3

# The mandate in the IFR



# Mandate in the IFR

- Article 7 IFR: EBA to develop RTS establishing requirements to ensure payment card schemes and processing entities are independent in terms of:
  - Accounting;
  - Organisation; and
  - Decision making.
- The mandate does not require to prevent payment card schemes from offering processing services via an independent processing entity.
- The mandate is not to require payment card schemes and processing entities to implement a legal separation. If a scheme decides to implement a legal separation with a processing entity on a voluntary basis, it should do so in a way that ensures compliance with these draft RTS.
- The mandate does not foresee any exemption for three party payment card scheme operating under a four party scheme model (exemption for three party payment card scheme only apply to chapter II of the IFR and so not article 7).



# Approach followed to deliver the mandate (1)



## Before developing these RTS, the EBA collected industry's views

- The EBA organised a workshop with market participants in June 2015. This workshop gathered a sample of domestic and international four party card schemes, three party schemes, processing entities and card standardisation bodies in the EU.
- In addition, EBA has received inputs from national competent authorities and other national industry players that did not participate in the workshop.
- Main views expressed by market participants :
  - Accounting independence :
    - ✓ ~~Will not prevent forms of price discrimination not covered by the mandate given to the EBA, such as high inter-regional interchange fees or high inter-regional processing fees.~~

Outside EBA  
mandate

# Approach followed to deliver the mandate (2)

## Before developing these RTS, the EBA collected industry's views

- Main views expressed by market participants :
  - Organisation and decision-making process independence (“functional separation”):
    - ✓ May require the duplication of staff in some areas and the potential splitting up of various activities or support services which had presented a certain degree of synergy implying increased scheme access costs for all scheme participants.
    - ✓ No harmonised view of the list of services that should fall under the scope of “processing” as defined by the IF Regulation. Given the definition of “processing” provided in the IFR, the EBA is of the view that there is no possibility to further define the list of processing services falling under the scope of these RTS.
    - ✓ Need for taking into account the development of innovations.

# **Content of the draft RTS, as published for consultation**

# The draft RTS – Accounting independence

- Payment card schemes and processing entities shall have accounting processes in place that enable them to produce, as a minimum on a yearly basis, financial information related to separated balance sheets, profit and loss accounts and explanatory notes.
- Methodology to follow for allocation :
  - a) where expenses are directly attributable to the provision of processing services, they shall be allocated to the processing entity;
  - b) where expenses are directly attributable to the payment card scheme, they shall be allocated to the payment card scheme;
  - c) where expenses are not directly attributable to the provision of processing services or to the payment card scheme, they shall be allocated, where practicable, on an activity-based costing (ABC).
  - d) where expenses are not directly attributable and cannot be allocated on an activity-based costing (ABC), they shall be allocated according to an accounting methodology documented in a supporting note indicating the basis for allocation and the rationale for that basis.
- The financial information shall be reviewed by an independent auditor.

**Question 1: When submitting your response to the CP, will you be in a position to provide feedback on whether the activity-based costing (ABC) methodology is appropriate for cost allocation, and whether you see any need for further clarification regarding account independence?**

# Draft RTS – Organisation independence



- Functional separation: Payment card schemes and processing entities shall be, at a minimum, organised in two separate business units (SBU) with separated workspaces.
- Senior management independence: The senior management of payment card schemes or SBU, shall be different from the senior management of processing entities or SBU, and act autonomously from one another.
- Staff independence: The staff of payment card schemes shall be different from the staff of processing entities. 3 exemptions:
  - a) the provision of shared services;
  - b) the design, update or implementation of any processing services in the initial phase of development of new solutions, if necessary for an innovation purpose.  
Condition: the scheme shall inform all processing entities participating in the payment card scheme at the same time and under the same conditions about the development of a new solution (non discrimination);
  - c) the design of the single set of rules, practices, standards and/or implementation guidelines for the execution of card-based payment transactions  
Condition: other processing entities can participate on a non-discriminatory basis and where the design of those rules involves a representative sample of all processing entities participating in the payment card scheme.

**Question 2: When submitting your response to the CP, will you be in a position to provide feedback on whether the clarifications suggested above regarding the functional separation, senior management independence and the conditions for exemptions are sufficiently clear and appropriate?**

# Draft RTS – Organisation independence (cont.)



- Remuneration: No “cross-entities” performance based incentives for staff.
- Use of shared services: shall not imply the disclosure of sensitive information and the list of shared services shall be documented in a single document available to competent authorities.
- 3 specific conditions for the use of shared IT system:
  - a) Separate identification of staff to access the IT system
  - b) strict separate access to prevent sharing of sensitive information.
  - c) maintenance of the shared information system shall be performed in a way that ensures that no sensitive information is shared.
- Sensitive information: Payment card schemes and processing entities shall not share information of a sensitive nature which may provide either the payment scheme or the processing entity at a competitive advantage compared to other competitors.
- Code of conduct: Payment card schemes and processing entities which are part of a same legal entity or group shall define and disclose publicly a code of conduct, setting out how their respective staff shall act to ensure compliance with the RTS, in particular to avoid sharing of sensitive information.

**Question 3: When submitting your response to the CP, will you be in a position to provide feedback on whether the conditions for staff independence and sharing of sensitive information are appropriate to maintain a certain degree of synergy between scheme management and processing activities while ensuring a level playing field ?**

# Draft RTS – Decision making independence

- Management bodies' independence: composition of the management bodies shall ensure that potential conflicts of interest for the decision making process between the payment card scheme and processing entity participating in the scheme are appropriately mitigated.
- Where part of the same group, the payment card scheme and processing entity management bodies shall approve and periodically review conflict of interest policies for managing and monitoring the compliance with the current RTS, such as the code of conduct.
- Where the payment card scheme and processing entity have the same management body , the management body of the payment card scheme and processing entity shall establish:
  - a) a dedicated composition responsible for decisions related to the payment card scheme activities composed of members of the management body who do not perform any executive function in the processing entity.
  - b) a dedicated composition responsible for decisions related to the processing entity, composed of members of the management body who do not perform any executive function in the payment card scheme.
  - c) independent reporting lines from senior management of the payment card scheme business unit and the processing entity business unit respectively to the management body.
- Annual operating plan independence.

**Question 4: When submitting your response to the CP, will you be in a position to provide feedback on whether the conditions for decision making independence are appropriate to maintain a certain degree of synergy between scheme management and processing activities within the same legal entity or group while ensuring level playing field?**



# Next steps

## Timeline for publication of final EBA RTS and subsequent adoption

- EBA publication envisaged for end of Q2 of 2016;
- This is followed by Commission legal review and scrutiny by EU Council and Parliament;
- Adoption and application date of the final RTS is tbc;

## Interaction of the RTS with the application date of the IFR

- The CP provides clarification on the requirements with which payment card schemes will be required to comply during the interim period, between application date of Article 7 and the possibly later application date of the RTS:
  - The EBA's final RTS will be published in 2016Q2, with adoption at a later date;
  - Art 7(1)(a) of the IFR will apply to card schemes and processing entities from 9 June 2016, as provided in Article 18(2) of the IFR, even if the EBA final RTS do not yet apply on 9 June 2016.
  - From June 2016 card schemes and processing entities will have to ensure their independence in terms of accounting, organisation and decisions-making processes.
  - In doing so, they may choose to take into account the final draft RTS that should by then be published by the EBA, although this will not be legally binding.
  - Once the final RTS are formally adopted by the Commission, the card schemes and processing entities will be legally bound to comply with the RTS;
  - Until the RTS are formally adopted by the Commission, NCAs shall ensure compliance with Article 7(1)(a), and when doing so may also take into account the final draft RTS. The authorities are invited to liaise closely with the Commission to ensure a consistent implementation of the obligations deriving from Article 7(1)(a) pending the adoption of the final draft RTSs.



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