



Public Hearing on the Draft EBA Guidelines on Authorisation and Registration under the PSD2

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Introduction to the EBA

The creation of the EBA

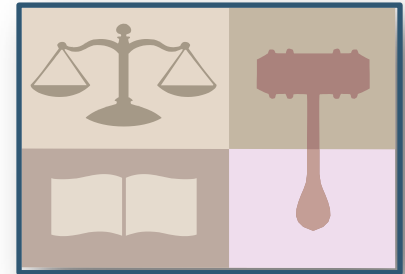
- The EBA was established by Regulation (EC) No. 1093/2010 of the European Parliament and EU Council;
- came into being on 1 January 2011;
- took over all existing tasks and responsibilities from the Committee of European Banking Supervisors (CEBS);
- took on additional tasks, incl. consumer protection, 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)

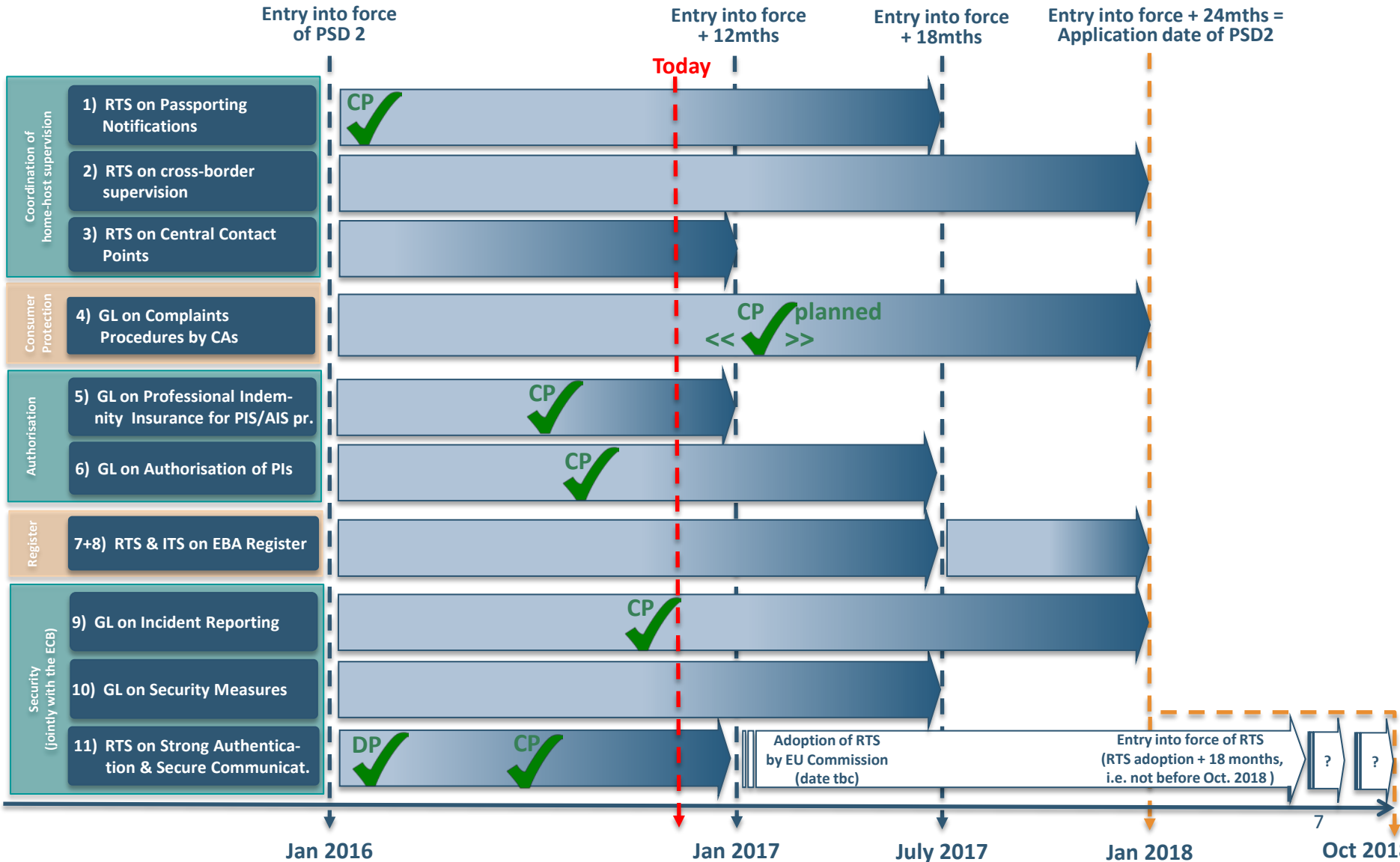


Output of the EBA to date

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

Mandates conferred on the EBA in support of PSD2



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 asks 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.



The PSD2 mandate for the Guidelines and the EBA's development approach

The wording of the mandate in PSD2

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

“By 13 July 2017, EBA shall, after consulting all relevant stakeholders, including those in the payment services market, reflecting all interests involved, issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 concerning the information to be provided to the competent authorities in the application for the authorisation of payment institutions, including the requirements laid down in points (a), (b), (c), (e) and (g) to (j) of the first subparagraph of paragraph 1 of this Article .”

Issues with authorisation process under PSD1

At the start of the process, the EBA asked the industry and the 28 national authorities to identify the issues they have experienced with the authorisation process under PSD1 and that they would like to see addressed under PSD2.

Issues identified by the industry

- Lack of transparency of the information the PI/EMI have to provide;
- Inconsistency between NCAs as to the information to be submitted;
- Lack of guidance on the level of detail required, specifically in the program of operations and business plan.

Issues identified by national authorities

- The information received was inconsistent, unfocused, lacked structure, and/or was irrelevant to the authorisation process;
- Long delays in PIs/EMIs providing the required information;
- Insufficient knowledge of financial regulation by the applicant;
- Incorrect identification of payment service;

The objectives of the Guidelines under PSD2

Based on the input provided by industry, national authorities and other sources, the EBA identified a set of objectives for the Guidelines.

Objectives for applicants

- Improving transparency and clarity of application process;
- Contributing to level-playing field for authorisations across the EU;

Objectives for national authorities and Member States

- Improving quality of information submitted by applicants;
- Contributing to consistent authorisation & supervision in the EU;

Objectives for payment services users

- Enhancing transparency & clarity about the meaning of an ‘authorised’ entity

Objectives for the EBA

- Contributing to EBA’s statutory objectives of improving the functioning of the EU internal market, preventing regulatory arbitrage, and promoting equal conditions for competition.

Q1: Do you consider the objectives of the Guidelines as identified by the EBA to be plausible and complete? If not, please provide your reasoning.

Draft Guidelines proposed in the CP

Structure of the Guidelines

The mandate in Article 5(5), in conjunction with several other Articles in PSD2 and EMD, convinced the EBA to structure the Guidelines into four separate sets.

Article 5(5) PSD2 mandates the EBA to develop Guidelines on the information to be provided to the competent authorities in the application for the authorisation of payment institutions.

1st set of Guidelines for Payment Institutions

Article 33 PSD2 provides that Article 5.5 of PSD2 applies only partially to Account Information Services Providers.

2nd set of Guidelines for AIS providers only

Article 3(1) EMD refers to the *mutatis mutandi* application of Article 5 PSD2 to Electronic Money Institutions

3rd set of Guidelines for Electronic Money Instit.

Article 12 of PSD2 refers to the communication of the decision for granting or refusing authorisation within 3 months of receipt of application or of completeness of application.

4th set of Guidelines on application completeness

Q2: Do you agree with the four-part structure of the Guidelines, and the inclusion of authorisation for electronic money institutions? If not, please provide your reasoning.

Information requirements specified in the GL

The Guidelines provide details on the information requirements that are listed in Article 5 (1) of PSD2 and that had not been available under PSD1.

1. Programme of operations and business plan
2. ~~Evidence of initial capital~~
3. ~~Description of the measures taken for safeguarding payment service users' funds~~
4. A description of the applicant's governance arrangements and internal control mechanisms
5. A description of the process in place to file, monitor, track & restrict access to sensitive payment data
6. A description of business continuity arrangements
7. ~~A description of the principles and definitions applied for the collection of statistical data~~
8. ~~A description of the internal control mechanisms to comply with AML obligations~~
9. A description of the applicant's structural organisation (agents, branches, outsourcing agreements..)
10. ~~Identity and evidence of suitability of persons holding directly or indirectly qualifying holdings.~~
11. Identity and evidence of suitability of directors and persons responsible for the management of the PI
12. Identity of statutory auditors and audit firms
13. The applicant's legal status and articles of association and the address of the applicant's head office

To providers of AI services, some of the requirements do not apply, which is why the EBA bundle the requirements that do apply into a separate, 2nd set of Guidelines.

The Guidelines and Proportionality

The EBA has developed the Guidelines in a way that the authorisation requirements achieve an appropriate degree of proportionality.

- Proportionality measures that derive from PSD2 itself;
- Exemptions provided in Articles 32 and 33 of PSD2;
- Limited room for further proportionality inside the GLs, due to the maximum harmonising nature of Article 5 PSD2.

Q3: Do you consider it helpful how the EBA has incorporated proportionality measures in the Guidelines in line with PSD2? If not, please explain your reasoning and propose alternative approaches.

General principles set out in the Guidelines

The first Guideline sets out a number of general principles.

Guideline 1: General Principles

- 1.1 The information provided by applicants should be true, complete, accurate, up to date and tailored and adjusted to the particular e-money service or services and, if applicable, to the payment activities the applicant intends to provide.
- 1.2 When submitting the information required, the applicant should avoid making references to specific sections of internal procedures/documents. Instead, the applicant should extract the relevant sections and provide these to the competent authority.
- 1.3 Should the CAs require clarifications on the information that had been submitted, the applicant should provide such clarification without delay.
- 1.4 Institutions should take into account their size, internal organisation and the nature, scale, and complexity of their activities when developing and implementing policies and processes. In any event, in accordance with Directive (EU) 2015/2366, the directors and the persons responsible for the management of the electronic money institution are of good repute and possess appropriate knowledge and experience to perform electronic money services, and payment services, when applicable, regardless of the institution's size, internal organisation and the nature, scope and the complexity of its activities and the duties and responsibilities of the specific position.
- 1.5 All personal data requested under these guidelines for authorisations as electronic money institutions (EMIs) are needed for the assessment of the application and will be treated by CA in accordance with the professional secrecy obligations set out in the PSD2, without prejudice to applicable Union Law and national requirements and procedures on the exercise of the right to access, rectify, cancel or oppose.

Guidelines in focus: “Programme of Operations”



3.1. The programme of operations to be provided by the applicant should contain the following:

- a) a description of the type of payment services envisaged, including an explanation on how the activities and the operations which will be provided are identified by the applicant as fitting into any of the legal categories of payment services listed in Annex I of PSD2.
- b) a declaration on whether the applicant will enter or not into possession of funds;
- c) a description of the execution of the different payment services, detailing all parties involved, and including for each payment service provided:
 - i. a diagram of flow of funds, unless the applicant intends to provide PIS only;
 - ii. settlement arrangements, unless the applicant intends to provide PIS only;
 - iii. draft contracts between all the parties involved, if applicable;
 - iv. a description of the different ways through which these services are provided;
 - v. flows of data; and
 - vi. processing times.
- d) a copy of the draft framework contract, as defined in Article 4(21) of PSD2;

Guidelines in focus (cont.)

- e) number of different premises from which the applicant intends to provide the payment services, and/or carry out activities related to the provision of payment services if applicable;
- f) a description of any ancillary services to payment services, if applicable;
- g) a declaration on whether or not the applicant intends to grant credit and, if so, within which limits;
- h) a declaration on whether the applicant plans to provide payment services in other member state or third country after the granting of the licence;
- i) an indication of whether the applicant intends to provide/already provides other business activities as referred to in article 11 (5) of Directive 2015/2366, including a description of the type and nature of the activities, expected volume and business premises.

Remaining Consultation Questions

- Q4: Do you agree with the Guidelines on information required from applicants for the authorisation as payment institutions for the provision of services 1-8 of Annex I of PSD2, as set out in chapter 4.1? If not, please provide your reasoning.**
- Q5: Do you agree with the Guidelines on information required from applicants for registration for the provision of only service 8 of Annex I PSD2 (account information services), as set out in chapter 4.2? If not, please provide your reasoning.**
- Q6: Do you agree with the Guidelines on information requirements for applicants for authorisation as electronic money institutions, as set out in chapter 4.3? If not, please provide your reasoning.**
- Q7: Do you consider the Guidelines regarding the assessment of completeness of the application, as set out in chapter 4.4 to be helpful? If not, please provide your reasoning.**

Next steps

Next steps

- **3 February 2017:** Consultation period ends;
- **Feb to May 2017:** EBA assesses CP responses to decide which, if any, changes will be made to the Guidelines before finalisation;
- **Summer 2017:** EBA will publish the Final Guidelines, in English language. The Guidelines will be part of a ‘Final Report’, which will also contain a ‘feedback table’ that lists all points made by respondents, and the EBA’s assessment of whether changes were required;
- **Autumn 2017:** EBA will publish the translations in all official EU languages. National authorities will then have two months to submit to the EBA compliance notifications stating whether or not they comply
- **13 January 2018:** Guidelines apply, i.e. need to be followed for all authorisations granted from that day onwards.