



EBA GL on fraud reporting requirements under Article 96(6) PSD2

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Agenda

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- Expected Timelines and envisaged next steps

I. Introduction to the EBA

The creation of the EBA

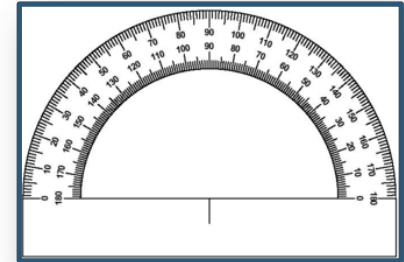
- The EBA was established by Regulation (EC) No. 1093/2010 of the European Parliament and EU Council;
- came into being on 1 January 2011;
- took over all existing tasks and responsibilities from the Committee of European Banking Supervisors (CEBS);
- took on additional tasks, incl. consumer protection,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



The scope of action of the EBA

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 and 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
Regulatory Technical Standards	-	1	39	22	15	15	92
Implementing Technical Standards	-	-	21	10	10	7	48
Guidelines	2	6	2	17	19	12	58
Opinions / Technical Advice	1	6	6	14	21	17	65
Published reports	6	12	26	23	34	37	138
Recommendations	2	-	4	1	2	1	10
Breach of Union Law investigations	-	-	-	1	-	-	1
Mediations	-	2	5	-	-	-	7
Peer reviews	-	-	1	1	1	2	5
Warnings	-	-	2	-	-	-	2
Stress tests	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.

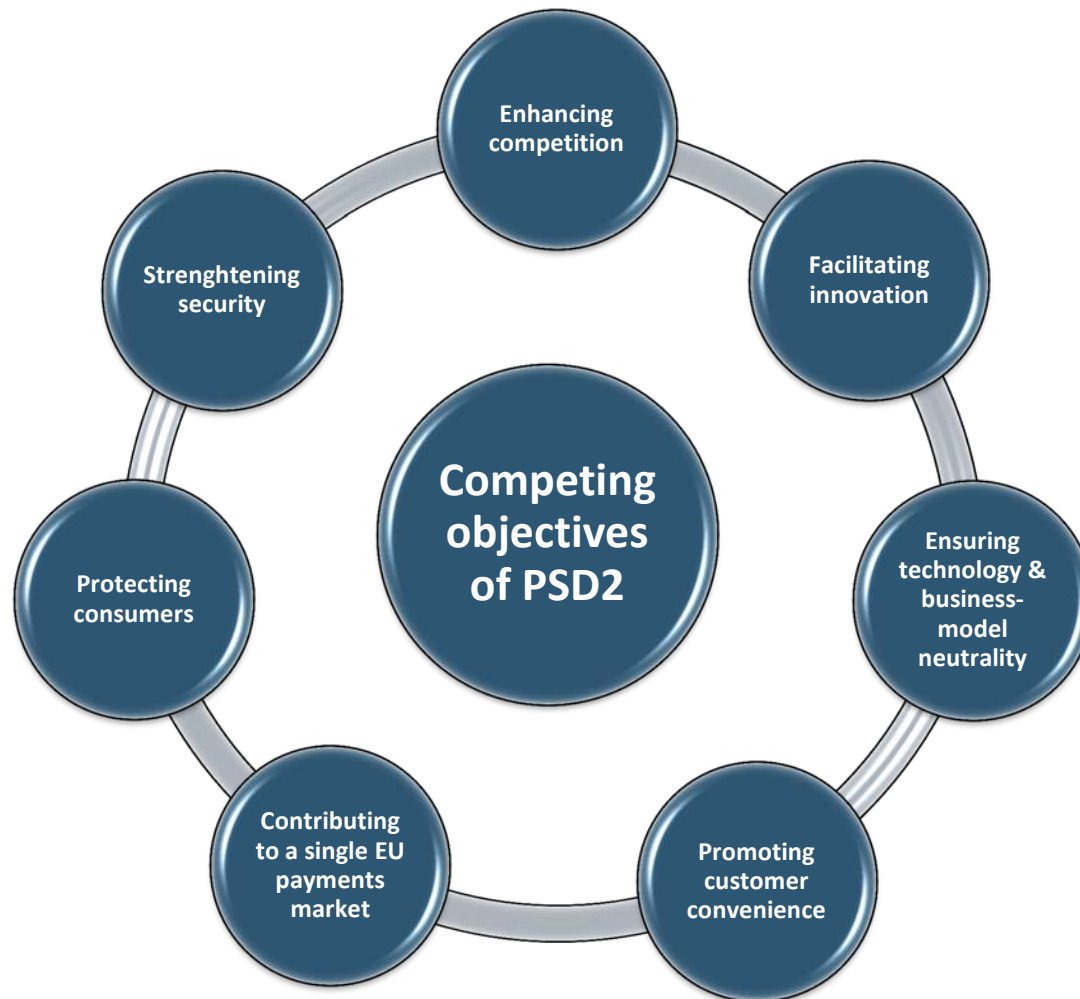
- An EBA hearing takes place during the consultation period, usually a month or so before the submission deadline of responses to the Consultation Paper (CP).
- The purpose of the hearing is for the EBA to present a summary of the CP, re-produce the questions of the CP, and ask attendees whether they 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.



II. EBA PSD2 mandates and related work

PSD2 objectives

The PSD2 has a number of different, often competing, objectives, that requires the EBA to make difficult trade-offs when developing its mandates.



Progress update on other payments related 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 GL on security of internet payments under PSD1		✓	✓	✓	✓
2 RTS on scheme separation under IFR		✓	✓	✓	
3 RTS on Passporting Notifications under PSD2		✓	✓	✓	
4 RTS on Strong Authentication & Secure Comms. under PSD2		✓	✓	✓	
5 GL on Professional Indemnity Insurance under PSD2		✓	✓	✓	
6 GL on Authorisation of payment institutions under PSD2		✓	✓	✓	
7 GL on Incident Reporting under PSD2		✓	✓	✓	
8 GL on Complaints Procedures by CAs under PSD2		✓	✓	→	
9 GL on Operational & Security Measures under PSD2		✓	✓	→	
10 RTS on Central Contact Points under PSD2		✓	✓		
11 RTS & ITS on EBA Register under PSD2		✓	✓		
12 EBA GL on fraud reporting under PSD2		✓	✓		
13 RTS on home-host coordination under PSD2		✓	→		

Status as of Sep '17
 Estim. status Dec '17

Other PSD2-related topics progressed by the EBA

In addition to the delivery of PSD2 mandates, the EBA is currently in the early stages of work on a number of other PSD2-related topics.

- The implications of the ‘transitional period’ under Articles 109 and 115 of PSD2;
- The status of agents and distributors of electronic money under the EU freedom to provide services;
- The implications for firms and national authorities from potential delays in the delivery/adoption of PSD2 mandates;
- Potential application of the existing JC Guidelines on complaints handling to the new AI and PI services under PSD2;
- The feasibility of extending the EBA’s existing web-based Q&A tool to PSD2-related queries from external stakeholders.



III. EBA draft GL on fraud reporting requirements under Article 96(6) PSD2

Background and details of the mandate

- At present, there is limited reliable and comparable data available on payment fraud at EU level and no common definition of “fraud” and “fraudulent payment transactions”
- Article 96(6) requires Member States (MS) to “ensure that payment service providers provide, at least on an annual basis, statistical data on fraud relating to different means of payment to their competent authorities”. The competent authorities (CAs) are further required “to provide EBA and the ECB with such data in an aggregated form”
- EBA Guidelines were identified as the most appropriate legal instrument through which to apply the requirements to PSPs and national authorities. The Guidelines proposed in the CP define the data to be provided by all PSPs across the 28 MS to enable comparable and reliable fraud data to be reported to CAs in the EU, as well as to the EBA and ECB
- The Guidelines were developed in close cooperation with the ECB and largely aligned with fraud reporting requirements at the ESCB, including, for the purpose of reporting of total payment transactions, with the current ECB Regulation on payment statistics

Objectives of the Guidelines

In the absence of detail in PSD2, EBA and ECB conducted an assessment of the objectives for different actors, including PSPs, CAs, ESCB, EBA and Payment service users (PSUs)

➤ **Objectives of the draft GL for PSPs:**

- Comparing own performance in preventing and mitigating fraud to country-level benchmark (if EBA/ECB or CAs were to publish aggregated country-level data);
- Collecting transaction and fraud data as part of their risk monitoring and risk assessment, helping them to better assess security incidents and risks;
- Pro-actively identifying fraud trends for future risk identification and proactive mitigation;
- Assisting with monitoring compliance with requirements of RTS on SCA and CSC, and in particular with Articles 18 and 20 draft RTS

➤ **Objectives for other actors:**

- For PSUs: Objectives include [if any aggregated data were to be published] having access to regular, reliable and aggregated fraud data at an EU and country-by-country level;
- For supervisory authorities and overseers: Objectives include contributing to assessing the effectiveness of applicable regulation, identifying fraud trends and potential risks, assessing and comparing payment fraud data and informing any future regulatory or supervisory change or action

Q1. Do you consider the objectives for the guidelines as chosen by the EBA, in close cooperation with the ECB, including the link with the RTS on SCA and CSC (and in particular Articles 18 and 20 RTS), to be appropriate and complete? If not, please provide your reasoning.

Definition of fraudulent payment transaction and data breakdowns

- No definition in PSD2 of “fraud” in relation to “different means of payment” as defined in Art.96(6)
- First step for the EBA and the ECB was to define “fraud” for the purpose of these GL. Fraud is understood as relating to “fraudulent payment transactions” rather than fraud more generally.
- For the purpose of the GL, fraudulent payment transactions include:
 - Unauthorised payment transactions
 - Transactions where the payer was manipulated into authorising and making a payment, and
 - Transactions where the payer acted fraudulently.
- Draft GL require PSPs to report annual statistical data on the different fraud types

Q2. In your view, does the definition of fraudulent payment transactions (in Guideline 1) and the different data breakdown tables (in Annexes 2 and 3) cover all relevant statistical data on “fraud on means of payment” that should be reported? If not, please provide your reasoning with details and examples of which categories should be added to, or existing categories modified in, the Guidelines.

Addressees of the Guidelines



- PSD2 refers to “fraud relating to different means of payment” and to “payment service providers”
- EBA’s interpretation: All PSPs that are part of a payment transaction chain are in scope of the reporting requirements under these GL
- Fraud data from AISPs would be redundant and cause double counting
- The EBA has arrived at the view that AISPs should not be within the scope of the draft GL.
- Note that AISPs have to comply with a large number of requirements under PSD2 and are subject to all other EBA mandates under PSD2.

Q3. Do you agree with the EBA’s proposal to exempt Account Information Service Providers from reporting any data for the purpose of these Guidelines? Please provide your reasoning with detail and examples.

Scope of reporting requirements

- The EBA and ECB have considered whether attempts to carry out fraudulent payment transactions should be included in the data reporting
- Capturing data on fraud attempts would enable CAs to assess the effectiveness of the internal controls of the PSP in blocking transactions before they are executed
- But it would substantially increase the amount of data to be collected and reported
- Under PSD2, all PSPs shall have risk and fraud monitoring systems in place to enable them to block any suspicious payment. The EBA and ECB would therefore expect PSPs to monitor the effectiveness of their systems, including by measuring the number of fraudulent transaction attempts blocked
- On balance, the EBA & ECB arrived at the view that the Guidelines should not require payment service providers to provide any data with regard to attempted fraud

Q4. Do you agree with the rationale for not including in Guideline 2.5 a requirement to report data for attempted fraud for the purpose of these Guidelines? If not, please provide your reasoning with detail and examples.

Net & gross fraudulent payment transactions data



- **Gross fraudulent payment transactions data enable supervisors and overseers to monitor and analyse data on fraudulent payment transactions for the purpose of consumer protection and maintaining the integrity of the EU payment market**
- **Net fraudulent payment transactions data enable national authorities to identify to which extent the financial damage has been recovered by the reporting entity and where the liability for the payment fraud may lie**
- **EBA has arrived at the view that PSPs should report both figures**
- **However, the EBA also appreciates that any given PSP would not be able to measure, and at times may even not be aware of, the net figure. The EBA has therefore defined net fraudulent payment transactions as only taking into account losses that have been recovered by the reporting payment service provider (rather than by all actors in the payment chain) from any source**

Question 5: Do you agree with the proposal for payment service providers to report both gross and net fraudulent payment transactions, with net fraudulent transactions only taking into account funds recovered by the reporting institution (rather than any other institution) as set out in Guideline 1.5? If not, please provide your reasoning with detail and examples.

Start date and frequency of reporting



- PSD2 refers to “at least on an annual basis”. The EBA considered various options in respect of the specific frequency through which reporting should take place
- Fraudulent payment transaction statistical data aim, among others to provide a tool for supervisors to have relatively timely information.
- For CAs to be able to act promptly, some fraudulent payment transactions data need to be reported more frequently than on an annual basis.
- More frequent data improves the quality of data
- EBA appreciates the importance of not being unduly burdensome
- the EBA arrived at the view that the GL should require detailed data to be reported as set out in Guideline 3 and specified further in Annex 2 on an annual basis and, in addition, less detailed data to be reported under Annex 3 on a quarterly basis
- On the basis of proportionality, the small payment institutions and e-money institutions that may be exempted under Art 32 of PSD2 and Art 9 of EMD respectively should be exempt from quarterly reporting

Question 6: Do you consider the frequency of reporting proposed in Guideline 3, including the exemption from quarterly reporting for small payment institutions and small e-money institutions in light of the amount of data requested in Annexes 1, 2 and 3, to be achieving an appropriate balance between the competing demands of ensuring timeliness to reduce fraud and imposing a proportionate reporting burden on PSPs? If not, please provide your reasoning with detail and examples.

Breakdown of data

- Comprehensive data required; but must also be proportionate and not unduly burdensome
- Guideline 7 and the breakdowns detailed in Annexes 2 and 3 distinguish between e-money issuance, payment initiation services, money remittance and all other payment services, depending on whether they are performed by means of a direct debit, credit transfer or card-based payment instrument.
- Level of data breakdown varies for each of the seven types both for quarterly and annual data reporting requirements.
- Annual data include, at most, gross and net fraudulent figures, payment channel (remote/non-remote), authentication method (SCA/no SCA), reason for authentication choice (detail under each exemption under the draft RTS on SCA and CSC) and fraud types. Reasons would only apply from the time the RTS apply.
- Quarterly data includes, at most, gross and net fraudulent figures, payment channel (remote/non-remote) and authentication method (SCA/no SCA)
- Annex 2 details more granular data requirements to be provided on an annual basis, while Annex 3 details more high-level data requirements to be provided on a quarterly basis. Annex 1 includes detail on level of geographical breakdown.

Question 7: Do you agree that payment service providers will be able to report the data specified in Guideline 7 and each of the three Annexes? If not, what obstacles do you see and how could these obstacles be overcome?

Double counting and double reporting

- To avoid double reporting as much as possible, draft GL only require transactions to be reported from the payer's side or the payee's side depending on the payment instrument and payment service, except for cards where both payer's and payee's PSP asked to report.
- For cards, this therefore will result in double reporting. However the EBA is of the view that not doing so would impede the ability for CAs to comprehensively capture and identify the origin, source and destination of fraudulent payment transactions.
- Double reporting does not equate to double counting. For cards data reporting, national authorities are requested not to add up the number or value of card payment transactions from the payer's side to the number or value of the same transactions from the payee's side to ensure no double counting takes place.
- The same applies to the requirement for reporting a payment transaction both by the payment service provider that executed the transaction and the payment initiation service provider that initiated the payment transaction

Question 8: In your view, do the proposed Guidelines reach an acceptable compromise between the competing demands of receiving comprehensive data and reducing double counting and double reporting? If not, please provide your reasoning.

Data breakdown between consumers and other payment service users



- EBA has been made aware via the different security fora of the payments market of increasing fraud figures and fraud developments at corporate level (at times referred to as ‘CEO fraud’) and considers it important to monitor such developments
- The EBA understands that payment service providers may not always be able to distinguish between consumers and other types of PSUs and has as a result at present not included such data breakdown.

Question 9: Are you of the view that payment services providers should distinguish between payment transactions made by consumers and payment transactions made by other PSUs? Please provide your reasoning with detail and examples.

Expected timeline and envisaged next steps



- **03 November 2017:** Consultation period ends
- **(at least) November – December 2017:** The EBA assesses the CP responses to decide which, if any, changes will be made to the draft GL
- **January 2018** PSD2 applies, including provisions in Article 96(6)
- **Q1 2018:** The EBA publishes final Guidelines in English and then in all official EU languages, triggering a 2-month notification period for CAs to confirm compliance, intention to comply or stating the reasons for not complying with the GL.
- **Q2 of 2018 (precise date tbc):** GL apply and all PSPs have to start reporting relevant data to CAs, and CAs have to report to EBA and ECB



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