

EBA/GL/2017/13

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Final Report

Guidelines

on procedures for complaints of alleged infringements of Directive
(EU) 2015/2366

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1. Abbreviations

ADR	alternative dispute resolution
CA	competent authority
EBA	European Banking Authority
ECB	European Central Bank
EU	European Union
PSD1	Payment Services Directive 1
PSD2	Payment Services Directive 2
PSP	payment service provider

2. Executive Summary

Article 100(6) of Directive (EU) 2015/2366 on Payment Services in the Internal Market (PSD2) requires the European Banking Authority (EBA), after consulting the European Central Bank (ECB), to issue Guidelines addressed to the competent authorities (CAs) under PSD2 on the complaints procedures to be taken into consideration to ensure and monitor effective compliance with PSD2.

Article 99(1) of PSD2 further specifies that Member States shall ensure that procedures are set up which allow payment service users and other interested parties including consumer associations, to submit complaints to the CAs with regard to payment service providers' (PSPs') alleged infringements of PSD2.

To fulfil this mandate, the EBA assessed existing complaints procedures that had been established by CAs pursuant to Article 80 of Directive 2007/64/EC (PSD1) and took them into account in the process of development of the Consultation Paper which was issued in February 2017. The EBA received 12 responses to the consultation from various types of market participants. While the majority of the respondents were supportive of the proposed Guidelines, some of them suggested more substantive amendments and clarifications to be made in relation to the channels for submission of complaints, the information requested from complainants, the scope of application of the Guidelines and the aggregate analysis of complaints.

As a result of the assessment of the main arguments presented in the responses, the EBA introduced the following changes to the content of the Guidelines:

- a clarification that the Guidelines apply to complaints submitted by PSPs that are affected by the situation that gave rise to the complaint;
- a requirement for CAs to establish at least one digital channel for submission of complaints which is accessible online;
- a requirement for CAs to provide information to complainants on how they can access the channels for submission of complaints, and on the contact details of any authority or body to which the complaint might have been forwarded;
- extension of the scope of the aggregate analysis of complaints, which now also includes information on the payment services and the provisions of PSD2 most complained about.

Finally, after assessing all distinct issues raised by the market participants which were more closely related to the content of the proposed Guidelines, the EBA decided to retain the structure of the Guidelines, which continues to cover channels for submission of complaints, information requested from complainants, CAs' reply to complainants, aggregate analysis of complaints, and documentation of and public information on the complaints procedures.

Next steps

The Guidelines will be translated into the official European Union (EU) languages and published on the EBA website. The deadline for CAs to report whether or not they comply with the Guidelines will be two months after the publication of the translations. The Guidelines will apply from 13 January 2018.

3. Background and rationale

3.1. Background

1. Article 100(6) of Directive (EU) 2015/2366, of 25 November 2015, on payment services in the internal market ('Payment Services Directive 2' (PSD2)) requires the European Banking Authority (EBA) to issue Guidelines, addressed to the competent authorities (CAs), in accordance with Article 16 of Regulation (EU) No 1093/2010, on the complaints procedures to be taken into consideration to ensure compliance with Article 100(1) of PSD2, after consulting the European Central Bank (ECB). The Guidelines need to be issued by the transposition date of PSD2 on 13 January 2018.
2. Article 100(1) of PSD2, in turn, states that 'Member States shall designate CAs to ensure and monitor effective compliance with this Directive. Those CAs shall take all appropriate measures to ensure such compliance'. The Guidelines therefore aim at establishing complaints procedures to be taken into consideration by CAs to 'ensure and monitor [payment service providers'] effective compliance' with PSD2.
3. Article 99 further specifies that 'Member States shall ensure that procedures are set up which allow payment service users and other interested parties including consumer associations, to submit complaints to the CAs with regard to payment service providers' (PSPs) alleged infringements of this Directive'. The EBA understands that the reference made to alleged infringements of PSD2 relates to infringements of provisions of national law transposing PSD2. However, these Guidelines make reference to 'infringements of PSD2' so as to keep the wording consistent with that in the Directive.
4. These Guidelines govern the process of the complaints submitted to CAs by payment service users and other interested parties, including PSPs that are affected by the situation that gave rise to the complaint and consumer associations, about the alleged infringement by PSPs of PSD2.
5. As a result, the following aspects remain outside the scope of these Guidelines:
 - a. dispute resolution procedures that PSPs have to put in place (which are covered in Article 101 of PSD2); and
 - b. alternative dispute resolution (ADR) procedures that Member States need to ensure exist (which are covered in Article 102 of PSD2).
6. It should therefore be noted that these Guidelines relate to complaints procedures under Title IV, Chapter 6, Section 1 of PSD2 and apply to complaints of alleged infringements of PSD2 submitted to CAs by payment service users and other interested parties. These Guidelines do not cover the role of competent bodies referred to in Article 102(1) of PSD2, which relates to

ADR procedures concerning the settlement of disputes between payment service users and PSPs.

7. These Guidelines were drafted taking into account complaints procedures that CAs have already put in place to deal with complaints under Article 80 of Directive 2007/64/EC (PSD1). In particular, Article 80(1) of PSD1 provides that ‘Member States shall ensure that procedures are set up which allow payment service users and other interested parties including consumer associations, to submit complaints to the CAs with regard to PSPs’ alleged infringements of the provisions of national law implementing the provisions of this Directive’. Article 82 of PSD1 further states that Member States shall take all the measures necessary to ensure that the complaints procedures provided for in Article 80(1) and 81(1) are administered by the authorities empowered to ensure compliance with the provisions of national law adopted pursuant to the requirements laid down in that Article.
8. In summary, these Guidelines are aimed at fulfilling the EBA’s overall objective, as set out in Article 1(5) of the EBA Regulation, of ensuring the consistent, efficient and effective application of the legislative acts that fall into the EBA’s scope of action.
9. A draft Consultation Paper on the Guidelines was published in February 2017 for a three-month consultation period, which closed on 16 May 2017. The EBA received 12 responses from various market participants, such as PSPs, trade associations and consumer associations. These respondents raised 59 distinct issues.
10. The EBA assessed the responses from the consultation and made changes to the Guidelines where relevant. The Feedback table in Chapter 4.2 (pages 22 to 42) provides an exhaustive and comprehensive list of all the responses and their respective analysis by the EBA. The Rationale section below summarises the subset of the key issues raised by respondents, and changes made to the Guidelines.

3.2. Rationale

11. The key issues and requests for clarification identified by the EBA relate to the channels for submission of complaints, the information requested from complainants, the PSPs in the scope of ‘other interested parties’, submission of complaints to the responsible CAs and the aggregate analysis of complaints.

Channels for submission of complaints

12. In terms of channels for submission of complaints, many of the respondents expressed the opinion that the EBA should harmonise the channels, while others suggested that one of the available channels for submission of complaints should be digital and accessible online, such as an email or a web form.
13. Having assessed these suggestions, the EBA confirms that the purpose of the Guidelines is to harmonise the practices for submission of complaints across the European Union (EU) as much

as possible. The EBA also shares the view that there would be benefits for payment service users and the other interested parties in providing a convenient and easily accessible channel for submitting complaints online.

14. The EBA has therefore amended Guideline 1 and introduced a new Guideline 1.2, which now requires at least one of the channels for submission of complaints to be of a digital nature.
15. Taking into account that there might be divergent digital channels introduced by the CAs, the EBA is of the view that CAs should decide on the precise choice of a digital channel. In addition, the EBA also considers that digital channels require access to the internet, which might not be available to all complainants, that such channels might lead to implicit costs for complainants, and also that CAs cannot guarantee 100% availability of digital channels. Therefore, the EBA slightly changed the wording of Guideline 1.1., which now specifies that at least one of the channels for submission of complaints should be easily accessible for all types of complainants.

Information requested from complainants

16. Several respondents suggested that additional information should be requested from complainants. Other respondents, on the contrary, considered that part of the information requested in Guideline 2 cannot be provided by complainants and that the requirements should avoid being overly burdensome, which might discourage complainants from filing a complaint.
17. Given that Article 100(6) of PSD2 provides that CAs shall take the complaints procedures into consideration for monitoring and ensuring compliance with PSD2, the EBA considers that the information specified in Guideline 2 contains all relevant details to put CAs in a position to fulfil this task effectively. However, the EBA would like to highlight that provision of the information requested in Guideline 2 is not mandatory for complainants.
18. In addition, the EBA would like to highlight that CAs can request additional information from complainants if the information provided is deemed insufficient for the assessment of the complaint.
19. However, to address the issues raised, and to bring greater clarity, the EBA deleted the first part of Guideline 2.1., which indicated that the information specified in the Guideline is requested when the complaint is being submitted. The EBA then separated the existing Guideline 2.1. into two new Guidelines: the new Guideline 2.1. concerning the request for information by CAs, and Guideline 2.2. concerning the recording of that information.

Payment service providers in the scope of 'other interested parties'

20. Many of the respondents to the consultation considered that the EBA should clarify that PSPs should also be considered 'other interested parties' for the purpose of the Guidelines and that PSPs should be able to make use of the complaints procedures introduced in PSD2 and further specified through the Guidelines.

21. Article 99(1) of PSD2 refers to ‘other interested parties including consumer associations’, without making any additional specification, which means the reference to consumer associations is not exhaustive.
22. The EBA therefore concludes that, for the purpose of these Guidelines, a PSP that *is* affected by the situation that gave rise to that complaint is to be considered an ‘other interested party’ that can raise a complaint of an alleged infringement of PSD2. This includes cases where it is not only the PSP, but also a payment service user, that is affected by the alleged infringement, for example when the payment service user is being prevented from making use of a payment service provided by the PSP that has raised the complaint.
23. Nevertheless, the EBA would like to emphasise that CAs will retain discretion to decide whether or not they will also apply the complaints procedures specified under these Guidelines to a PSP that *is not* affected by the situation that gave rise to the complaint.

Submission of complaints to the responsible competent authorities

24. Some of the respondents to the consultation considered that, in a case of an alleged infringement of PSD2 related to cross-border provision of payment services, the Guidelines should specify that complainants should address their complaints to the CA in the home Member State where the PSP was authorised or registered.
25. The Guidelines stay silent about to which CA complainants should submit their complaints, because different complaints would require complainants to approach different CAs, which might not be known in advance. It should also be taken into account that complainants might not always be aware that they should address their complaints to the CA in the home Member State, and that they might even not be able to identify that CA. Furthermore, the procedure for filing a complaint to a CA in another Member State could be burdensome for some complainants.
26. Furthermore, Guideline 3.1.c. specifies that the complainant should be provided with ‘information on whether the competent authority has forwarded the complaint to another authority or body which may be located in the same or in another country’.
27. PSD2 also stays silent about to which CA complainants should submit their complaints. PSD2 establishes requirements on cooperation between CAs, including in a cross-border context. In addition, Article 29(6) of PSD2 confers a mandate on the EBA to develop regulatory technical standards specifying the framework for cooperation, and for the exchange of information, between the CAs of the home and the host Member States. The EBA considers that these measures are sufficient in allowing the complaint to reach the responsible CA.
28. Finally, there might be some cases related to the provision of cross-border services via the right of establishment, where the responsible CA might be the CA of the host Member State. In addition, the CA in the host Member State could benefit from the information contained in the

respective complaint for the overall assessment of compliance with the requirements of PSD2 in its jurisdiction. As a result, the EBA concluded that the Guidelines should not be amended.

29. One respondent suggested that, when CAs respond to complainants and inform complainants that the CA has forwarded the complaint to another authority or body, the CA should also provide the contact details of the authority or body to which it has forwarded the complaint.
30. The EBA agrees that this suggestion would bring more transparency to the complaints procedures, by informing complainants about the authority or body to which their complaint has been forwarded and from which they might expect further communication. The EBA also considers that complainants might benefit from having the contact details of that CA or body, in case they would like to provide additional information for their complaint.
31. As a result, the EBA clarified in Guideline 3.1.c. that the information on whether or not the CA has forwarded the complaint to another authority or body should also include the name and contact details of that authority or body. The EBA also changed the wording of Guideline 6.1.b., which now requires CAs to also make publicly available information on how each channel for submission of information will be accessed.

Aggregate analysis of complaints

32. Several respondents suggested that the aggregate analysis of complaints under Guideline 4 should be made publicly available, either by the national CA or by the EBA.
33. By way of response, the EBA would like to highlight that the purpose of these Guidelines is to establish a procedure for submission of complaints related to alleged infringements of PSD2. The information under Guideline 4.1.f. is related to the overall assessment of complaints and the subsequent supervisory measures taken by the CA. Taking into account the sensitivity of this information, the EBA is of the view that the question of whether or not the aggregate analysis of complaints under Guideline 4 should be made publicly available is a matter to be left to national administrative laws and CAs' internal policies and procedures.
34. Another comment related to the aggregate analysis of complaints suggests that payment instruments and payment channels should be taken into consideration.
35. The EBA agrees with the rationale behind this proposal, but, taking into account that the term 'payment channel' is not defined in PSD2 and that payment instruments are linked to the provision of a specific payment service, the EBA has introduced payment services as another criterion to be assessed in the aggregate analysis of complaints.
36. The EBA also considers that information about the payment instrument or payment channel used by the complainant will be included in the issues most complained about under Guideline 4.1.d., which is linked to the description of the situation that gave rise to the complaint under Guideline 2.1.e.

4. Guidelines

EBA/GL/2017/13

13/10/2017

Guidelines

on procedures for complaints of alleged infringements of Payment Services Directive 2

1. Compliance and reporting obligations

Status of these Guidelines

1. This document contains Guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010⁽¹⁾. In accordance with Article 16(3) of Regulation (EU) No 1093/2010, competent authorities must make every effort to comply with the Guidelines.
2. Guidelines set out the EBA's view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied in a particular area. Competent authorities as defined in Article 4(2) of Regulation (EU) No 1093/2010 to which Guidelines apply should comply by incorporating them into their practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where Guidelines are directed primarily at institutions.

Reporting requirements

3. According to Article 16(3) of Regulation (EU) No 1093/2010, competent authorities must notify the EBA as to whether they comply or intend to comply with these Guidelines, or otherwise with reasons for non-compliance, by [dd.mm.yyyy]. In the absence of any notification by this deadline, competent authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the form available on the EBA website to compliance@eba.europa.eu with the reference 'EBA/GL/201x/xx'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities. Any change in the status of compliance must also be reported to EBA.
4. Notifications will be published on the EBA website, in line with Article 16(3) of Regulation (EU) No 1093/2010.

⁽¹⁾ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, (OJ L 331, 15.12.2010, p. 12).

2. Subject matter, scope and definitions

Subject matter and scope of application

5. These Guidelines address the requirement for the EBA to issue Guidelines under Article 100(6) of Directive (EU) 2015/2366 of 25 November 2015 on payment services in the internal market.
6. These Guidelines apply to complaints submitted to competent authorities with regard to payment service providers' alleged infringements of Directive (EU) 2015/2366 as laid down in Article 99(1) of the Directive. These complaints are to be taken into consideration by competent authorities to ensure and monitor effective compliance with Directive (EU) 2015/2366, as referred to in Article 100(6) of the Directive. These complaints may be submitted by payment service users and other interested parties, including payment service providers that are affected by the situation(s) that gave rise to the complaint and consumer associations ('complainants').

Addressees

7. These Guidelines are addressed to competent authorities as defined in point i) of Article 4(2) of Regulation (EU) No 1093/2010, and designated by Member States to ensure and monitor effective compliance with Directive (EU) 2015/2366, in accordance with Article 100(1) of that Directive.

Definitions

8. Unless otherwise specified, terms used and defined in Directive (EU) 2015/2366 have the same meaning in the Guidelines.

3. Implementation

Date of application

9. These Guidelines apply from 13 January 2018.

4. Guidelines on procedures for complaints of alleged infringements of Directive (EU) 2015/2366

Guideline 1: Channels for the submission of complaints of alleged infringements of Directive (EU) 2015/2366

- 1.1. Competent authorities should ensure that at least two different channels are available for complainants to submit their complaints of alleged infringement of Directive (EU) 2015/2366 and that at least one of these channels is easily accessible for all types of complainants.
- 1.2. Competent authorities should ensure that at least one of the channels referred to in Guideline 1.1. is digital and accessible online, such as an email or a web form.

Guideline 2: Information to be requested from complainants

- 2.1. Competent authorities should request from complainants to provide, where possible, information which includes but is not limited to:
 - a. the identity and contact details of the complainant;
 - b. an indication of whether the complainant is a natural or a legal person;
 - c. an indication of whether or not the complainant is a payment service user;
 - d. the identity of the payment service provider(s) that has/have given rise to the complaint of an alleged infringement of Directive (EU) 2015/2366; and
 - e. a description of the situation that gave rise to the complaint of an alleged infringement of Directive (EU) 2015/2366.
- 2.2. Competent authorities should record the information provided by the complainants under Guideline 2.1.
- 2.3. Competent authorities should make means available for complainants to submit any documentary evidence in support of the complaint, such as a copy of their contract with the payment service provider, any correspondence exchanged with the payment service provider(s) or with any other entity, and information related to their payment account if relevant.

Guideline 3: Reply to complainants

- 3.1. When responding to the complainants and, where appropriate, informing them of the existence of alternative dispute resolution procedures in accordance with Article 99(2) of Directive (EU) 2015/2366, competent authorities should also provide:
 - a. an acknowledgment of receipt of the complaint;
 - b. information on the general competence of the competent authority in respect of the procedure for complaints of alleged infringements of Directive (EU) 2015/2366;
 - c. information on whether the competent authority has forwarded the complaint to another authority or body, which may be located in the same or in another Member State, and including the name and contact details of that authority or body; and
 - d. information on either the timing and form of any further communication with the complainant on the alleged infringement of Directive (EU) 2015/2366, or if the reply represents the end of the complaints procedure with the competent authority.
- 3.2. Competent authorities should send the reply to the complainant without undue delay.
- 3.3. Competent authorities should include information as set out in Guideline 3.1.d. in any subsequent communication that they may have with the complainant.

Guideline 4: Aggregate analysis of complaints

- 4.1. Taking into account at least the information collected under Guideline 2.1., competent authorities should have a complaints procedure in place that allows for the aggregate analysis of complaints of alleged infringements of Directive (EU) 2015/2366 and enables competent authorities to identify, understand and assess, for a given timeframe:
 - a. the total number of complaints of alleged infringements of Directive (EU) 2015/2366 received;
 - b. the nature of the most common types of complainants;
 - c. the identity of the payment service providers that are most often complained about;
 - d. the issues and, where possible, the provisions of Directive (EU) 2015/2366 most complained about;
 - e. the payment services most complained about, where possible; and
 - f. the most common measures taken by the competent authority in response to the complaints received to ensure effective compliance with Directive (EU) 2015/2366.

- 4.2. Competent authorities should take into account the aggregate analysis of complaints referred to in Guideline 4.1. to ensure and monitor effective compliance of payment service providers with Directive (EU) 2015/2366.
- 4.3. Competent authorities should treat complaints from the same complainant, about the same payment service provider and with the same description of the situation that gave rise to the complaint, as a single complaint for the purposes of the aggregate analysis of complaints referred to in Guideline 4.1.

Guideline 5: Documentation of complaints procedures

- 5.1. Competent authorities should document their complaints procedures by outlining the procedure for the receipt of complaints submitted by payment service users and other interested parties, as laid down in these Guidelines, and the internal governance of that procedure.

Guideline 6: Public information on complaints procedures

- 6.1. Competent authorities should make publicly available information on their procedures for complaints of alleged infringements of Directive (EU) 2015/2366. This information should be up to date and easily accessible, and include but not be limited to:
 - a. the objective and scope of the complaints procedures;
 - b. the channels through which complaints can be submitted, and how to access them;
 - c. the information that complainants are requested to provide as set out in Guideline 2.1.;
 - d. the sequential steps of the complaints procedures and any deadlines that may apply;
 - e. the general competence of the competent authority in respect of the procedure for complaints of alleged infringements of Directive (EU) 2015/2366; and
 - f. the various measures available to the competent authority to ensure and monitor effective compliance with Directive (EU) 2015/2366.

5. Accompanying documents

5.1. Cost-benefit analysis/impact assessment

Article 100(6) of Directive (EU) 2015/2366, of 25 November 2015, on payment services in the internal market (PSD2) requires the EBA, after consulting the ECB, to issue Guidelines, addressed to the competent authorities, in accordance with Article 16 of Regulation (EU) No 1093/2010, on the procedures for complaints of alleged infringements of Directive (EU) 2015/2366 to be taken into consideration to ensure compliance with Article 100(1) of PSD2. The Guidelines need to be issued by the transposition date of PSD2 on 13 January 2018.

Article 16(2) of the EBA regulation provides that the EBA should carry out an analysis of ‘the potential related costs and benefits’ of any guidelines it develops. This analysis should provide an overview of the findings regarding the problem to be dealt with, the solutions proposed and the potential impact of these options.

This annex contains the impact assessment on competent authorities, payment service users and other interested parties arising from adopting the Guidelines on procedures for complaints of alleged infringements of Directive (EU) 2015/2366 under Article 100(6) of PSD2.

A. Problem identification and baseline scenario

Article 80 of Directive 2007/64/EU (PSD1) sets the current legal standards for EU Member States to establish complaints procedures which allow payment service users and other interested parties to submit complaints directly to competent authorities.

The analysis by the European Commission of the current status of transposition of PSD1 shows that the established procedures for the submission of complaints differ among Member States and that awareness of users concerning these procedures may be significantly lower in some Member States than in others⁽²⁾. The analysis further shows that, in their established national complaints systems, competent authorities experience material difficulties, namely the lack of information received from complainants, in providing sound complaints procedures and therefore effectively supervising compliance with the Directive.

On the consumer side, the EU efforts to encourage the development of competitive markets in payment services by offering cross-border purchases of financial products are currently hampered by consumers’ concern about insufficient information about their rights in case of a problem.

² European Commission (2013), *Study on the impact of Directive 2007/64/EC on payment services in the internal market and on the application of regulation (EC) No 924/2009 on cross-border payments in the community — Annexes to Final Report*, http://ec.europa.eu/finance/payments/docs/framework/130724_study-impact-psd-annex_en.pdf.

Payment service users and other interested parties are further concerned about lower consumer protection in EU Member States other than their home countries ⁽³⁾.

To address these issues, the Guidelines identify and describe requirements for the procedures for complaints of alleged infringements of Directive (EU) 2015/2366, to be put in place by competent authorities to enhance Member States' current practices and the enforcement of consumers' rights, and thereby strengthen consumer protection.

B. Policy objectives

These Guidelines propose six requirements, addressed to competent authorities specifying the procedures for complaints of alleged infringements of Directive (EU) 2015/2366, which they should put in place to ensure and monitor effective compliance of payment service providers with PSD2, with the aim of enhancing consumers' rights ⁽⁴⁾.

In general, the Guidelines aim to contribute to the EBA objective of enhancing regulatory and supervisory convergence, and protection of users of payment services in the EU ⁽⁵⁾, by ensuring that procedures for complaints of alleged infringements of Directive (EU) 2015/2366 are applied consistently, efficiently and effectively across the EU.

More specifically, these Guidelines aim to ensure a coherent approach in the set-up of complaints procedures by competent authorities across Member States, by addressing the submission of complaints, and some level of harmonisation of the treatment of those complaints by competent authorities.

Operationally, the Guidelines have been drafted taking into account the procedures put in place under PSD1, to build on good practices and to minimise any implementation costs for competent authorities.

C. Options considered and preferred option

Analysing the current procedures for complaints of alleged infringements of Directive (EU) 2015/2366 established in EU Member States under PSD1 allows the EBA to benefit from best practices in the field. Various scenarios about the scope of these Guidelines and about the requirements for competent authorities have been considered.

Insufficient information submitted to competent authorities by complainants hinders the efficient handling of the complaint. These Guidelines address this issue by requiring competent authorities to offer sufficient channels for complainants to submit their complaints (Guideline 1) and by setting a list of elements that competent authorities should request from complainants when the

⁽³⁾ European Commission (2016), Special Eurobarometer 446 — Financial Products and Services, p.10, <http://ec.europa.eu/COMMFrontOffice/publicopinion/index.cfm/ResultDoc/download/DocumentKy/74151>.

⁽⁴⁾ European Commission (2015), Payment Service Directive — FAQ, http://europa.eu/rapid/press-release_MEMO-15-5793_en.htm?locale=en.

⁽⁵⁾ EBA (2017), *Annual Report 2016*; EBA (2017), *Work Programme 2017*.

complaint is submitted (Guideline 2). The EBA considered various options on the number of elements to be requested by the competent authorities. Based on the EBA survey, the retained option requires competent authorities to request from complainants the information which has been identified as most useful for possible follow-up of the complaints, and as helpful for closing gaps in the currently submitted information. Further, the retained option gives competent authorities flexibility to handle complaints where the information listed in Guideline 2.1. is not provided by complainants.

The Guidelines require measures to remove current barriers to submit complaints. To this end, Guideline 3 requires competent authorities when responding to complainants to acknowledge the receipt of each complaint, and to provide a number of information elements to complainants without undue delay. The EBA considered several options on the scope and detail of the reply to the complainants. The retained option ensures that competent authorities can choose to further communicate with complainants provided that they include in each communication information on when and how the competent authority will further communicate with the complainant on the alleged infringement of Directive (EU) 2015/2366, or information on whether or not the reply is intended to finalise the complaints procedure with the competent authority (Guideline 3.3.).

D. Cost-benefit analysis

The Guidelines will affect competent authorities, payment service users and other interested parties, including payment service providers that are affected by the situation that gave rise to the complaint and consumer associations. The options adopted in the Guidelines describe the complaints procedures in a high-level way that allows competent authorities to take into account national specificities and what they consider will work best in their jurisdictions when implementing the Guidelines at national level. The Guidelines are based on current best practices and therefore allow competent authorities to leverage on the procedures they already have in place.

Currently, competent authorities comply with the technical and administrative standards needed to implement these Guidelines. The EBA survey shows that the required submission channels are already in place in all Member States that responded to the survey. It is expected that there will be a one-time cost to amend the current complaints procedures system, allowing competent authorities to request and, if applicable, process and assess the required information. The additional information received from complainants will benefit competent authorities that are responsible for the follow-up of complaints, allowing them to process the received complaints in a prompter and more efficient manner. Complainants are also expected to support all competent authorities in their responsibility to ensure payment service providers' compliance with PSD2. The complaints procedures under these Guidelines will set standards which are already in place in some Member States, and thereby unify them at the EU level rather than create new standards.

The Guidelines further affect payment service users and other interested parties by making the process of submitting a complaint more transparent. Submission by complainants will raise awareness of and trust in procedures for complaints of alleged infringements of Directive

(EU) 2015/2366 established by competent authorities, as well as in the use of payment service providers' services. The harmonisation among Member States will build further trust in an EU-wide standard and facilitate cross-border use of payment services.

Overall, these Guidelines are expected to deliver net benefits and better protection for payment service users, and to contribute to the development of the market for payment services in the EU.



5.2. Feedback on the public consultation

Summary of the responses to the consultation and the EBA’s analysis

No	Comments	Summary of responses received	EBA analysis	Amendments to the proposal
Feedback on the general comments				
1	General comment	A number of respondents considered that the EBA should clarify that payment service providers should be considered ‘other interested parties’ for the purpose of the Guidelines, and, therefore, that they should be able to make use of the complaints procedures introduced in PSD2 and further specified through the Guidelines.	<p>Article 99(1) of PSD2 refers to ‘other interested parties including consumer associations’, without making any additional specification. This means that the reference to consumer associations is not exhaustive.</p> <p>The EBA therefore concludes that, for the purpose of these Guidelines, a payment service provider that <i>is</i> affected by the situation that gave rise to that complaint is to be considered an ‘other interested party’, that can raise a complaint of an alleged infringement of PSD2. This includes cases where it is not only the payment service provider, but also a payment service user, that is affected by the alleged infringement, for example when the payment service user is being prevented from making use of a payment service provided by the payment service provider that has raised the complaint.</p> <p>Nevertheless, the EBA would like to highlight that competent authorities will retain discretion to decide whether or not they will also apply the complaints procedures specified under these Guidelines to a PSP that <i>is not</i> affected by the situation that gave rise to the complaint.</p>	<p>The second paragraph of the ‘Subject matter and scope of application’ section is amended as follows:</p> <p>‘These Guidelines apply to complaints submitted to competent authorities with regard to payment service providers’ alleged infringements of Directive (EU) 015/2366 <i>as laid down in Article 99(1) of the Directive. These complaints are to be taken into consideration by competent authorities to ensure and monitor effective compliance with Directive (EU) 2015/2366, as referred to in</i></p>



No	Comments	Summary of responses received	EBA analysis	Amendments to the proposal
				<p>Article 100(6) of Directive (EU) 2015/2366the Directive. These complaints may be submitted by payment service users and other interested parties, including <i>payment service providers that are affected by the situation(s) that gave rise to the complaint and</i> consumer associations (here and after referred to as 'complainants'), as laid down in Article 99(1) of Directive (EU) 2015/2366, irrespective of whether or not the complainant is affected by the alleged infringement.</p>
2	General comment	One respondent was of the view that complainants might not always be able to identify the correct competent authority to which they should file their complaint.	The Guidelines stay silent about to which competent authority complainants should submit their complaint because different complaints would require the complainant to approach different competent authorities, which might not be known in advance. It should also be taken into account that complainants might not always be able to identify the competent authority to which their complaint should be submitted. PSD2 also stays silent about to which competent authority the complainant should submit its complaint. Additionally, PSD2 already contains requirements on cooperation between competent authorities, including in a cross-border context. For cross-border complaints, see the analysis of response 3.	None

No	Comments	Summary of responses received	EBA analysis	Amendments to the proposal
			<p>Furthermore, Guideline 3.1.c. specifies that the complainant should be provided with 'information on whether the competent authority has forwarded the complaint to another authority or body which may be located in the same or in another country'.</p>	
3	General comment	<p>Some respondents considered that, in case of an alleged infringement of PSD2 related to cross-border provision of payment services, the Guidelines should specify that the complainants should address their complaints to the competent authority in the home Member State where the payment service provider was authorised or registered.</p>	<p>The Guidelines stay silent about to which competent authorities the complainant should submit its complaint because different complaints would require the complainant to approach different competent authorities, which might not be known in advance. It should also be taken into account that complainants might not always be aware that they should address their complaints to the competent authority in the home Member State, and that they might even not be able to identify that competent authority. Furthermore, the procedure for filing a complaint to a competent authority in another Member State could be burdensome for some complainants.</p> <p>In addition, the competent authority in the host Member State could benefit from the information contained in the respective complaints for the overall assessment of compliance with the provisions of PSD2 in its jurisdiction.</p> <p>PSD2 also stays silent about to which competent authority complainants should submit their complaint. PSD2 establishes requirements on cooperation between competent authorities, including in a cross-border context. In addition, Article 29(6) of PSD2 confers a mandate on the EBA to develop regulatory technical standards specifying the framework for cooperation, and for the exchange of information, between the competent authorities of the home and the host Member States. The EBA considers that these measures are sufficient in allowing the complaint to reach the responsible competent authority.</p> <p>Finally, there might be some cases related to the provision of cross-border services via the right of establishment, where the responsible competent authority might be the competent authority of the host Member State.</p>	None
4	General comment	<p>A number of respondents suggested that the EBA should introduce requirements in the Guidelines that would require payment service users to address their complaint to the payment</p>	<p>The EBA does not agree with the suggestion that payment service users should address their complaints to their payment service provider in the first instance. In fact, these Guidelines intend to provide more transparency to and awareness of the procedures for complaints of alleged infringements of PSD2 that competent authorities have adopted.</p> <p>Furthermore, Article 100(1) of the PSD2 states that 'Member States shall designate competent authorities to ensure and monitor effective compliance with this Directive'.</p>	None

No	Comments	Summary of responses received	EBA analysis	Amendments to the proposal
		<p>service provider in the first instance, rather than to competent authorities. These respondents considered that this would facilitate the process of complaint handling and reduce the number and handling time of complaints filed to competent authorities. A few of those respondents suggested that, while filing their complaints to competent authorities, payment service users should provide evidence that they have already approached the relevant payment service provider.</p>	<p>These complaints procedures aim to ensure effective compliance with the Directive, rather than resolve individual disputes.</p> <p>In addition to the above, payment service users should not be limited in their right to file a complaint related to an alleged infringement of PSD2. Therefore, providing evidence that a complaint has already been submitted to a payment service provider should not be a barrier to submitting a complaint to a competent authority.</p> <p>Finally, these Guidelines do not cover the dispute resolution procedures that payment service providers have to put in place pursuant to Article 101 of PSD2, or the alternative dispute resolution procedures that Member States need to ensure exist pursuant to Article 102 of PSD2.</p>	
5	General comment	<p>A respondent suggested that the EBA should introduce a definition of ‘complaint’ in the Guidelines.</p>	<p>The PSD2 does not provide a definition of ‘complaint’ and, therefore, the Guidelines should also avoid introducing such a definition, or any requirements that could potentially limit or change the meaning of the terminology used in the level 1 text.</p> <p>The term ‘complaint’ is a broad one that is also used for complaints related to dispute resolution procedures that payment service providers have to put in place pursuant to Article 101 of PSD2, and/or the alternative dispute resolution procedures that Member States need to ensure exist pursuant to Article 102 of PSD2.</p>	None
6	General comment	<p>One respondent considered that, as part of the complaints procedures, national competent authorities should issue guidance on how disputes between account servicing payment service providers and payment initiation service providers or account information service</p>	<p>Section 3 of Chapter 3 of Title IV of PSD2 introduces the liability requirements for the various types of payment service providers, including account servicing payment service providers and payment initiation service providers, or account information service providers.</p> <p>Furthermore, the EBA is of the view that the purpose of these Guidelines is to establish a procedure for the submission of complaints related to alleged infringements of PSD2.</p>	None



No	Comments	Summary of responses received	EBA analysis	Amendments to the proposal
		providers, should be managed, and how liability for the execution of payment transactions should be proved.		
7	General comment	One respondent suggested that the complaints procedures should include information about the way competent authorities will interact with other competent authorities or bodies to which they have forwarded a payment service user's complaint.	PSD2 already provides requirements on cooperation between competent authorities in national and cross-border contexts. In addition, Article 29(6) of PSD2 confers a mandate on the EBA to develop regulatory technical standards specifying the framework for cooperation, and for the exchange of information, between the competent authorities of home and the host Member States. The EBA considers that these requirements would provide sufficient information on the way how competent authorities and bodies will interact with each other.	None
8	General comment	One respondent suggested that when a competent authority responds to a complainant and informs them that it has forwarded the complaint to another authority or body, the competent authority should also provide to the complainant the contact details of the respective authority or body and the responsible persons with whom the complainant could further communicate.	<p>The EBA agrees that this suggestion would bring more transparency to the complaints procedures, by informing the complainant of the authority or body to which their complaint has been forwarded, and from which they might expect further communication. The EBA also considers that complainants might benefit from having the contact details of that competent authority or body, in case they would like to provide additional information for their complaint.</p> <p>However, the EBA considers that it would not be possible for competent authorities to appoint a single member of their staff who will be responsible for all type of complaints received by the authority.</p> <p>As a result, the EBA clarified in Guideline 3 that the information on whether or not the competent authority has forwarded the complaint to another authority or body should also include the name and the contact details of that authority or body. The EBA also changed the wording of Guideline 6.1.b., which now also requires competent authorities to make publicly available information on how each channel for submission of information can be accessed.</p>	<p>The existing Guideline 3.1.b. is separated into Guidelines 3.1.b. and 3.1.c. as below:</p> <p>3.1.b. 'information on the general competence of the competent authority in respect of procedures for complaints of alleged infringements of Directive (EU) 2015/2366';</p> <p>3.1.c. 'information on whether the competent authority has forwarded the</p>

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				<p>complaint to another authority or body, which may be located in the same or in another Member State, <i>and including the name and contact details of that authority or body</i>’.</p> <p>Guideline 6.1.b. is amended in the following way:</p> <p>6.1.b. ‘the channels through which complaints can be submitted, <i>and how to access them</i>’.</p>
9	General comment	A respondent considered that only one competent authority should be responsible for receiving complaints of alleged infringements of PSD2.	<p>Competent authorities are designated by Member States when transposing PSD2 into their national legislations. The Directive provides that Member States could designate more than one competent authority in their jurisdiction.</p> <p>Furthermore, the EBA is of the view that complainants should be able to file their complaint to any designated competent authority responsible for ensuring compliance with the provisions of the national law transposing PSD2.</p>	None
10	General comment	A respondent considered that the Guidelines should refer to infringements of PSD2 rather than the provisions of national law transposing the Directive.	<p>The EBA understands that the reference made in Article 99(1) of PSD2 to ‘alleged infringements of this Directive’ is related to infringements of provisions of the national law transposing PSD2. Nevertheless, the Directive refers to infringements of PSD2 and not to the national law transposing the Directive; therefore, the Guidelines replicate that wording.</p> <p>In addition, it should be noted that the provisions of the national law transposing PSD2 will set out the enforcement measures applicable to the infringements. These enforcement measures would be handled by the competent authorities, whose supervisory, enforcement and sanctioning powers refer to national legislation.</p>	None

No	Comments	Summary of responses received	EBA analysis	Amendments to the proposal
11	General comment	One respondent suggested that the EBA should clarify that the Guidelines are applicable not only to alleged infringements of PSD2, but also to alleged infringements of the technical standards and guidelines mandated by PSD2 to the EBA.	<p>The EBA is of the view that no further clarification in the Guidelines is needed.</p> <p>Technical standards developed by the EBA and endorsed by the European Commission are binding and should be considered an integral part of PSD2. Any specific reference to the technical standards under PSD2 is considered superfluous.</p> <p>The Guidelines of the EBA are non-binding acts. Competent authorities shall confirm to the EBA whether they comply, intend to comply or do not comply with the respective Guidelines.</p>	None
12	General comment	One respondent was of the view that complaints should be considered by competent authorities only if they are sufficiently documented and the complainant can be identified.	<p>The EBA would like to highlight that it is not mandatory for complainants to provide the whole set of information requested in Guideline 2.</p> <p>Furthermore, the purpose of these Guidelines is to allow competent authorities to identify infringements of PSD2, and ensure and monitor effective compliance with the Directive. Therefore, competent authorities should determine whether or not it is necessary to identify the complainant, to assess whether or not an infringement of PSD2 has occurred.</p>	None
13	General comment	A few respondents suggested that the categories of complainants should be standardised.	<p>The EBA is of the view that standardising the categories of complainants may introduce a risk that some types of complainants would be excluded from the scope of the Guidelines.</p> <p>Furthermore, these Guidelines should be considered a tool for every competent authority to ensure and monitor effective compliance of payment service providers with PSD2 in its jurisdiction.</p>	None
14	General comment	One respondent highlighted that the Guidelines do not provide the opportunity for payment service users to complain against non-regulated entities carrying out payment services.	The EBA considers that this issue is already accounted for in the Guidelines. Neither PSD2 nor the Guidelines limit payment service users from using the complaints procedures for filing a complaint related to an infringement of PSD2 by a non-regulated entity.	None
15	General comment	One respondent expressed concern that, in some Member States, supervisory authorities do not have a mandate to deal with	The EBA would like to clarify that the purpose of these Guidelines is to establish a procedure for filing complaints related to alleged infringements of PSD2, and to ensure compliance with the Directive. The Guidelines do not cover procedures for the settlement of complaints.	None

No	Comments	Summary of responses received	EBA analysis	Amendments to the proposal
		consumer complaints.	Finally, these Guidelines do not cover the alternative dispute resolution procedures that Member States need to ensure exist pursuant to Article 102 of PSD2.	
Feedback on responses to question 1				
16	Guideline 1	One respondent was of the view that a common channel should be used by all competent authorities in Member States.	<p>The establishment of a unique channel for submission of complaints is likely to exclude certain types of complainants from opportunities to file complaints to competent authorities.</p> <p>Furthermore, the EBA recognises that introducing a common channel for submission of complaints will affect current practices among Member States.</p> <p>Finally, the EBA considers that a single channel for submission of complaints will expose competent authorities to high operational risk if this channel collapses because of unforeseeable circumstances.</p>	None
17	Guideline 1	A number of respondents suggested that one of the available channels for submission of complaints should be digital and accessible online, such as an email or a web form.	Having assessed this suggestion, the EBA confirms that the purpose of the Guidelines is to harmonise practices for submission of complaints across the EU as much as possible. The EBA also shares the view that there would be benefits for payment service users and other interested parties in providing a convenient and easily accessible channel for submitting complaints online, while at the same time not increasing the cost for competent authorities that have already established such channels. The EBA has therefore amended Guideline 1 and introduced a new paragraph, which now requires at least one of the channels for submission of complaints to be of a digital nature. Taking into account that various types of digital channel that might be introduced by competent authorities, the EBA is of the view that each competent authority should decide on the precise choice.	<p>A new Guideline 1.2. is introduced:</p> <p><i>1.2. 'Competent authorities should ensure that at least one of the channels referred to in Guideline 1.1. is digital and accessible online, such as an email or a web form.'</i></p>
18	Guideline 1	A few respondents considered that harmonising complaints channels across the EU would be beneficial to complainants.	See the analysis of response 17.	See the amendment in response 17.
19	Guideline 1	A few respondents suggested that complainants should be provided with durable proof of	The EBA is of the view that Guideline 3 assures complainants that they will receive 'proof' of their complaint by requiring competent authorities to reply to complainants providing acknowledgment of receipt of their complaint.	None

No	Comments	Summary of responses received	EBA analysis	Amendments to the proposal
		their complaint.	<p>In addition, competent authorities should have in place systems that allow them to record all complaints submitted, either digitally or on paper.</p> <p>Furthermore, the purpose of the Guidelines on the complaints procedures is for competent authorities to be aware of alleged infringements of PSD2 and to ensure effective compliance with the Directive.</p>	
20	Guideline 1	One respondent suggested introducing a definition of 'channel' and specifying certain criteria related to the channels for submission of information, such as simplicity and availability.	<p>The EBA considers that requirements for simplicity and availability of the channels for submission of information are already implicitly introduced in Guideline 1, which requires the channels to be easily accessible for all types of complainants. Guideline 1 implies that the channels should be simple to use, not costly and with a high level of availability.</p> <p>Furthermore, introducing a definition of channel or additional criteria may potentially limit the use of certain channels. Therefore, the EBA is of the view that no further clarification on the channel for submission of complaints is needed.</p>	None
21	Guideline 1	One respondent suggested that the channels for submission of complaints should allow competent authorities to identify the complainant.	<p>The EBA is of the view that not all channels for submission of complaints would allow competent authorities to identify the complainant.</p> <p>Furthermore, the identity of the complainant is requested in Guideline 2.1.a.</p> <p>Lastly, the purpose of the Guidelines on the complaints procedures is to allow competent authorities to identify infringements of PSD2, and to ensure and monitor effective compliance with the Directive. Competent authorities do not necessarily need to identify the person filing the complaint.</p>	None
22	Guideline 1	One respondent suggested that the digital channel for submission of complaints, in case there is one, should ensure the integrity and non-repudiation of the transmitted information.	<p>The EBA considers that introducing such a requirement would not be in line with the approach taken in the development of the Guidelines, which does not specify any requirements for the various channels for transmission of information.</p> <p>Furthermore, introducing overly burdensome requirements for the channels for submission of complaints, including a digital channel, may result in limiting the channels that competent authorities will make available to consumers.</p>	None
23	Guideline 1	One respondent suggested that one of the channels should not incur excessive costs for	The EBA considers that the current wording of Guideline 1 addresses the issue raised because it requires the channels for submission of complaints to be easily accessible for all types of complainants. See also the analysis of response 20.	None



No	Comments	Summary of responses received	EBA analysis	Amendments to the proposal
		complainants, which might deter them from submitting complaints.		
24	Guideline 1	One respondent suggested the inclusion of a requirement for competent authorities to review whether or not the established channels are effective, and to adjust them accordingly.	Guideline 1 already requires competent authorities to make available at least one channel for submission of complaints which is easily accessible by all types of complainants, and to ensure that the respective channel is working effectively. Therefore, the EBA is of the view that introducing a requirement for the review of the effectiveness of these channels is not necessary because, to comply with these Guidelines, competent authorities should ensure that at least one channel is accessible at all times and by all types of complainants.	None
Feedback on responses to question 2				
25	Guideline 2	<p>One respondent suggested adding the following information to the requirements of Guideline 2:</p> <ol style="list-style-type: none"> 1) the identity and contact details of the natural person linked to the legal person, where the complainant is a legal person; 2) the email address of the complainant; 3) an economic valuation of the economic loss suffered, if applicable. 	<p>Given that Article 100(6) PSD2 provides that competent authorities shall take the complaints procedures into consideration for monitoring and ensuring compliance with PSD2, the EBA considers that the information specified in Guideline 2.1. contains all relevant details to put the competent authority in a position to fulfil this task effectively. However, the EBA would like to highlight that it is not mandatory for complainants to provide the whole set of information requested in Guideline 2.1.</p> <p>In addition, the EBA would like to highlight that competent authorities may request additional information from complainants if the information provided is deemed not to be sufficient for the assessment of the complaint. However, to provide greater clarity, the EBA deleted the first part of Guideline 2.1., which indicated that the information specified in the Guideline is requested when the complaint is submitted.</p> <p>The EBA would like to underline that the purpose of the Guidelines on the complaints procedures is to allow competent authorities to identify infringements of PSD2. Furthermore, these Guidelines do not cover the alternative dispute resolution procedures that Member States need to ensure exist pursuant to Article 102 of PSD2. Therefore, the identity of the natural person filing the complaint and the economic valuation of the economic loss suffered should not be necessary for competent authorities to assess complaints for infringements of PSD2.</p> <p>In addition, asking for a description of the economic loss suffered by the complainant could</p>	<p>Guideline 2.1. is separated into two Guidelines and amended as follows:</p> <p><i>2.1. When the complaint of an alleged infringement of Directive (EU) 2015/2366 is submitted Competent authorities should request from complainants to provide, where possible, information which includes but is not limited to: ...';</i></p> <p><i>2.2. 'Competent authorities should record the information</i></p>



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			<p>create a perception that the competent authority has functions similar to those of the Ombudsman, which is not the case in most Member States.</p> <p>With regard to the suggestion to request the complainant's email address, the EBA is of the view that this information is already covered in the contact details, requested under Guideline 2.1.a. The EBA considers that it should be left to the complainant to decide what contact details they should provide.</p>	<i>provided by the complainants under Guideline 2.1.1.</i>
26	Guideline 2	One respondent suggested that the information requested from complainants, in particular from legal persons, should contain the nature of the relationship between the complainant and the payment service provider subject to the complaint.	<p>The EBA is of the view that the description of the relationship between the complainant and the payment service provider subject to the complaint should be provided as part of the description of the situation that gave rise to the complaint, requested under Guideline 2.1.e.</p> <p>See also response 23.</p>	None
27	Guideline 2	One respondent considered that the Guidelines should take into account the fact that complainants might not always be able to provide the identity of the payment service provider.	Given that Article 100(6) PSD2 provides that competent authorities shall take complaints procedures into consideration for monitoring and ensuring compliance with PSD2, the EBA considers that the information specified in Guideline 2 contains all relevant details to put the competent authority in a position to fulfil this task effectively. However, the EBA would like to highlight that it is not mandatory for complainants to provide the whole set of information requested in Guideline 2.	See the amendments in response 23.
28	Guideline 2	One respondent suggested that the EBA should take into account the requirements of the General Data Protection Regulation.	The Guidelines do not need to specify that competent authorities should comply with the requirements of the General Data Protection Regulation, because EU Regulations are directly applicable to all competent authorities in Member States.	None
29	Guideline 2	According to one respondent, the process of requesting information from the complainant is already regulated by general administrative legislation in the respective Member State. That respondent considers that the	The EBA clarifies that the Guidelines aim to ensure a consistent approach in the submission of complaints to competent authorities across Member States, and to collect information about alleged infringements of PSD2. The EBA considers that the information specified in Guideline 2 contains all relevant details to put the competent authority in a position to fulfil these tasks effectively. However, the EBA would like to highlight that it is not mandatory for complainants to provide the whole set of information requested in Guideline 2.	None

No	Comments	Summary of responses received	EBA analysis	Amendments to the proposal
		Guidelines should provide flexibility to competent authorities, because national administrative procedures should be followed in any case.	While developing the Guidelines, the EBA has taken into consideration the current practices put in place under PSD1. Furthermore, the EBA considers that the Guidelines are high level and flexible enough to accommodate all national practices.	
30	Guideline 2	One respondent suggested that the Guidelines should specify that, in case of a complaint from a consumer association, the individual names and addresses of the payment service users should be provided.	<p>PSD2 itself provides the opportunity for other interested parties including consumer associations, to submit complaints.</p> <p>Consumer associations also might not always complain about an issue on behalf of payment service users — they might do so because of legal findings or general trends they have observed. Moreover, the persons on behalf of whom they are complaining will often be apparent from the complaint.</p> <p>Furthermore, introducing such a requirement might introduce an additional burden for consumer associations, in retrieving the individual names and addresses of the payment service users, and discourage them from filing the complaint.</p> <p>Finally, these Guidelines do not cover the alternative dispute resolution procedures that Member States need to ensure exist pursuant to Article 102 of PSD2. The purpose of the Guidelines is to allow competent authorities to identify infringements of PSD2, and to ensure and monitor effective compliance with the Directive.</p>	None
31	Guideline 2	One respondent suggested that the Guidelines should introduce a list of the documentary evidence that payment service users should submit with their complaint.	<p>The EBA considers that Guideline 2.2. introduces an indicative list of documentary evidence.</p> <p>The EBA is also of the view that it would not be possible to include in the Guidelines a complete list that could anticipate all types of documentary evidence to be submitted. The EBA is of the view that, to avoid limiting the potential documentary evidence that might be used, this matter should be left open and that no further specification is needed.</p>	None
32	Guideline 2	A respondent suggested that the Guidelines should specify that, where the complainant has not provided sufficient information, competent authorities should not have discretion whether to assess	<p>The Guidelines establish a procedure for filing complaints related to alleged infringements of PSD2. The Guidelines do not cover procedures for assessment of the complaints received.</p> <p>The Guidelines are high level and allow competent authorities to request additional information from complainants if the information provided is deemed not to be sufficient for the assessment of the complaint. However, to provide greater clarity, the EBA deleted</p>	See the amendments in response 23.

No	Comments	Summary of responses received	EBA analysis	Amendments to the proposal
		a complaint or not.	the first part of Guideline 2.1., which indicated that the information specified in the Guideline is requested when the complaint is submitted.	
33	Guideline 2	One respondent considered that the information requested from complainants should not be overly burdensome, which might discourage them from filing a complaint.	The EBA agrees with the respondent, but is of the view that the information requested from complainants under Guideline 2.1. is basic and will not discourage complainants from filing a complaint. In addition, the EBA considers that the information specified in Guideline 2.1. contains all relevant details to put the competent authority in a position to monitor and ensure compliance with the PSD2 effectively. However, the EBA would like to highlight that it is not mandatory for complainants to provide the whole set of information requested in Guideline 2.1.	None
Feedback on responses to question 3				
34	Guideline 3	A number of respondents asked the EBA to introduce a specific timeframe for the response of competent authorities to complainants. These respondents also suggested that competent authorities should regularly update complainants on the status of their complaints and the applicable deadlines.	<p>The EBA is of the view that the timeframe for the analysis of each complaint cannot be stipulated <i>a priori</i>, as it depends on the complexity of each complaint, as well as on the necessary additional investigation. Furthermore, in the initial phase of the complaint analysis it might not be possible for competent authorities to outline the review process.</p> <p>However, Guideline 3.1.d. specifies that competent authorities should provide information to the complainant about ‘the timing and form of any further communication with the complainant’. Pursuant to Guideline 3.3., this information should be included in any communication with the complainant.</p> <p>Furthermore, Guideline 3.2. requires competent authorities to ‘send the reply to complainants without undue delay’.</p> <p>In addition, Guideline 6.1.d. provides that competent authorities should make publicly available ‘the sequential steps of the complaints procedures and any deadlines that may apply’, which allows complainants to be made aware of the process in a general way.</p>	None
35	Guideline 3	One respondent suggested the introduction of a requirement for competent authorities, while replying to the complainant, to provide an initial assessment of whether or not there has been an	The EBA is of the view that, in the initial phase of the analysis of the complaint, it would be difficult for competent authorities to make a sound initial assessment of alleged infringements of PSD2 without proceeding to a complete analysis with all the necessary steps of the procedure. If the initial assessment cannot be verified at the end of the analysis of the complaint, it would lead to precipitate conclusions or expectations from the complainants.	None

No	Comments	Summary of responses received	EBA analysis	Amendments to the proposal
		infringement of PSD2.	<p>The purpose of the Guidelines is to allow competent authorities to ensure and monitor effective compliance with PSD2. Accordingly, these complaints procedures aim at providing information to competent authorities about alleged infringement, so that the competent authorities can investigate them. The Guidelines do not aim to inform the complainants of the existence of an infringement, deriving from their complaints, or to solve their individual dispute.</p> <p>The Guidelines also do not introduce any requirements for competent authorities to assess every complaint individually.</p> <p>Furthermore, Guideline 3 does not introduce any restrictions to competent authorities if they wish to communicate to the complainant an assessment, including an initial assessment, of the complaint.</p>	
36	Guideline 3	One respondent suggested that Guideline 3 should provide that competent authorities should inform complainants of whether they accept or reject their complaint.	<p>The purpose of the Guidelines on the complaints procedures is to allow competent authorities to identify infringements of PSD2, and to ensure and monitor effective compliance with the Directive.</p> <p>The Guidelines do not cover procedures for the individual assessment of the complaints received. Therefore, the Guidelines should not prescribe whether or not competent authorities accept the complaint, or whether or not they agree with the complainant.</p>	None
37	Guideline 3	A few respondents suggested that the provisions of Guideline 3 should specify that competent authorities should notify the payment service provider subject to the complaint, and involve it in the investigation.	The purpose of the complaints procedures under these Guidelines is not redress; therefore, competent authorities might not need to contact the payment service provider to establish whether or not there has been an infringement of PSD2. The EBA is of the view that, depending on the issue raised in each complaint, competent authorities should decide whether or not to contact the payment service provider subject to the complaint, and whether or not to involve it in the investigation.	None
38	Guideline 3	One respondent suggested that the EBA should state in Guideline 3 that competent authorities should use the same communication channel as that used by the complainant.	<p>The EBA is of view that the Guidelines should not limit complainants' choice of communication channels. Guideline 2.1.a. allows complainants to indicate the most convenient channel for communication with them.</p> <p>In addition, for practical and in some cases legal reasons, stemming from national legal requirements, some flexibility should be left to competent authorities to determine which</p>	None

No	Comments	Summary of responses received	EBA analysis	Amendments to the proposal
			channel to use when replying to complainants.	
39	Guideline 3	One respondent suggested that the EBA should state in Guideline 3 that competent authorities should communicate to the complainant a reference number or record of the complaint submitted.	<p>The EBA is of the view that the reply to the complainant, including acknowledgement of receipt of the complaint, will prove the receipt of the complaint.</p> <p>In addition, a reference number and/or information about the record of the complaint submitted are not expected to bring any added value for the complainant.</p>	None
40	Guideline 3	One respondent suggested that the EBA should state in Guideline 3 that competent authorities should communicate to the complainant whether or not the resolution of the complaint is binding for the payment services provider.	<p>These Guidelines establish a procedure for filing complaints related to alleged infringements of PSD2. The Guidelines do not cover procedures for assessment of the complaints received by competent authorities.</p> <p>Furthermore, the Guidelines do not cover the alternative dispute resolution procedures that Member States need to ensure exist pursuant to Article 102 of PSD2.</p>	None
41	Guideline 3	One respondent suggested additional provisions to be set out to address cases in which complainants are not satisfied with how their complaint has been handled by the competent authority.	<p>These Guidelines establish a procedure for filing complaints related to alleged infringements of PSD2. The purpose of the Guidelines on the complaints procedures is to ensure and monitor effective compliance with the Directive. The complaints submitted are part of the information gathered by competent authorities for supervisory purposes. The Guidelines do not cover procedures for assessment of the complaints received by competent authorities.</p> <p>Furthermore, the Guidelines do not cover the alternative dispute resolution procedures that Member States need to ensure exist pursuant to Article 102 of PSD2.</p>	None
42	Guideline 3	One respondent suggested that the Guidelines should include information on whether the complainants will receive a response to their complaint by the competent authority or by the payment service provider	<p>These Guidelines are addressed only to competent authorities and establish a procedure for submission of complaints related to alleged infringements of PSD2. The Guidelines do not cover procedures for assessment of the complaints received by competent authorities. The purpose of the Guidelines on the complaints procedures is to allow competent authorities to ensure and monitor effective compliance with the Directive.</p> <p>Furthermore, the Guidelines do not cover the dispute resolution procedures that payment</p>	None

No	Comments	Summary of responses received	EBA analysis	Amendments to the proposal
		subject to the complaint.	service providers have to put in place pursuant to Article 101 of PSD2.	
Feedback on responses to question 4				
43	Guideline 4	A number of respondents suggested that the aggregate analysis of complaints under Guideline 4 should be made publicly available, either by the national competent authority or by the EBA, and free of charge.	<p>The EBA is of the view that the sole purpose of these Guidelines is to establish a procedure for submission of complaints related to alleged infringements of PSD2.</p> <p>The information under Guideline 4.1.f. is related to the assessment of complaints and the subsequent supervisory measures taken by the competent authority. Taking into account the sensitivity of this information, the EBA is of the view that the question of whether or not the aggregate analysis of complaints under Guideline 4 should be made publicly available is a matter to be left to national administrative laws and competent authorities' internal policies and procedures.</p>	None
44	Guideline 4	A respondent suggested that, to guarantee the complainant's right to effective remedy, the Guidelines should clarify that the aggregate analysis should be carried out notwithstanding the obligation to ensure compliance.	<p>The EBA agrees that the aggregate analysis of complaints should be carried out notwithstanding the obligation to ensure and monitor effective compliance with PSD2. However, the EBA considers that Guideline 4.2. clearly distinguishes between the obligation of competent authorities to make an aggregate analysis of complaints and the obligation to ensure and monitor effective compliance of payment service providers with the Directive.</p> <p>Furthermore, these Guidelines do not cover the dispute resolution procedures that payment service providers have to put in place pursuant to Article 101 of PSD2, or the alternative dispute resolution procedures that Member States need to ensure exist pursuant to Article 102 of the PSD2, appropriate for seeking effective individual remedy.</p>	None
45	Guideline 4	One respondent was of the view that the aggregate analysis of Guideline 4 should distinguish between upheld and not upheld complaints.	<p>The purpose of the Guidelines on the complaints procedures is to allow competent authorities to identify infringements of PSD2, and to ensure and monitor effective compliance with the Directive. These Guidelines do not cover the dispute resolution procedures that payment service providers have to put in place pursuant to Article 101 of PSD2, or the alternative dispute resolution procedures that Member States need to ensure exist pursuant to Article 102 of PSD2.</p> <p>In addition, asking competent authorities to make a distinction between upheld and not upheld complaints could create a perception that the competent authority has functions similar to those of the Ombudsman, which is not the case in most Member States. Therefore, no distinction should be made in the aggregate analysis of complaints between</p>	None

No	Comments	Summary of responses received	EBA analysis	Amendments to the proposal
			upheld and not upheld complaints.	
46	Guideline 4	One respondent was of the view that the EBA should harmonise the issues most complained about under Guidelines 4.1.d.	<p>The EBA considers that identification of the issues most complained about is country specific and results from the aggregate analysis itself. Therefore, the issues cannot be harmonised <i>ex ante</i>.</p> <p>The EBA is also of the view that harmonising the issues complained about may introduce a risk that some issues would be excluded from the scope of the aggregate analysis.</p> <p>However, the EBA considers that harmonisation could be achieved by introducing a requirement for competent authorities to supplement the description of the issues most complained about with information about the provisions of PSD2, identified by the competent authority, that were allegedly infringed in the complaints received.</p> <p>Therefore, the EBA decided to merge Guidelines 4.1.d. and 4.1.e., which had been consulted on.</p> <p>The newly added part of Guideline 4.1.d. focuses on the provisions of PSD2 most complained about, rather than the provisions found to be most often infringed. The slight change of wording has been introduced because the information about the provisions of PSD2 most often infringed does not necessarily derive from the complaints procedures, but could also be a result of other supervisory tools.</p>	<p>Guidelines 4.1.d. and 4.1.e., which were consulted on, are merged into one as below:</p> <p><i>4.1.d. 'the issues and, where possible, the provisions of Directive (EU) 2015/2366 most complained about'.</i></p>
47	Guideline 4	<p>One respondent proposed two additional characteristics of a complaint to be taken into consideration in the aggregate analysis of complaints:</p> <ol style="list-style-type: none"> 1. average economic loss to the payment service user caused by the infringement of PSD2; 2. payment instrument and payment channel about which the complaint is made. 	<p>The EBA agrees with the rationale behind this proposal but, taking into account that the term 'payment channel' is not defined in PSD2 and that payment instruments are linked to the provision of a specific payment service, the EBA has introduced payment services as another criterion to be assessed in the aggregate analysis of complaints.</p> <p>The EBA also considers that information about the payment instrument or payment channel used by the complainant will be included in the issues most complained about under Guideline 4.1.d., which is linked to the description of the situation that gave rise to the complaint under Guideline 2.1.e.</p> <p>With regard to the economic loss, see response 23.</p>	<p>Introduce a new Guideline 4.1.e.: 'the <i>payment services most complained about, where possible</i>'.</p>
48	Guideline 4	A few respondents considered	The EBA is of the view that the purpose of these Guidelines is to establish a procedure for	None

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		<p>that competent authorities should notify the competent authorities of the other Member States and the EBA of the most common and major infringements revealed by their aggregate analysis.</p>	<p>submission of complaints related to alleged infringements of PSD2, and therefore should not cover requirements related to the sharing of information between competent authorities for supervisory purposes.</p> <p>Article 29(6) of PSD2 confers a mandate on the EBA to develop regulatory technical standards specifying the framework for cooperation, and for the exchange of information, between the competent authorities of the home and host Member States, which should cover the issue raised by the respondent.</p> <p>Furthermore, Article 96(2) and (6) of PSD2 explicitly requires competent authorities to notify the EBA and the ECB of major operational or security incidents, and to provide them with aggregated data on fraud.</p>	
49	Guideline 4	<p>One respondent asked for clarification on whether different competent authorities in one country should perform the aggregation in their own individual complaints database, or whether the aggregation should be performed by a single authority at a country level.</p>	<p>The EBA is of the view that Guideline 4.1. provides sufficient clarity that each competent authority should perform an aggregate analysis of complaints in accordance with its internal procedures and legal remit.</p> <p>Furthermore, the EBA has clarified in Section 2 of these Guidelines that they are addressed to competent authorities as defined in point i) of Article 4(2) of Regulation (EU) No 1093/2010, and designated by Member States to ensure and monitor effective compliance with PSD2, in accordance with Article 100(1) of the Directive.</p>	None
50	Guideline 4	<p>One respondent considered that the EBA might clarify how the aggregated analysis will be performed when complaints are forwarded to a competent authority in another Member State.</p>	<p>The EBA is of the view that no further clarification of Guideline 4 is needed. Competent authorities responsible for the assessment of a complaint, including in another Member State, should include it in their aggregate analysis of complaints. The competent authority which has forwarded the complaint should retain discretion on whether or not to insert the complaint in its aggregate analysis of complaints.</p>	None
51	Guideline 4	<p>One respondent suggested that it is necessary to remove duplicate complaints from the aggregate analysis when a complaint has been submitted through more</p>	<p>The EBA agrees that double counting of complaints should be avoided when competent authorities prepare the aggregate analysis of complaints and, therefore, has introduced a new paragraph in Guideline 4 to address this possibility.</p>	<p>A new Guideline 4.3. has been introduced: <i>4.3. 'Competent authorities should treat</i></p>

No	Comments	Summary of responses received	EBA analysis	Amendments to the proposal
		than one of the channels available for complainants.		<i>complaints from the same complainant, about the same payment service provider and with the same description of the situation that gave rise to the complaint, as a single complaint for the purposes of the aggregate analysis of complaints referred to in Guideline 4.1.'</i>
Feedback on responses to question 5				
52	Guideline 5	One respondent was of the view that Guideline 5 should require the establishment of a forum for harmonising complaints procedures and their governance.	The purpose of these Guidelines is to harmonise, to the extent possible, procedures for submitting complaints among Member States, to ensure and monitor effective compliance with PSD2. Therefore, the EBA considers that the proposed harmonisation should be reached through these Guidelines, and not through the establishment of a separate forum.	None
53	Guideline 5	One respondent suggested that Guideline 5 should require that the complaints procedure and its governance should be developed through a public consultation process.	The EBA is of the view that the question of whether or not public consultation is required for the development of complaints procedures and their governance is a matter to be left to national administrative laws and processes. Furthermore, the complaints procedures adopted by competent authorities should be in line with the requirements of these Guidelines.	None
54	Guideline 5	One respondent considered that Guideline 5 should require competent authorities to publicly review the complaints procedures and their governance	The EBA is of the view that the question of when complaints procedures and their governance should be reviewed is a matter to be left to national administrative laws and processes. Moreover, Article 100(6) of PSD2 itself requires the EBA to update the Guidelines on a regular basis, as appropriate. Therefore the EBA considers no further clarification is needed	None

No	Comments	Summary of responses received	EBA analysis	Amendments to the proposal
		every 3 years.	in the Guidelines on the review of the complaints procedures.	
Feedback on responses to question 6				
55	Guideline 6	One respondent suggested that the complaints procedures should be available on the competent authority's website, and that links to the procedures should be available on the ECB website.	The EBA considers that the information that the respondent suggests be made publicly available is already covered by Guideline 6. Guideline 6 requires national competent authorities to make publicly available information on their complaints procedures. The EBA is of the view that PSD2 does not require the ECB to be involved in the complaints procedures.	None
56	Guideline 6	One respondent suggested the inclusion in the information provided in Guideline 6 of a list of the various measures available to competent authorities to ensure and monitor effective compliance with PSD2.	The EBA is of the view that Guideline 6.1.f. already provides that competent authorities should make publicly available 'the different measures available to them to ensure and monitor effective compliance with the PSD2'. Taking into account the divergent national practices and legislations, the EBA considers that it cannot introduce a list of standardised measures.	None
57	Guideline 6	One respondent considered that the information in Guideline 6 should be made publicly available in the national language of the competent authority, and at least in English.	PSD2 does not specify languages for the complaints procedures that need to be set up pursuant to Article 99(1) of the Directive. The communication of public bodies with the public within their jurisdictions is a matter of national law.	None
58	Guideline 6	One respondent suggested that the complaints procedures should be available on the websites of all competent authorities in the EU.	The EBA does not see added value in having all complaints procedures of the various competent authorities made publicly available on the websites of all competent authorities. The procedures for forwarding complaints under these Guidelines, as well as the requirements on cooperation between competent authorities under PSD2 and the future regulatory technical standards specifying the framework for cooperation and the exchange of information between the competent authorities of the home and the host Member States under Article 29(6) of PSD2, should be sufficient in allowing the complaint to reach the responsible competent authority.	None

No	Comments	Summary of responses received	EBA analysis	Amendments to the proposal
59	Guideline 6	A few respondents suggested that Guideline 6 should specify that, where a complaint has been made regarding a payment service provider located in another Member State, it will be forwarded to the relevant competent authority in that Member State and dealt with appropriately.	<p>The purpose of Guideline 6 is to raise awareness among payment service users and other interested parties of the existence of complaints procedures, by providing a general view on the most relevant aspects of the respective procedure set out by competent authorities.</p> <p>The EBA also considers that introducing such clarification is not needed because it should be part of the sequential steps referred to in Guideline 6.1.d. The complainants would also receive this information if their complaint has been forwarded to a competent authority in another Member State pursuant to Guideline 3.1.c.</p>	None