EBA questionnaire on the future EBA Register under PSD2

1. The revised Payment Services Directive[[1]](#footnote-2) (PSD2) has conferred 11 mandates on the EBA. Article 15(4) and (5) of PSD2 confers two mandates on the EBA related to the electronic central register that the EBA shall develop, operate and maintain under PSD2.
2. The mandate under Article 15(4) of PSD2 foresees for the EBA to “develop draft regulatory technical standards setting technical requirements on development, operation and maintenance of the electronic central register and on access to the information contained therein.”
3. The mandate under Article 15(5) of PSD2 foresees for the EBA to develop draft implementing technical standards on the details and structure of the information that competent authorities shall enter in their public registers and notify to the EBA, including the common format and model in which this information is to be provided.
4. As provided in recital (42) of PSD2 “in order to enhance transparency of the operation of payment institutions that are authorised by, or registered with, competent authorities of the home Member State, including their agents, and to ensure a high level of consumer protection in the Union, it is necessary to ensure easy public access to the list of the entities providing payment services. EBA should therefore develop and operate a central register in which it publishes a list of the names of the entities providing payment services. Member States should ensure that the data that they provide is kept up to date. Those measures should also contribute to the enhancement of the cooperation between the competent authorities.”
5. In preparation of the consultation paper, the EBA is in the process of carrying out some fact-finding and evidence-gathering, which includes a questionnaire asking for your experience with the national public registers, established pursuant to Article 13 of Directive 2007/64/EC[[2]](#footnote-3) (PSD1) and the information that they consider relevant and that should therefore be contained in the future electronic central register of the EBA. The information provided by you will be used by the EBA in the process of developing the two mandates under Article 15(4) and (5) of the PSD2 related to the EBA Register.
6. Article 3(1) of Directive 2009/110/EC[[3]](#footnote-4) (EMD2) provides that “without prejudice to this Directive, Articles 5 and 10 to 15, Article 17(7) and Articles 18 to 25 of Directive 2007/64/EC shall apply to electronic money institutions *mutatis mutandis*.”
7. Furthermore, Article 111(1)(a) of PSD2 also provides that Article 3(1) of EMD2 is replaced by the following:

“Without prejudice to this Directive, Article 5, Articles 11 to 17, Article 19(5) and (6) and Articles 20 to 31 of Directive (EU) 2015/2366 of the European Parliament and of the Council (\*), including the delegated acts adopted under Article 15(4), Article 28(5) and Article 29(7) thereof, shall apply to electronic money institutions mutatis mutandis.”

1. Throughout the questionnaire you will find few references to PSD2. The provisions of PSD2 that are referred to are reproduced in their entirety in the Annex to this questionnaire.
2. We would be grateful if you could complete and return the questionnaire to <mailto:Antonio.Barzachki@eba.europa.eu> **by 13 April 2017, cob**.

## **General comments**

We support the PSD2’s creation of a central EBA Register, which will serve as a one-stop-shop for consumers and businesses alike to access up-to-date information about the Payment Service Providers (PSPs) they interact with.

Generally speaking, the Register should provide all the necessary information for both consumer and business use cases, which are inherently different. While a consumer will be more interested in accessing contact information for a given PSP, a business will look to identity and verify a given partner in real-time (e.g. to allow a Third-Party Payment Provider (TPP) access to the Acount Servicing Payment Service Provider’s (ASPSP) interface).

From a Payment Institution’s (PI) perspective, the Register should provide capabilities for real-time partner verifications through fast and directly accessible APIs. This means the EBA Register should:

* contain comprehensive data for PSP identity, license and capability verification;
* be easily accessible;
* be kept up-to-date in real-time; and

be free of charge to Payment Institutions registered in the EU.

Section 1 – Experience of payment institutions with the national public registers (NPR), established pursuant to Article 13 of PSD1

1. **Do you consider the information contained in the NPRs under PSD1 to be comprehensive enough in order to meet the objective of PSD1 to provide transparency in the payment market? (Please explain your reasoning and indicate the respective national jurisdictions that you refer to)**

Yes

No

|  |
| --- |
| We are basing our experience on that in the UK.  Whilst the information is transparent and clear in the UK (FCA) Register, we would like to see the same level of detailed data that is made available for banks, available for PIs and EMIs. For example, bank data includes the name of officers which may be useful if we need to contact another PI. |

1. **Do you consider the information contained in the NPRs under PSD1 to be accurately presented? (Please explain your reasoning and indicate the respective national jurisdictions that you refer to)**

Yes

No

|  |
| --- |
| Manual processes can lead to some discrepancies so the more automated the process is, the less the chance of human error. |

1. **Do you think that NCAs currently update their NPRs under PSD1 frequently enough? (Please explain your reasoning and indicate the respective national jurisdictions that you refer to)**

Yes

No

|  |
| --- |
| Ensuring that NPRs are updated when existing agent activities are varied or changed has proved challenging on occasion as the quantity and quality of information listed on NPRs varies between Member States. |

1. **Please indicate any other experiences (positive and negative) that you have with the NPRs that have not been covered in the questions above:**

|  |
| --- |
|  |

Section 2 – EBA’s Electronic Central Register under Article 15 of PSD2

1. **What are in your opinion the benefits to payment service users of having a central electronic register operated and maintained by the EBA?**

|  |
| --- |
| It would facilitate the ability for individual Payment Service Users (PSUs) to verify the eligibility of the PSP they wish to engage with, and to access a central source of information for all PSPs operating in the EU where they can find important data such as contact information, licensing status and which Competent Authority to contact in case of issues.  It would also be a pre-requisite for the functioning of the payments API economy, as it is the basis for a TPP to check the credentials of the ASPSP and vice-versa, thereby enabling more competition.  A central electronic register would be advantageous to payment service users as it would provide an overview of all payment service providers in all EU/EEA countries by opening just one webpage, this in turn would be advantageous for our customers and may also increase competition amongst payment service providers. |

1. **What are in your opinion the benefits to non-bank payment service providers of having a central electronic register operated and maintained by the EBA?**

|  |
| --- |
| For a non-bank, the Register provides clear and defined rules, and visibility thereof, to participate in the Payments world, leading to legal certainty that the ASPSP will, upon verification with the Register, allow them access to their interface.  A central electronic register would optimize the communication with a single authority.  It would be a single tool to verify inconsistencies and assist in the maintenance in the validation process of payment licenses including certain revocation steps, as any modifications would only be undertaken by NCAs and the EBA  In addition, it is a critical building block in the ability of TPPs (PISPS and AISPs) to verify the identity of ASPSPs, and vice-versa. |

1. **Please indicate the functionalities that you would like to see in the EBA’s Register under PSD2 (search criteria, display features and other):**

|  |
| --- |
| From a PSU’s perspective, the Register should provide easy access to all the information contained in a licensed PSP’s Registry information (e.g. company ID, person legally responsible, license status, Member State of authorization, contact information for the PSP and for the Competent Authority etc.).  From a Payment Institution’s (PI) perspective, the Register should provide an electronic interface, based on Industry Standard APIs, providing capabilities for real-time partner verifications – this includes comprehensive data about the TPP (i.e. full set of Registry information, including whether their authorisation has been withdrawn, etc.), as well as access to time optimization measures (e.g. geographic replication).  We would appreciate consideration for the inclusion of the following functionality:   * Extract reports in Microsoft Excel format, * Full set of legal and trading registry information (including active and operating locations), * Search criteria to also include Company ID, Inclusion of a facility to identify list of active agents and agents whose authorisation has been withdrawn, * Comprehensive information provision, and * Facilitation of identity token provision following authentication of a regulated PSP. |

1. **Please provide what type of information do you consider relevant to be contained in the EBA’s electronic central register for each of the following types of authorised institutions, registered natural and legal persons:**

8.1. Payment institutions

|  |
| --- |
| We believe that the information provided by and for all regulated entities needs to be the same, with the core information being information allowing them to be identified and details of their authorisations to be known.  For Payment institutions specifically this should also include:   * API endpoints and documentation * PI’s Terms & Conditions |

8.2. Branches of the PIs

|  |
| --- |
| We believe that the information provided by and for all regulated entities needs to be the same, with the core information being information allowing them to be identified and details of their authorisations to be known. |

8.3. Agents of PIs

|  |
| --- |
| We believe that the information provided by and for all regulated entities needs to be the same, with the core information being information allowing them to be identified and details of their authorisations to be known.  For Agents of PIs specifically this should also include the agent type, and a full set of legal and trading registry information. |

8.4. Exempted natural and legal persons under Article 32 of PSD2

|  |
| --- |
| We believe that the information provided by and for all regulated entities needs to be the same, with the core information being information allowing them to be identified and details of their authorisations to be known. |

8.5. Agents of exempted natural and legal persons under Article 32 of PSD2

|  |
| --- |
| We believe that the information provided by and for all regulated entities needs to be the same, with the core information being information allowing them to be identified and details of their authorisations to be known. |

8.6. Account information service providers

|  |
| --- |
| We believe that the information provided by and for all regulated entities needs to be the same, with the core information being information allowing them to be identified and details of their authorisations to be known.  For Account information services providers specifically this should also include:   * Allowed data scopes, * AISP’s Terms & Conditions, * Any indications whether the AISP has been associated with fraudulent behaviour, has been prosecuted or has otherwise violated Payment-related rules, and * Information what other services the AISP provides, if any (as ASPSP or PISP). |

8.7. Agents of account information service providers

|  |
| --- |
| We believe that the information provided by and for all regulated entities needs to be the same, with the core information being information allowing them to be identified and details of their authorisations to be known. |

8.8. Institutions referred to in Article 2(5) of PSD2 (institutions referred to in points (4) to (23) of Article 2(5) of Directive 2013/36/EU[[4]](#footnote-5)) that are entitled under national law to provide payment services

|  |
| --- |
| We believe that the information provided by and for all regulated entities needs to be the same, with the core information being information allowing them to be identified and details of their authorisations to be known.  For Institutions referred to in Article 2(5) of PSD2 that are entitled under national law to provide payment services this should also include:   * Allowed services , * PISP’s Terms & Conditions, * Any indications whether the PISP has been associated with fraudulent behaviour, has been prosecuted or has otherwise violated Payment-related rules Information what other services the PISP provides, if any (as ASPSP or AISP) |

8.9. Branches of institutions referred to in Article 2(5) of PSD2 that are entitled under national law to provide payment services

|  |
| --- |
| We believe that the information provided by and for all regulated entities needs to be the same, with the core information being information allowing them to be identified and details of their authorisations to be known. |

8.10. Service providers that carry out the activities referred to in points (k)(i) and (k)(ii) of Article 3 of PSD2

|  |
| --- |
| Access to the list of service providers |

8.11. Service providers that carry out the activities referred to in point (l) of Article 3 of PSD2

|  |
| --- |
| Access to the list of service providers |

8.12. E-money institutions (EMI)

|  |
| --- |
| We believe that the information provided by and for all regulated entities needs to be the same, with the core information being information allowing them to be identified and details of their authorisations to be known. |

8.13. Branches of EMIs

|  |
| --- |
| We believe that the information provided by and for all regulated entities needs to be the same, with the core information being information allowing them to be identified and details of their authorisations to be known. |

8.14. Agents of EMIs

|  |
| --- |
| We believe that the information provided by and for all regulated entities needs to be the same, with the core information being information allowing them to be identified and details of their authorisations to be known. |

8.15. Waived EMIs

|  |
| --- |
| We believe that the information provided by and for all regulated entities needs to be the same, with the core information being information allowing them to be identified and details of their authorisations to be known. |

8.16. Agents of waived EMIs

|  |
| --- |
| We believe that the information provided by and for all regulated entities needs to be the same, with the core information being information allowing them to be identified and details of their authorisations to be known. |

8.17. Other (please specify) ……………………………………………………..

|  |
| --- |
|  |

1. **Please indicate any additional aspects related to the EBA Register that have not been covered in the questions above, that you might deem relevant for the purposes of its establishment and operation:**

|  |
| --- |
| All information should be easily accessible and search facilities provided free of charge to Payment institutions who are registered with appropriate Competent Authorities. |

Annex: wording of Articles of PSD2

*Article 3*

***Exclusions***

*This Directive does not apply to the following:*

*(k) services based on specific payment instruments that can be used only in a limited way, that meet one of the following conditions:*

*(i) instruments allowing the holder to acquire goods or services only in the premises of the issuer or within a limited network of service providers under direct commercial agreement with a professional issuer;*

*(ii) instruments which can be used only to acquire a very limited range of goods or services;*

*(iii) instruments valid only in a single Member State provided at the request of an undertaking or a public sector entity and regulated by a national or regional public authority for specific social or tax purposes to acquire specific goods or services from suppliers having a commercial agreement with the issuer;*

*(l) payment transactions by a provider of electronic communications networks or services provided in addition to electronic communications services for a subscriber to the network or service:*

*(i) for purchase of digital content and voice-based services, regardless of the device used for the purchase or consumption of the digital content and charged to the related bill; or*

*(ii) performed from or via an electronic device and charged to the related bill within the framework of a charitable activity or for the purchase of tickets;*

*provided that the value of any single payment transaction referred to in points (i) and (ii) does not exceed EUR 50 and:*

*— the cumulative value of payment transactions for an individual subscriber does not exceed EUR 300 per month, or*

*— where a subscriber pre-funds its account with the provider of the electronic communications network or service, the cumulative value of payment transactions does not exceed EUR 300 per month;*

*Article 32*

***Conditions***

*1. Member States may exempt or allow their competent authorities to exempt, natural or legal persons providing payment services as referred to in points (1) to (6) of Annex I from the application of all or part of the procedure and conditions set out in Sections 1, 2 and 3, with the exception of Articles 14, 15, 22, 24, 25 and 26, where:*

*(a) the monthly average of the preceding 12 months’ total value of payment transactions executed by the person concerned, including any agent for which it assumes full responsibility, does not exceed a limit set by the Member State but that, in any event, amounts to no more than EUR 3 million. That requirement shall be assessed on the projected total amount of payment transactions in its business plan, unless an adjustment to that plan is required by the competent authorities; and*

*(b) none of the natural persons responsible for the management or operation of the business has been convicted of offences relating to money laundering or terrorist financing or other financial crimes.*

*2. Any natural or legal person registered in accordance with paragraph 1 shall be required to have its head office or place of residence in the Member State in which it actually carries out its business.*

*3. The persons referred to in paragraph 1 of this Article shall be treated as payment institutions, save that Article 11(9) and Articles 28, 29 and 30 shall not apply to them.*

*4. Member States may also provide that any natural or legal person registered in accordance with paragraph 1 of this Article may engage only in certain activities listed in Article 18.*

*5. The persons referred to in paragraph 1 of this Article shall notify the competent authorities of any change in their situation which is relevant to the conditions specified in that paragraph. Member States shall take the necessary steps to ensure that where the conditions set out in paragraph 1, 2 or 4 of this Article are no longer met, the persons concerned shall seek authorisation within 30 calendar days in accordance with Article 11.*

*6. Paragraphs 1 to 5 of this Article shall not apply in respect of Directive (EU) 2015/849 or of national anti-money- laundering law.*

1. Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC. [↑](#footnote-ref-2)
2. Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC. [↑](#footnote-ref-3)
3. Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC [↑](#footnote-ref-4)
4. Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC [↑](#footnote-ref-5)