

Industry Warned Not To Sleepwalk Through PSD2 Technical Standards

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A critical window for industry players to influence widespread EU payment standards has opened, with legal experts urging payment service providers (PSPs) not to ignore the chance to shape regulator thinking.

The European Banking Authority (EBA) has published three consultations which will determine its mandate, following the **recent approval** of the revised Payment Services Directive (PSD2).

It must deliver "Regulatory Technical Standards" on **strong customer authentication** by January 2017, following industry views.

It also requires input on draft technical standards on the separation of payment card schemes and processing entities under **interchange fee regulations**.

Yesterday, the EBA **announced** a consultation on the cooperation and exchange of information for passporting under PSD2, a particularly **hotly debated** topic.

Each EU member state will have two years from January to amend national laws to implement it in a way it can be applied to PSPs.

Payments expert Chris Finney, a partner at Cooley LLP and leader of the firm's financial services practice, said there was little the industry could do now to change the often ambiguous PSD2 guidelines.

But, he told PaymentsCompliance, there is an important opportunity to influence the detailed technical standards to be finalised by the EBA.

"There are several reasons: the technical standards will be made using European Regulations, so PSPs will lose some of the benefits that might have been associated with local-regulator dialogue and local implementation," he said.

"These regulations will be made in Europe, and they'll apply directly to relevant PSPs, without the need

for local rules.

"It may seem obvious, but they'll also cover detailed technical issues; and they'll need to strike a balance between many competing interests and objectives."

This is a view the regulator does understand.

Dirk Haubrich, head of consumer protection, financial innovation and payments at the EBA, said it had to make "very difficult trade-offs between competing demands".

"These include, for example, inter-operability, which would suggest that the EBA should devise requirements that allow only one, or very few, industry standards that are easy to use for the thousands of payment services providers," he told PaymentsCompliance.

"However, a competing demand is to allow firms to innovate, across time and space, which suggests that the EBA should devise requirements that are high-level and allow for dozens, possibly hundreds, of different industry standards."

Finney said it will be "difficult or impossible" for the authorities to get it right from any one stakeholder's perspective, but "the consequences of getting it wrong could be significant when the near term compliance costs; medium term enforcement costs; and longer term innovation and opportunity costs are taken into account".

The basis on which payment account providers, on one hand, and payment initiation and account information providers, on the other, will exchange account access information is an area of concern to be explored.

That is according to payment services expert Jonathan Rogers, a partner in the Taylor Wessing financial services regulatory group.

"This is a critical point; EBA recognises that if account providers employ too many divergent processes, intermediaries may struggle to be competitive across all of these channels," he told PaymentsCompliance.

"Equally EBA accepts that if the technical standards are too prescriptive, this may stifle innovation.

"A potential solution the paper appears to flag is that account providers should use at least one truly interoperable channel."

Rogers said, as part of this discussion, the EBA flags that neither it nor any other agent has a mandate to govern the coordination of these standards going forward.

"This may mean account providers put in place an interoperable way of access across platforms for everybody, but it will be interesting to see how that goes because there are a manner of issues to

consider."

He said a further issue is how non-bank payment account providers must recognise the third parties, and there may be considerable costs around identification.

"Consumer data becomes key," he said.

"On the issue of strong authentication, the EBA requests responses on the occasions when the industry can be exempted from applying these standards."

Rogers said this was an opportunity for the industry to lobby for its own solutions.

"EBA's own ideas accept that a blend of factors could be used to determine when an exemption applies, including qualitative factors such as use of white lists and payment patterns, rather than merely quantitative factors such as small transactions," he said.

"If there is a beneficiary on a white list for example, if they have consistent spending habits, perhaps on a particular device.

"This is for the industry to put forward a potential solution where consistent criteria may apply."

For Finney, from the industry's perspective, some of the answer lies in ensuring the EBA, the European Central Bank (ECB) and affected PSPs have a common understanding on important terms.

This includes concrete definitions of "strong customer authentication" and "secure communication", he said; what can be achieved from a realistic commercial perspective, how far they must go to achieve PSD2's objectives; and how far it is sensible to go now, versus later.

"This is a particular challenge for regulators, because they're also trying to develop technical standards that will work across the whole of the EU; when it's sometimes difficult for them to understand how the industry works today," he said.

"And it will be harder for them to anticipate the consequences of a rule change that seems to make good policy and regulatory sense today, but is almost bound to have unintended consequences for consumers and PSPs tomorrow."

The EBA discussion papers summarise the thinking and the questions and issues that have arisen.

All stakeholders can comment on the initial points.

Finney said time is of the essence.

"By the time that has happened, it will be difficult to move the EBA and ECB from their initial proposals; and the cost of trying will be significant," Finney said.

"So the best time to seek to influence thinking and policy in these areas is now.

"I'd encourage every PSP with an interest in these issues to reply; to make sure the industry's voice is heard; and the issues are properly identified and resolved before it's too late or too expensive to do anything much about what's happening."

For more on PSD2, visit the [*PaymentsCompliance Regulatory Tracker*](#).

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