EBA/CP/2017/09

29 June 2017

Consultation Paper

Draft Regulatory Technical Standards

on the criteria for determining the circumstances in which the appointment of a central contact point pursuant to Article 29(4) of Directive (EU) 2015/2366 is appropriate and the functions of those central contact points

Contents

1. Responding to this consultation

The EBA invites comments on all proposals put forward in this paper and in particular on the specific questions summarised in 6.2.

Comments are most helpful if they:

- respond to the question stated;
- indicate the specific point to which a comment relates;
- contain a clear rationale;
- provide evidence to support the views expressed/ rationale proposed; and
- describe any alternative regulatory choices the EBA should consider.

Submission of responses

To submit your comments, click on the 'send your comments' button on the consultation page by 29.09.2017. Please note that comments submitted after this deadline, or submitted via other means may not be processed.

Publication of responses

Please clearly indicate in the consultation form if you wish your comments to be disclosed or to be treated as confidential. A confidential response may be requested from us in accordance with the EBA's rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the EBA's Board of Appeal and the European Ombudsman.

Data protection

The protection of individuals with regard to the processing of personal data by the EBA is based on Regulation (EC) N° 45/2001 of the European Parliament and of the Council of 18 December 2000 as implemented by the EBA in its implementing rules adopted by its Management Board. Further information on data protection can be found under the Legal notice section of the EBA website.

2. Abbreviations

EBA	European Banking Authority
PSD1	Directive 2007/64/EC on payment services in the internal market
PSD2	Directive (EU) 2015/2366 on payment services in the internal market
RTS	Regulatory Technical Standards

3. Executive Summary

Article 29(4) of the Directive (EU) 2015/2366 on payment services in the internal market (PSD2) provides that host Member States may require payment institutions, whose head office is situated in another Member State and that operate through agents in their territories under the right of establishment, to set up a central contact point in their territory, in order to ensure adequate communication and information reporting on compliance with Titles III and IV of PSD2 and to facilitate the supervision by the competent authorities. According to Article 3(1) of Directive 2009/110/EC, as amended by Article 111 of PSD2, these provisions shall also apply *mutatis mutandis* to electronic money institutions when providing payment services in a host Member State through agents under the right of establishment.

In line with the mandate conferred on the EBA under Article 29(5) of PSD2, these RTS set out the criteria for determining the circumstances in which the appointment of a central contact point pursuant to Article 29(4) of PSD2 is appropriate and the functions of those contact points.

Pursuant to Article 29(4) and Article 29(5) of PSD2, the appointment of a central contact point should be proportionate to achieving the objectives foreseen by PSD2, of ensuring adequate communication and information reporting on compliance with Titles III and IV of PSD2 in the host Member State and of facilitating supervision by the competent authorities of the home and host Member States, without creating unnecessary burdens on payment institutions or electronic money institutions.

These draft RTS aim to provide legal certainty as regards the circumstances in which it is appropriate to appoint a central contact point pursuant to Article 29(4) of the PSD2 and to ensure that, where the requirement to appoint a central contact point is implemented in the jurisdiction of the host Member State, it is proportionate to the aims pursued by PSD2.

Next steps

The consultation period will run from 29 June 2017 to 29 September 2017. The final draft RTS will be published after the end of the consultation period.

4. Background and rationale

4.1 Background

1. On 12 January 2016, Directive (EU) 2015/2366 on payment services in the internal market (PSD2) entered into force, and it will apply from 13 January 2018. PSD2 aims, *inter alia*, to enhance the cross-border supervision of payment institutions that provide payment services in a Member State other than their home Member State, by enhancing the cooperation between the competent authorities of the home and host Member States, while at the same time reinforcing the supervisory powers of the competent authorities of the host Member State, where those payment institutions provide payment services in the host Member State under the right of establishment.

2. PSD2 includes a series of measures that aim to reinforce the supervisory powers of the competent authorities of the host Member State, in order to ensure and monitor effective compliance with Titles III and IV of the PSD2, pursuant to Article 100(4) of PSD2. These include new reporting requirements under Article 29(2) of PSD2, which allows the competent authorities of the host Member State to require payment institutions having agents or branches within their territory to report to them on the activities carried out in their territory, and, where those payment institutions operate through agents or branches under the right of establishment, to use that data for monitoring compliance with Titles III and IV of PSD2 in the host Member State.

3. Furthermore, Article 29(4) of the PSD2 allows host Member States to require payment institutions, whose head office is situated in another Member State and that operate on their territories through agents under the right of establishment to set up a central contact point in their territory, in order to "ensure adequate communication and information reporting on compliance with Titles III and IV" of the PSD2 and to "facilitate supervision by competent authorities of home Member State and host Member States". According to Article 3(1) of Directive 2009/110/EC, as amended by Article 111 of PSD2, these provisions shall also apply mutatis mutandis to electronic money institutions when providing payment services in a host Member State through agents under the right of establishment.

4. In support of the provisions in Article 29(4) of the PSD2, Article 29(5) mandates the EBA to develop draft RTS setting out "the criteria to be applied when determining, in accordance with the principle of proportionality, the circumstances when the appointment of a central contact point is appropriate, and the functions of those contact points, pursuant to [Article 29] paragraph 4".

5. In what follows below, this Consultation Paper proceeds with a rationale section that sets out the way in which the EBA has developed its mandate. This is followed by the actual RTS with the draft provisions proposed by the EBA. Questions have been inserted throughout the document to elicit the views of external stakeholders.

4.2 Rationale

6. In what follows below, this chapter sets out the approach the EBA has taken to develop the draft RTS and invites respondents to the Consultation Paper to provide their views, on the EBA's approach as well as on the resultant requirements that are specified in chapter 5. The section summarises the input that the EBA has sought and received from competent authorities prior to its commencing the work and explains the options considered and assessed when the draft RTS were developed.

4.2.1 Criteria

7. Article 29(5) of the PSD2 mandates the EBA to develop "the criteria to be applied when determining, in accordance with the principle of proportionality, the circumstances when the appointment of a central contact point is appropriate". In developing these criteria, Article 29(5) of the PSD2 requires the EBA to take into account, in particular: (i) "the total volume and value of transactions carried out by the payment institution in host Member States"; (ii) "the type of payment services provided"; and (iii) "the total number of agents established in the host Member State".

8. Prior to developing the mandate, the EBA approached competent authorities in the 28 EU Member States and gathered information and data on the payment services provided by payment institutions and electronic money institutions on a cross-border basis through agents. The aim of this data collection exercise was to identify the criteria for determining when the appointment of a central contact point would be appropriate and proportionate to achieving the aims pursued by PSD2, of ensuring adequate communication and information reporting on compliance with Titles III and IV of PSD2 in the host Member States and of facilitating supervision by competent authorities, without creating unnecessary burdens for market participants.

9. The following factors were considered by the EBA when assessing the criteria for the appointment of a central contact point:

- feasibility of obtaining the relevant data for calculating the relevant thresholds and implementing them across the 28 Member States;

- methodological robustness of the approach used to calculate the relevant thresholds; and

- degree of proportionality, which refers to the desideratum for the criteria for appointing a central contact point to be proportionate to achieving the objectives of PSD2, of ensuring adequate communication and information reporting on compliance with Titles III and IV of PSD2 in the host Member States and of facilitating supervision by competent authorities, without creating unnecessary burdens for market participants. In assessing these criteria, the EBA has also tried to reach the most appropriate balance between these aims pursued by PSD2 and another key objective of PSD2 which is to encourage the development of an integrated internal market in payment services.

10. Having assessed the data received from competent authorities against these criteria, the following options emerged on how to determine the criteria for assessing when the appointment of a central contact point is appropriate:

- Option 1: Setting different thresholds, relating to the volume and value of the payment services carried out cross-border in a host Member State through agents and the number of agents established in the host Member State, tailored for each host Member State, based on the particularities of the market in each Member State;

- Option 2: Setting a single set of thresholds, relating to the volume and value of payment services carried out cross-border in a host Member State through agents and the number of agents established in the host Member State, applicable across all 28 EU Member States, based on an overall assessment of the markets across all 28 EU Member States; and

- Option 3: Determining additional criteria, in addition to the indicative criteria set out in Article 29(5) of PSD2 (relating to the volume and value of transactions, the type of payment services and the number of agents established in a host Member State), based on the data drawn from an aggregated analysis of complaints received by competent authorities from payment service users under Article 80 of the PSD1, regarding alleged infringements of the PSD1 by payment service providers (where such analysis is available).

11. EBA assessed each of the options identified against the criteria of feasibility, methodological robustness and degree of proportionality and arrived at the view that Option 1 is not a desirable option, as it creates an undue complexity for both market participants providing services cross-border and competent authorities, which could reflect in higher compliance costs for gathering the required data and monitoring when the respective thresholds are reached. Moreover, this approach might lead to market fragmentation and conflict with the objective of PSD2 of encouraging the development of an integrated internal market in payment services. In addition, feedback received from competent authorities suggests that the data necessary in order to calculate these thresholds, for each host Member State, is not currently available across all 28 EU Member States, under the legal framework in place under PSD1, and that, as a result, this option is not, at least at this stage, feasible.

12. Option 2 is based on an overall assessment of the data available at this stage regarding the cross-border provision of payment services across all 28 EU Member States. Its *prima facie* advantage compared with Option 1 would be one of simplicity and practicality, as payment institutions and electronic money institutions providing payment services cross-border as well as competent authorities would have to monitor the application of only one set of criteria across all EU Member States.

13. Moreover, this approach should create legal certainty and a harmonised approach across the EU regarding the criteria for the appointment of a central contact point under the PSD2 and its functions. It would also ensure consistency with the approach taken as regards the criteria for the appointment of a central contact point under the Anti-Money Laundering Directive (AMLD)[1] pursuant to the delegated act referred to in Article 45(11) thereof, which establishes a single set of thresholds applicable across all EU Member States (notwithstanding that there are certain differences in how such thresholds are determined for central contact points under the PSD2, and respectively, for central contact points under the AMLD4, due to the different purposes of the two types of contact points and the particularities of the legal framework under which they are established).

14. The EBA has also considered whether additional criteria should be considered for the purpose of determining when the appointment of a central contact point is appropriate, in addition to the criteria set out in Article 29(5) of PSD2 relating to the volume and value of transactions carried out in the host Member State, the type of payment services and the number of agents established in the host Member State (Option 3). In particular, the EBA considered whether such additional threshold(s) could be based on data deriving from an aggregated analysis of the complaints received by competent authorities from payment service users under Art. 80 of the PSD1 regarding alleged infringements of the PSD1 by payment service providers.

15. The advantage of such approach would be that it might give a better indication of the complexity or difficulty for competent authorities in monitoring and supervising compliance with Titles III and IV. For example, a very high number of complaints received against a particular payment institution operating in a host Member State through agents under the right of establishment might indicate a greater difficulty in monitoring and supervising compliance by that institution of the national law provisions implementing Titles III and IV in the host Member State, and, thus, provide a better indication on when a central contact point might be needed in order to facilitate supervision.

[1] Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing

16. However, the main downsides of this option are that, first, an aggregated analysis of the data deriving from the complaints received by CAs under Art. 80 of PSD1 is not available at this stage across all EU Member States and will only be a requirement under the EBA Guidelines on complaints procedures under Article 100(6) of PSD2. Secondly, having a threshold based on the number of complaints received by competent authorities might not be workable in practice because market participants might not be able timely to monitor whether they exceed or not the respective threshold(s) as they may not have knowledge of all complaints submitted against them with competent authorities. For this reasons, the EBA decided not to further pursue this option, at least at this stage.

17. From the 3 options presented, the EBA therefore considers Option 2 to be the preferred one to pursue, as it currently best meets the criteria the EBA has used for assessing the options. Option 2 therefore constitutes the basis on which the EBA has drafted these RTS for the purpose of this consultation.

Q1. Do you agree with the option chosen by the EBA regarding the determination of the criteria for assessing when the appointment of a central contact point is appropriate? In particular, do you agree that the RTS should establish a single set of thresholds applicable across all the EU Member States, based on the indicative criteria set out in Article 29(5) of the PSD2? Please explain your reasoning and provide any alternatives that the EBA should consider, and why.

18. Feedback received from competent authorities suggests that the thresholds for appointing a central contact point that would be appropriate in order to allow the competent authorities of the host Member State to effectively monitor and supervise compliance with Titles III and IV by the payment institutions and electronic money institutions providing payment services cross-border in their territories through agents under the right of establishment are reached when:

(a) the total number of agents through which a payment institution or electronic money institution provides any of the payment services referred to Annex 1 of PSD2 in a host Member State under the right of establishment is equal to, or exceeds, 10 agents; or

(b) the total value of the payment transactions carried out by a payment institution or electronic money institution in the host Member State in the last financial year, and including the value of payment transactions initiated when providing payment initiation services, through agents located in the host Member State and operating under either the right of establishment or the freedom to provide services, exceeds EUR 3 million and the respective institution has engaged at least 2 of those agents under the right of establishment; or

(c) the total volume of payment transactions carried out by a payment institution or electronic money institution in the host Member State in the last financial year and including the value of payment transactions initiated when providing payment initiation services, through agents located in the host Member State and operating under either the right of establishment or the freedom to provide services, exceeds 100,000 transactions and the respective institution has engaged at least 2 of those agents under the right of establishment.

19. The identification of the agents, for the purpose of assessing whether the above threshold regarding the number of agents is met, should be consistent with the information notified to the competent authorities of the host Member State pursuant to the passporting procedure in Article 25 of the PSD1, or, after 13 January 2018, pursuant to the passporting procedure in Article 28 of PSD2 and the delegated act under Article 28(5) thereof, taking into account, where relevant, any subsequent changes to the initial passport application communicated pursuant to Article 28(4) of PSD2.

20. The thresholds mentioned in bullets (b) and (c) above are, evidently, not applicable in relation to account information services (AIS) referred to in point (8) of Annex I to the PSD2. The EBA considers that no volume or value of transactions can be detected in the provision of AIS, as the service does not trigger the initiation and neither the execution of a payment transaction resulting in a transfer of funds. Given the particularities of these services and the specific legal regime to which AIS providers are subject, EBA considered that these thresholds are not applicable to AIS. Nevertheless, it remains conceivable that an account information service provider might still potentially meet the first criterion referred to in paragraph (a) above, and, as a result, be subject to the requirement to appoint a central contact point.

21. As regards the scope of the transactions to which the thresholds referred to in paragraphs (b) and (c) above apply, the EBA took into consideration the provisions of Article 29(5) of PSD2 which require the EBA to take account of, among others, "the total volume and value of transactions carried out by the payment institution in the host Member States".

22. The wording in Article 29(5) of PSD2 may suggest that all transactions carried out in the host Member State should be considered for the purpose of determining the criteria for the appointment of a central contact point, irrespective of whether those transactions are carried out in the exercise of the right of establishment or the freedom to provide services. However, Article 29(4) of the PSD2 is clear that a central contact point can be required only where a payment institution is providing services in the host Member State through agents under the right of establishment. Moreover, Recital (44) to the PSD2 further clarifies that the role of a central contact point is to facilitate the "supervision of network of agents" by competent authorities.

23. As a result, the EBA decided to take a balanced approach and arrived at the view that the thresholds for the volume and value of transactions should apply by reference to the transactions carried out in the host Member State through agents located in the host Member State's territory irrespective of whether those agents were notified under the right of establishment or the freedom to provide services. By contrast, transactions carried out in the host Member State through branches, or in the exercise of the free provision of services without any agents, should not be included for the purpose of calculating these thresholds.

24. Where a payment institution or electronic money institution provides payment services in a host Member State by establishing both a branch and a network of agents and the conditions for the appointment of a central contact point are met, the RTS allow for the scenario whereby the functions of such contact point are fulfilled by the branch. This would allow the competent authorities of the host Member State to have a single point of reference for all information regarding the services provided by that institution in its territory, whether conducted through the branch or the agents, and may also reduce the regulatory burden on payment service providers.

Q2. Do you agree with the criteria proposed in Article 2 of the draft RTS for determining when the appointment of a central contact point is appropriate? In particular, do you agree with the threshold of 10 agents and with the annual thresholds of EUR 3 million and, respectively, of 100,000 transactions, as set out in Article 2 of the draft RTS? Please explain your reasoning and provide any alternatives that the EBA should consider, and why.

25. The EBA also acknowledges that more reliable data is to become available after the transposition of the PSD2 by Member States, which could help the EBA subsequently to fine-tune and review the appropriateness of the criteria proposed in these draft RTS. This includes among others:

(a) data reported to the competent authorities of the host Member States pursuant to Article 29(2) of PSD2, as such will be further developed in the RTS under Article 29(6) of PSD2, regarding the activities conducted by payment institutions and electronic money institutions providing payment services in the host Member State through agents in the exercise of the right of establishment or the freedom to provide services;

(b) data on the nature of the passport application when using agents in the host Member State (right of establishment or the freedom to provide services), that will need to be specified in the passport application pursuant to Article 10 (1) (d) and paragraph (6) of Annex III of the delegated act under Article 28(5) of the PSD2;

(c) consolidated data that will become available once the EBA register under Article 15 of the PSD2 becomes operational, regarding the payment institutions and electronic money institutions providing payment services cross-border and their agents;

(d) data that will be derived from an aggregated analysis of the complaints received by competent authorities from consumers and other interested parties under Article 99 of PSD2, regarding alleged infringements of the PSD2 by payment service providers, that competent authorities will be required to perform and take into account in monitoring compliance with PSD2, pursuant to the draft EBA Guidelines under Article 100(6) of PSD2[2]; and

(e) statistical data on fraud relating to different means of payment that will be reported to the competent authorities, and also, in aggregated form, to the EBA and the ECB, pursuant to Article 96 (6) of the PSD2.

26. Given these additional sources of data from 2018 onwards, the EBA will monitor the appropriateness of the thresholds specifying the criteria for the appointment of a central contact point. Where new available data provides evidence that an adjustment in the value of those thresholds could ensure a more proportionate application of the criteria on volume and value of transactions and number of agents, EBA may propose amendments, where appropriate, to these RTS in accordance with the tasks and powers set out in Regulation (EU) No 1093/2010. Such review will ensure that the RTS remain proportionate over time to attaining the aims of a central contact point as set out in PSD2, without creating undue regulatory burdens for market participants.

4.2.2 Functions

27. According to Article 29(4) of Directive (EU) 2015/2366, the main objectives of a central contact point are: (i) "to ensure adequate communication and information reporting on compliance with Titles III and IV" of the PSD2; and (ii) "to facilitate supervision by competent authorities of home and host Member States, including by providing competent authorities with documents and information on request".

28. In line with the mandate conferred on the EBA under Article 29(5), Article 3 of these draft RTS propose the functions that such contact points should have in fulfilment of these objectives, which are:

- to serve as single provider and single point of collection of the reporting obligations of the appointing institution to the competent authorities of the host Member State pursuant to Article 29(2) of the PSD2 including the delegated act referred to in Article 29(7) thereof, in relation to the payment services provided in the host Member State through agents under the right of establishment;

[2]The draft EBA Guidelines are available at: https://www.eba.europa.eu/documents/10180/1756077/Consultation+Paper+on+Guidelines+on+complaints+procedures+under+PSD2+%28EBA-CP-2017-01%29.pdf

- to serve as single point of contact of the appointing institution in communications with the competent authorities of the home and host Member States, in relation to the payment services provided in the host Member State through agents under the right of establishment, including by providing competent authorities with documents and information on request; and

- to facilitate the on-site inspection of the agents of the appointing institution operating in the host Member State under the right of establishment, and the implementation of any supervisory measures adopted by the competent authorities of the home or host Member States pursuant to PSD2.

Q3. Do you agree with the functions of a central contact point, as set out in Article 3 of the draft RTS? Please explain your reasoning.

5. Draft regulatory technical standards

COMMISSION DELEGATED REGULATION (EU) No …/..

of XXX

[…]

supplementing Directive (EU) 2015/2366 of the European Parliament and of the Council with regard to regulatory technical standards on the criteria for determining the circumstances in which the appointment of a central contact point pursuant to Article 29(4) of Directive (EU) 2015/2366 is appropriate and the functions of those central contact points

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,
Having regard to 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, and in particular Article 29(4) and 29(5),

Whereas:

(1) Pursuant to Article 29(4) of the Directive (EU) 2015/2366, Member States may require payment institutions, the head office of which is situated in another Member State and which operate on their territory through agents under the right of establishment, to appoint a central contact point in their territory, in order to ensure adequate communication and information reporting on compliance with Titles III and IV of the Directive (EU) 2015/2366 and to facilitate the supervision by the competent authorities of the home and host Member States. In accordance with Article 3(1) of Directive 2009/110/EC of the European Parliament and of the Council[3], as amended by Article 111 of the Directive (EU) 2015/2366, these provisions shall apply *mutatis mutandis* to electronic money institutions when providing payment services in a host Member State through agents under the right of establishment. A reference to 'payment institution' therefore needs to be read as a reference to 'electronic money institution'.

[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 (OJ L 267, 10.10.2009, p. 7)

(2) The appointment of a central contact point should be proportionate to achieving the aim of adequate communication and information reporting on compliance with Titles III and IV in the host Member State and to facilitating the supervision by the competent authorities of the home and the host Member States, without creating unnecessary burdens on payment institutions or electronic money institutions. Therefore, in line with Article 29(5) of the Directive (EU) 2015/2366, this regulation specifies the thresholds that represent a proportionate application of the criteria relating to the volume and value of the transactions carried out in the host Member State though agents and to the number of agents established in the host Member State. Those thresholds may be re-assessed and updated, as appropriate, where new available data provides evidence that an adjustment in their value is needed to ensure a proportionate application of the criteria on volume and value of transactions and number of agents.

(3) In line with Article 29(4) of the PSD2, where a central contact is required, it should primarily ensure adequate communication and information reporting on compliance with Titles III and IV in the host Member State, including ensuring compliance with the reporting obligations of the appointing institution towards the competent authorities of the host Member State pursuant to Directive (EU) 2015/2366, and have a central coordinating role between the appointing institution and the competent authorities of the home and the host Member States in order to facilitate supervision of the payment services business conducted in the host Member State though agents under the right of establishment. To that end, the central contact point should possess appropriate knowledge of the national law provisions transposing Titles III and IV of Directive (EU) 2015/2366 in the host Member State, in order to be able to perform its tasks and increase awareness within the local network of agents of the national provisions transposing Titles III and IV of Directive (EU) 2015/2366.

(4) References in this Regulation to amounts in euro are to be intended as the national currency equivalent as determined by each non-euro Member State.

(5) This Regulation is based on the draft regulatory technical standards submitted by the European Supervisory Authority (European Banking Authority) (EBA) to the Commission.

(6) EBA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010.

HAS ADOPTED THIS REGULATION:

Article 1
Scope

1. This Regulation establishes the criteria to be applied for determining the circumstances, pursuant to Article 29(4) of Directive (EU) 2015/2366, in which it is appropriate to require payment institutions that operate in host Member States through agents under the right of establishment to appoint a central contact point in the territory of those Member States, and the functions of a central contact point.

2. This Regulation applies *mutatis mutandis* to electronic money institutions providing payment services referred to in point (a) of Article 6(1) of Directive 2009/110/EC in host Member States by engaging agents under the right of establishment and subject to the conditions laid down in Article 19 of Directive (EU) 2015/2366.

Article 2
Criteria for the appointment of a central contact point

For the purpose of Article 29(4) of Directive (EU) 2015/2366, it is appropriate to require payment institutions to appoint a central contact point in the territory of the host Member States where any of the following is met:

(a) the total number of agents through which a payment institution provides any of the payment services referred to in Annex I to Directive (EU) 2015/2366 in a host Member State under the right of establishment is equal to, or exceeds, 10 agents;

(b) the total value of payment transactions carried out by a payment institution in the host Member State in the last financial year and including the value of payment transactions initiated when providing payment initiation services, through agents located in the host Member State and operating under either the right of establishment or the freedom to provide services, exceeds EUR 3 million and the payment institution has engaged at least 2 of those agents under the right of establishment;

(c) the total volume of payment transactions carried out by a payment institution in the host Member State in the last financial year and including the volume of payment transactions initiated when providing payment initiation services, through agents located in the host Member State and operating under either the right of establishment or the freedom to provide services, exceeds 100,000 transactions and the payment institution has engaged at least 2 of those agents under the right of establishment.

Article 3
Functions of the central contact point

1. A central contact point that is appointed pursuant to Article 29(4) of Directive (EU) 2015/2366 shall:

   (a) Serve as single provider and single point of collection of the reporting obligations of the appointing payment institution to the competent authorities of the host Member State pursuant to Article 29(2) of Directive (EU) 2015/2366, including the delegated act referred to in Article 29(7) thereof, in relation to payment services provided in the host Member State through agents under the right of establishment;

   (b) Serve as single point of contact of the appointing payment institution in communications with the competent authorities of the home and host Member States in relation to the payment services provided in the host Member State through agents under the right of establishment, including by providing competent authorities with documents and information on request;

(c) facilitate the on-site inspection by competent authorities of the agents of the appointing payment institution operating in the host Member State under the right of establishment and the implementation of any supervisory measures adopted by the competent authorities of the home or host Member States pursuant to Directive (EU) 2015/2366.

2. Payment institutions shall ensure that a central contact point possesses all the adequate resources and has access to all data necessary for the performance of the functions set out in Article 29(4) of Directive (EU) 2015/2366 and in paragraph 1 of this Article.

3. Compliance with the provisions in paragraphs 1 and 2 does not entail any consequence to the obligations and the liability of the appointing payment institution under Directive (EU) 2015/2366.

Article 4
Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission

The President

6. Accompanying documents

6.1 Draft cost-benefit analysis / impact assessment

Article 10(1) of the EBA Regulation provides that any regulatory technical standards (RTS) developed by the EBA should be accompanied by an analysis of 'the potential related costs and benefits'. 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.

A. Problem identification and baseline scenario

PSD2 aims, among others, to improve the supervision of payment institutions (PIs) when providing payment services cross-border, by, on the one hand, strengthening the cooperation between the competent authorities (CAs) of the home and host Member States, and, on the other hand, by reinforcing the supervisory powers of the CAs of the host MS, where the services are provided within the host MS's territory through agents or branches operating under the right of establishment.

PSD2 reinforces the supervisory powers of the CAs of the host MS by, for example, allowing the CA of the host MS to take precautionary measures, in certain limited circumstances, in order to address an infringement of the national law provisions of the host MS transposing Titles III and IV of the PSD2, where a PI provides payment services within its territory through agents or branches under the right of establishment. Also, Article 29(2) of the PSD2 provides the possibility for the CAs of the host MS to require PIs having agents or branches within their territory to report to them on the activities carried out in their territories.

Furthermore, Article 29(4) of the PSD2 gives the host MS the option to require PIs which provide payment services within their territories via agents under the right of establishment, to set up a central contact point in the host MS, in order to "ensure adequate communication and information reporting on compliance with Titles III and IV of PSD2" and "to facilitate the supervision" by the CAs of the home and host MS. According to Article 3(1) of Directive 2009/110/EC, as amended by Article 111 of PSD2, these provisions shall also apply *mutatis mutandis* to electronic money institutions (EMIs) when providing payment services in a host MS through agents under the right of establishment.

Article 29(5) of the PSD2 mandates the EBA to specify "the criteria to be applied when determining, in accordance with the principle of proportionality, the circumstances when the appointment of a central contact point is appropriate, and the functions of those contact points". To that end, EBA has to identify the methods to assess when the appointment of a central contact point is required and the functions that those contact points should have in fulfilment of the objectives set by the PSD2.

Without the use of common criteria there is a significant risk that the supervision of PIs and EMIs providing payment services cross-border would be more complex and fragmented across Member States.

B. Policy objectives

These RTS contribute to the overall aim of the PSD2 of facilitating the cross-border supervision of PIs and EMIs when providing payment services cross-border, without creating undue regulatory barriers to the freedom of establishment of PIs and EMIs.

More specifically, these RTS specify how to determine the criteria to assess when the appointment of a central contact point is appropriate and what its functions should be, in fulfilment of the objectives set by PSD2.

In determining the criteria for assessing when the appointment of a central contact point is appropriate, Article 29(5) of PSD2 provides that the RTS "shall, in particular, take account of: (a) the total volume and value of transactions carried out by the payment institution in host Member States; (b) the type of payment services provided; and (c) the total number of agents established in the host Member State".

C. Options considered

The criteria for the appointment of a central contact point could be determined according to the following options:

Option 1: Setting different thresholds, based on the criteria set out in Art. 29(5) of PSD2, tailored for each host Member State;

Option 2: Setting a single set of thresholds, based on the criteria set out in Art. 29(5) of PSD2, applicable across all 28 EU Member States;

Option 3: Determining additional criteria and thresholds in addition to the indicative criteria set out in Article 29(5) of PSD2.

Option 1 envisages setting different thresholds based on the characteristics of the market in each host MS. This option takes into account the specificities of the market in each of the 28 EU Member States.

Option 2 considers a single set of common thresholds, based on the overall assessment of the markets within the 28 Member States. This option aims to create a simpler and more practical approach in order to facilitate the determination of when the appointment of a central contact point is appropriate.

Option 3 envisages, in addition to the criteria specified in Article 29(5), additional elements, like data that may be drawn from an aggregated analysis of complaints received by CAs from consumers and consumer associations regarding alleged infringements of the PSD1 by PIs and EMIs, in order to provide a better indication of when the appointment of a central contact point is needed.

D. Cost-Benefit Analysis and preferred option

These RTS will affect PIs and EMIs providing services cross-border via agents under the right of establishment, users of payment services and CAs. Considering the overall costs and benefits for these stakeholders stemming from each option, EBA is of the view that Option 2 is the preferred one.

Option 2 allows applying a common set of rules across the EU that would ensure legal certainty. More certainty in the criteria definition should encourage PIs and EMIs to provide services cross-border without incurring higher compliance costs that would differ across Member States.

Higher costs and uncertainty in the determination of the applicable criteria, on the other hand, could reflect in a more complex and less efficient supervisory activity. This would also increase the fragmentation of the payment services market within the EU. The precise costs of these RTS will depend on the form a central contact point would be required to have, which is however outside of the scope of these RTS.

A better supervisory activity can positively affect consumer protection, improve user experience and increase the confidence in the market.

Generally, a safer and more efficient payment services market would also facilitate the exchange of goods and services within the single European market, resulting in particular from the potential role of innovative (e.g. mobile and internet) payment solutions in facilitating cross-border e-commerce and trade[4].
Hence, it is reasonable to state that the overall benefits of Option 2 would exceed the costs.

On the other hand, a single set of thresholds applicable across all 28 EU Member States doesn't take into account the specificities of the market in each MS. Option 1 aims to address this issue, but it is reasonable to assume that gathering the data required to determine different thresholds, and also the ongoing monitoring of these thresholds, would be costly for both PIs and EMIs, and for competent authorities. Furthermore, the data necessary may not be available for all MS. Thus, Option 1 is not considered to be effectively feasible.

Option 3 envisages additional elements for determining when the appointment of a central contact point is appropriate, such as data that may be drawn from an analysis of complaints received by competent authorities from consumers and consumer associations, in addition to the criteria set out in Article 29(5) of PSD2. The benefits of this option would be related to the possibility to take into account other information and data that are not already included in the thresholds considered for Option 1 and Option 2. This may potentially allow a better fine-tuning of the criteria for assessing when the appointment of a central contact point is necessary in order to facilitate supervision.

Nevertheless, the data necessary to apply this option could be difficult to gather at this stage and this would also imply higher compliance costs for both PIs and EMIs, as well as for competent authorities. Furthermore, developing a criteria based on the number of complaints received by CAs from consumers may be difficult to implement in practice because PIs and EMIs might not be able to timely monitor whether they meet or not the respective threshold(s) as they may not have knowledge of all complaints filed against them with CAs.

[4] In this context, see for instance EC, A Digital Single Market Strategy for Europe – Analysis and Evidence, 2015

Consequently, Option 2 is preferred.

6.2 Overview of questions for consultation

Q 1 Do you agree with the option chosen by the EBA regarding the determination of the criteria for assessing when the appointment of a central contact point is appropriate? In particular, do you agree that the RTS should establish a single set of thresholds applicable across all the EU Member States, based on the indicative criteria set out in Article 29(5) of the PSD2? Please explain your reasoning and provide any alternatives that the EBA should consider, and why.

Q 2 Do you agree with the criteria proposed in Article 2 of the draft RTS for determining when the appointment of a central contact point is appropriate? In particular, do you agree with the threshold of 10 agents and with the annual thresholds of EUR 3 million and, respectively, of 100,000 transactions, as set out in Article 2 of the draft RTS? Please explain your reasoning and provide any alternatives that the EBA should consider, and why.

Q 3 Do you agree with the functions of a central contact point, as set out in Article 3 of the draft RTS? Please explain your reasoning.