

EBA/Op/2017/16

19 December 2017

# Opinion of the European Banking Authority on the transition from PSD1 to PSD2

## Introduction and legal basis

1. The competence of the European Banking Authority (EBA) to deliver the opinion is based on Article 29(1)(a) of Regulation (EU) No 1093/2010<sup>1</sup> as part of the objective of the EBA “to play an active role in building a common Union supervisory culture and consistent supervisory practices, as well as in ensuring uniform procedures and consistent approaches throughout the Union” (Article 29(1)).
2. With new types of services brought into the sphere of regulation and new requirements for all payment service providers (PSPs) to comply with, the revised Payment Services Directive (EU 2015/2366; “PSD2”) is expected to significantly change the payments market in the European Union.
3. In order to support the objectives of PSD2 of enhancing competition, facilitating innovation, protecting consumers, increasing security and contributing to a single EU market in retail payments, the Directive conferred on the EBA the development of 12 Technical Standards and Guidelines, to specify detailed provisions in relation to payments security, authorisation, passporting, supervision, and more. At time of issuing this Opinion in December 2017, the EBA has finalised 10 of these deliverables, with the remaining 2 due to be completed at the beginning of 2018.
4. Either because of a delay in adoption or because PSD2 intended it to be so, not all the provisions of PSD2 or EBA technical standards and guidelines will be applicable on 13 January 2018. This misalignment, whether explicitly foreseen in PSD2 or a result of the delayed entry into force of EBA guidelines and technical standards, has led to a number of additional transitional issues that both market participants and competent authorities (CAs) have approached the EBA about. Clarification on those issues would help to ensure a transition from PSD1 to PSD2 that is orderly and consistent across the 28 Member States of the EU.

<sup>1</sup> 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 (OJEU L 331, 15.12.2010, p. 12).

5. To that end, the EBA has decided to issue this opinion, which is addressed to the national authorities to be designated as competent under PSD2.
6. The opinion contains both general and specific comments and advice in relation to the implications for PSPs and CAs of the delayed finalisation and/or adoption of some of the 12 EBA instruments developed under PSD2; the rights and obligations of various types of PSPs during the 'transitional' period under the PSD2; the application of the EBA Guidelines on the security of internet payments under PSD1 (EBA-GL-2014-12) during that transitional period; and the support the EBA will provide to market participants after the application date of PSD2, 13 January 2018.
7. In accordance with Article 14(5) of the Rules of Procedure of the Board of Supervisors<sup>2</sup>, the Board of Supervisors has adopted this opinion.

## General comments

8. While the EBA expects to have finalised 10 of the 12 instruments by the application date of the PSD2, many of them will not yet be applicable on that date. This may be the case for:
  - EBA technical standards, because they become applicable either only after the European Commission has adopted the technical standards as a delegated act, published them in the Official Journal of the European Union (OJEU) and they have entered into force (on a date that the standards set or, failing that, 20 days after its publication in the OJEU); or at a date set by PSD2;
  - EBA guidelines, because they become applicable only on a date specified in the guidelines after the EBA has published them in all the official EU languages.
9. The EBA anticipates that, on the application date of PSD2 on 13 January 2018, three of the 12 mandates will be applicable:
  - the RTS on passporting (EBA-RTS-2016-08) that were published in the OJEU on 11 November 2017<sup>3</sup>,
  - the Guidelines on authorisation and registration (EBA-GL-2017-09), and
  - the Guidelines on the minimum amount of professional indemnity insurance (EBA-GL-2017-08).

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<sup>2</sup> Decision adopting the Rules of Procedure of the European Banking Authority Board of Supervisors of 27 November 2014 (EBA/DC/2011/01 Rev4).

<sup>3</sup> COMMISSION DELEGATED REGULATION (EU) 2017/2055 of 23 June 2017 supplementing Directive (EU) 2015/2366 of the European Parliament and of the Council with regard to regulatory technical standards for the cooperation and exchange of information between competent authorities relating to the exercise of the right of establishment and the freedom to provide services of payment institutions, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R2055&from=EN>

10. These three mandates support key provisions of PSD2, and their completion and legal application ensures that, from the first day of PSD2, legal entities know how to obtain authorisation or registration; know what insurance cover or guarantee to take out for that purpose; and be able to passport into other EU Member States using consistent processes.
11. The EBA anticipates that a further 3 EBA Guidelines under PSD2 will become applicable in Q1 of 2018:
  - the Guidelines on incident reporting (EBA-GL-2017-10);
  - the Guidelines on procedures set up by CAs for complaints of alleged infringements (EBA-GL-2017-13); and
  - the Guidelines on security measures for operational and security risks (EBA-GL-2017-17).
12. The EBA is also developing guidelines on fraud reporting (EBA-CP-2017-13). The application date of the final guidelines is not yet known and will be decided and made public at a later stage.
13. The remaining five mandates are technical standards and consist of
  - the RTS on strong customer authentication (SCA) and common and secure communication (CSC) (EBA-RTS-2017-03)
  - the RTS and the ITS on the EBA register (EBA-RTS-2017-10 and EBA-ITS-2017-07);
  - the RTS on central contact points (EBA-RTS-2017-09); and
  - the RTS on home-host cooperation (EBA-CP-2017-16).
14. Of this set of technical standards, the EBA has completed, and submitted to the EU Commission, all but the RTS on home-host cooperation, which it anticipates submitting early in Q2 of 2018.
15. The application date of technical standards cannot be estimated by the EBA, as they need to be adopted by the Commission and published in the OJEU, with the European Parliament and the Council of the EU having a right to scrutiny in the process in relation to the RTS. The EBA is therefore not in control of the adoption process and is not in a position to anticipate the timelines.
16. A special case is the first of these technical standards, the RTS on SCA and CSC, because Article 115(4) of PSD2 specifies that these RTS will apply 18 months after they have been published in the OJEU and entered into force. At the time of writing this opinion, the EBA estimates that the date of application may fall sometime in the second half of 2019.

17. The implication of the difference between the application date of PSD2 (or the application date of the Directive as transposed into national law) and the application date of some of the EBA mandates is that all PSPs must comply with national transpositions of PSD2 provisions, even where the more detailed requirements the EBA has been mandated to develop in support of those provisions have themselves not yet been adopted and are therefore not yet applicable.
18. During the period in which a particular EBA mandate is not yet legally applicable but the underlying national transpositions of PSD2 provisions are, the EBA advises CAs to take into account the most recent available version of the final draft requirements as an indication of what is required to comply with PSD2, and of what will be required to comply with the EBA instrument once it becomes applicable. The EBA advises CAs also to encourage PSPs to do the same. In the case of RTS, for example, the most recent available version would be the “final draft” version that the EBA has submitted to the European Commission for adoption and which is available on the EBA website, or the final text adopted by the Commission but not yet published in the OJEU, while in the case of EBA guidelines, this could be the final guidelines in English in the final report that is published on the EBA website.
19. Thus, in the case of the EBA register, for example, CAs are expected to start collecting the data, or adjust their existing data collection, on the basis of the final draft RTS and ITS, but the requirement to provide the data to the EBA would not start until a later date. In the intervening period, the EBA website would provide links to the 28 national registers.
20. In the case of the EBA Guidelines on security measures for operational and security risks, CAs should allow applicants seeking authorisation or registration to rely on the final guidelines in English in the final report that is published on the EBA website.
21. By contrast, PSPs are not required to start collecting the data specified in the guidelines on fraud reporting from 13 January 2018; rather they are required to collect and start reporting data specified by the CAs during an interim stage as the requirement under Article 96(6) PSD2 is addressed to Member States rather than to the EBA. Also, the EBA acknowledges that PSPs and CAs need time to adapt their systems.
22. In addition, and although the PSD2 requirements linked to the RTS on SCA and CSC do not apply prior to the RTS application date, the EBA would nevertheless encourage CAs and PSPs to prepare to comply with the RTS, as adopted by the Commission on 27 November<sup>4</sup>, at an early stage on the basis of the issues in relation to and resulting from the transitional period, which are detailed in the next chapter.

## Specific comments

23. This chapter covers a number of questions and issues arising from the transition from PSD1 to PSD2, such as exemptions to the immediate requirement to be PSD2 authorised, access to payment account information during the transitional period under Article 115(4) PSD2, the

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<sup>4</sup> C(2017) 7782 final, [http://ec.europa.eu/finance/docs/level-2-measures/psd2-rts-2017-7782\\_en.pdf](http://ec.europa.eu/finance/docs/level-2-measures/psd2-rts-2017-7782_en.pdf)

application of the EBA Guidelines on the security of internet payments under PSD1 during that transitional period; and the provision of cross-border services in the event of delayed transposition of PSD2 in all EU Member States. The chapter concludes with a section on the support the EBA will provide to market participants after the application date of PSD2 and includes a number of advice aimed at ensuring a smooth transition. The opinion addresses each issue in turn.

### **Exemptions to the immediate requirement to be PSD2 authorised**

24. Payment institutions (PIs), electronic money Institutions (EMIs), account information service providers (AISPs) and payment initiation service providers (PISPs) cannot start operating or continue to operate from 13 January 2018 unless they are authorised or registered under PSD2 or are exempted from immediate authorisation.
25. PSD2 provides for three such exemptions. Firstly, an exemption under Article 115(5) PSD2 for providers that performed account information services (AIS) and/or payment initiation services (PIS)-like activities before 12 January 2016 which may continue to perform the same activities in the same territories even before being authorised (or registered) as an AISP and/or PISP under PSD2. Secondly, an exemption under Article 109 PSD2 that foresees a six-month period until 13 July 2018 for the applications of existing PIs and EMIs to be processed during which these PIs and EMIs can continue to offer services to ensure continuity of service. Thirdly, under Article 109(3), payment institutions who benefited from an exemption under Article 26 of PSD1 have until 13 January 2019 to be authorised under PSD2 or to seek an exemption pursuant to art. 32 of PSD2.

### **The re-authorisation of existing PIs and EMIs**

26. As provided by Article 109(1) PSD2, existing PIs and EMIs benefit from a transitional period ('transitional period I') until 13 July 2018 to be re-authorised. Article 109(2) also states that PIs can 'be automatically granted authorisation and entered in the registers referred to in Articles 14 and 15 if the CAs already have evidence that the requirements laid down in Articles 5 and 11 are complied with'. Considering that PSD2 requires additional information to be provided together with the application compared to PSD1, providers will have to provide a number of additional documents to evidence that the PSD2 requirements under Articles 5 and 11 are complied with. The EBA notes that existing PIs and EMIs that also want to start providing payment services for which they were not authorised under PSD1 or additional AIS and/or PIS services from the application date of PSD2 will need to have an authorisation under PSD2 from that date. In other words, the transition period until July 2018 does not extend to the provision of payment services for which the PIs and EMIs were not previously authorised and to AIS and/or PIS services (unless those providers benefit from the exemption under Article 115(5) PSD2).
27. CAs should take account of the higher workload arising from the re-authorisation applications of PIs for which CAs do not have evidence of compliance with Articles 5 and 11, including with the EBA Guidelines on authorisations and registrations (EBA-GL-2017-09) under Article 5(5)

PSD2. The EBA advises CAs to engage with the existing PIs and EMIs early and to commit sufficient resources to the increased demand to ensure that all applications are assessed under Article 109 PSD2 within the timeframe required by PSD2.

### **Providers of AIS or PIS-like services benefiting from the exemption under Article 115(5) PSD2**

28. When considering the applicable regulatory framework during the transitional period provided for in Article 115(4) PSD2 (transitional period II) starting on 13 January 2018 and coming to an end when the RTS on SCA and CSC apply, the EBA has identified four main groups of providers that are able to operate during that period, namely

- PIs and EMIs authorised under PSD2;
- AISPs and PISPs authorised under PSD2;
- PIs and EMIs that are awaiting re-authorisation under PSD2 and benefit from transitional period I, as well as PIs and EMIs exempted under Article 26 PSD1 that benefit under Article 109(3) PSD2 until 13 January 2019 to be authorised under PSD2 or exempted under Article 32 PSD2; and
- Legal entities that offered AIS or PIS-like services before 12 January 2016 and that will require PSD2 authorisation or registration to continue providing these services

29. These providers will be subject to different regimes. Providers that offered AIS or PIS-like services in a given Member State before 12 January 2016 benefit from the exemption under Article 115(5) PSD2. These providers can continue their activities in that (those) Member State(s) without being immediately authorised under PSD2, but they will not be able to benefit from the full set of rights specified in PSD2 until they obtain authorisation. This includes all the requirements and rights under Titles III and IV of PSD2 as well as the right to passport their services under PSD2. In addition, from a practical viewpoint, their reputation may be affected as (new) consumers may feel confident using, and have more trust in, the new payment services of authorised providers than those of providers without authorisation. This may in turn limit the adoption and uptake of unauthorised providers' products and their ability to compete against those who are authorised. The EBA advises CAs to encourage those providers to approach them without undue delay to facilitate those providers' transition to PSD2.

### **Accessing payment account information during transitional period II under PSD2**

30. Article 115(4) PSD2 provides that 'the application of the security measures referred to in Articles 65, 66, 67 and 97' will not apply during transitional period II (between 13 January 2018 and the application of the RTS on SCA and CSC, 18 months after their publication in the OJEU). After discussions with the Commission, the EBA understands that those measures under PSD2 include Articles 97 (except Article 97(5)), 65(2)(c), 66(3)(d), 66(4)(a), 67(2)(c) and 67(3)(a) PSD2. The RTS on SCA and CSC do not apply during that period. This means that the requirement for SCA under PSD2 does not yet apply, although other requirements may apply

to some providers under other legal instruments of the EBA or legislation, for instance under the EBA Guidelines on security of internet payment (EBA-GL-2014-12). This also means that a PSP providing AIS or PIS cannot be required to identify itself or to communicate the data securely as defined under PSD2.

31. In other words, during transitional period II, AISPs and PISPs can access payment accounts held by account servicing payment service providers (ASPSPs) but AISPs and PISPs will not have an obligation under PSD2 to identify themselves. In addition, ASPSPs will not have an obligation under PSD2 to 'communicate securely' with AISPs and PISPs given that articles 66(4)(a) and 67(3)(a) PSD2 will not apply. Nor will ASPSPs have an obligation under the RTS to offer an interface (i.e. to develop a new interface or adapt an existing interface) for AISPs and PISPs to access the necessary data.
32. Relatedly, the EBA considers that the requirement under Article 115(6) PSD2 for ASPSPs not to abuse their ability to 'block or obstruct the use of payment initiation and account information services for the accounts that they are servicing' means that ASPSPs can block access only for reasonably justified and duly evidenced reasons, in particular in the event of suspected unauthorised or fraudulent access or payments.
33. It is the EBA's view that in accordance with Article 115(2), (4) and (6) PSD2 AISPs and PISPs may access customer account information without being blocked (unless there are reasonably justified and duly evidenced reasons for doing so) using existing methods, for instance 'web scraping' or 'screen scraping' (where the PSP logs in to an account as if it were the user) unless national law prevented such access before PSD2 came into force on 12 January 2016.
34. Given that the EBA understands that the intention was for transitional period II to provide time for all market participants to make the changes necessary to comply with the new PSD2 requirements in a number of key areas, including SCA, secure communication, data access and data sharing, the EBA welcomes the intention of a number of PSPs to comply, in full or in part, with the RTS on SCA and CSC and the related PSD2 articles early, i.e. prior to the application date of the RTS. The EBA advises CAs to encourage all PSPs to comply with these requirements as soon as possible.
35. For ASPSPs, this means either the early adaptation of the customer interface or the early development of dedicated interfaces. In turn, for AISPs and PISPs, this means the development of technologies to ensure that they can access those interfaces. Early adoption will require a degree of cooperation between all providers, including, potentially, the early development of common industry standards. The EBA notes that a number of such standards are already being developed.
36. Early adoption of RTS-compliant interfaces would in addition facilitate compliance with other PSD2 requirements that are applicable from 13 January 2018, including the obligation for AISPs to 'access only the information from designated payment accounts and associated payment transactions' and the obligation for PISPs and AISPs 'not [to] use, access or store any data for

purposes other than for performing the service [...] explicitly requested by the payment service user’.

37. This would also be in line with the EBA Guidelines on the security of internet payments, which contains a number of requirements, including on the protection of sensitive payments data and traceability (see the section below on those guidelines for more detail). Crucially, this would also contribute to building consumers’ confidence, as the risks of malfunctioning, as well as of fraud or data or security breaches, are expected to be minimised as data would be accessed in a way that is specifically designed for that purpose. In addition, early compliance with PSD2 security requirements and the RTS on SCA and CSC would facilitate compliance with the General Data Protection Regulation (GDPR), once it becomes applicable in May 2018, for all providers (e.g. with the security requirements under Article 32 of GDPR).
38. In summary, the EBA advises CAs to encourage all providers to comply early with the RTS on SCA and CSC and Articles 65(2)(c), 66(3)(d), 66(4)(a), 67(2)(c), 67(3)(a), 97(1) to 97(4) PSD2.

#### **Application of the EBA Guidelines on the security of internet payments under PSD1**

39. Because of the later application of some of the EBA instruments developed under PSD2 listed at the beginning of this opinion, the EBA will not repeal the existing EBA Guidelines on security of internet payments at the moment that PSD2 applies on 13 January 2018. Instead, in order to ensure the continued applicability of stringent security requirements, part of the guidelines will continue to apply beyond the PSD2 application date and will gradually cease to apply when they are superseded by PSD2-specific EBA instruments or other legal acts. This will ensure that there are no gaps in applicable security requirements during transitional period II. The European Central Bank (ECB) will address separately the impact of PSD2 and EBA instruments developed under PSD2, including with regard to the ECB oversight assessment guides applicable to payment schemes.
40. The parts of the EBA Guidelines on the security of internet payments that have been superseded by PSD2, applicable from 13 January 2018, will cease to apply from 13 January 2018. As shown in the table below, this is the case for Guidelines 3.4, 4.7 (in part), 4.8, 6.2, 6.3, 11.3, 12, 12.1, 13 and 14 (in part for the latter).
41. The other parts of those guidelines will continue to apply after 13 January 2018. References to PSD1 in the EBA Guidelines on the security of internet payment are to be read as references to PSD2, in line with Article 114 PSD2. More specifically:
  - Guidelines 5, 7, 8, 9, 10, 11.1 and 11.2 and 11 will continue to apply until the end of transitional period II;
  - Guideline 3.2 will cease to apply when the EBA guidelines on incident reporting under PSD2 apply;

- Guidelines 1, 2, 3, 3.1, 4.1 to 4.6 (only in parts for 4.2) and 12.4 will cease to apply when the EBA Guidelines on security measures for operational and security risks (GL on SM for OSR) under PSD2 apply.

42. In summary, the EBA intends to formally repeal the guidelines in stages and at appropriate points in time, at the application date of PSD2, at the application date of the Guidelines on incident reporting, at the application date of the Guidelines on security measures for operational and security risks and at the application date of the RTS on SCA and CSC, 18 months after the RTS are published in the OJEU.

43. The table below provides further detail on the analysis and conclusions reached by the EBA.

<b>EBA Guidelines on the security of internet payments under PSD1</b>	<b>Superseded by</b>	<b>Application date of the instrument superseding</b>
<b>1 (Governance)</b>	Article 5 (1) (j) and GL 2 on SM for OSR	Exp. Q1 2018
<b>2 (Risk assessment)</b>	Article 5 (1) (j) and GL 3 on SM for OSR	Exp. Q1 2018
<b>3 and 3.1 (Incident monitoring and reporting)</b>	GL 5 on SM for OSR	Exp. Q1 2018
<b>3.2 (Procedure for notifying CAs)</b>	GL on incident reporting	Exp. Q1 2018
<b>3.3 (Procedure for cooperating)</b>	There is no explicit requirement for cooperation with law enforcement	NA
<b>3.4 (Requirements for PSPs to contractually require merchants to comply)</b>	Not superseded, beyond PSD2 scope so no longer applicable from 13 January 2018	13 January 2018
<b>4 (Defence in depth)</b>	GL 4.2 on SM for OSR	Exp. Q1 2018
<b>4.1 (Segregation of duties)</b>	GL 4.5 on SM for OSR	Exp. Q1 2018
<b>4.2 (Appropriate security solutions)</b>	GL 4.1 on SM for OSR	Exp. Q1 2018
<b>4.3 (Appropriate processes to monitor and restrict access)</b>	GL 5.1 and 4.9-4.13 on SM for OSR	Exp. Q1 2018
<b>4.4 (Data minimisation)</b>	GL 4.6 on SM for OSR	Exp. Q1 2018
<b>4.5 (Testing security measures)</b>	GL 7 on SM for OSR	Exp. Q1 2018
<b>4.6 (Periodic audit)</b>	GL 2.6 on SM for OSR	Exp. Q1 2018
<b>4.7 (Outsourcing)</b>	Article 19 and 20 PSD2, GL 2.7 and 2.8 on SM for OSR	13 January 2018 Exp. Q1 2018
<b>4.8 (Requirements for PSPs to contractually require merchants to comply)</b>	Not superseded, beyond PSD2 scope so no longer applicable from 13 January 2018	13 January 2018
<b>5 (Traceability)</b>	Article 26 draft RTS on SCA and CSC <sup>5</sup>	Exp. H2 2019
<b>6.1 Identification (customer due diligence requirements, etc.)</b>	Not superseded by PSD2 (but covered under anti-money laundering)	NA
<b>6.2 and 6.3 (Customer information)</b>	Article 52 PSD2 and GL 9 on on SM for OSR	13 January 2018 and [Exp. Q1 2018]
<b>7 to 7.9 (SCA)</b>	Article 97 PSD2 and draft RTS on SCA and CSC (Articles 1, 2 and 4 to 9)	Exp. H2 2019

<sup>5</sup> RTS on SCA and CSC as adopted by the European Commission on 27 November 2017

<b>7.7 (Wallet solutions)</b>	Article 97 PSD2 and RTS on SCA and CSC (Articles 1, 2 and 4 to 9) – for the providers of wallet solutions to which PSD2 and draft RTS on SCA and CSC are directly applicable	Exp. H2 2019
<b>8 (Enrolment for and provision of authentication tools)</b>	Draft RTS on SCA and CSC (Chapter 4)	Exp. H2 2019
<b>9 (Log-in attempts, session time-out, validity of authentication)</b>	Article 4 draft RTS on SCA and CSC	Exp. H2 2019
<b>10 (Transaction monitoring)</b>	Different principle under the RTS on SCA and CSC (exemption in Article 18 and risk-based framework under Article 2)	Exp. H2 2019
<b>11 (Protection of sensitive payment data)</b>	Chapter 4 draft RTS on SCA and CSC as well as GDPR Article 32	Exp. H2 2019 May 2018
<b>11.3 (Requirements for PSPs to contractually require merchants to comply)</b>	Not superseded as beyond PSD2 scope so no longer applicable from 13 January 2018	13 January 2018
<b>12 and 12.1 (Customer communication)</b>	Articles 52, 68, 69 and 70 PSD2 and GL 9 on SM for OSR	13 January 2018
<b>12.4 (Customer education and awareness programme)</b>	Partially superseded by GL 9.1 and 9.2 of GL on SM for OSR	Exp. Q1 2018
<b>13 (Requirement for providers to set limits)</b>	Article 68(1) PSD2 [as well as GL 9.4 on SM for OSR]	13 January 2018 [Exp. Q1 2018]
<b>14 (Customer access to information)</b>	PSD2 (including article 58)	13 January 2018

44. Until repealed, the guidelines will continue to apply to the PSPs that they applied to under PSD1. The guidelines will not apply to AISP or PISP.
45. The EBA advises CAs to adopt the same approach as the EBA for the gradual repeal and cessation of application of the guidelines in the measures implementing them at national level.

### Cross-border services in the event of delayed transposition of PSD2 in a Member State

46. The EBA is aware that a few EU Member States might be delayed in their transposition of PSD2 into national law and notes that a delayed transposition of the PSD2 may have implications for the provision of services across borders.
47. A delayed transposition in a host Member State cannot be used to prevent a legal entity from submitting a passporting notification in the Member State where that entity is authorised and where PSD2 has been transposed on time, or to prevent an entity from carrying out activities in that host Member State.
48. PSPs established in Member States that have not transposed PSD2 by 13 January 2018 but have already been authorised under PSD1 and have already obtained a valid passport notification, may continue to provide payment services in the Member States for which they have already obtained a valid passport notification.

49. The principle stated in paragraph 48 applies to all PSPs, regardless of whether or not they have already provided cross-border services to any given host Member State.
50. In the context of the passporting notification procedures under Articles 28 to 30 PSD2 CAs shall comply with the EBA RTS on passporting (EBA-RTS-2016-08).
51. If the host Member State has reason to doubt that a home Member State has met its obligations under PSD2 it may have recourse to Article 259 of the Treaty of the Functioning of the European Union (TFEU) or request that the Commission takes action against a home Member State for failing to meet its obligations pursuant to Article 258 TFEU.

### **The EBA's proposed supervisory actions in 2018 to support the transition**

52. The EBA anticipates that even after the application date of PSD2, external stakeholders will continue to have questions in relation to the Level-1 directive and/or the Level-2 technical standards or Level-3 Guidelines developed by the EBA. In order to support external stakeholders, reduce uncertainty and increase transparency on the interpretation of any given requirement, and, in so doing, achieve the EBA's objectives of bringing about regulatory and supervisory convergence across the EU, the EBA is considering extending its existing Q&A tool to cover PSD2.
53. Should the EBA receive the resources required to set this up, the EBA anticipates that the process would be up and running in spring 2018 and anyone would be able to pose a question.
54. The EBA is also considering other options to address queries and provide clarity on the interpretation of EBA mandates, particularly on the RTS on SCA and CSC once they are adopted and published in the OJEU and to do so well before their application date. This may, for instance, include engaging with initiatives that are developing national or pan-European application programme interfaces and providing clarifications where possible.
55. The EBA recommends that CAs inform the market participants within their territories that the EBA plans to launch its Q&A process early in 2018 and encourage them to submit questions, the answers to which would be published by the EBA and accessible by the public.

This opinion will be published on the EBA's website.

Done at London, 19/12/2017

[signed]

Andrea Enria

Chairperson

For the Board of Supervisors