

EBA/GL/2017/08

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## Final Report

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Guidelines on the criteria on how to stipulate the minimum monetary amount of the professional indemnity insurance or other comparable guarantee under Article 5(4) of Directive (EU) 2015/2366 (PSD2)

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# Abbreviations

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|--------------|---|
| <b>AIS</b>   | Account information services  |
| <b>AISP</b>  | Account information service provider                                |
| <b>ASPSP</b> | Account servicing payment service provider                          |
| <b>EMI</b>   | E-money institution   |
| <b>PI</b>    | Payment institution   |
| <b>PISP</b>  | Payment initiation service provider                                 |
| <b>PII</b>   | Professional indemnity insurance                                    |
| <b>PIS</b>   | Payment initiation services   |
| <b>PSD2</b>  | Directive (EU) 2015/2366 on payment services in the internal market |
| <b>PSP</b>   | Payment services provider   |

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## Executive summary

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Article 5(4) of the revised Payment Services Directive (PSD2) mandates the EBA to issue guidelines addressed to the competent authorities on the criteria on how to stipulate the minimum monetary amount of the professional indemnity insurance (PII) or other comparable guarantee for two new services defined in PSD2: payment initiation services (PIS) and account information services (AIS). PSD2 further specifies that, when developing these Guidelines, the EBA must take into account the criteria specified in Article 5(4)(a)-(d) of PSD2.

To fulfil this mandate, the EBA mapped market practices in the European Union with regard to the provision of PIS and AIS and applicable insurance policies. Based on the findings of the mapping exercise, the EBA elaborated on the criteria and indicators set out in PSD2; identified additional indicators; developed a calculation method for the indicators; established a formula for the calculation of the minimum monetary amount of the PII or comparable guarantee; and consulted on its proposals, between September and December 2016. While some consultation respondents were supportive of these Guidelines, some respondents suggested amendments relating to the calculation of some indicators, to proportionality and to definitions. Other respondents requested the deletion of some indicators and a few respondents proposed including additional indicators.

The EBA assessed the main arguments presented in the responses, with a view to deciding on whether amendments were required before issuing the final Guidelines. The changes and clarifications that the EBA has made as a result of this assessment include adding specifications on the scope of the PII and comparable guarantee, and redrafting Guideline 1 to include details on the PII and comparable guarantee. Furthermore, the EBA has deleted the indicators 'geographical location' and 'number of contracts' under the risk profile criterion in Guideline 5. With the aim of providing clarity on scope and calculation, the EBA has renamed the 'value of claims' indicator 'value of requests for refunds' and amended the wording of this indicator. To address the comments of some respondents about the potentially very high coverage amount that the formula would produce for undertakings, the EBA has reduced the percentages applied to the top tier in the calculation of the indicators under Guidelines 5 and 7. Finally, the EBA has added details on engagement in other business with regard to the type of activity criterion in Guideline 6, to clarify how this is to be taken into account for the purpose of calculating the minimum monetary amount of the PII or comparable guarantee.

### Next steps

The Guidelines will be translated into the official EU languages and published on the EBA website. The deadline for competent authorities to report whether they comply with the Guidelines will be two months after the publication of the translations. The Guidelines will apply from 13 January 2018.

# 1. Background and rationale

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## 1.1 Background

1. Article 5(4) of the revised Payment Services Directive (PSD2) mandates the EBA to issue guidelines addressed to the competent authorities on the criteria on how to stipulate the minimum monetary amount of the professional indemnity insurance (PII) or other comparable guarantee for two new services defined in PSD2: payment initiation services (PIS) and account information services (AIS). PSD2 further specifies that, when developing these Guidelines, the EBA shall take into account the criteria specified in Article 5(4)(a)-(d), which are:
  - a. the risk profile of the undertaking;
  - b. whether the undertaking provides other payment services as referred to in Annex I to PSD2 or is engaged in other business;
  - c. the size of the activity:
    - i. for undertakings that apply for authorisation to provide payment services as referred to in point (7) of Annex I to PSD2, the value of the transactions initiated;
    - ii. for undertakings that apply for registration to provide payment services as referred to in point (8) of Annex I to PSD2, the number of clients that make use of the account information services;
  - d. the specific characteristics of comparable guarantees and the criteria for their implementation.
2. As stated in recitals 27 and 28 to PSD2, technological developments in recent years have given rise to the emergence of new types of payment services, such as PIS and AIS. PIS play a part in e-commerce payments by establishing a software bridge between the website of the merchant and the online banking platform of the payer's account servicing payment service provider (ASPSP) to initiate internet payments on the basis of a credit transfer. AIS provide the payment service user with aggregated online information on one or more payment accounts held with one or more other payment service providers (PSPs) and accessed via the online interfaces of the ASPSP. The payment service user is thus able to have an overall view of its financial situation immediately at any given moment.
3. Furthermore, recital 35 to PSD2 explains that payment initiation service providers (PISPs) and account information service providers (AISPs), when exclusively providing PIS/AIS, do not hold client funds, and it would therefore be disproportionate to impose own funds requirements on these new market participants. However, PSD2 considers it important that these providers are able to meet their liabilities in relation to their activities, which is why Article 5(2) and (3)

provides that Member States must require AIS and PIS providers to hold PII or a comparable guarantee against specified liabilities as a condition for their authorisation/registration.

4. Therefore, Article 5(4) of PSD2 mandates the EBA to develop guidelines, in accordance with Article 16 of Regulation (EU) No 1093/2010 (EBA Regulation), on the criteria on how to stipulate the minimum monetary amount of the PII or comparable guarantee.
5. To fulfil this mandate, the EBA mapped market practices in the European Union with regard to the provision of PIS and AIS and applicable insurance policies. Based on the findings of the mapping exercise, the EBA elaborated on the criteria and indicators set out in PSD2; identified additional indicators; developed a calculation method for the indicators; and established a formula for the calculation of the minimum monetary amount of the PII or comparable guarantee in a Consultation Paper.
6. On 22 September 2016, the EBA launched a consultation on the draft Guidelines on the criteria on how to stipulate the minimum monetary amount of the PII or other comparable guarantee, which ended on 30 November 2016. The EBA received 26 responses to the Consultation Paper, 21 of which gave permission for the EBA to publish them on the EBA website.

## 1.2 Rationale

7. The EBA has assessed all of the responses and has arrived at the main conclusions set out below with regard to the requirements that it decided to amend. They are presented following the structure of the Guidelines, starting with general comments received on the scope and definitions, and then moving on to comments received on the Guidelines relating to the risk profile criterion, type of activity criterion and size of activity criterion. Additional, more detailed, analysis of all the responses received is provided in the feedback table in Section 3.2 of this Final Report.

### Scope of the Guidelines

8. While a majority of respondents supported the objectives of these Guidelines, some of them indicated that the Guidelines might create a non-level playing field, favouring credit institutions over payment institutions (PIs) and e-money institutions (EMIs). These respondents were of the view that, by requiring PIs and EMIs to hold PII or a comparable guarantee when providing PIS/AIS and, at the same time, not requiring credit institutions to hold PII or a comparable guarantee, the Guidelines might discourage new providers from entering the market.
9. The EBA has assessed the merits of these views and, in response, wishes to emphasise that the scope of the Guidelines is set out in Article 5(4) of PSD2, in conjunction with Article 5(2) and (3), as follows: 'EBA shall ... issue guidelines, addressed to the competent authorities, in accordance with Article 16 of Regulation (EU) No 1093/2010 on the criteria on how to stipulate the minimum monetary amount of the professional indemnity insurance or other comparable guarantee referred to in paragraphs 2 and 3'. Article 5(2) of PSD2 states that 'undertakings that apply for authorisation to provide payment services as referred to in point (7) of Annex I, [shall be required] as a condition of their authorisation, to hold a professional indemnity insurance, ...'. Article 5(3) of PSD2 states that 'undertakings that apply for registration to provide

payment services as referred to in point (8) of Annex I, [shall be required] as a condition of their registration, to hold a professional indemnity insurance covering the territories in which they offer services, or some other comparable guarantee’.

10. Based on the scope of the EBA’s mandate, the Guidelines refer to providers of PIS and AIS only. The EBA is of the view that the Guidelines are in line with the aim of the legislator explained in recital 35 to PSD2, according to which, ‘Payment initiation service providers and account information service providers, when exclusively providing those services, do not hold client funds. Accordingly, it would be disproportionate to impose own funds requirements on those new market players. Nevertheless, it is important that they be able to meet their liabilities in relation to their activities. They should therefore be required to hold either professional indemnity insurance or a comparable guarantee.’
11. Regarding the non-level playing field referred to by some respondents, the EBA clarifies that PSD2 sets out several requirements that payment institutions must fulfil, in particular in relation to initial capital (Article 7), own funds (Article 8) and safeguarding requirements (Article 10). These requirements are not, in full, applicable to PIS and AIS providers, in particular where the providers provide only PIS/AIS. The EBA has taken account of the concerns raised by amending the type of activity criterion.
12. Having considered all the requirements, the EBA is of the view that the Guidelines do not create any barriers for new providers who intend to enter the market.
13. However, the EBA notes that the availability of data on PII and comparable guarantees, their associated costs and requests for refunds is limited, as a result of the novelty of the payment services and related insurance products. Therefore, the EBA will, in accordance with Article 5(4) of PSD2, review the Guidelines on a regular basis and amend them, where necessary, to address changes in the market after PSD2 enters into force.
14. Several respondents suggested that the Guidelines should provide details on the PII or comparable guarantee, in terms of, for example, characteristics, conditions and terms of execution. The EBA acknowledges and agrees with this suggestion and has therefore amended Guideline 1 to provide greater clarity on the scope of the PII or comparable guarantee, including liabilities to be covered and further details on the insurance limitations policy.

### **Risk profile criterion**

15. Considering that PSD2 does not set out indicators for the risk profile criterion, some respondents were of the view that the proposed Guidelines introduced too many indicators under this criterion and that the Guidelines were therefore unnecessarily complex. Other respondents, by contrast, proposed introducing additional indicators, mainly relating to cybersecurity requirements. Finally, some respondents suggested deleting some indicators because, in their view, they were not proportionate and/or did not address risks arising from PIS/AIS activities.
16. The EBA has considered these contrasting responses and has concluded that, in line with the arguments set out in the Consultation Paper, all the indicators should be retained with the

exception of the indicators relating to geographical location and number of contracts, which the EBA has deleted. Furthermore, to provide greater clarity on the indicators, the EBA has renamed the indicator 'value of claims received' to 'value of requests for refunds' and amended its wording.

17. Several respondents were concerned that the calculation of the indicators for which the draft Guidelines proposed tiered approaches that were similar to the Method B calculation of own funds in Article 9 of PSD2 was not proportionate in relation to the activities of PIS and AIS providers. While some respondents were of the view that the resultant amounts, in particular with regard to number of contracts, were too low, others considered the resultant amounts excessively high. As a result, the respondents argued, it might be difficult for undertakings to obtain an insurance contract or to obtain a contract at an appropriate premium cost. Some respondents also proposed using a similar calculation to that used in PSD2 based on monthly volumes instead of the calculation in the Guidelines based on yearly volumes.
18. The EBA has assessed the merits of these concerns and clarifies that the resultant minimum monetary amounts will depend on the actual values for each indicator and that the indicators will reflect the activity of each undertaking. Thus, the minimum amount will increase or decrease proportionally to an increase or decrease in the activity of the provider. Furthermore, for undertakings that apply for authorisation and/or registration and do not possess relevant historical data and/or forecasts, the Guidelines set out a common denominator, i.e. the lowest tier, to compensate for the lack of data. In this regard, Guideline 9 requires undertakings to review and recalculate their minimum monetary amounts, in particular if they initially used the lowest tier, to ensure that their minimum monetary amounts correctly reflect their business activity.
19. The EBA agrees with the concerns of some respondents about the potentially very high coverage amount that the formula could produce for undertakings that are, for example, of a very large size. To address these concerns, the EBA has reduced the percentages applied to the top tier in the calculation of the indicators under Guidelines 5 and 7. More specifically, the EBA has reduced the percentages for the indicators 'number of initiated transactions' and 'number of accessed accounts' under Guideline 5 and for both indicators under the size of activity criterion under Guideline 7, from 2.5% to 0.025%. The effect of this change is that the coverage amount will 'taper off' for undertakings that fall into the top tiers for any of the criteria.
20. Regarding monthly or yearly volumes, the EBA is of the view that annual volumes better reflect the purpose of the Guidelines. Furthermore, the EBA has also taken into account the fact that insurance policies or comparable guarantees will usually be applicable for one year and then extended for another year.

### **Type of activity criterion**

21. The majority of respondents agreed with the distinction between PIS and AIS proposed in the Guidelines for the purpose of calculating the type of activity criterion. However, many respondents were of the view that engagement in other business does not pose additional risk



in relation to PIS/AIS activity and, therefore, the respondents suggested deleting all references to it.

22. In response, the EBA wishes to emphasise that Article 5(4)(b) of PSD2 requires the EBA to take account of ‘whether the undertaking provides other payment services as referred to in Annex I or is engaged in other business’. Given the will of the legislators thus expressed, the EBA does not concur with the views of the respondents who proposed deleting the reference to engaging in other business. However, the EBA has amended Guideline 6 to clarify the application of the criterion.

### **Size of activity criterion**

23. In this regard, respondents raised similar concerns to those submitted regarding indicators under the risk profile criterion that were calculated using a tiered approach based on the calculation of own funds; some respondents proposed that the EBA should also reconsider the indicators under the size of activity criterion and use monthly volumes instead of annual volumes. As stated above with regard to the risk profile criterion, the EBA is of the view that annual volumes better reflect the purpose of the Guidelines.

## 2. Guidelines

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## Guidelines

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on the criteria on how to stipulate the minimum monetary amount of the professional indemnity insurance or other comparable guarantee under Article 5(4) of Directive (EU) 2015/2366

# 1. Compliance and reporting obligations

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## Status of these guidelines

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

## Reporting requirements

3. In accordance with Article 16(3) of Regulation (EU) No 1093/2010, competent authorities must notify the EBA that they comply or intend to comply with these guidelines, or otherwise give reasons for non-compliance, by ([dd.mm.yyyy]). In the absence of any notification by this deadline, competent authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the form available on the EBA website to [compliance@eba.europa.eu](mailto:compliance@eba.europa.eu) with the reference 'EBA/GL/2017/08'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities. Any change in the status of compliance must also be reported to the EBA.
4. Notifications will be published on the EBA website, in line with Article 16(3).

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<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, (OJ L 331, 15.12.2010, p. 12).

## 2. Subject matter, scope and definitions

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### Subject matter and scope of application

5. These guidelines specify criteria and indicators on how to stipulate the minimum monetary amount of the professional indemnity insurance (PII) or other comparable guarantee to be held by undertakings that apply for:
  - i. authorisation to provide payment services under point (7) of Annex I (payment initiation services, PIS) in accordance with Article 5(2) of Directive (EU) 2015/2366 of the European Parliament and of the Council on payment services in the internal market (PSD2);
  - ii. registration to provide payment services under point (8) of Annex I (account information services, AIS) in accordance with Article 5(3) of PSD2;
  - iii. authorisation to provide both payment services under point (7) and (8) of Annex I to PSD2.
6. The guidelines also set out a formula for the calculation of the minimum monetary amount of the PII or comparable guarantee.

### Addressees

7. These guidelines are addressed to competent authorities as defined in point (ii) of Article 4(2) of Regulation (EU) No 1093/2010 by reference to PSD2.

### Definitions

8. Unless otherwise specified, terms used and defined in PSD2 have the same meaning in the guidelines. In addition, for the purpose of these guidelines, the following definitions apply:

|             |   |
|-------------|---|
| Undertaking | <p>A provider that applies for authorisation to provide payment services as referred to in point (7) of Annex I to PSD2, i.e. to provide payment initiation services (PIS).</p> <p>A provider that applies for registration to provide payment services as referred to in point (8) of Annex I to PSD2, i.e. to provide account information services (AIS).</p> <p>A provider that applies for authorisation to provide payment services as referred to in points (7) and (8) of Annex I to PSD2, i.e. to provide payment initiation services (PIS) and account information services (AIS).</p> |
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## 3. Implementation

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### Date of application

9. These guidelines apply from 13 January 2018.

## 4. Guidelines on the criteria on how to stipulate the minimum monetary amount of the PII or other comparable guarantee

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### Guideline 1: Professional indemnity insurance and comparable guarantee

- 1.1 Competent authorities should consider the PII and comparable guarantee mutually exclusive and should require undertakings that apply for authorisation or registration to hold either the PII or the comparable guarantee.
  - 1.2 Competent authorities should ensure that the PII or comparable guarantee held by undertakings, for the purpose of Article 5(2) and (3) of PSD2, covers their liabilities as follows:
    - (a) in the case of undertakings that apply for authorisation to provide PIS, the liabilities specified in Articles 73, 89, 90 and 92 of PSD2;
    - (b) in the case of undertakings that apply for registration to provide AIS, liabilities vis-à-vis the account servicing payment service providers (ASPSP) or the payment service user resulting from non-authorised or fraudulent access to or non-authorised or fraudulent use of payment account information;
    - (c) in the case of undertakings that apply for authorisation to provide PIS and AIS, the liabilities referred to in both point (a) and point (b) of this Guideline.
  - 1.3 Competent authorities should also ensure that the minimum monetary amount of the PII or comparable guarantee covers costs and expenses incurred by payment service users and ASPSPs who request undertakings to refund losses resulting from one or more of the liabilities referred to in Article 5(2) and (3) of PSD2.
  - 1.4 Competent authorities should ensure that the minimum monetary amount of the PII or comparable guarantee allows undertakings to effectively meet their liabilities in relation to their activities by verifying that the PII or comparable guarantee does not have any excess, deductible or any threshold that could prejudice repayments resulting from the requests for refunds of payment service users and ASPSPs, and is valid when the liability occurs.
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- 1.5 Competent authorities should ensure that the minimum monetary amount of the PII or comparable guarantee covers the territories in which undertakings offer services, regardless of the countries where their users are established or the place in which the services are provided.

## Guideline 2: Criteria and indicators

- 2.1 When stipulating the minimum monetary amount of the PII or comparable guarantee to be held by undertakings, competent authorities should use the following criteria and their indicators:
- a. the risk profile criterion:
    - i. value of requests for refunds, for the liabilities referred to in Article 5(2) and (3) of PSD2, received by the undertaking;
    - ii. number of initiated payment transactions by an undertaking that provides PIS;
    - iii. number of payment accounts accessed by an undertaking that provides AIS;
  - b. the type of activity criterion:
    - i. whether the undertaking provides exclusively PIS or AIS, or both;
    - ii. whether the undertaking provides other payment services as referred to in Annex I to PSD2;
    - iii. whether the undertaking is engaged in business other than payment services;
  - c. the size of activity criterion:
    - i. for undertakings that provide PIS, the value of the transactions initiated;
    - ii. for undertakings that provide AIS, the number of clients that make use of the AIS;
  - d. the comparable guarantee criterion:
    - i. specific characteristics of the comparable guarantee;
    - ii. triggers for the implementation of the comparable guarantee.



## Guideline 3: Formula

- 3.1 To calculate the minimum monetary amount of the PII or comparable guarantee to be held by undertakings, competent authorities should use the following formula:

$$\begin{array}{l} \text{Minimum monetary} \\ \text{amount of PII} \\ \text{or comparable} \\ \text{guarantee} \end{array} = \begin{array}{l} \text{Amount} \\ \text{reflective of risk} \\ \text{profile criterion} \end{array} + \begin{array}{l} \text{Amount} \\ \text{reflective of type} \\ \text{of activity} \\ \text{criterion} \end{array} + \begin{array}{l} \text{Amount reflective of} \\ \text{size of activity} \\ \text{criterion} \end{array}$$

- 3.2 To calculate the minimum monetary amount of the PII or comparable guarantee, competent authorities should populate the indicators under each criterion with the relevant values as specified in Guidelines 5 to 7, they should calculate the amount reflective of each criterion separately by adding up the amounts reflective of the indicators and they should use the resultant amounts in the formula.
- 3.3 Values in these Guidelines are expressed in euros. In Member States where the official currency is not the euro, competent authorities may convert the amounts reflective of the criteria into the national currency equivalent.
- 3.4 The minimum monetary amount of the PII or comparable guarantee calculated by competent authorities, and by implication also by undertakings that apply for authorisation or registration, should be expressed as a figure per year.

## Guideline 4: Publication

- 4.1 Competent authorities should make the criteria, the indicators and the formula publicly available in their jurisdiction, to enable undertakings to calculate the minimum monetary amount of the PII or comparable guarantee before they apply for authorisation or registration.

## Guideline 5: Calculation of risk profile criterion

### Value of requests for refunds received

- 5.1 When calculating the value of the indicator 'requests for refunds received', competent authorities should use the aggregated value of all requests for refunds made by the payment service users of the undertaking and by ASPSPs, in the previous 12 calendar months, for losses resulting from one or more of the liabilities referred to in Article 5(2) and (3) of PSD2.
- 5.2 If no requests for refunds have been made to the undertaking in the previous 12 months, competent authorities should set to 0 the value for this indicator in the formula.

- 5.3 For undertakings that have not offered services at any time in the previous 12 months, competent authorities should use the aggregated value of all requests for refunds forecasted by the undertaking for the purpose of its application for authorisation/registration.
- 5.4 If the undertaking does not provide any forecasts relating to requests for refunds, or if the amount resulting from the application of the forecasted total value of requests of refunds is lower than EUR 50 000, competent authorities should set to 50 000 the value for this indicator in the formula.

### **Number of initiated payment transactions by undertakings that provide PIS**

- 5.5 Competent authorities should calculate the value of the indicator ‘number of initiated payment transactions’ as the sum of the following elements, where  $N$  represents the number of payment transactions initiated by the undertaking in the previous 12 months:
- (a) 40% of the slice of  $N$  up to and including 10 000 initiated payments;  
plus
  - (b) 25% of the slice of  $N$  above 10 000 initiated payments up to and including 100 000 initiated payments;  
plus
  - (c) 10% of the slice of  $N$  above 100 000 initiated payments up to and including 1 million initiated payments;  
plus
  - (d) 5% of the slice of  $N$  above 1 million initiated payments up to and including 10 million initiated payments;  
plus
  - (e) 0.025% of the slice of  $N$  above 10 million initiated payments.
- 5.6 For undertakings that have not offered services at any time in the previous 12 months, competent authorities should use the number of initiated payment transactions forecasted by the undertaking for the purpose its application for authorisation.
- 5.7 If the undertaking does not provide any forecasts relating to the number of initiated payment transactions, or if the amount resulting from the application of the forecasted number of initiated payment transactions is lower than 50 000, competent authorities should set to 50 000 the value for this indicator in the formula.

## Number of payment accounts accessed by undertakings that provide AIS

5.8 Competent authorities should calculate the value of the indicator ‘number of accessed payment accounts’ as the sum of the following elements, where  $N$  represents the number of different payment accounts accessed in the previous 12 months by an undertaking that provides AIS:

(a) 40% of the slice of  $N$  up to and including 10 000 accessed accounts;

plus

(b) 25% of the slice of  $N$  above 10 000 accessed accounts up to and including 100 000 accessed accounts;

plus

(c) 10% of the slice of  $N$  above 100 000 accessed accounts up to and including 1 million accessed accounts;

plus

(d) 5% of the slice of  $N$  above 1 million accessed accounts up to and including 10 million accessed accounts;

plus

(e) 0.025% of the slice of  $N$  above 10 million accessed accounts.

5.9 For undertakings that have not offered services at any time in the previous 12 months, competent authorities should use the number of accessed payment accounts forecasted by the undertaking for the purpose of its application for registration or authorisation, where relevant.

5.10 If the undertaking does not provide any forecasts relating to the number of accessed payment accounts, or if the amount resulting from the application of the forecasted number of accessed accounts is lower than 50 000, competent authorities should set to 50 000 the value for this indicator in the formula.

## Guideline 6: Calculation of type of activity criterion

6.1 Competent authorities should set to 0 the value for this indicator in the formula for those undertakings that apply for authorisation to provide only PIS.

6.2 Competent authorities should set to 0 the value for this indicator in the formula for those undertakings that apply for registration to provide only AIS.

- 6.3 If an undertaking applies for authorisation to provide both PIS and AIS, competent authorities should calculate the minimum monetary amount separately for each service and add the resultant amounts to get the minimum monetary amount covering both services. Furthermore, competent authorities should ensure that the PII or comparable guarantee arrangements cover the provision of both PIS and AIS, reflecting the different liabilities referred to in paragraphs (2) and (3), respectively, of Article 5 of PSD2.
- 6.4 If an undertaking provides any other payment service as referred to in points 1 to 6 in Annex I to PSD2, in parallel with either PIS or AIS, or both, competent authorities should calculate the minimum monetary amount of the PII or comparable guarantee for providing PIS or AIS, or both, without prejudice to requirements relating to the calculation of initial capital according to Article 7 of PSD2 and/or own funds according to Article 9 of PSD2.
- 6.5 If an undertaking is also engaged in business other than providing payment services as referred to in Annex I to PSD2 (non-payment services activities), competent authorities should add in the formula, in addition to the values required for the type of activity the undertaking aims to provide, the value of 50 000.
- 6.6 However, if an undertaking that is engaged in other, non-payment services, activities can prove that its engagement does not have an impact on the provision of PIS/AIS, either because it holds a guarantee that covers its liabilities arising from the other, non-payment, services activities or because the competent authority has requested the establishment of a separate entity for the payment service business, in accordance with Article 11(5) of PSD2, competent authorities should set to 0 the value in the formula.

## Guideline 7: Calculation of size of activity criterion

- 7.1 Competent authorities should calculate the amount reflective of the size of activity criterion for an undertaking that provides PIS as the sum of the following elements, where  $N$  represents the total value of all transactions initiated by the undertaking in the previous 12 months:
- (a) 40% of the slice of  $N$  up to and including EUR 500 000;  
plus
  - (b) 25% of the slice of  $N$  above EUR 500 000 up to and including EUR 1 million;  
plus
  - (c) 10% of the slice of  $N$  above EUR 1 million up to and including EUR 5 million;  
plus
  - (d) 5% of the slice of  $N$  above EUR 5 million up to and including EUR 10 million;

plus

(e) 0.025% of the slice of  $N$  above EUR 10 million.

7.2 Competent authorities should calculate the amount reflective of the size of activity criterion for an undertaking that provides AIS as the sum of the following elements, where  $N$  represents the number of users of the AIS (clients), where each client is considered separately, that made use of the AIS in the previous 12 months:

(a) 40% of the slice of  $N$  up to and including 100 clients;

plus

(b) 25% of the slice of  $N$  above 100 clients up to and including 10 000 clients;

plus

(c) 10% of the slice of  $N$  above 10 000 clients up to and including 100 000 clients;

plus

(d) 5% of the slice of  $N$  above 100 000 clients up to and including 1 million clients;

plus

(e) 0.025% of the slice of  $N$  above 1 million clients.

7.3 For undertakings that have not offered services in the previous 12 months, competent authorities should use the value of all transactions initiated in the case of an undertaking that provides PIS, or the number of clients, in the case of an undertaking that provides AIS, forecasted by the undertaking for the purpose of its authorisation/registration.

7.4 If the undertaking does not provide any forecasts relating to the value of all transactions initiated, in the case of an undertaking that provides PIS, or relating to the number of clients, in the case of an undertaking that provides AIS, or if the amount resulting from the application of the forecasted value of all transactions initiated, in the case an undertaking that provides PIS, or of the number of clients, in the case of an undertaking that provides AIS, is lower than 50 000, competent authorities should set to 50 000 the value for these indicators in the formula.

## Guideline 8: Comparable guarantee criterion

8.1 Competent authorities should require undertakings to hold either the PII or a comparable guarantee.

## Guideline 9: Review

- 9.1 Competent authorities should ensure that undertakings review, and if necessary recalculate, the minimum monetary amount of their PII or comparable guarantee, and that they do so at least on an annual basis.

## 3. Accompanying documents

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### 3.1 Cost-benefit analysis/impact assessment

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

#### 3.1.1 Problem identification and baseline scenario<sup>2</sup>

25. The market for payment services in the EU is developing very dynamically. With the numbers of users and providers of innovative payment services rising continuously, the need for an adequate regulatory and governance framework for this market becomes more urgent. In the absence of an adequate regulatory and governance framework, there would be an increasing risk of market failures, potentially resulting in consumer detriment and a lack of trust in these innovative services. In addition to potentially causing adverse effects on consumer demand for innovative payment solutions, this could result in the distortion of the supply side of the payment market, including the emergence of unfair competitive practices.
26. Currently, many PISPs and AISPs operate outside a prudential regulatory and supervisory framework in most EU Member States, as was found by the EBA’s survey conducted for the development of these draft Guidelines. The gap between this dynamically developing market and the applicable regulatory framework would widen further in the absence of regulatory intervention. For instance, providers currently offering AIS and PIS are not required to hold any mitigation/insurance against the risk of payments initiated/processed erroneously, potentially to the detriment of payment service users in the EU.
27. Therefore, PSD2 mandates the EBA to develop these draft Guidelines on the criteria on how to stipulate the minimum monetary amount of the PII or other comparable guarantee against the liabilities of PISPs and AISPs, including those resulting from unauthorised or fraudulent access to or use of payment account information. PSPs will be required to hold such insurance or a comparable guarantee as a condition for their authorisation or registration (Article 5(2) and (3) of PSD2).

#### 3.1.2 Policy objectives

28. Generally, these draft Guidelines aim to contribute to the development of the internal market and the growth of the digital economy in the EU<sup>3</sup>, as well as to the protection of

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<sup>2</sup> see also EBA, Consumer Trends Report (2016) at <https://www.eba.europa.eu/-/eba-publishes-report-on-consumer-data-and-identifies-a-number-of-applicable-requirements-under-eu-law>

users of payment services<sup>4</sup>. More specifically, these draft Guidelines are intended to ensure that PISPs/AISPs hold sufficient PII or another comparable guarantee against liabilities arising, inter alia, from unauthorised or fraudulent access or use of payment account information. Operationally, these draft Guidelines are drafted with a view to ensuring that the criteria can be consistently and efficiently applied by PSPs and that their application can be effectively supervised by competent authorities.

### 3.1.3 Options considered and preferred option

29. For the development of these draft Guidelines, the EBA approached competent authorities and, through them, different types of relevant market participants, including ASPSPs, PISPs and AISPs, as well as insurance undertakings, with a view to collecting data that would help the EBA to develop the Guidelines using the criteria specified in the mandate.
30. The EBA received more than 100 questionnaire responses, from 26 EU Member States, which provided a good overview of existing market practices in the EU.
31. The responses received suggested that PISPs and AISPs, which are currently not regulated under the existing Payment Services Directive (PSD1), are not required to hold PII or a comparable guarantee in any of the 26 Member States but that a small number of them have notwithstanding taken out PII or a cover similar to PII.
32. The responses also showed that the majority of AISPs and PISPs also offer services other than PIS/AIS, and that they usually operate in more than one country, including countries outside the EU.
33. In terms of the number of customers of PISPs or AISPs, the responses suggested that there is a range between fewer than 100 for some providers to more than 1 million for others and that their customers include both legal and natural persons.
34. Having analysed the responses, the EBA considered the following options for the draft Guidelines:
  - operationalising the risk profile criterion by defining it qualitatively (option 1.1)
  - operationalising the risk profile criterion by assigning an indicator to it (option 1.2).
35. Defining the risk profile criterion in a qualitative manner would probably result in a criterion that would be hard to apply consistently across the EU Member States and difficult to

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<sup>3</sup>See EU Institutions, Joint Declaration on the EU's legislative priorities (2017), at [https://ec.europa.eu/commission/publications/joint-declaration-eus-legislative-priorities-2017\\_en](https://ec.europa.eu/commission/publications/joint-declaration-eus-legislative-priorities-2017_en)

<sup>4</sup> See EBA, Work Programme 2017., at <https://www.eba.europa.eu/about-us/work-programme/current-work-programme>



combine with quantitative indicators specified for the other criteria on how to stipulate the minimum monetary amount of the PII or comparable guarantee to be held by PISPs/AISPs.

36. To facilitate combination with other criteria and consistent application across Member States, the EBA proposes to specify the risk profile criterion under PSD2 relying on indicators relating to the value of requests for refunds received, the number of initiated payment transactions and the number of payment accounts (option 1.2). The further options considered were the following:
  - stipulating the minimum required amount based on a new formula (option 2.1).
  - stipulating the minimum required amount based on existing formulae used in PSD2 (option 2.2).
37. To effectively stipulate the minimum monetary amount of the PII or comparable guarantee, each PISP's/AISP's performance needs to be assessed in terms of the indicators specified in PSD2 and in these draft Guidelines combined, to allow an overall assessment of the minimum amount required to cover relevant risks.
38. Calculating a total score based on a completely new formula would result in additional costs for PISPs and AISPs, and competent authorities, to develop, test and implement it, entailing in addition the risk of its methodological inaccuracy. Consequently, the EBA proposes to combine each PISP's/AISP's performance per criterion using a method consistent with the formula set out in PSD2 for the calculation of own funds, that is, based on an additive cluster method (option 2.2, as set out in the Guidelines).

#### **3.1.4 Cost-benefit analysis**

39. The Guidelines on the minimum monetary amount of the PII or other comparable guarantee will mainly affect payment service users, PISPs and AISPs, as well as competent authorities engaged in the authorisation/registration of such PSPs. More generally, other PSPs and the broader economy will be affected.
40. A European Commission study on the impact of various policy changes under PSD2 concluded that regulating PSPs will have a positive effect on legal certainty, potential security risks in the payment chain and consumer protection. The EBA survey carried out prior to the drafting of the Guidelines, including competent authorities and relevant market participants, indicated the increased importance of PISPs and AISPs; the draft Guidelines will therefore contribute to creating a stable market for those services at an early stage, decreasing adjustment costs at a later stage.
41. The clear allocation of liabilities creates transparency and will benefit consumers' trust in the new electronic services, thereby eliminating barriers to market access and providing the environment for a competitive market. The positive dynamics towards more efficient pricing, in turn, will benefit consumers.

42. The option proposed by these draft Guidelines recommends the use of quantitative indicators, mainly already specified in PSD2. This methodology allows an efficient and transparent calculation of the PII or comparable guarantee.
43. For competent authorities, the use of previously identified PSD2 indicators facilitates their work (authorisation, registration and supervision) and enables them to reflect better the growth of PISPs and AISPs. In the long run, the standardised process will create scale benefits for competent authorities as well as for PISPs and AISPs.
44. At the same time, the calculation methodology (formula) stipulated should facilitate competitive dynamics and the entrance of new market participants, by allowing expectation-based calculations.
45. The implementation of the draft Guidelines will entail further regulatory costs for accessing information about PISPs and AISPs, especially in relation to the risk profile criterion.
46. Overall, the benefits in terms of increased competition in the payment-related services market, consumer protection and economy of scale in the calculation process outweigh the possible additional costs.

## 3.2 Feedback on the public consultation

The EBA publicly consulted on the draft proposal contained in this paper. The consultation period lasted for 10 weeks and ended on 30 November 2016. The EBA received 26 responses to the consultation paper, 21 of which gave permission for the EBA to publish them on the EBA website.

This chapter presents a summary of the key points and other comments arising from the consultation, the analysis and discussion triggered by these comments and the actions taken to address them if deemed necessary.

In many cases, several industry bodies made similar comments or the same body repeated its comments in response to different questions. In such cases, the comments, and the EBA's analysis, are included in the section of this paper where the EBA considers them most appropriate.

Changes to the draft Guidelines have been incorporated as a result of the responses received during the public consultation.

### Summary of key issues and the EBA's response

The respondents broadly supported the Guidelines but were concerned about several issues, which are summarised below.

#### Scope of the Guidelines

Several respondents were of the view that the Guidelines create a non-level playing field by setting different requirements for credit institutions as opposed to PIs and EMIs providing PIS and AIS. While credit institutions will not need to hold PII or a comparable guarantee when they provide PIS/AIS, payment institutions and EMIs will have to hold PII or a comparable guarantee.

The EBA notes the respondents' view but emphasises that the mandate specifying the scope of the Guidelines has been given to the EBA in PSD2 and that the Guidelines therefore elaborate on the Level 1 legal text. Furthermore, the EBA clarifies that the requirements applicable to credit institutions, such as own funds and safeguarding requirements, do not apply to providers of PIS/AIS only because it would be, as explained in recital 35 to PSD2, disproportionate to impose these requirements on providers who do not hold client funds.

#### Definitions

Many respondents requested that the Guidelines include details on the PII or comparable guarantee in terms of, for example, characteristics, conditions and terms of execution.

The EBA concurs with these requests and, instead of introducing definitions, has amended Guideline 1 to provide greater clarity on the PII or comparable guarantee, including with regard to scope, coverage and conditions.

## Indicators and criteria

Some respondents were concerned that the Guidelines included many indicators and, as a result, they considered the Guidelines to be complicated.

Several respondents were concerned that the calculation of the indicators for which the draft Guidelines proposed tiered approaches that were similar to the Method B calculation of own funds in Article 9 of PSD2 was not proportionate in relation to the activities of PIS and AIS providers. While some respondents considered that the calculation in the Guidelines resulted in inappropriately low minimum monetary amounts for the PII or comparable guarantee, others were of the opposite view and considered the resultant amounts inappropriately high, creating a barrier for new providers, who, as result of high minimum monetary amounts, would not enter the market.

The EBA notes the respondents' views but emphasises that Article 5 of PSD2 sets out the criteria and indicators that the EBA must take into account when developing the Guidelines. However, taking into consideration the respondents' concerns, the EBA has deleted indicators relating to the geographical location of the undertaking and number of contracts under the risk profile criterion and amended the type of activity criterion to provide clarity on the calculation of this criterion.

With regard to the amounts resulting from the application of the indicators and the formula for the calculation of the minimum monetary amount, the EBA clarifies that the calculation is based on an approach similar to that used for the calculation of own funds as envisaged in PSD2. Furthermore, the indicators proposed in the Guidelines proportionately reflect the business activities of the undertakings, i.e. they will increase and decrease based on business activity developments. However, to address some of the concerns, the EBA has lowered the percentages applied to the top tier in the calculation of the indicators under Guidelines 5 and 7. More specifically, the EBA has reduced the percentages for the indicators 'number of initiated transactions' and 'number of accessed accounts' under Guideline 5 and for both indicators under the size of activity criterion under Guideline 7 from 2.5% to 0.025%. The effect of this change is that the coverage amount will 'taper off' for undertakings that fall into the top tiers for any of the criteria.

In addition, in accordance with Guideline 9, undertakings should ensure that they review and recalculate the minimum monetary amounts to reflect any changes in their activities. Finally, the EBA will review the Guidelines on a regular basis and amend them, where necessary, taking into consideration market developments after PSD2 enters into force. The EBA's detailed assessment of the responses is presented in the table below.

## Summary of responses to the consultation and the EBA's analysis

| No   | Comments                | Summary of responses received   | EBA analysis   | Amendments to the proposals |
|--|-------------------------|---|--|-----------------------------|
| <b>Feedback on general comments received</b> |                         |   |  |                             |
| (1)  | Scope of the Guidelines | <p>Several respondents were concerned that the Guidelines created a non-level playing field because they set out different requirements for credit institutions as opposed to PIs/EMIs. While credit institutions providing AIS/PIS would in fact not be subject to the PII requirement, PIs/EMIs – even when subject to own funds requirements – would have to hold PII if they also provided PIS/AIS. PIs and EMIs would have a higher cost-base when offering PIS/AIS, and would, therefore, be unable to compete with equivalent offerings from credit institutions. Therefore, several respondents proposed that the Guidelines should specify that PIs and EMIs are excluded from the requirement to have PII when they offer PIS/AIS because they are already subject to own funds requirements.</p> <p>One respondent proposed that the final Guidelines should clarify that the requirements do not apply to ASPSPs as their activities and the related risks are already covered by their operational risk management and solvency requirements.</p> <p>Some respondents were of the view that the Guidelines should also apply to:</p> <ul style="list-style-type: none"> <li>- PSPs that issue card-based payment instruments in accordance with Article 65 of PSD2;</li> <li>- bank-driven solutions;</li> <li>- banks' application programming interface API</li> </ul> | <p>The EBA emphasises that the scope of these Guidelines is set out in Article 5(4) of PSD2, in conjunction with Article 5(2) and (3). Based on this Article, and as stated in the Consultation Paper, in the 'Subject matter, scope and definitions' section of these Guidelines and in Guideline 1, these Guidelines cover undertakings that apply for:</p> <ol style="list-style-type: none"> <li>i. authorisation to provide payment services under point (7) of Annex I (PIS) in accordance with Article 5(2) of PSD2;</li> <li>ii. registration to provide payment services under point (8) of Annex I (AIS) in accordance with Article 5(3) of PSD2;</li> <li>iii. authorisation to provide payment services under point (7) and (8) of Annex I to PSD2.</li> </ol> <p>The EBA emphasises that Article 5(2) and (3) explicitly requires undertakings that apply for authorisation to provide PIS and those that apply for registration to provide AIS to hold PII or a comparable guarantee. Furthermore, Article 9(1) of PSD2 specifies that payment institutions, except those offering only PIS or AIS, or both, shall hold own funds. Moreover, credit institutions do not have to hold PII or a professional guarantee, as the authorisation in accordance with Article 8 of Directive</p> | Addition of new GL 6.6      |

| No  | Comments    | Summary of responses received  | EBA analysis  | Amendments to the proposals  |
|-----|-------------|--|---|--|
|     |             | providers.   | <p>2013/36/EU (CRD) already covers the provision of payment services (any of the payment services listed in the Annex to the PSD).</p> <p>To address the concerns raised by the respondents, the EBA has added new Guideline 6.6, which includes exemptions for undertakings that are engaged in business other than providing payment services.</p> <p>The EBA also emphasises that it does not have a mandate to extend the scope of the Guidelines to any subjects other than those specified in Article 5(4) of PSD2.</p>   |  |
| (2) | Definitions | <p>Many respondents suggested that the Guidelines should provide details on the PII or comparable guarantee, in terms of characteristics, conditions, timeframes and terms of execution. They also proposed that the Guidelines specify that the PII or comparable guarantee must be valid at least 13 months after the undertaking's last payment initiation or account information request, and that insurance undertakings are obliged to confirm to the relevant competent authority that the PII or comparable guarantee is valid.</p> <p>One respondent suggested that the Guidelines prescribe criteria for the insurance policy, such as duration of contract, termination and renewal clauses, disclosure requirements and scope of coverage, such as of fraud and cyber risks.</p> | <p>As clarified in the EBA's analysis with regard to the scope of the Guidelines, row 1, the EBA's mandate is limited to setting out criteria to be considered by competent authorities on how to stipulate the minimum monetary amount of the PII or comparable guarantee. Therefore, the EBA cannot extend the mandate to cover proposals from the respondents.</p> <p>However, the EBA is of the view that, for the purpose of these Guidelines, some general principles should be defined. Therefore, to provide more clarity on the terminology and requirements for the PII and comparable guarantee, the EBA has amended Guideline 1 by deleting definitions of the PII and comparable guarantee and adding specifications on them into the text of Guideline 1.</p> | Deletion of the definition of the PII and comparable guarantee and amendment of GL 1 to include specifications on the PII and comparable guarantee |
| (3) | Definitions | One respondent was of the view that the reference to claimants in the definition of the PII or comparable guarantee might be inconsistent with PSD2 because, according to Article 66(5) and Article 67(4) of PSD2, the provision of  | <p>The EBA notes the respondent's view but clarifies that the contractual relationship at issue refers to the contract between undertakings and users of their services.</p> <p>However, the EBA has amended Guideline 1 to provide clarity</p>   | Amendment of GL 1 and 5.1; deletion of the indicator   |

| No  | Comments   | Summary of responses received   | EBA analysis   | Amendments to the proposals |
|-----|------------|---|--|-----------------------------|
|     |            | PIS/AIS should not be dependent on the existence of any contractual relationship between PISPs/AISPs and ASPSPs.  | <p>on the specifications of the PII and comparable guarantee.</p> <p>See also the EBA's analysis in row 2.</p> <p>Furthermore, the EBA has amended Guideline 5.1 by referring to requests for refunds for the liabilities referred to in Article 5(2) and (3) of PSD2 and added a specification of the requests under these Guidelines for the purpose of calculating the risk profile criterion.</p> <p>Finally, the EBA has deleted the indicator 'number of contracts'.</p>   | 'number of contracts'       |
| (4) | Indicators | <p>Several respondents were concerned that the proposed indicators were too complicated, specifically for start-ups and new market participants.</p> <p>These respondents were also of the view that the Guidelines should explain the tiers for calculation of some indicators and/or that the indicators should be left to insurance providers to set up.</p> | <p>The EBA notes the respondent's concerns but clarifies that it is Article 5(4) of PSD2 that prescribes the criteria and the indicators that the EBA must take into account in developing the Guidelines.</p> <p>Furthermore, the Consultation Paper, in particular the 'Background and rationale' section, explained in detail the reasoning behind each criterion and indicator, as well as the formula. The Consultation Paper also included examples of the calculation of the minimum monetary amount of the PII or comparable guarantee.</p> <p>Nevertheless, the EBA will, in accordance with Article 5(4) of PSD2, review the Guidelines on a regular basis and amend them, where necessary, taking into consideration market developments after PSD2 enters into force.</p> <p>Finally, these Guidelines set out criteria to be considered by competent authorities when stipulating the minimum monetary amount of the PII or comparable guarantee. Should insurance undertakings deem the PIS/AIS activities to pose higher risks than are covered by the minimum monetary</p> | None                        |

| No  | Comments                                      | Summary of responses received   | EBA analysis  | Amendments to the proposals |
|-----|---|---|---|-----------------------------|
|     |   |   | amount, they should address such circumstances in their insurance policies.   |                             |
| (5) | Qualitative indicators                        | Several respondents were of the view that the indicators were of a 'quantitative' nature and therefore not able to consistently reflect the level of risks entailed by PIS/AIS. | <p>The EBA agrees with the respondents that qualitative data can be indicators of undertakings' conduct. However, in order to allow a verifiable calculation of the minimum monetary amount of the PII or comparable guarantee, the Guidelines have to consider reliable data that consists of measurable quantities.</p> <p>Furthermore, the EBA is of the view that some qualitative indicators, such as indicators relating to security and internal controls, are covered by the authorisation procedure stipulated by Article 5(1) of PSD2.</p>  | None                        |
| (6) | 12-month period assessed under the indicators | Several respondents were of the view that the indicators should be based on monthly rather than yearly volumes, similar to Method B in Article 9 of PSD2 for own funds.         | <p>The EBA clarifies that the calculation in the Guidelines proposes tiered approaches that are similar to the Method B calculation of own funds in Article 9 of PSD2. However, the EBA is of the view that a calculation based on annual volumes, and not on monthly values as in Method B, better reflects the purpose of the Guidelines. The EBA also took into consideration the fact that insurance policies or comparable guarantees will usually be applicable for one year and then extended for another year.</p> <p>Furthermore, the EBA is of the view that a reduction to a one-month period could lead to the PII or comparable guarantee providing deficient cover, i.e. the resultant amount might not cover all liabilities.</p> <p>Finally, a reduction to a one-month period would be, in the view of the EBA, in conflict with the overall intention and purpose, including consumer protection, of Article 5(2) and (3) of PSD2 and recital 35 to PSD2.</p> | None                        |



| No  | Comments                          | Summary of responses received   | EBA analysis   | Amendments to the proposals |
|-----|-----------------------------------|---|--|-----------------------------|
| (7) | Rationale                         | One respondent was concerned that the 'Background and rationale' section of the Consultation Paper included too little information on the positions expressed by insurance undertakings in the fact-finding exercise.   | The EBA concurs with the respondent's view but clarifies that, as stated in the Consultation Paper, the feedback received from the mapping exercise was limited. Therefore, the 'Background and rationale' section of the Consultation Paper included only relevant findings.  | None                        |
| (8) | Availability of PII on the market | <p>Several respondents noted that the PII market for PIS/AIS did not exist and/or was not very well developed in some countries. These respondents were also concerned that non-existence of appropriate insurance products could be a barrier to entering the market for PISPs/AISPs.</p> <p>Other respondents were of the view that insurance companies would not offer PII policies as a result of their unattractiveness because the PIS/AIS market is small.</p> | As mentioned in the Consultation Paper, at the time of assessing the responses to the EBA mapping exercise, the PIS and AIS market in the EU was described as relatively small. However, the respondents to the mapping exercise were also of the view that the market would expand significantly in the coming years. The EBA is of the view that such expansion might lead to an expansion of the insurance market as well, as PII is a legal requirement under PSD2 for authorisation/registration.   | None                        |
| (9) | Lowest tier                       | Several respondents raised concerns that the lowest tier of EUR 50 000 was too low.   | <p>The EBA clarifies that, as a general approach in the Guidelines, the calculation of the minimum monetary amount of the PII or comparable guarantee is based on accurate and updated quantitative data. In addition, Guideline 9 requires the undertakings to review and if necessary recalculate the minimum monetary amount of the PII or comparable guarantee on a regular basis and to reflect the development of their activities.</p> <p>As explained in the Consultation Paper and as specified in the Guidelines, there are only specific cases when the lowest tier is used, i.e. mainly cases where the undertaking does not possess relevant historical data.</p> <p>The aim of the EBA is to strike a balance between different interests, i.e. between the interests of ASPSPs on the one hand and those of PISPs/AISPs on the other hand. Therefore, the EBA</p> | None                        |

| No   | Comments                             | Summary of responses received   | EBA analysis  | Amendments to the proposals |
|------|--------------------------------------|---|---|-----------------------------|
|      |                                      |   | <p>is of the view that by using the separate amount for initial capital for PISPs, as set out in Article 7(b) of PSD2, i.e. EUR 50 000, the purpose of a general amount replacing relevant data in specific situations defined in the Guidelines is achieved.</p> <p>However, the EBA will, in accordance with Article 5(4) of PSD2, review the Guidelines on a regular basis and amend them, where necessary, taking into consideration market developments after PSD2 enters into force.</p>  |                             |
| (10) | Risks arising from providing PIS/AIS | <p>Several respondents noted that, owing to little experience with PISPs/AISPs, no assessment could be made at this stage of whether PIS are riskier than AIS, or vice versa.</p> <p>One respondent was of the view that PIS represent the most secure payment methods on the internet. The respondent also stated that PIS solutions are more cost-efficient with less default and abuse than any other online payment mechanism. Because PISPs check the availability of funds to ensure that the transfer can be executed, their reliability for merchants is exceptionally high. Finally, the respondent noted that, because PISPs rely on the authentication procedures of ASPSPs and do not store credentials, they bear no particular systemic risk.</p> <p>Several respondents argued that the riskiness of the activities would be more properly assessed by insurance undertakings.</p> | <p>The EBA agrees with the respondents regarding the limited knowledge of the PIS/AIS market. Therefore, as referred to in the Consultation Paper, the approach taken in the Guidelines regarding the criteria, the indicators and the formula is based on the PSD2 provisions, Method B for own funds and the findings of the mapping exercise. Furthermore, the EBA will, in accordance with Article 5(4) of PSD2, review the Guidelines on a regular basis and amend them, where necessary, when it has more experience with the PIS/AIS market.</p> <p>Finally, as already mentioned in this Final Report, these Guidelines set out criteria to be considered by competent authorities when stipulating the minimum monetary amount of the PII or comparable guarantee. Should insurance undertakings deem the PIS/AIS activities to pose higher risks than are covered by the minimum monetary amount, they should address such circumstances in their insurance policies.</p> | None                        |
| (11) | Additional costs                     | Four respondents raised concerns that the Guidelines introduced a significant burden on undertakings, i.e. increased administrative costs and/or expenses for all stakeholders (e.g. policyholders, supervising bodies and  | The EBA emphasises that the requirement to hold the PII or comparable guarantee is set out in Article 5 of PSD2.  | None                        |

| No   | Comments               | Summary of responses received  | EBA analysis   | Amendments to the proposals |
|------|------------------------|--|--|-----------------------------|
|      |                        | insurers).   |  |                             |
| (12) | Deductibles and excess | <p>Three respondents suggested that the Guidelines should specify a restriction on the enforceability of deductibles/excess insurance policy provisions.</p> <p>Considering the liability that rests on the account holder, one respondent proposed that the Guidelines should stipulate that any excess provision in the insurance policy agreed by the PISP/AISP would be unenforceable against the account holder.</p> <p>Another respondent was of the view that the Guidelines should set out a number of limitations for insurers, such as to include all claims made under Articles 73, 89 and 90, but should accept that liability might be limited under contract for other losses as set out under Articles 91 and 92 and would exclude consequential loss or claims by third parties not involved in the payment transaction.</p> | <p>See the EBA's analysis with regard to definitions, row 3.</p> <p>The EBA also clarifies that the liability of AIS and PIS providers is determined by PSD2 provisions and cannot be capped. Instead, the deductible and the excess could limit repayments. For greater clarity, the EBA has amended Guideline 1.</p> | Amendments to GL 1          |
| (13) | Franchise              | <p>One respondent noted that, in the insurance market, it is common practice to contract policies with franchises, as, should a covered event occur, the insurance coverage will take on a lower amount than might otherwise be expected, since the policyholder has to bear a net loss. The respondent was of the view that this practice should be taken into account by supervisory authorities because, in the case of policies with high franchise deductibles, the PSP will be in a very complex financial situation and, most likely, unable to meet its financial obligations. According to the respondent, a possible solution would be to set a limit on franchises, specifying the maximum percentage of the amount of the</p>  | <p>See the EBA's analysis with regard to definitions, rows 3 and 12.</p>   | None                        |

| No   | Comments   | Summary of responses received   | EBA analysis  | Amendments to the proposals |
|------|--|---|---|-----------------------------|
|      |  | policy they can represent.  |   |                             |
| (14) | Register   | <p>Some respondents proposed that a dedicated register listing information relating to the insurance or comparable guarantees taken out for each PISP/AISP should be established at national level and/or EU level and that it should be regularly updated.</p>   | <p>The EBA emphasises that holding PII or a comparable guarantee is a condition for authorisation/registration. In addition, Guideline 9 requires reviews of the minimum monetary amount on a regular basis and relevant articles of PSD2 set out procedures for the withdrawal of authorisation, such as in cases where a payment institution no longer meets the conditions for granting the authorisation or fails to inform the competent authority about major developments in this respect (Article 13(1)(c)).</p> <p>Finally, according to Article 14 of PSD2, Member States must establish public registers, and PSD2 specifies the information to be included in such registers.</p>   | None                        |
| (15) | Minimum monetary amount of the PII or comparable guarantee | <p>Several respondents were of the view that the Guidelines should specify the minimum monetary amount of the PII or comparable guarantee, for example EUR 5 million, because the minimum monetary amounts based on the formula are too low (EUR 150 000 for PISPs, EUR 100 000 for AISPs).</p> <p>In the case of AISPs, according to the General Data Protection Regulation, Regulation (EU) 2016/679, an AISP can be fined up to 4% of global annual turnover or EUR 20 million, whichever is greater, for breach of data which led to acts of fraud. The respondents therefore proposed that the Guidelines set the minimum monetary amount at a high enough level to cover liabilities resulting from breach of data.</p> <p>Some respondents proposed that the minimum monetary amount should cover all operational losses of undertakings, and fraud, operational misconduct and data privacy</p> | <p>The EBA notes the respondents' views but clarifies that the resultant minimum monetary amount of the PII or comparable guarantee will depend on the actual values for each indicator and that the indicators will reflect the activity of each undertaking. Thus, the minimum amount will increase or decrease proportionally to an increase or decrease in the activity of the undertaking.</p> <p>The EBA also clarifies that these Guidelines specify cases when the lowest tier can be used and that these cases are limited to those where the undertaking does not possess relevant historical data or relevant forecasts.</p> <p>Finally, the review clause in Guideline 9 aims to ensure that the minimum monetary amounts are reviewed so that they correctly reflect the activities of the undertakings.</p> <p>Regarding the reference to Regulation (EU) 2016/679, the EBA</p> | None                        |

| No   | Comments | Summary of responses received  | EBA analysis   | Amendments to the proposals |
|--|----------|--|--|-----------------------------|
|  |          | <p>breaches.</p> <p>One respondent was of the view that the minimum monetary amount should be expressed as a percentage of the annual transaction volume, for example 50% of the transaction volume.</p>   | emphasises that the Regulation applies to all PSPs.  |                             |
| <b>Feedback on responses to Question 1</b> |          |  |  |                             |
| (16)                                       | GL 9.1   | <p>Several respondents agreed with the requirement to review, and if necessary recalculate, the minimum monetary amount of the PII or comparable guarantee.</p> <p>However, many respondents considered the proposed frequency of the review, i.e. at least on an annual basis, to be inadequate.</p> <p>Among these respondents, some suggested that the frequency of the review of the minimum amount should be more than once a year.</p> | <p>The EBA notes the respondents' views but, as stated in the Consultation Paper, the EBA chose a 12-month period because it expects that the PII contracts between the undertakings and insurance undertakings will last for at least one calendar year. Similarly, the EBA expects that any agreements relating to the comparable guarantee will cover at least one calendar year. Therefore, the Guidelines also set out that the quantitative data will cover the conduct of undertakings that apply for authorisation/registration during 12 calendar months before their application.</p> <p>However, as mentioned in the Consultation Paper, the EBA notes that the activities of PISPs and AISPs might increase or decrease on a daily basis. Given that the mandate for the Guidelines refers, predominantly, to the process of authorisation/registration of undertakings, the EBA concludes that competent authorities could refer to the requirements laid down in these Guidelines in the fulfilment of their ongoing supervision responsibilities. This could, eventually, lead the competent authorities to review the minimum monetary amounts that were required for authorisation/registration and, where applicable, withdraw authorisation in accordance with Article 13 of PSD2. Finally, the EBA clarifies that while, based on these Guidelines, the competent authorities will stipulate</p> | None                        |

| No   | Comments | Summary of responses received   | EBA analysis  | Amendments to the proposals |
|------|----------|---|---|-----------------------------|
|      |          |   | the minimum monetary amounts of the PII or comparable guarantees, the PSD2 requirements regarding authorisation and maintenance of authorisation apply without prejudice.   |                             |
| (17) | GL 9.1   | <p>Some respondents proposed that the frequency of the review of the minimum amount should reflect the service provider's activities, which, expressed as certain key criteria, should trigger a review. In this regard, several respondents pointed out that the market is rapidly changing and, therefore, they proposed that reporting requirements should be introduced (e.g. ad hoc reporting in case of significant changes, regular reporting on business volumes and/or PII or comparable guarantee amounts).</p> <p>Two respondents proposed that the following obligation should be included in Guideline 9: 'When granting the authorisation and/or registration to the undertakings, competent authorities should stipulate that the undertakings review, and if necessary re-calculate, the minimum monetary amount of the PII or comparable guarantee, and that they do so at least on a quarterly basis if the activity increases by more than [for example 10%] in a quarter. Competent authorities shall closely monitor the activity of the authorised and/or supervised entity.'</p> | See the EBA's analysis with regard to Guideline 9.1, row 16. In addition, the EBA emphasises the obligation on payment institutions under Article 16 of PSD2, according to which the payment institution must, without undue delay, inform the competent authorities of its home Member State about any change that affects the accuracy of information and evidence provided in accordance with Article 5. | None                        |
| (18) | GL 9.1   | Some respondents were of the view that, for those undertakings that do not provide any forecasts, the frequency of reviews should be higher, for example on a quarterly basis.  | See the EBA's analysis with regard to Guideline 9.1, row 16.  | None                        |
| (19) | GL 9.1   | Several respondents suggested that the Guidelines should set up a tiered approach, i.e. different requirements for new  | See the EBA's analysis with regard to Guideline 9.1, row 16.  | None                        |

| No   | Comments | Summary of responses received   | EBA analysis   | Amendments to the proposals |
|--|----------|---|--|-----------------------------|
|  |          | <p>market entrants and existing market entrants.</p> <p>One of these respondents also proposed that in the initial period of rapid growth, a quarterly review would be appropriate to understand annual transaction volume better, while at a later stage undertakings might be required to report back to the competent authorities immediately only in case of significant changes in turnover (or other parameters).</p> |  |                             |
| (20)                                       | GL 9.1   | <p>Two respondents, while agreeing with the reviewing requirement, did not agree with the methodology for the review, and thus questioned its feasibility.</p> <p>Other respondents deemed that the Guidelines should define in detail the scope and depth of the review.</p>   | <p>See the EBA's analysis with regard to Guideline 9.1, row 16.</p> <p>In addition, the EBA clarifies that Guideline 9 explicitly refers to review, and if necessary recalculation, of the minimum monetary amount of the PII or comparable guarantee, i.e. review of all criteria and factors to allow the correct and accurate calculation of the minimum monetary amount.</p>   | None                        |
| (21)                                       | GL 9.1   | <p>Three respondents suggested that the Guidelines should introduce more supervisory powers for competent authorities to ensure that the supervised undertakings are able to meet their responsibilities, such as suspension, revocation of licence and add-on/override regarding PII amounts.</p>  | <p>As clarified in the EBA's analysis with regard to the scope of the Guidelines, row 1, the EBA's mandate is limited to setting out criteria to be considered by competent authorities on how to stipulate the minimum monetary amount of the PII/or comparable guarantee. Therefore, the EBA cannot extend the mandate to cover proposals from the respondents. However, the EBA emphasises that the role of the competent authorities with regard to authorisation is set out in Chapter 1, Section 1, of PSD2.</p> | None                        |
| <b>Feedback on responses to Question 2</b> |          |   |  |                             |
| (22)                                       | GL 3     | <p>Two respondents were of the view that calculating the minimum monetary amount for each policyholder by means of a formula was a very unusual approach. They were also of the view that an abstract formula would give the impression</p>   | <p>The EBA notes the respondents' views but is of the opinion that, in this particular case, when different criteria need be taken into account, the proposed formula ensures that all the criteria are consistently considered by competent authorities</p>   | None                        |

| No   | Comments | Summary of responses received   | EBA analysis   | Amendments to the proposals |
|------|----------|---|--|-----------------------------|
|      |          | <p>that the minimum monetary amount of the PII or comparable guarantee could actually be calculated accurately and consistently. They concluded that, in practice, however, the minimum monetary amount calculated in this way might deviate significantly from the amount actually required.</p> <p>One respondent was also of the view that the effort involved in calculating the minimal monetary amount using the formula was unreasonable, particularly since the result would merely appear to be accurate.</p>  | <p>across Member States in the calculation of the minimum monetary amount of the PII or comparable guarantee.</p>  |                             |
| (23) | GL 3     | <p>Several respondents were concerned that the formula was too complex because it covered too many criteria and indicators.</p> <p>One respondent was of the view that the Guidelines should focus only on risks that have to be insured and that, therefore, the calculation of the minimum monetary amount of the PII or comparable guarantee should be based on only two relevant criteria: the number of active clients that use the AIS/PIS services and the number of accounts that the AISP aggregates or the value of the transactions that the PISP initiates.</p> | <p>As explained in relation to the scope of these Guidelines, it is Article 5(4) of PSD2 that specifies the criteria and indicators that the EBA must take into account in developing the Guidelines. The EBA clarifies that the criteria in the Guidelines, the indicators and the formula result from the requirements set out in PSD2. The EBA also clarifies that it is not possible to base the calculation of the minimum monetary amount of the PII or comparable guarantee on only two criteria as proposed by the respondent.</p> <p>See also the EBA's analysis regarding the indicators, row 4.</p> | None                        |
| (24) | GL 3     | <p>One respondent was concerned that the proposed formula did not make a distinction between direct and indirect PIS. The respondent proposed that the distinction should be taken into account in the Guidelines because PIS with direct access present higher risks and PISPs providing such PIS should be required to hold a higher amount of PII.</p>   | <p>The EBA notes the respondent's concern but clarifies that PSD2 does not provide for a distinction between direct and indirect PIS. Furthermore, the EBA emphasises that, according to PSD2, any kind of access has to respect specific security requirements and secure communication. These will be further specified in the EBA draft Regulatory Technical Standards on strong customer authentication and secure communication.</p> <p>Therefore, no type of access can be considered per se as being</p>  | None                        |



| No  | Comments | Summary of responses received  | EBA analysis  | Amendments to the proposals |
|---|----------|--|---|-----------------------------|
|   |          |  | <p>riskier than another.</p> <p>Finally, the EBA's mandate is to stipulate the criteria to be used by competent authorities when calculating the minimum monetary amount of the PII or comparable guarantee. If an insurance undertaking considers any activities of the PISP/AISP to be higher risk, it will address this in its premium.</p>  |                             |
| (25)  | GL 3     | <p>One respondent was of the view that the formula should mirror the approach taken to the calculation of own funds in Article 9 of PSD2.</p> <p>Two other respondents believed that a PSP should be able to hold own funds as an alternative to the PII or comparable guarantee.</p>                  | <p>The EBA clarifies that the calculation of several criteria and their indicators is based on Method B, used to calculate own funds under Article 9 of PSD2. However, to address the different business models, risks and criteria for PII or a comparable guarantee of AISPs/PISPs, the EBA did not take into consideration all the factors of the own funds calculation.</p> <p>See also the EBA's analysis with regard to the 12-month period assessed under the indicators, row 6.</p> <p>Regarding own funds, see the EBA's analysis with regard to the scope of the Guidelines, row 1.</p> | None                        |
| (26)  | GL 3     | <p>One respondent suggested that the formula should also consider qualitative data, such as conditions under which AISPs/PISPs archive data, their supervision and processing procedures for security incidents, security measures for data access restrictions, internal control procedures, etc.</p> | <p>See the EBA's analysis with regard to qualitative indicators, row 5.</p>   | None                        |
| (27)  | GL 3.2   | <p>One respondent proposed that the Guidelines provide for a reduction of PII of at least 50% in circumstances when a PI or an EMI is acting as a PISP or AISP and would be the payee itself.</p>  | <p>The EBA clarifies that PSD2 does not envisage situations such as those described by the respondent.</p>  | None                        |
| <p><b>Feedback on responses to Question 3</b></p> |          |  |   |                             |

| No   | Comments | Summary of responses received   | EBA analysis   | Amendments to the proposals |
|------|----------|---|--|-----------------------------|
| (28) | GL 5     | <p>One respondent was of the view that the indicators proposed by the EBA were too complicated. The respondent proposed using only the following two indicators:</p> <ul style="list-style-type: none"> <li>i. for PISPs, the value of the transactions initiated;</li> <li>ii. for AISPs, the number of active clients that make use of the AIS.</li> </ul>  | <p>See the EBA's analysis with regard to the indicators (row 4).</p> <p>As stated in the feedback on Guideline 3, it is Article 5(4) of PSD2 that specifies the criteria and indicators that the EBA must take into account in developing the Guidelines. Therefore, the EBA clarifies that it is not possible to base the calculation of the risk profile on only the two indicators proposed by the respondent. Furthermore, both indicators are taken into account under the size of activity criterion.</p>  | None                        |
| (29) | GL 5     | <p>One respondent suggested that, with regard to the risk profile criterion, the following key issues should be considered:</p> <ul style="list-style-type: none"> <li>i. The nature of business relationships (average transaction amount combined with the total volume of transactions); the combination of both criteria is of the essence, as the PII must cover single high-value transactions in the same way as it covers multiple low-value transactions (EUR 5 000 = 100 transactions of an average value of EUR 50).</li> <li>ii. A different weighting for corporates and individuals.</li> <li>iii. The number of complaints received from the undertaking's clients (individuals/corporates and merchants) through their respective ASPSPs (payments or data breaches).</li> <li>iv. The total amount of unauthorised transactions attributable to the undertaking.</li> <li>v. The number of information requests on the undertaking's client's payment accounts.</li> </ul> | <p>The EBA notes the respondent's proposals and is of the view that the indicators under the risk profile criterion and other criteria cover the key issues identified by the respondent.</p> <p>Regarding the different approach to corporate and individual customers, the EBA is of the view that the criteria and their indicators should be general enough to cover all potential types of customers and their payment habits, and various situations.</p> <p>The different criteria that are used in the formula take into account, directly or not, the key issues mentioned in the comment except the type of clients (corporate or individual).</p> | None                        |

| No   | Comments | Summary of responses received   | EBA analysis   | Amendments to the proposals |
|------|----------|---|--|-----------------------------|
| (30) | GL 5     | <p>One respondent was concerned that the criterion does not include indicators relating to the risk assessment of the interface specifically used and general IT security.</p> <p>Similarly, one respondent was of the view that the risk profile criterion should factor potential cybersecurity incidents and proposed that either a new indicator should be introduced or undertakings should be required to take out a cybersecurity insurance policy.</p> <p>With regard to the new indicator, the respondent proposed that it could be based on the ratings of the security audits passed by the undertaking during the previous year(s) and performed by qualified third party auditors, in such a way that not having passed a security audit would require the highest amount for the PII or comparable guarantee.</p> <p>With regard to the cybersecurity insurance policy, this option might, according to the respondent, allow harmonisation of other insurance requirements in related regulations (such as the data protection and the cyber security legal frameworks). The respondent was of the view that the following elements should be taken into account in the coverage to be provided by a cybersecurity insurance policy:</p> <ul style="list-style-type: none"> <li>- Crisis services, which include the costs for computer forensic investigations to determine the cause of data breaches, obtaining legal guidance, notifying victims, providing credit monitoring to victims, and promoting media or public relations campaigns.</li> <li>- Regulatory defence, which includes fines and penalties.</li> </ul> | <p>The EBA notes the respondents' views and agrees that IT security and cybersecurity are relevant indicators. However, the EBA also emphasises that Article 5(1), in particular point (j), requires payment institutions that apply for authorisation to submit a security policy document, including a detailed risk assessment in relation to their payment services and a description of security control and mitigation measures taken to adequately protect payment service users against the risks identified, including fraud and illegal use of sensitive and personal data. Furthermore, the EBA, in its Guidelines on the information to be provided for authorisation as payment institutions and e-money institutions and for registration as account information service providers, specifies information to be included in the security policy document.</p> <p>Based on these legislative requirements, in accordance with which each undertaking will have to consider the security of its systems, the EBA is of the view that, for the purpose of these Guidelines, it is not necessary to consider a separate indicator relating to security issues.</p> | None                        |

| No   | Comments | Summary of responses received  | EBA analysis  | Amendments to the proposals |
|------|----------|--|---|-----------------------------|
|      |          | <ul style="list-style-type: none"> <li>- Prior acts coverage/retroactive date, which protects against prior acts that may lead to a claim during the policy period. The ‘retroactive date’ is the date when the coverage begins, and can be subject to negotiation.</li> <li>- Network business interruption coverage, to cover certain losses while the network is interrupted as a result of a data breach.</li> <li>- Defence option/reimbursement of costs: some cyber insurance policies require the insurance company to hire consultants and attorneys to defend the insured company, while others agree to reimburse reasonable and necessary costs.</li> <li>- Costs of restoring and recreating data.</li> <li>- Cyber extortion: cover provided for both the cost of external experts to handle the incident, including conducting the ransom negotiations, and for the payment of the ransom sum.</li> <li>- Physical asset damage: several standard cyber exclusions may apply to certain types of property insurance.</li> </ul> |   |                             |
| (31) | GL 5     | Two respondents suggested considering the indicators ‘number of contracts’, ‘number of initiated payment transactions’ and ‘number of different payment accounts’ under the size of activity criterion rather than under the risk profile criterion.   | As stated in the feedback on Guideline 3 above, it is Article 5(4) of PSD2 that specifies the criteria and indicators that the EBA must take into account in developing the Guidelines. The indicators under the size of activity criterion are specified in PSD2 and therefore those mentioned by the respondents have been considered by the EBA under the risk profile criterion following the approach taken by the legislator. | None                        |

| No   | Comments | Summary of responses received   | EBA analysis   | Amendments to the proposals |
|------|----------|---|--|-----------------------------|
| (32) | GL 5     | One respondent agreed with all the proposed indicators but did not agree with the ways in which the indicators were to be calculated because the calculation seemed to be arbitrary and far too generic, without sufficient use of actuarial principles.  | The EBA notes the respondent's view but points out that the Guidelines are based on the current situation on the market, knowledge of the market and approaches used in PSD2 for the calculation of the own funds. Furthermore, the EBA will, in accordance with Article 5(4) of PSD2, review the Guidelines on a regular basis and amend them, where necessary, when it has more experience with the PIS/AIS market.<br><br>See also the EBA's analysis with regard to the indicators, row 4. | None                        |
| (33) | GL 5.1   | One respondent was of the view that 'value of claims' is an inappropriate indicator because it does not reflect the conduct of the undertakings in terms of complying with legal requirements.  | The EBA notes the respondent's view and, in order to provide more clarity, has amended Guideline 5.1, including changing the title of the indicator to refer to requests for refunds.  | Amendments to GL 5.1        |
| (34) | GL 5.1   | Several respondents were of the view that only legitimate, valid, proven or settled claims should be taken into account for the purpose of the indicator.<br><br>Two respondents noted that authentication procedures are designed and run by ASPSPs and that PISPs' role is to forward credentials. These respondents raised concerns regarding the fact that ASPSPs may direct claims to PISPs, regardless of whether the PISPs are at fault or not. Therefore, according to the respondents, the Guidelines should specify that under the indicator 'value of claims', only valid claims, i.e. claims for which it can be proven that the PISP's system was defective, should be considered. | To address the concerns raised by the respondents, the EBA has amended Guideline 5.1.  | Amendments to GL 5.1        |
| (35) | GL 5.1   | One respondent proposed that the Guidelines should clearly specify which claims should be considered for the purpose of these Guidelines. According to the respondent, all claims   | The EBA agrees with the respondent; see also the EBA's analysis with regard to Guideline 5.1, rows 33 and 34.  | None                        |

| No   | Comments | Summary of responses received   | EBA analysis   | Amendments to the proposals |
|------|----------|---|--|-----------------------------|
|      |          | <p>received in the previous 12 calendar months should be included in calculating the 'value of indemnity claims received', as should those (potential) claims that the PISP has already refunded to the ASPSP(s) and/or payment service user(s) out of courtesy. In the respondent's view, this would ensure that all indemnity claims in the previous 12 calendar months were included in the calculation, and that this calculation was not dependent on the courtesy policy of the PISP or AISP.</p> |  |                             |
| (36) | GL 5.1   | <p>One respondent was of the view that the value of historical complaints received during the previous 12 months is not necessarily an indicator of the number of complaints that will be received in the future.</p>   | <p>The EBA notes the respondent's view but, as stated in the Consultation Paper, the Guidelines set out that the quantitative data will cover the conduct of undertakings that apply for authorisation/registration during 12 calendar months before their application. The EBA chose a 12-month period because it expects that the PII contracts between the undertakings and insurance undertakings will be concluded for at least one calendar year. Similarly, the EBA expects that any agreements relating to the comparable guarantee will cover at least one calendar year.</p> <p>In this context, the EBA notes that the activities of PISPs and AISPs might increase or decrease on a daily basis and so might the number of complaints. Given that the mandate for the Guidelines refers, predominantly, to the process of authorisation/registration of undertakings, the EBA concludes that competent authorities could refer to the requirements laid down in these Guidelines in the fulfilment of their ongoing supervision responsibilities. This could, eventually, lead the competent authorities to review the minimum monetary amounts that were required for authorisation/registration and, where applicable, withdraw authorisation in accordance with</p> | None                        |

| No   | Comments       | Summary of responses received   | EBA analysis  | Amendments to the proposals             |
|------|----------------|---|---|---|
|      |                |   | Article 13 of PSD2.   |   |
| (37) | GL 5.1 and 5.3 | Several respondents considered the period of 12 months to be too short and proposed that claims made during a period of between three and five years should be considered.                  | See the EBA's analysis with regard to the previous comment relating to Guideline 1.5, row 36.   | None                                    |
| (38) | GL 5.3         | One respondent proposed a change to the Guideline and suggested that, where there have been no claims in the previous 12 months, the minimum requirement should have to be met in any case. | The EBA disagrees with the respondent's proposal because the aim of the indicator is to reflect requests for refunds, as these indicate the risk profile of the undertaking. Therefore, if there were no requests, keeping the lowest tier would unreasonably add to the minimum monetary amount of the PII or comparable guarantee.  | None                                    |
| (39) | GL 5.5         | According to some respondents, the proposal to use the lowest tier when there are no forecasts might encourage undertakings to avoid forecasts.   | The EBA considers that it is difficult for undertakings to determine the level of requests for refunds they will receive, especially when participating in a new activity.<br><br>The EBA emphasises that the Guidelines include a review clause (Guideline 9) and, as already stated in the EBA's analysis with regard to the register, row 14, PSD2 includes provisions relating to irrelevant/non-updated information. | None                                    |
| (40) | GL 5.5         | Several respondents were concerned that the lowest tier of EUR 50 000 is too low to be used in cases where no forecasts for claims are provided by an undertaking.                          | The EBA emphasises that the approach taken in the Guidelines regarding the lowest tiers is a compromise between various challenging aspects. Furthermore, the minimum monetary amount is calculated using all the indicators and criteria and, therefore, the resultant amount should cover potential cases where no forecasts are provided by an undertaking.  | None                                    |
| (41) | GL 5.6         | One responded suggested renaming the indicator 'geographical location of the undertaking' to 'geographical provision of services by the undertaking' because it would                       | The EBA reconsidered the purpose of the indicator and agreed with some respondents who proposed deleting the indicator.   | Deletion of the indicator in GL 5.6-5.8 |

| No   | Comments | Summary of responses received  | EBA analysis  | Amendments to the proposals                     |
|------|----------|--|---|---|
|      |          | better reflect this indicator's content.   |   |   |
| (42) | GL 5.6   | <p>Many respondents were concerned that the fixed amount of EUR 50 000 was too generic and not proportionate to the type and/or size of the undertakings and their activities. They were of the view that the add-on amount should be proportionate to the size of activities by the undertakings outside the EU.</p> <p>One respondent proposed a gradual approach depending on the percentage of revenue that is generated from non-EU business, e.g. each 10% of revenue that is generated outside the EU adds EUR 10 000 to the minimum monetary amount.</p> | See the EBA's analysis in row 41.   | Deletion of the indicator in GL 5.6-5.8         |
| (43) | GL 5.6   | Several respondents were of the view that the provision of services outside the EU does not have any impact on services provided by undertakings within the EU.  | See the EBA's analysis in row 41.   | Deletion of the indicator in GL 5.6-5.8         |
| (44) | GL 5.6   | Four respondents suggested deleting the indicator 'geographical location'.   | See the EBA's analysis in row 41.   | Deletion of the indicator in GL 5.6 to 5.8      |
| (45) | GL 5.9   | <p>Several respondents raised concerns regarding the proportionality of the proposed calculation of the indicator 'number of contracts' because the number of contracts is usually very limited and the calculation does not provide sufficient range.</p> <p>Two respondents proposed that the indicator 'number of contracts' should be removed because there is no relationship between the number of contracts and potential liabilities. Two respondents also noted that other indicators</p>   | The EBA notes the respondents' views and has deleted the indicator 'number of contracts'. | Deletion of the indicator 'number of contracts' |



| No   | Comments | Summary of responses received  | EBA analysis   | Amendments to the proposals            |
|------|----------|--|--|--|
|      |          | sufficiently cover all risk aspects.   |  |  |
| (46) | GL 5.12  | <p>Many respondents were of the view that the Guidelines should specify what is considered to be an initiated payment transaction for the purpose of these Guidelines.</p> <p>One respondent was of the view that transactions between customers' own payment accounts should be excluded.</p>   | <p>The EBA emphasises that Article 5(15) of PSD2 defines PIS and Article 66 of PSD2 defines rules on access to payment accounts for PIS. The EBA is of the view that these two Articles provide sufficient clarity also for the purpose of these Guidelines.</p> <p>Regarding transactions between customers' own accounts, the EBA clarifies that PSD2 does not envisage any specific conditions in relation to PIS. Therefore, the same legal requirements apply as for any other transactions.</p>  | None                                   |
| (47) | GL 5.12  | <p>Two respondents were of the view that the number of initiated payment transactions is the most adequate way to measure the risk profile of an undertaking. The respondents also noted that a similar parameter goes into the calculation of the size of activity criterion (number of payments multiplied by average value per payment) and, therefore, that the Guidelines should avoid double-counting.</p> <p>The same respondents suggested that the Guidelines should refer to the number of transactions in one month, not one year, similarly to the provisions relating to own funds, because PII is not supposed to cover higher risks than envisaged under own funds. Furthermore, the respondents supported their arguments by mentioning that ISPs have been exempted from Article 9 of PSD2 precisely because of their lower risk and that the Guidelines should reflect this.</p> | <p>See the EBA's analysis with regard to the indicators, row 4.</p> <p>In addition, the EBA clarifies that the two indicators cover different aspects. Where an undertaking has X clients, it does not have to access all their accounts and/or one client might have more than one account. Therefore, the EBA is of the view that both indicators should be considered.</p> <p>Regarding own funds, as already stated in this Final Report, the EBA clarifies that the calculation of several criteria and their indicators is based on Method B, used to calculate own funds under Article 9 of PSD2. However, to address the different business models, risks and criteria for PII or a comparable guarantee of AISPs/PISPs, the EBA did not take into consideration all the factors of the own funds calculation.</p> | None                                   |
| (48) | GL 5.12  | Several respondents were of the view that the proposed calculation would lead to excessive PII coverage/value requirements compared with the treatment of other PSPs.  | The EBA agrees with this concern, has assessed options on how to mitigate it, and has decided to lower the percentages applied to the top tier in the calculation of the indicators under Guidelines 5 and 7. More specifically, the EBA has reduced the   | Amendments to GL 5.5, 5.8, 7.1 and 7.2 |

| No   | Comments | Summary of responses received   | EBA analysis   | Amendments to the proposals |
|------|----------|---|--|-----------------------------|
|      |          | One respondent was concerned that, for PISPs, where the risk arising from their activities is limited to the loss or misuse of data, the factors for the calculation of the value were too high and would lead to unreasonably high amounts of PII. Therefore, the respondent proposed that a one-month period, rather than a 12-month period, should be used in the calculation. | percentages for the indicators ‘number of initiated transactions’ and ‘number of accessed accounts’ under Guideline 5 and for both indicators under the size of activity criterion under Guideline 7 from 2.5% to 0.025%. The effect of this change is that the coverage amount will ‘taper off’ for undertakings that fall into the top tiers for any of the criteria.                                |                             |
| (49) | GL 5.12  | One respondent suggested that the Guidelines should consider under the indicator ‘number of initiated payments’ not only the number of the payments but also the value of each payment.   | The EBA emphasises that the total value of all transactions is covered under the size of activity criterion and that the respondent’s proposal is indirectly covered by this criterion.  | None                        |
| (50) | GL 5.15  | Several respondents were of the view that the Guidelines should specify what is considered to be a ‘payment account’ and an ‘accessed payment account’ for the purpose of these Guidelines.   | The EBA emphasises that Article 4(12) of PSD2 defines ‘payment account’.<br><br>Regarding accessed payment accounts, the EBA emphasises that Article 4(16) of PSD2 defines AIS and Article 67 of PSD2 specifies rules on access to and use of payment account information for AIS. The EBA is of the view that these two Articles provide sufficient clarity also for the purpose of these Guidelines. | None                        |
| (51) | GL 5.15  | One respondent agreed with the indicator and how it is to be calculated.  | The EBA notes the respondent’s view.   | None                        |
| (52) | GL 5.15  | Two respondents were of the view that the indicator should be redrafted and cover number of bank connections instead of number of accounts accessed, because the number of accounts is irrelevant to the risk level.  | The EBA clarifies that the indicator reflects the number of accounts accessed by the undertaking, i.e. how many times it has acted within the scope of AIS activities.   | None                        |

| No   | Comments | Summary of responses received   | EBA analysis  | Amendments to the proposals                     |
|--|----------|---|---|---|
| (53)                                       | GL 5.15  | One respondent noted that customers may, during a year, add or remove their accounts and that, therefore, the number of accounts does not reflect real numbers and the undertaking might be over-insured. The respondent suggested either using an average or using the number of bank accounts accessed on the day of the calculation. | <p>The EBA notes the respondent's view but clarifies that the Guidelines set out that the quantitative data will cover the conduct of undertakings that apply for authorisation/registration during 12 calendar months before their application. The EBA chose a 12-month period because it expects that the PII contracts between the undertakings and insurance undertakings will be concluded for at least one calendar year.</p> <p>Similarly, the EBA expects that any agreements relating to the comparable guarantee will cover at least one calendar year. Therefore, the value for the calculation should represent the total value of all payment accounts accessed by the undertaking in the previous 12 months.</p> | None  |
| (54)                                       | GL 5.15  | Two respondents agreed with the indicator but were of the view that the calculation should be scaled down because it would lead to excessive values for the minimum monetary amount of the PII or comparable guarantee.   | <p>The EBA notes the respondents' views but emphasises that the indicator reflects the actual business activity of the undertaking and will be proportionate to changes, i.e. increase or decrease in the total number of the accessed payment accounts.</p> <p>See also the EBA's analysis in row 48.</p>  | None  |
| <b>Feedback on responses to Question 4</b> |          |   |   |   |
| (55)                                       | GL 6     | One respondent was of the view that the type of activity criterion should be removed because other criteria and their indicators sufficiently reflect the conduct of undertakings.  | <p>The EBA notes the respondent's view. As already stated in relation to the indicators in general, it is Article 5(4) of PSD2 that sets out the criteria and factors that the EBA should consider when developing these Guidelines. Therefore, the EBA has to include the type of activity criterion.</p> <p>However, the EBA clarifies that, in relation to the particular aspect of this criterion relating to engagement in other business, the EBA has amended Guideline 6.5 and added new</p>   | Amendments to GL 6.5 and addition of new GL 6.6 |

| No   | Comments            | Summary of responses received   | EBA analysis   | Amendments to the proposals |
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|      |                     |   | <p>Guideline 6.6 to reflect the requirement in Article 11(5) of PSD2, according to which ‘where a payment institution provides any of the payment services as referred to in points (1) to (7) of Annex I and, at the same time, is engaged in other business activities, the competent authorities may require the establishment of a separate entity for the payment services business, where the non-payment services activities of the payment institution impair or are likely to impair either the financial soundness of the payment institution or the ability of the competent authorities to monitor the payment institution’s compliance with all obligations laid down by this Directive’.</p> <p>Given the cross-references contained in Article 33(1) of PSD2, this provision is applicable to undertakings that apply for authorisation to provide PIS, as well as for those that apply for registration to provide AIS.</p> <p>Furthermore, the amendment also covers situations where Member States do not require the establishment of a separate entity and where the undertaking can prove to the competent authorities that it already covers the risks stemming from other activities.</p> |                             |
| (56) | GL 6.1, 6.2 and 6.3 | While agreeing with the clear distinction between PIS and AIS, several respondents disagreed with the proposal in Guideline 6.3 and considered it to be counterintuitive. | The EBA notes the respondents’ views but, as also acknowledged by the respondents, there is a distinction between PIS and AIS activities and risks arising from these activities. Therefore, the EBA is of the view that all aspects of their activities, i.e. all criteria and indicators, should be taken into consideration in the calculation of the minimum monetary amount of the PII or comparable guarantee.   | None                        |
| (57) | GL 6.3              | Some respondents were of the view that, if an entity carries out both PIS and AIS, the risks posed are exponential and  | See the EBA’s analysis with regard to Guidelines 6.1, 6.2 and 6.3, row 56.   | Amendments to GL 6.3        |

| No   | Comments | Summary of responses received  | EBA analysis   | Amendments to the proposals |
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|      |          | <p>therefore simply adding the two separate calculations is not a sufficiently prudential approach.</p> <p>On the contrary, according to other respondents, a separate calculation for each of these two services, i.e. PIS and AIS, would entail double-counting some data (e.g. geographical location; total value of indemnity claims received). Therefore, the respondents suggested prescribing a single input of the total data for the two services.</p> <p>One respondent suggested the following wording for Guideline 6.3: 'If an undertaking that applies for authorisation to provide PIS also applies for registration to provide AIS, or if an undertaking that applies for registration to provide AIS also applies for authorisation to provide PIS, competent authorities should calculate the minimum monetary amount separately for each service, i.e. calculate amounts reflective of all criteria for provision of AIS and PIS separately. Competent authorities should accept separate policies or otherwise provided independent coverages by undertakings applying for both services.'</p> | <p>The EBA agrees with the proposal by one respondent that separate coverage (either PII or a comparable guarantee) for each of the two services provided (PIS and AIS) should be accepted by competent authorities and has amended Guideline 6.3 according.</p> |                             |
| (58) | GL 6.4   | <p>Several respondents suggested that if PIS/AIS are carried out by a PI/EMI that is subject to own funds requirements, such requirements should be considered a comparable guarantee and the amount of own funds should be adjusted to take into consideration the risks stemming from PIS/AIS.</p> <p>These respondents were also of the view that if PIS/AIS are carried out by a PI/EMI that is subject to own funds requirements and such own funds are much higher than the minimum capital requirements, they should be considered to also cover PIS/AIS risks and therefore the requirement to</p>   | <p>See the EBA's analysis's with regard to the scope of the Guidelines, row 1.</p>   | None                        |

| No   | Comments | Summary of responses received  | EBA analysis   | Amendments to the proposals                     |
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|      |          | have PII should be revoked.  |  |   |
| (59) | GL 6.5   | <p>Several respondents raised concerns regarding the proposal to add EUR 50 000 in the formula for PISPs/AISPs that were also carrying out other business activities. They were of the view that the amount added should be proportionate to the size and type of the other business and should be calculated in a more gradual manner. In particular, as far as the type of activity is concerned, the respondents were of the view that the following indicators should also be considered:</p> <ul style="list-style-type: none"> <li>i. whether the other business activity is regulated or not;</li> <li>ii. whether the activity is covered or not by the Directive on security of network and information systems or the Data Protection Regulation;</li> <li>iii. what type of clients the business targets (retail versus corporates);</li> <li>iv. whether other business in which the undertaking is engaged increases or decreases the ability of the undertaking to make payments.</li> </ul> <p>One respondent suggested using an approach similar to that provided for in Guideline 5.7. According to this respondent, if the undertaking can prove that that it already covers the risks stemming from other activities, i.e. by holding some guarantee similar to PII, no add-on should be requested.</p> <p>Another respondent proposed that, instead of the add-on, the percentage of revenue generated from the other business should be used (e.g. each 10% of revenue generated from the other business adds EUR 10 000 to the amount of</p> | See the EBA's analysis with regard to Guideline 6, row 55. | Amendments to GL 6.5 and addition of new GL 6.6 |

| No   | Comments | Summary of responses received   | EBA analysis  | Amendments to the proposals                     |
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|  |          | the PII).   |   |   |
| (60)                                       | GL 6.5   | One respondent proposed that the Guidelines should specify the status of undertakings being engaged in other business and that it should be clarified whether or not the undertaking would be considered as engaged in other business if it had created a separate legal entity to carry out such business.   | See the EBA's analysis in row 55.   | Amendments to GL 6.5 and addition of new GL 6.6 |
| <b>Feedback on responses to Question 5</b> |          |   |   |   |
| (61)                                       | GL 7     | <p>While agreeing with the criterion, some respondents disagreed with the calculations, stating that they seemed arbitrary and far too generic, without sufficient use of actuarial principles.</p> <p>One respondent proposed that a growth variable should be added, based on the undertaking's historical development of activity over the past three years.</p> | <p>As previously clarified in this Final Report, under 'General remarks', the calculation in these Guidelines uses tiered approaches that are similar to the Method B calculation of own funds in Article 9 of PSD2, with some modifications to address the different business models, risks and criteria for PII or comparable guarantee of AISP/PISPs compared with payment institutions.</p> <p>The EBA notes the respondent's proposal but clarifies that the Guidelines set out that the quantitative data cover the conduct of undertakings that apply for authorisation/registration during the 12 calendar months before their application. The EBA chose a 12-month period because it expects that the PII contracts between the undertakings and insurance undertakings will be concluded for at least one calendar year. Similarly, the EBA expects that any agreements relating to the comparable guarantee will cover at least one calendar year.</p> <p>See also the EBA's analysis with regard to Guideline 5.1, rows 31-36.</p> | None  |
| (62)                                       | GL 7     | One respondent pointed out that Guideline 7 does not consider that PIS/AIS providers may have access to multiple client accounts, thus increasing the size and relative risk of   | The EBA notes the respondents' view but is of the view that while the indicator 'number of clients' indeed refers to individual clients, the indicator 'number of payment accounts  | Amendments to GL 7                              |

| No   | Comments | Summary of responses received  | EBA analysis   | Amendments to the proposals  |
|------|----------|--|--|--|
|      |          | <p>their activities.</p> <p>Other respondents noted that more than one person might be authorised to use the account and, therefore, the Guidelines should provide detailed definitions of ‘contracts’ and ‘customers’.</p>  | <p>accessed’ takes into consideration all accounts that the undertaking has accessed in the previous 12 months. Therefore, both aspects – number of clients and number of accounts – are considered in the calculation.</p> <p>Regarding the definition of ‘customers’, the EBA has amended Guideline 7.2 to provide clarity. Finally, the EBA is of the view that all aspects of use of accounts are considered in the Guidelines, i.e. when the account is accessed by the undertaking; when the payment is initiated from the account; and the value of all payments.</p>   |  |
| (63) | GL 7.1   | <p>Several respondents were of the view that the indicator proposed for the calculation of the size criterion for PISPs was not appropriate to the risks specific to PIS. The respondents went on to argue that this is because the risk of misuse of PISP systems to the detriment of payers, and hence the risk of liability in line with Articles 73 and 90 of PSD2, is very low. They also mentioned that, in the unlikely event of an attack on a PISP’s systems, this attack would be detected very quickly. Therefore, the respondents suggested calculating the size of activity criterion using the approach of Method B in Article 9 of PSD2, i.e. using monthly volumes instead of yearly volumes.</p> <p>These respondents also pointed out that the calculation proposed in the Consultation Paper would lead to extremely high insurance premiums that might be difficult or impossible to obtain from insurance undertakings and that, in some cases, the amount of the PII or other comparable guarantee would be several times higher than the own funds requirement.</p> | <p>Regarding the premium, the EBA emphasises that one of the key drivers of the premium is the risk arising from the activity of the insured subject. While these Guidelines set out criteria for competent authorities to consider when stipulating the minimum monetary amount, i.e. the amount of insurance coverage, not the premium, insurance undertakings will set premiums according to their policies, including considering the risk of the PIS/AIS activity.</p> <p>Regarding the proportionality principle in the Guidelines, please see the EBA’s analysis with regard to the minimum monetary amount of the PII or comparable guarantee, row 15.</p> <p>Regarding potentially excessive amounts, see the EBA’s analysis in row 48.</p> | Amendments to GL 7.1 with regard to the last tier in the calculation |



| No   | Comments | Summary of responses received   | EBA analysis   | Amendments to the proposals |
|------|----------|---|--|-----------------------------|
|      |          | <p>Finally, the respondents were of the view that the corresponding yearly premium would imply a very significant cost increase that would in turn eventually be forwarded to payment services users. They were also of the view that, as a result, it would add a significant cost to the provision of PIS, which PSPs that provided other services would not have to bear and, as result, would lead to a non-level playing field.</p>  |  |                             |
| (64) | GL 7.1   | <p>Several respondents were concerned that the proposed calculation of the indicator for PIS would not be appropriate when corporate transactions were taken into account, as only one or two transactions would breach the insured amount.</p> <p>To address this, one respondent proposed that the Guidelines specify a requirement for PISPs to agree with their customers' limits for payments that could be initiated through the PISP within their contractual framework. The respondent also mentioned that the limits would have to be lower than the insured amount.</p> <p>Other respondents proposed that a sub-category should be added for corporate customers.</p> <p>One respondent suggested adding an indicator of the number of transactions because the risk level is not the same and the risk appears to be more frequent for individuals and more significant in monetary amounts for corporates.</p> | <p>Regarding the different approach to corporate and individual customers, the EBA is of the view that the criteria and their indicators should be general enough to cover all potential types of customers and their payment habits, and various situations.</p> <p>Furthermore, the EBA is of the view that various aspects of payments, such as more frequent payments by individuals or high-value payments by corporates, are addressed by different indicators, such as the indicator 'value of payments' or the indicator 'number of initiated payments'.</p> | None                        |
| (65) | GL 7.2   | <p>One respondent was of the view that this indicator is redundant because it was already covered by the indicator 'number of accessed accounts' under the risk profile criterion.</p>  | <p>See the EBA's analysis with regard to the indicators, row 4.</p> <p>In addition, the EBA clarifies that the two indicators cover different aspects. Where an undertaking has X clients, it does not have to access all their accounts and/or one client might have more than one account. Therefore, the EBA is of the view</p>   | None                        |

| No   | Comments       | Summary of responses received  | EBA analysis  | Amendments to the proposals |
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|      |                |  | that both indicators should be considered.  |                             |
| (66) | GL 7.2         | One respondent suggested adding to the calculation the outstanding amounts aggregated by the AISP and the number of accounts per customer.   | The EBA notes the respondent's suggestion but is of the view that adding the number of accounts per customer would be redundant because, under the risk profile criterion, the indicator 'number of accessed accounts' covers all accounts, regardless of their holders, accessed by the AISP during the relevant period.   | None                        |
| (67) | GL 7.2         | <p>One respondent was of the view that the indicator should be narrower and that the number of clients was defined as the number of clients that had refreshed data, i.e. made a connection to their bank account through the AIS, during the previous 12 months. According to the respondent, clients that have not been active during the previous 12 months should be excluded.</p> <p>Other respondents suggested that the indicator should differentiate between unique one-time AIS users and permanent users, for example by dividing the overall number of unique one-time AIS users (i.e. clients) in the previous 12 months by a certain number that might be connected to the amount of regular pull/push calls per year.</p> | See the EBA's analysis with regard to Guideline 7.1, rows 63 and 64.  | None                        |
| (68) | GL 7.3 and 7.4 | According to several respondents, the method of calculation does not ensure that the forecasted value will cover the real value of the transactions. Therefore, the respondents proposed using the average number of all transactions initiated (for PISPs) or the average number of clients (for AISPs) during the previous 12 months of similar operators (having the same characteristics) in the relevant market.  | The EBA agrees with the respondents that the forecasted values might not reflect the real value of all the transactions. As already mentioned in this Final Report, the Guidelines clarify specific situations when forecasts and the lowest tier are to be used. Furthermore, Guideline 9 requires undertakings to review and if necessary recalculate the minimum monetary amount of the PII or comparable guarantee on a regular basis | None                        |

| No   | Comments   | Summary of responses received   | EBA analysis  | Amendments to the proposals |
|--|------------|---|---|-----------------------------|
|  |            | One respondent was of the view that, for the purpose of the size of activity criterion, the lowest tier was too low and should be increased.  | and to reflect the development of their activities. Therefore, the real values have to be used by the undertaking in the first review of the minimum monetary amount.<br><br>See also the EBA's analysis with regard to the lowest tier, row 9.   |                             |
| <b>Feedback on responses to Question 6</b> |            |   |   |                             |
| (69)                                       | Indicators | <p>Several respondents proposed additional and/or different indicators.</p> <p>One respondent proposed that only the type of activity criterion and the following indicators should be considered in the formula:</p> <ul style="list-style-type: none"> <li>- geographical location;</li> <li>- annual turnover of the undertaking;</li> <li>- for PIS, the value of the transactions initiated;</li> <li>- for AIS, the number of active clients that use AIS.</li> </ul> <p>Other respondents proposed that the formula cover type and rating of insurance provider and the following indicators relating to insurance coverage:</p> <ul style="list-style-type: none"> <li>- minimum insurance sum;</li> <li>- geographical scope;</li> <li>- limitation on valid exceptions;</li> <li>- procedural guidelines regarding handling of claims.</li> </ul> <p>Other respondents proposed that the formula should</p> | <p>As previously stated in this Final Report, it is Article 5(4) of PSD2 that specifies the criteria and indicators that the EBA must take into account in developing the Guidelines. The EBA clarifies that the criteria in the Guidelines, the indicators and the formula result from the requirements set out in PSD2.</p> <p>Therefore, these Guidelines cannot consider only some indicators, as proposed by the respondents.</p> <p>Regarding the indicators proposed by the respondents, the EBA clarifies that some of them, such as volume of transactions, are covered in the indicators included in the Guidelines. With regard to the setting out of the minimum monetary amount, see the EBA's analysis with regard to the minimum monetary amount of the PII or comparable guarantee, row 15.</p> | None                        |

| No   | Comments                          | Summary of responses received   | EBA analysis  | Amendments to the proposals |
|--|-----------------------------------|---|---|-----------------------------|
|  |                                   | consider the following factors from an insurer's point of view: <ul style="list-style-type: none"> <li>- number and volume of transactions;</li> <li>- average value of transactions;</li> <li>- fees earned in connection with transactions;</li> <li>- the broader control environment.</li> </ul>  |   |                             |
| (70)                                       | Additional qualitative indicators | Several respondents were concerned that the Guidelines did not include any qualitative indicators and therefore proposed that the Guidelines should also factor in the following indicators: <ul style="list-style-type: none"> <li>- conditions for archiving data;</li> <li>- supervision and processing procedures in the event of security incidents, implemented security measures (data access restriction and access traceability);</li> <li>- internal control procedures and personal training;</li> <li>- compliance with other applicable rules (protection of personal data, especially in data storage and processing; bank secrecy).</li> </ul> | The EBA is of the view that the indicators proposed by the respondents are covered by the authorisation procedure stipulated by Article 5(1) of PSD2. | None                        |
| (71)                                       | Indicators                        | One respondent proposed including in the Guidelines the potential (fraud) risk of the (technical) method(s) used to initiate payment transactions (for PISPs) or retrieve payment account-related information from ASPSPs (for AISPs).  | The EBA is of the view that the indicators proposed by the respondent are covered by the authorisation procedure stipulated by Article 5(1) of PSD2.  | None                        |
| <b>Feedback on responses to Question 7</b> |                                   |   |   |                             |

| No   | Comments             | Summary of responses received   | EBA analysis   | Amendments to the proposals |
|------|----------------------|---|--|-----------------------------|
| (72) | Comparable guarantee | <p>Some respondents were of the view that the Guidelines should specify that the following are considered to be comparable guarantees for the purpose of the Guidelines:</p> <ul style="list-style-type: none"> <li>- capital 'buffer' corresponding to the value of valid indemnity claims;</li> <li>- insurance already held by PISPs/AISPs;</li> <li>- own funds, in the case of PISPs, and where the PII market does not exist/is not developed. The amount of own funds should be calculated in accordance with Method B set out in Article 9 of PSD.</li> </ul> <p>One respondent was of the view that the option of deducting an existing comparable guarantee from the PII should be included in the Guidelines as an option.</p> | See the EBA's analysis with regard to the scope of the Guidelines, row 1.  | None                        |
| (73) | Comparable guarantee | One respondent proposed that the Guidelines clarify that the assumptions for calculation of the comparable guarantee are identical to those for the PII.  | The EBA clarifies that Guideline 3 explicitly states that the formula and the calculation of the criteria and indicators are identical for the PII and for the comparable guarantee.                   | None                        |
| (74) | Comparable guarantee | One respondent was of the view that the Guidelines should not differentiate between PII and a comparable guarantee, as they should be interchangeable.  | The EBA agrees with the respondent's view and emphasises that the Guidelines refer to the same obligations and requirements regardless of whether the undertaking holds PII or a comparable guarantee. | None                        |

| No   | Comments            | Summary of responses received  | EBA analysis  | Amendments to the proposals |
|------|---------------------|--|---|-----------------------------|
| (75) | Liabilities         | <p>Several respondents proposed that the Guidelines clarify the division of liabilities between ASPSPs and PISPs/AISPs, for example in cases of fraudulent and negligent PISPs or AISPs, i.e. in cases of the risk of identity theft, the loss or leaking of private data, either due to fraudulent internal activities at the undertaking or through hackers accessing an insufficiently protected server/database. The respondents were of the view that the Guidelines should clarify that all losses ASPSPs incur due to fraudulent and negligent internal activities at the undertaking would be covered by PII to avoid introducing significant risks and to maintain the stability of the financial system. Furthermore, the respondents mentioned that, if certain losses banks incur cannot be covered by the PII, it could have negative consequences for the calculation of regulatory capital in the context of operational risk.</p> <p>One respondent suggested that the Guidelines should include the provision that competent authorities should ensure that an ASPSP that has already refunded its unduly debited client's account can directly claim on first demand the PII or comparable guarantee whenever the liable PISP or AISP does not comply with its obligation to compensate the ASPSP immediately.</p> | See the EBA's analysis with regard to the scope of the Guidelines, row 1.   | None                        |
| (76) | Rounding of amounts | One respondent suggested rounding the resulting required levels in the formula up to the nearest 10 000 or 100 000 to reflect the fact that these are estimates.   | The EBA clarifies that the values to be used by the undertakings in the calculation should be based on real and exact numbers. Only in cases where no historical data are available should forecasts be used. Therefore, the EBA does not consider that rounding the amounts would correctly reflect the quantitative data. | None                        |

| No   | Comments              | Summary of responses received  | EBA analysis   | Amendments to the proposals |
|------|-----------------------|--|--|-----------------------------|
| (77) | Additional indicators | <p>One respondent proposed that the following aspects should be considered in the Guidelines:</p> <ul style="list-style-type: none"> <li>- Compromise of customer credentials: where customer credentials (e.g. two-factor authentication information) are transmitted via an undertaking, no end-to-end encryption of the data can be ensured. In common cases, data would be encrypted with transport layer security (TLS), which is the successor to secure socket layer. TLS encrypted data between the client and undertaking would then be decrypted and newly encrypted at a gateway between the Third Party Provider (TPP) and the bank. For risk mitigation, the two-factor authentication should always be performed directly between the device of the client and the infrastructure of the bank. Alternatively, if the credentials are transmitted via an undertaking, the Guidelines should mandate the use of hardware security modules (HSMs) for the decryption and encryption processes at the TPP. HSMs are tamper-resistant computing devices that store secret data safely and perform cryptographic processes such as encryption and decryption.</li> <li>- Fraud detection systems: only when a direct connection between a customer and a bank is established can a bank utilise the full extent of session data (e.g. the device's IP address, geo-location, operating system and browser type/language settings, time stamps) and device data (e.g. a smartphone's identity number, jail-broken/rooted status, operating system and version,</li> </ul> | See the EBA's analysis with regard to the qualitative indicators, row 5. | None                        |

| No   | Comments               | Summary of responses received  | EBA analysis   | Amendments to the proposals |
|------|------------------------|--|--|-----------------------------|
|      |                        | <p>access channel) for robust fraud detection. Therefore, the Guidelines should require the installation of end-point malware detection systems at the PISP.</p> <ul style="list-style-type: none"> <li>- High-value payments (HVPs): corporates usually assign a maximum amount to each authorised signatory, and require collective sign-off for high-value payments. While the sign-off authorisation limits and requirement for collective sign-off of corporate transactions can be seen as risk mitigants, corporate transfers can be several orders of magnitude higher than typical retail market transactions. This exposes banks to a substantially higher risk through fraudulent transactions as banks are required to execute HVPs when they are received via a PISP with proper client credentials and when the account shows sufficient balance (or agreed credit lines/overdraft agreements).</li> </ul> |  |                             |
| (78) | Compensation procedure | <p>One respondent requested that the Guidelines clarify:</p> <ul style="list-style-type: none"> <li>- whether there will be any supervisory body that collects and keeps records of complaints received by the ASPSPs in connection with PISP/AISP;</li> <li>- how ASPSPs can enforce compensation claims against PISPs/AISPs;</li> <li>- whether, in the case of a dispute between a PISP/AISP and an ASPSP, there will be a supervisory board for investigation.</li> </ul>  | <p>As previously mentioned in relation to the scope of the Guidelines, the EBA's mandate is set out in Article 5(4) of PSD2 and refers to issuing of guidelines, addressed to the competent authorities, on the criteria on how to stipulate the minimum monetary amount of the PII or other comparable guarantee.</p> <p>Therefore, the EBA cannot, in these Guidelines, specify any complaints procedures.</p> | None                        |



| <b>No</b> | <b>Comments</b> | <b>Summary of responses received</b>   | <b>EBA analysis</b>   | <b>Amendments to the proposals</b> |
|-----------|-----------------|--|---|------------------------------------|
| (79)      | GL 8            | One respondent was of the view that Guideline 8 is redundant, as it did not define any requirement or detail any provision not already contained in Article 5(2) or (3) of PSD2. | The EBA notes the respondent's view but is of the view that Guideline 8 provides greater clarity. | None                               |

