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European Banking Authority

## **Consultation Paper on draft Guidelines on fraud reporting requirements under Article 96(6) of Directive (EU) 2015/2366 (PSD2)**

The Swedish Bankers' Association (SBA) appreciates the opportunity to comment upon the draft Guidelines on fraud reporting requirements under Article 96(6) of Directive (EU) 2015/2366 (PSD2). We have divided the answer into two parts: first, general concerns, and second, answers and comments to the specific EBA questions.

### **General concerns**

1. The process between EBA, the Commission, the Parliament and Member States concerning PSD2 is not synchronized which creates concerns for Swedish banks.
2. We think that it is possible to ensure a consistently implemented fraud reporting routine with fraud reporting requirements on a higher level than the detailed requirements in the draft guidelines.
3. The time frame for implementation is very short. The banks need to implement a functioning reporting solution to meet the requirements and there are no practical ways for banks to achieve a functional implementation under this time frame.
4. It is important that definitions, terminology and taxonomy are aligned between the EU institutions and their directives and guidelines. EPC states in their response which is a valid point: "Lack of a clear taxonomy and terminology related to fraud and payment instruments and moreover the scope with respect to fraudulent transactions differs from the one mentioned in the proposed EU Directive on combating fraud and counterfeiting of non-cash means of payment and replacing Council Framework Decision 2001/413/JHA (COM (2017) 489 final)".
5. We welcome the publication of aggregated fraud data which will bring transparency to the payments European payments market.

## **Answers to the EBA questions**

**Question 1: Do you consider the objectives for the guidelines as chosen by the EBA, in close cooperation with the ECB, including the link with the RTS on SCA and CSC (and in particular Articles 18 and 20 RTS), to be appropriate and complete? If not, please provide your reasoning.**

Yes, we do consider the objectives to be appropriate, but we question the timing. SCA will not be in place until the RTS is in effect earliest autumn 2019. Any reporting obligations of SCA before that date cannot be in line with the scope and objectives of the Directive. We need to know how SCA is defined in the RTS before banks can distinguish between SCA and non-SCA.

Furthermore, we believe that leaving the decision on the communication method between PSPs and authorities to national criteria could result in an uneven EU-playing field, i.e. that PSPs have different fraud reporting obligations depending on their location. EBA should have aligned and defined requirements towards national FSAs.

**Question 2: In your view, does the definition of fraudulent payment transactions (in Guideline 1) and the different data breakdown (in Annexes 2 and 3) cover all relevant statistical data on “fraud on means of payment” that should be reported? If not, please provide your reasoning with details and examples of which categories should be added to, or existing categories modified in, the Guidelines.**

The SBA's opinion is that the reporting requirements are too extensive and the amount of data demanded is too big in comparison to what the benefits can be for national competent authorities and the EU. In addition, some of the requested reporting is practically impossible to carry out, for example for an acquirer it is not possible to distinguish between a debit and a credit card. Fraud-wise there are no reasons to separate the two.

Social engineering is the art of deceiving and manipulating people so they give up confidential information. It is very difficult to identify where the exact origin of social engineering takes place. Although morally and ethically questionable, counting these transactions as fraudulent would increase the fraud rate associated with a payment service and hinder the ability to exempt certain transactions from SCA. Therefore, PSPs could only commit to share information on the allegedly “fraudulent transactions” claimed by a payment service user on a best effort basis. For example,

we don't consider the fraudulent behaviour in many Subscription Traps to reside within the payment transaction, but in the lack of information given to the payer.

As stated above, it is apparent that the definition of fraud and manipulation needs to be clearly specified. Guidelines are required in order to interpret the concept "payee acted fraudulently".

**Question 3: Do you agree with the EBA's proposal to exempt Account Information Service Providers from reporting any data for the purpose of these Guidelines? Please provide your reasoning with detail and examples.**

The SBA does not agree with the proposal to exempt AIS providers since it would be in breach of the Directive.

There might be other reasons for AIS to report data on fraud. Data leakage can enable and facilitate fraud like identity theft.

**Question 4: Do you agree with the rationale for not including in Guideline 2.5 a requirement to report data for attempted fraud for the purpose of these Guidelines? If not, please provide your reasoning with detail and examples.**

The SBA agrees with the reasoning and supports the answer provided by EPC in its position paper, see below:

"Yes, the EPC agrees with the rationale for not including in GL 2.5 a requirement to report data for attempted fraud for the purpose of the GLs. The appreciation of the PSP's efficiency on fraud management based on the fraud reporting is out of the scope of these GLs (see PSD2 requirements in Article 96.6)."

**Question 5: Do you agree with the proposal for payment service providers to report both gross and net fraudulent payment transactions, with net fraudulent transactions only taking into account funds recovered by the reporting institution (rather than any other institution) as set out in Guideline 1.5? If not, please provide your reasoning with detail and examples.**

The more frequent reporting (for example monthly and quarterly), the larger the risk for misleading reporting. For example, it will be possible with a potential positive loss (due to recovered funds) in net terms although the net loss is the actual loss month per month. This risk is reduced if reporting is done annually instead of quarterly.

Also, it is important that a recovery is reported when it is recurred and not when the original transaction happened.

It is difficult to report net fraud and it has questionable value. If a merchant pays back a customer in cash, or other payment mean, then the value of the net fraud concept is misleading. Somebody else, possibly outside the payment system, has absorbed the loss and recovery which shows that banks do not have full control over the entire payment chain.

**Question 6: Do you consider the frequency of reporting proposed in Guideline 3, including the exemption from quarterly reporting for small payment institutions and small e-money institutions in light of the amount of data requested in Annexes 1, 2 and 3, to be achieving an appropriate balance between the competing demands of ensuring timeliness to reduce fraud and imposing a proportionate reporting burden on PSPs? If not, please provide your reasoning with detail and examples.**

The SBA has the following concerns:

1. We question whether these guidelines can achieve a level playing field.
2. If the purpose with the draft Guidelines on fraud reporting requirements under Article 96 is to identify fraud levels in the EU and provide opportunities for the authorities to take action it is important that the picture of fraud levels is adequate and updated regularly. Therefore, the fraud reporting should be done yearly.
3. The differences between the annexes (quarter/year) are fairly limited and EBA should consider if one of the two annexes are sufficient, to ease reporting burden on PSPs.
4. If data is to be reported annually the SBA's assumption is that the discrepancies will be more limited with an annual reporting process compared to quarterly reporting process. The reason for this is that losses and funds recovered due to fraud can "move" between quarters. A loss that is reported in Q1 can be reported as a funds recovered in Q2 which might blur the picture and drive competent authorities to take wrong actions.
5. If institutions are mandated to report quarterly to the EBA, ECB and national competent authorities, do these bodies have the necessary resources and competence to collect, aggregate, present, analyze and act swiftly upon the data collected? These are enormous amounts of data from which conclusions should be drawn.
6. If those resources are not available for national competent authorities there is little reason to produce the report quarterly. For all of the above reasons, a yearly fraud reporting template and process makes more sense.

7. If EBA decides to opt for quarterly reporting the SBA questions why smaller intuitions should be exempted. If national competent authorities are expected to act swiftly on fraud there is no reason to exempt anyone. There are no indications that smaller institutions are more risk averse than larger ones.

**Question 7: Do you agree that payment service providers will be able to report the data specified in Guideline 7 and each of the three Annexes? If not, what obstacles do you see and how could these obstacles be overcome?**

It is complicated to divide SCA and not SCA. Card acquirers cannot report data per card type (debit and credit) since the merchant does not have the data on card type. For card issuers, this is not an issue.

The SBA believes that EPC makes a valid point in its position paper in the second paragraph, fourth bullet point "Since the reporting timelines are set by the respective competent authorities, this can vary by country and does not provide a level playing field (Guideline 3.3)."

SBA also believes that EPC's comment around discrepancies in geographical areas for fraud reporting between EBA and ECB payment and card fraud statistics, is very valid. Harmonization should be applied.

**Question 8: In your view, do the proposed Guidelines reach an acceptable compromise between the competing demands of receiving comprehensive data and reducing double counting and double reporting? If not, please provide your reasoning.**

With the proposed guidelines we believe it is unavoidable with the occurrence of double counting and double reporting if card issuers and card acquirers report for two-legged transactions, and we believe it is important to avoid this. For card transactions, we propose the following divide:

1. For EEA transactions – only the issuer should report the fraud as it is the practice for fraud reporting for card schemes like VISA and MasterCard.
2. For one leg card transactions reporting – the issuer should report fraud transactions outside EEA for their own cards and the acquirer should report fraud transaction for their own merchants.

The SBA agrees with EPC's reasoning in its position paper that they recommend "EBA to reassess its view on whether the benefits (to the objectives of the GLs) of PSPs reporting on a detailed quarterly - next to an annual basis, actually outweigh the additional compliance cost (administrative burden) for PSPs to adhere to this detailed quarterly reporting requirement. The EPC recommends the EBA to limit the reporting to an annual reporting."



**Question 9: Are you of the view that payment services providers should distinguish between payment transactions made by consumers and payment transactions made by other PSUs? Please provide your reasoning with detail and examples.**

No comments.

SWEDISH BANKERS' ASSOCIATION

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