

Hogan Lovells Global Payments Newsletter

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Welcome to the Hogan Lovells Global Payments Newsletter. In this monthly publication we provide an overview of the most recent payments, regulatory and market developments from major jurisdictions around the world as well as sharing interesting reports and surveys on issues affecting the market.

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For more information on our Payment Services team please click the link [here](#).

For more Financial Institutions resources please click the link [here](#).

Key Developments

Key developments of interest over the last month include:

EBA consults on guidelines on security reporting: the draft guidelines specify, amongst other things, the criteria for classifying operational or security incidents as major, and a template for payment services providers to use when notifying incidents to the competent authorities.

Implementation of PSD2: in Germany, two draft implementing acts (one for regulatory, one for contract law aspects of PSD2) have been published for consultation.

UK PSR response to Which? authorised push payments super-complaint: the PSR, in conjunction with Financial Fraud Action UK, is looking to the banking industry to lead on a programme of work which will address the issue of a lack of clear data and develop best practice standards for banks to follow.

Regulatory Developments

Global

Europe: EBA consults on guidelines on reporting operational or security incidents under PSD2

On 8 December 2016, the European Banking Authority (**EBA**) published a consultation paper on guidelines on major incidents reporting under PSD2.

The draft guidelines specify:

- criteria for classifying operational or security incidents as major;
- a template for payment service providers (**PSPs**) to use when notifying incidents to the competent authorities (**CAs**); and
- indicators CAs need to use when assessing the relevance of a reported incident, and the minimum information that CAs should share with other domestic authorities when they consider an incident to be relevant to those authorities.

The draft guidelines allow PSPs to delegate their incident reporting obligations to a third party, subject to certain conditions. They also allow PSPs to report incidents through a technical service provider in a way that is consolidated with other affected PSPs.

See the consultation paper [here](#).

United Kingdom: PSR moves towards wholesale change of payments infrastructure

On 7 December 2016, the Payment Systems Regulator (**PSR**) published a consultation paper setting out a number of proposed changes as part of its market review into the ownership and competitiveness of infrastructure provision.

The PSR published its final report on its market review into the ownership and competitiveness of the infrastructure, which supports three payment systems, Bacs, Faster Payments Service (**FPS**) and LINK, in July 2016. The PSR found that there is no

effective competition for the provision of central infrastructure for these three payment systems.

In the light of its findings, the PSR is consulting on two measures:

- mandating a competitive procurement process that will enable new infrastructure providers with different technology to enter the market and drive new and innovative products and services; and
- adopting a common international messaging standard (ISO 20022), for Bacs and FPS, to lower barriers and encourage new entrants to the market.

The PSR intends that the measures will benefit all users of payment systems, from PSPs to consumers, by creating a better choice of tailored payment services.

Given the proposed MasterCard acquisition of VocaLink, which currently supplies the central infrastructure for all three systems, the PSR does not, at this stage, plan to impose a divestment remedy.

The consultation is accompanied by three annexes, which set out case studies on competitive procurement and the PSR's estimate of the size of negative effects to users and the draft specific directions.

In addition, the PSR has published a study (dated November 2016) carried out by a consultancy on the costs and benefits of migration to ISO 20022 in the Single Euro Payments Area.

See the consultation paper [here](#).

See Annexes 1 and 2 [here](#).

See Annex 3 [here](#).

See the study [here](#).

Europe: EBA publishes final draft RTS on co-operation and exchange of information for passporting under PSD2

On 14 December 2016, the EBA published final draft regulatory technical standards (**RTS**) on passport notifications under PSD2.

Article 28 of PSD2 requires an authorised payment institution to inform the competent authorities of its home member state if it wishes to provide payment services for the first time in one or more member states other than its home member state.

Article 28(5) gives the EBA a mandate to develop draft RTS, specifying method, means and details of the cross-border co-operation between CAs in the context of passport notifications of payment institutions. The RTS must include the scope of information to be submitted, a common terminology and standard templates, to ensure that the process is consistent and efficient.

The EBA consulted on the draft RTS in December 2015. Changes to the final version of the RTS in the light of responses to that consultation include:

- More clarity for when a payment institution uses an agent or an e-money institution uses a distributor.
- New provisions so that payment institutions will be informed when the notification is transmitted from the CA in the home member state to the CA in the host member state.
- Deletion of information relating to governance arrangements and internal control mechanisms, outsourcing and the agent structural organisation.

The final draft RTS will be submitted to the European Commission for endorsement.

See the final RTS [here](#).

United Kingdom: PSOs publish guide on UK's interbank payment schemes

On 15 December 2016, the UK's interbank payments system operators (**PSOs**) (that is, Bacs Payment Schemes Ltd, CHAPS, Cheque and Credit Clearing Company, FPS and LINK) published a guide on the UK's interbank payment schemes.

The guide is intended for use by PSPs that are considering joining or are thinking of extending more payments services to their customers.

It:

- provides an overview of the UK's payment schemes;
- sets out what each payment scheme offers; and
- explains how each payment scheme can be accessed by PSPs.

The guide has been developed by the PSOs, together with input from the Payments Strategy Forum, challenger banks and FinTech firms.

See the guide [here](#).

United Kingdom: PSR response to Which? authorised push payments super-complaint

On 16 December 2016, the PSR published its response to a super-complaint from Which? relating to concerns it has around consumer safeguards in the market for push payments, together with a factsheet.

The super-complaint, lodged in September 2016, raised concerns that there is insufficient protection for people who are tricked into transferring money to fraudsters via an authorised push payment (**APP** - where a customer instructs their bank to send money).

As a result of the PSR examining Which?'s evidence and gathering its own, the PSR warns that APP scams are a growing concern and more needs to be done to address the problem. The PSR has identified that the data available on the scale and type of APP scams is of poor quality and the ways in

which banks currently work together in responding to reports of scams needs to improve. The PSR also found evidence to suggest that some banks could do more to identify potentially fraudulent incoming payments and to prevent accounts falling under the influence of scammers.

The PSR has agreed a programme of work with Financial Fraud Action UK that it intends the banking industry to lead on. This includes addressing the issue of a lack of clear data and developing a common approach, or best practice standards, for banks to follow.

In addition, the PSR will carry out further work to consider the potential for the operators of payment systems, in particular FPS and CHAPS, to play an expanded role in helping to minimise consumer harm caused by scams. It intends to publish terms of reference for this work in early 2017 and its findings in the second half of 2017.

The FCA has published a press release relating to the PSR's response, announcing that it will work with firms to tackle concerns around both sending and receiving banks in relation to APP fraud. It will also consider the evidence it has received relating to the super-complaint and address any firm-specific issues directly.

See more information [here](#).

See the PSR's response [here](#).

See the factsheet [here](#).

See the press release [here](#).

Italy: Implementation of 4AMLD

On 28 November 2016, the Ministry of Economy and Finance published a consultation paper concerning the implementation of 4AMLD in Italy (the **Consultation**).

The Consultation also anticipates certain provisions set out under the EU proposal for amending the 4AMLD ("5AMLD"). Although the Consultation ended on 20 December 2016, the final rules have not yet been enacted.

The Consultation sets out specific provisions for payment and e-money institutions, their branches and central contact points (**CCPs**). Specific provisions address the AML obligations of agents and affiliated entities of payment and e-money institutions.

The Consultation, amongst other things, addresses:

- **Scope:** in addition to covering EU and-non EU entities operating in Italy under the freedom of establishment (including EU payment institutions (**PIs**) operating in Italy through a branch), the new Italian AML rules would be extended to EU financial institutions (including PIs) 'established without a branch in the Italian territory'. This essentially means that EU PIs operating in Italy using agents under the freedom to provide services regime (meaning the PIs are 'established' in Italy but 'without a branch') would fall within the scope of the new Italian AML rules.
- **Fulfilment of AML obligations:** the Consultation specifically regulates how AML obligations must be fulfilled by the CCP and agents of a PI:
 - **KYC:** agents must obtain data and information from the customer, executor and beneficial owner and communicate such data and information to the CCP within 20 days from the execution of the transaction; in case of occasional transactions, the above communication must be sent before the execution of the transaction;
 - **Record-keeping:** agents must retain KYC data and information for a 12 month period; and
 - **Suspicious transaction reporting:** agents must communicate any relevant circumstances and information for suspicious transaction reporting purposes to the CCP.
- **Agent agreement:** the agreement with the agents must expressly include the agents'

AML obligations, relevant procedures and timing, and liability for the failure to comply with such requirements.

- Reporting obligations to the Organisation of agents and brokers (*Organismo degli agenti e dei mediatori*) (OAM): every six months PIs, their branches, and/or the CCP must communicate data relating to their agents to the OAM, indicating whether such agents provide money remittance services. Information on the termination of the contractual relationship with agents for non-commercial reasons must also be communicated to the OAM.

See the consultation [here](#) (in Italian).

Germany: Implementation of PSD2

In the week before Christmas, Germany published two draft legislative acts implementing PSD2.

Member States have to implement PSD2 by 13 January 2018. Although Germany is expected to approve the finalised PSD2 implementing legislation in Q2 2017, the new rules and requirements will enter into force on 13 January 2018.

The Federal Ministry of Finance drafted the sections implementing the new regulatory requirements, with the Federal Ministry of Justice and Consumer Protection being responsible for the civil law/contract law part of PSD2. As both drafts concern the same directive and industry, it is likely that the drafts will be combined in a single draft before it is submitted to the German cabinet.

PSD2 is a maximum harmonization directive. Nevertheless, the implementing acts in each Member State are of great relevance for financial institutions, particularly for payment institutions and e-money institutions, and those businesses currently operating under a PSD exemption. Member States may use options provided for under PSD2 when implementing PSD2, for example, the options concerning the rules on surcharging to address country-specific needs.

The official explanatory notes to the German draft acts (included in the second part of the draft acts themselves) contain clarifications and guidance on how to interpret the PSD2 provisions. As such, the explanatory notes have the potential to shape the regulatory and legal framework for regulated and non-regulated businesses in Germany.

See the regulatory draft act [here](#) (in German)

The contract law draft act is not available online at this time

Europe: TARGET Instant Payments Settlement

The European Central Bank (ECB) has decided to launch an evaluation process for the Instant Payments Settlement Service and has set up the "Task Force on TARGET Instant Payments Settlement". Those participating in the initiative include various European central banks, along with other banks and clearing houses.

The main purpose of the initiative is to establish the user and market requirements for a potential European based solution for the settlement of instant payments.

A consultation paper concerning the user requirements document for a TARGET instant payment settlement service was published on 10 January 2017, with the deadline for responses being 24 February 2017. The outcome of the consultation will be published on the ECB website.

See the consultation [here](#).

See the press release [here](#).

France: Decree on the modalities of declaration of money transfer exceeding EUR 50,000

On 5 December 2016, Decree no. 2016-1663 on the modalities of declaration of money transfer exceeding EUR 50,000 was adopted.

The Decree specifies the French legal provisions which require the physical transfer of money, securities or bonds to or from an EU Member State equalling or exceeding EUR 10,000 to be declared to the customs administration.

If the amount being transferred exceeds EUR 50,000, documents evidencing the origin of the funds must be provided alongside the declaration. The Decree also lists the documents that are allowed to be used to evidence the origin of the funds.

See the Decree in full [here](#) (in French).

France: Decree on prepaid card limits

On 15 December 2016, Decree no. 2016-1742 on prepaid cards limits was adopted.

This Decree will limit:

- the loading capacity of prepaid cards to EUR 10,000;
- the maximum amount that can be loaded onto prepaid cards by means of cash or anonymous e-money to EUR 1,000 per calendar month;
- the withdrawal of money using prepaid cards to EUR 1,000 per calendar month; and
- the maximum amount of e-money that can be reimbursed in cash to EUR 10,000.

The Decree came into force on 1 January 2017.

See the Decree in full [here](#) (in French).

France: Decree on limits of payments by means of cash and electronic money

On 30 December 2016, Decree no. 2016-1985 on limits for payment operations relating to pledge loans in tangible property by means of cash or e-money and payment of debts by means of e-money was adopted.

The purpose of the Decree is to:

- limit payment operations relating to pledge loans in tangible property using cash or e-money to EUR 3,000; and
- increase the limit on the payment of debts using e-money from EUR 1,000 to EUR 3,000.

The Decree came into force on 1 January 2017.

See the Decree in full [here](#) (in French).

Indonesia: New regulations introduced for FinTech firms

The new rules, issued by the Indonesian Financial Services Authority (**OJK**), will apply to FinTech firms running a peer to peer lending business.

The rules mean firms applying for a business licence are required to have a capital requirement of Rp 2.5bn, and a minimum of Rp 1bn when registered with the OJK. This is significantly lower than the amounts initially proposed in the draft regulation of Rp 5bn and Rp 2.5bn respectively.

The OJK has also launched a regulatory sandbox for FinTechs and other startups in addition to the new rules concerning capital adequacy.

See more information [here](#).

Payment Market Developments

Global

Europe: Moneymailme app to offer video calls with cash transfer capabilities

Moneymailme is available in over 130 different countries and combines social interaction with the instant sending and receiving of e-money. The new service places Moneymailme in a small group of global innovators who allow money exchange to take place with video messaging.

With most phones now using 4G technology, it is thought that 75 per cent of the world's mobile data traffic will be video by 2020. The CEO of Moneymailme, Mihai Ivascu, said "*the adoption rate of mobile video is already increasing at a dramatic pace and the future of payments will centre on video*".

See more information [here](#).

Europe: Messenger app payment method launched by Facebook

Facebook has obtained the Central Bank of Ireland's (CBI) approval for as an e-money issuer to facilitate its new payment service. The payment service, which currently only works in the United States, allows customers to send money to their Facebook friends via the Messenger app. Facebook are reportedly planning on adding payments to businesses via the app in the near future.

The approval from the CBI means that the ability to pay via the Messenger app will soon be available throughout the EU if Facebook exercises the passporting rights under the Directives.

See more information [here](#).

Germany: Blockchain prototype launched by German Central Bank and German Stock Exchange

The German Central Bank and the German Stock Exchange have launched a functional blockchain-

prototype for the technology-based settlement of securities.

The prototype is designed to enable the settlement of securities with centrally issued digital units of value ("delivery-versus-payment transactions"), as well as the pure transfer of digital coins or digital securities, and simple corporate actions, including interest payments for bond owners and repayment upon the maturity of a bond.

See more information [here](#).

Malaysia: First digital remittance service launched

Maybank and Western Union have launched the Maybank2u (M2u) mobile banking app, which will allow customers to transfer up to RM10,000 in a day. The app enables Maybank customers to transfer money to Western Union Agent locations in over 200 countries and territories. The service will also be available on M2u's website.

Maybank is the provider for 62 per cent of all mobile banking transactions in the Malaysian market, and has the highest digitally engaged customer base compared to its peers.

See more information [here](#).

Global: Visa and Mastercard agree wallet tokenisation arrangement

The deal means each firm's digital wallet service can request the other's tokenised payment credentials, enabling both firms' wallets to open to each other's cards.

It is hoped that the agreement will drive the adoption of tokens and ensure each firm's wallet solutions remain available for use. Using tokens has the advantage of enabling extra security compared to using real card numbers.

See more information [here](#).

India: The State Bank of India to experiment with branchless banking

The State Bank of India (**SBI**) has announced plans to launch a digital-only bank later on in the year. Although staff will be used in the initial set up of the bank, the bank will eventually have a completely digital service with no manual intervention of any kind.

Once established, the SBI Digi Bank will offer end-to-end digitisation products and services, and all transactions will be undertaken using apps and internet and mobile banking. The bank will be available to both new and existing customers.

See more information [here](#).

Surveys and Reports

Europe: 28 per cent of spending on cards use domestic schemes

Retail Banking Research's (RBR) new study has found that 87 per cent of the 1.5 billion cards issued in Europe at the end of 2015 carried a Visa or Mastercard brand. In contrast, domestic-only bank cards made up less than 5 per cent of the regional total in Europe. Instead, domestic schemes are more commonly present on the same card as an international scheme (also known as "dual-badged" or "co-badged" cards).

According to the study, domestic schemes make up 28 per cent of card spending across Europe overall. In Belgium, Denmark, France, Germany and Norway, where dual-badged debit cards are used more widely, this figure increases to 60 per cent.

RBR noted that domestic schemes have sought to innovate in order to keep up with international competitors. In Germany and Denmark, for example, domestic schemes have added a contactless functionality.

See more information [here](#).

Africa: Nigeria capable of becoming a significant FinTech leader in Africa

Global Entrepreneurship Monitor's survey has revealed that mobile penetration in Nigeria is very high, with 23 million smartphone users and 150 million active subscriber lines in the country.

The FinTech "ecosystem" in Nigeria, consisting of 50 companies with investments exceeding \$200 million in the last 2 years, has been mapped by Irrational Innovations, a venture capital firm focused on FinTech in Africa.

Irrational Innovations found that 32 per cent of FinTech startups offer lending and finance, with 31 per cent of startups falling under a new generation

of products and services that did not exist before 2015.

See more information [here](#).

India: Mobile wallet market on the rise

A new report from Research and Markets has found that India's mobile wallet market grew with a compound annual growth rate (CAGR) of 48.85 per cent during 2012-16. The report also forecast that the market will reach \$4.4 billion in transactions by 2022, with a CAGR of over 148 per cent during 2017-22.

The market has grown due to rising smartphone ownership and internet access; a press release about the report noted that India is already the world's second biggest smartphone market, overtaking the USA.

The market is expected to improve further in the 2017-22 period because of the Indian government's focus on making India a cashless and digital economy, and its recent demonetisation of INR 500 and INR 1000 currency notes. The report noted that this economic climate will directly benefit companies like Paytm.

See more information [here](#).

Our Global Payments Team

Hogan Lovells' global payments practice is made up of financial services and technology lawyers working closely together as a single team from our network of offices, including offices in all the major financial centres.

The practice covers traditional payment services as well as technology driven innovations that affect products, business structures, services and markets.

Our Clients

The team provides strategic advice to all market participants including:

- lenders
- card issuers (including banks and e-money institutions)
- acquirers
- money remitters
- payment schemes
- mobile operators
- retailers
- payment platforms or technology providers
- payment processors
- networks and settlement services

How we can help

In addition to advising on payment specific regulation, the team:

- advises on all related regulation such as money laundering, data and privacy, technology law and IP, e-commerce and consumer protection
- negotiates commercial contracts
- leads or supports on mergers and acquisitions in the payments sector
- engages with Government on new regulation and implementing new legislation
- advises on multi-party arrangements to develop new payment services or networks and on related loyalty and incentive programmes
- negotiates outsourcing of payments processing and settlement
- drafts related customer and commercial documentation

The global payments practice is part of Hogan Lovells market leading Financial Institutions Group, one of the largest practices of its kind with approximately 200 lawyers worldwide.

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