

EBA/GL/2017/13

05/12/2017

Guidelines

on procedures for complaints of alleged infringements of Payment Services Directive 2

1. Compliance and reporting obligations

Status of these Guidelines

1. This document contains Guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010 ⁽¹⁾. In accordance with Article 16(3) of Regulation (EU) No 1093/2010, competent authorities 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 which 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. According to Article 16(3) of Regulation (EU) No 1093/2010, competent authorities must notify the EBA as to whether they comply or intend to comply with these Guidelines, or otherwise with reasons for non-compliance, by 05/02/2018. 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 with the reference 'EBA/GL/2017/13'. 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 EBA.
4. Notifications will be published on the EBA website, in line with Article 16(3) of Regulation (EU) No 1093/2010.

⁽¹⁾ 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

Subject matter and scope of application

5. These Guidelines address the requirement for the EBA to issue Guidelines under Article 100(6) of Directive (EU) 2015/2366 of 25 November 2015 on payment services in the internal market.
6. These Guidelines apply to complaints submitted to competent authorities with regard to payment service providers' alleged infringements of Directive (EU) 2015/2366 as laid down in Article 99(1) of the Directive. These complaints are to be taken into consideration by competent authorities to ensure and monitor effective compliance with Directive (EU) 2015/2366, as referred to in Article 100(6) of the Directive. These complaints may be submitted by payment service users and other interested parties, including payment service providers that are affected by the situation(s) that gave rise to the complaint and consumer associations ('complainants').

Addressees

7. These Guidelines are addressed to competent authorities as defined in point i) of Article 4(2) of Regulation (EU) No 1093/2010, and designated by Member States to ensure and monitor effective compliance with Directive (EU) 2015/2366, in accordance with Article 100(1) of that Directive.

Definitions

8. Unless otherwise specified, terms used and defined in Directive (EU) 2015/2366 have the same meaning in the Guidelines.

3. Implementation

Date of application

9. These Guidelines apply from 13 January 2018.

4. Guidelines on procedures for complaints of alleged infringements of Directive (EU) 2015/2366

Guideline 1: Channels for the submission of complaints of alleged infringements of Directive (EU) 2015/2366

- 1.1. Competent authorities should ensure that at least two different channels are available for complainants to submit their complaints of alleged infringement of Directive (EU) 2015/2366 and that at least one of these channels is easily accessible for all types of complainants.
- 1.2. Competent authorities should ensure that at least one of the channels referred to in Guideline 1.1. is digital and accessible online, such as an email or a web form.

Guideline 2: Information to be requested from complainants

- 2.1. Competent authorities should request from complainants to provide, where possible, information which includes but is not limited to:
 - a. the identity and contact details of the complainant;
 - b. an indication of whether the complainant is a natural or a legal person;
 - c. an indication of whether or not the complainant is a payment service user;
 - d. the identity of the payment service provider(s) that has/have given rise to the complaint of an alleged infringement of Directive (EU) 2015/2366; and
 - e. a description of the situation that gave rise to the complaint of an alleged infringement of Directive (EU) 2015/2366.
- 2.2. Competent authorities should record the information provided by the complainants under Guideline 2.1.
- 2.3. Competent authorities should make means available for complainants to submit any documentary evidence in support of the complaint, such as a copy of their contract with the payment service provider, any correspondence exchanged with the payment service provider(s) or with any other entity, and information related to their payment account if relevant.

Guideline 3: Reply to complainants

- 3.1. When responding to the complainants and, where appropriate, informing them of the existence of alternative dispute resolution procedures in accordance with Article 99(2) of Directive (EU) 2015/2366, competent authorities should also provide:
 - a. an acknowledgment of receipt of the complaint;
 - b. information on the general competence of the competent authority in respect of the procedure for complaints of alleged infringements of Directive (EU) 2015/2366;
 - c. information on whether the competent authority has forwarded the complaint to another authority or body, which may be located in the same or in another Member State, and including the name and contact details of that authority or body; and
 - d. information on either the timing and form of any further communication with the complainant on the alleged infringement of Directive (EU) 2015/2366, or if the reply represents the end of the complaints procedure with the competent authority.
- 3.2. Competent authorities should send the reply to the complainant without undue delay.
- 3.3. Competent authorities should include information as set out in Guideline 3.1.d. in any subsequent communication that they may have with the complainant.

Guideline 4: Aggregate analysis of complaints

- 4.1. Taking into account at least the information collected under Guideline 2.1., competent authorities should have a complaints procedure in place that allows for the aggregate analysis of complaints of alleged infringements of Directive (EU) 2015/2366 and enables competent authorities to identify, understand and assess, for a given timeframe:
 - a. the total number of complaints of alleged infringements of Directive (EU) 2015/2366 received;
 - b. the nature of the most common types of complainants;
 - c. the identity of the payment service providers that are most often complained about;
 - d. the issues and, where possible, the provisions of Directive (EU) 2015/2366 most complained about;

- e. the payment services most complained about, where possible; and
 - f. the most common measures taken by the competent authority in response to the complaints received to ensure effective compliance with Directive (EU) 2015/2366.
- 4.2. Competent authorities should take into account the aggregate analysis of complaints referred to in Guideline 4.1. to ensure and monitor effective compliance of payment service providers with Directive (EU) 2015/2366.
- 4.3. Competent authorities should treat complaints from the same complainant, about the same payment service provider and with the same description of the situation that gave rise to the complaint, as a single complaint for the purposes of the aggregate analysis of complaints referred to in Guideline 4.1.

Guideline 5: Documentation of complaints procedures

- 5.1. Competent authorities should document their complaints procedures by outlining the procedure for the receipt of complaints submitted by payment service users and other interested parties, as laid down in these Guidelines, and the internal governance of that procedure.

Guideline 6: Public information on complaints procedures

- 6.1. Competent authorities should make publicly available information on their procedures for complaints of alleged infringements of Directive (EU) 2015/2366. This information should be up to date and easily accessible, and include but not be limited to:
- a. the objective and scope of the complaints procedures;
 - b. the channels through which complaints can be submitted, and how to access them;
 - c. the information that complainants are requested to provide as set out in Guideline 2.1.;
 - d. the sequential steps of the complaints procedures and any deadlines that may apply;
 - e. the general competence of the competent authority in respect of the procedure for complaints of alleged infringements of Directive (EU) 2015/2366; and
 - f. the various measures available to the competent authority to ensure and monitor effective compliance with Directive (EU) 2015/2366.
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